

Exhibit A

DEFINITIONS AND ACRONYMS

“**Addenda/Addendum**” means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

“**Alternative Technical Concepts**” or “**ATCs**” means the concepts described in ITP Section 3.1.

“**Authorized Representative**” has the meaning set forth in ITP Section 2.2.1.

“**Code**” has the meaning set forth in ITP Section 1.6.4.

“**Commission**” means the Texas Transportation Commission.

“**Development Agreement**” means the comprehensive development agreement to develop, design and construct the Project, as further set forth in Volume II of the RFP.

“**Developer**” has the meaning set forth in ITP Section 1.1.

“**Development Plan Evaluation Subcommittee**” or “**DPES**” means the subcommittee that performs the initial review of the Technical Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.1.

“**Disadvantaged Business Enterprise**” or “**DBE**” has the meaning set forth in 49 CFR Part 26.

“**Capital Maintenance Agreement**” or “**CMA**” means the agreement to provide capital maintenance services for the Project for up to 15 years, as further set forth in Volume II of the RFP.

“**Equity Member**” means (a) each entity with a direct interest in the Proposer (whether as a member, partner, joint venture member, or otherwise), (b) each entity proposed to have a direct interest in Developer (whether as a member, partner, joint venture member, or otherwise), and (c) each entity that will have an indirect interest in the Proposer or Developer through one or more intermediaries. Notwithstanding the foregoing, if the Proposer is a publicly traded company, shareholders with less than a 10% interest in the Proposer shall not be considered Equity Members.

“**Evaluation and Selection Recommendation Committee**” or “**ESRC**” means the committee that will review and evaluate the Proposals and make a recommendation to the Steering Committee as set forth in ITP Section 5.1.

“**FHWA**” means the Federal Highway Administration.

“**Financial Proposal**” means the financial information included in a Proposal submitted by a Proposer providing the information requested in Exhibit C-1 of the ITP.

“Financial Proposal Evaluation Subcommittee” or **“FPES”** means the subcommittee that performs the initial review of the Financial Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.1.

“Instructions to Proposers” or **“ITP”** means the documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

“Intelligent Transportation System” or **“ITS”** means a system for monitoring traffic flow and performance, including vehicle detection equipment that measures vehicle classification, vehicular volume, lane occupancy, and speed information; communications equipment; closed circuit television equipment; and equipment for dynamic messaging capability.

“Key Personnel” means the individuals designated by a Proposer pursuant to Section 3.2.5 of Exhibit B to the ITP.

“Key Subcontractor” means any subcontractor that will (a) fill any of the following key project roles: project management, lead design firm, quality control management, and quality assurance management or (b) serve as a key task leader for geotechnical, hydraulics and hydrology, structural, environmental, utility or right-of-way issues. See Form Q.

“Maintenance Option Price” has the meaning set forth in ITP Section 5.5.5.

“Maintenance Price” has the meaning set forth Section 3.2 of Exhibit C-2 to the ITP.

“Major Participant” means each Equity Member and each member of the Proposer’s organization with: (a) primary responsibility for design; (b) primary responsibility for construction; (c) primary responsibility for capital maintenance; or (d) a proposed subcontract with a value greater than or equal to \$10 million (excluding subcontracts with Suppliers).

“Major Professional Services Firm” has the meaning set forth in Section 3.2.2 of Exhibit B to the ITP.

“Post-Selection Deliverables” has the meaning set forth in ITP Section 5.12.

“Preliminary Baseline Schedule” means the Project schedule required to be submitted with the Proposal and meeting the requirements set forth in Section 4.1.3 of Exhibit B to the ITP.

“Pre-Proposal Submittal” has the meaning set forth in ITP Section 2.4.

“Price Proposal” means the price offer included in the Proposal submitted by a Proposer as set forth on the forms requested in Exhibit C-2 of the ITP.

“Price Proposal Due Date” means the deadline for submission of Price Proposals identified in ITP Section 1.5.

“Project” means the Grand Parkway Project, consisting of Segments F-1, F-2 and G as described in Section 1.4.1 of the ITP.

“Project Development Plan” means the plan submitted with the Technical Proposal providing the information requested in Section 4.0 of Exhibit B to the ITP.

“Project Management Plan” means the portion of the Project Development Plan providing the information requested in Section 4.2 of Exhibit B to the ITP.

“Project Website” has the meaning set forth in ITP Section 2.2.

“Proposal” means the original documents submitted by a Proposer in response to the RFP.

“Payment for Work Product Agreement” means the agreement between Proposer and TxDOT set forth as ITP Exhibit H that governs the payment for work product and use of the Proposer’s work product, if unsuccessful, in accordance with ITP Section 6.3.

“Proposal Revisions” have the meaning set forth in ITP Section 5.8.

“Proposal Security” means the proposal bond as described in Section 3.3 of Exhibit C-2 to the ITP.

“Proposer” means the entity submitting a Proposal for the Project in response to this RFP.

“Qualifications Submittal” or **“QS”** means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by TxDOT.

“Quality Management Plan” means the portion of the Project Development Plan providing the information requested in Section 4.3 of Exhibit B to the ITP.

“Reference Information Documents” means the documents and information included in Volume IV and described in ITP Section 1.2.1.

“Request for Qualifications” or **“RFQ”** means TxDOT’s Request for Qualifications issued on November 18, 2011, as amended.

“Request for Proposals” or **“RFP”** means the set of documents identifying the Project and the work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/Developer. The RFP includes the ITP, Development Agreement Documents, CMA Documents and Reference Information Documents. The RFP is issued only to Proposers that have been shortlisted following RFQ review.

“Segment F-1” means the portion of the Project generally described in ITP Section 1.3.3

“Segment F-2” means the portion of the Project generally described in ITP Section 1.3.3.

“Segment G” means the portion of the Project generally described in ITP Section 1.3.3.

“Stakeholder” means parties that may have a stake in the Project by virtue of their location or funding, including the Houston Galveston Area Council (“HGAC”), Harris County Toll Road Authority, Montgomery County Toll Road Authority, A-95 Environmental Review agencies, the cities, counties, USDOT, and FHWA and their officers, directors, and employees. For purposes of ITP Section 2.2.3(d), the Texas Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and other police and public safety services in accordance with applicable Laws and agreements with State and local agencies will not be considered Stakeholders.

“Steering Committee” has the meaning set forth in ITP Section 5.9.

“Surety” means the individual or entity committing to provide any of the bonds identified in the RFP.

“Technical Proposal” means all of the documents, certifications and information required to be submitted pursuant to Exhibit B to the ITP.

“Technical Proposal Due Date” means the deadline for submission of Technical and Financial Proposals identified in ITP Section 1.5.

“Toll System Integrator Agreement” has the meaning set forth in ITP Section 1.4.4.

“Technical Solutions” means the portion of the Project Development Plan providing the information requested in Section 4.1 of Exhibit B to the ITP.

For the purpose of this definition, “system” means one or more of the toll collection systems that TxDOT wishes to develop, install, test, integrate and maintain pursuant to the Toll System Integrator Agreement.

“USDOT” means the United States Department of Transportation.

For definitions of other initially capitalized terms, see the Developer Agreement Documents and CMA Documents.

Exhibit B

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit B describes the submission format for Technical Proposals and outlines the required information that will comprise a Technical Proposal for the Development Agreement and CMA.

Proposer shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms on behalf of each Major Participant. Item B of the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A-1 identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories for Major Participants.

2.0 Format

The Technical Proposal shall be limited to an aggregate of 80 pages (if double-sided, 40 sheets), plus the executive summary, resumes, appendices and exhibits containing required forms, graphs, matrices, schedule, drawings and other pertinent data.

3.0 Contents of the Technical Proposal

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit B. A copy of the checklist for the Technical Proposal shall be included in the Technical Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

The Technical Proposal shall consist of the following major elements:

- (a) Executive Summary;
- (b) Proposer Information, Certifications and Documents (including required Forms A-1, B-1 through E, G through J, P, S and Q);

- (c) Project Development Plan; and
- (d) Appendices

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with Proposer’s Proposal and Proposer’s ability to satisfy the financial and technical requirements of the Project. The Executive Summary shall not exceed ten single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

- (a) An explanation of the organization and contents of the Proposal.
- (b) A summary of any changes to Proposer’s QS.
- (c) A summary of any changes in Proposer’s organization, Equity Members, other Major Participants and Key Personnel since submission of the QS.
- (d) A summary of the proposed management, decision making, and day-to-day operation structure of Proposer, and a statement that each Major Participant has committed to provide the specified people;
- (e) A summary of the Project Development Plan including:
 - A summary of the Technical Solutions,
 - A summary of the Project Management Plan, and
 - A summary of the Quality Management Plan
- (f) A summary of the Proposer’s approach to satisfying the DBE requirements;

3.2 Proposer Information, Certifications and Documents

3.2.1 Technical and Financial Proposal Letter

The Proposal shall include the Technical and Financial Proposal Letter (Form A-1). Proposer shall attach to the Technical and Financial Proposal Letter the documents and information described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A-1, provided however, Proposer may attach to the original Form A-1 an envelope including four certified copies of the required organizational documents in lieu of providing organizational documents with each of the copies of the Technical Proposal.

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3.2.2 Information About Proposer, Major Participants and Other Subcontractors

The Proposal shall include a completed chart on Form B-1, including the names, contact information, role in the organization, licensing information, and description of work (if applicable) for Proposer and Equity Members.

The Proposal shall include completed Form B-2 providing information about Proposer and its team as specified therein.

The Proposal shall include a completed Form B-3 providing information regarding (i) each Major Participant excluding Equity Members; (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance and/or other professional services for development of the Project valued at \$2 million or more (“Major Professional Services Firm”); and (iii) all other subcontractors identified by Proposer as of the Technical Proposal Due Date. Proposer is advised that all Major Professional Services Firms must be identified at the time of the Proposal, and that, as a condition to final award and execution of the Development Agreement and Capital Maintenance Agreement (“CMA”), the successful Proposer must provide evidence that it and its Major Participants hold all necessary licenses and professional registrations.

The Proposal shall include copies of organizational documentation described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A-1 for Proposer, Developer and Equity Members, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or, if Proposer intends to form an affiliated entity to be the Developer, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A-1) for such proposed entity.

3.2.3 Responsible Proposer Questionnaire

The Proposal shall include Form C, the “Responsible Proposer Questionnaire”, signed by Proposer, each Major Participant and any other team member identified in the Proposal. As noted on the form, it may be provided by Proposer on its own behalf and on behalf of the Developer and Equity Members, or it may be provided by Proposer on its own behalf and the individual Equity Members on their own behalf. The form executed by Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Equity Members shall be signed by an authorized representative of such Equity Members and the Proposal shall include evidence of signature authorization for such individual.

3.2.4 Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each member of Proposer’s team that will perform or supervise installation and/or construction work on the Project, including information for any entity in which such team

member holds a substantial interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

3.2.5 Key Personnel

3.2.5.1 Designation of Key Personnel Prior to Proposal Due Date

Each Proposer shall submit a package that includes an original and five copies of the information specified in this Section 3.2.5.1 to TxDOT, by the date and time for submittal of changes in Key Personnel specified in ITP Section 1.5 for review and written approval by TxDOT, in its sole discretion. The package shall be delivered to the address set forth in ITP Section 2.2.1, and shall include a list of any proposed changes in Key Personnel from those identified in the QS and any new Key Personnel that were not required to be submitted with the QS falling within any of the categories identified in Section 3.2.5.2, along with copies of resumes for each such person (which must contain the individual's qualifications and relevant work experience) and contact information for three references for each individual. TxDOT discourages changes in Key Personnel from the individuals listed in the QS and is under no obligation to approve such requests and may disapprove the request at its sole discretion; provided however, TxDOT will consider requests for a change in the Environmental Compliance Manager, which position is no longer required to be filled by an employee of the Lead Contractor or Lead Designer but is required to meet additional requirements as specified in Section 4.4.1 of the Technical Provisions. In addition, if any individual included in the Proposal is also proposed as a Key Personnel or for another position on any other TxDOT procurement, Proposer shall include in the package either: (1) a statement certifying that said individual will be available to assume its designated role on the Grand Parkway Project if Proposer is the successful Proposer, or (2) the resume of a qualified alternate.

If TxDOT, in its sole discretion, disapproves a proposed Key Personnel or (if applicable) its proposed alternate, Proposer shall submit the information required above for its proposed substitute, for review and approval by TxDOT in accordance with the foregoing process, at least ten Business Days prior to the Technical Proposal Due Date. The Proposal may not include any Key Personnel previously disapproved by TxDOT in writing.

The Proposal shall identify the pre-approved Key Personnel and shall include Form E identifying personnel work assignments, as well as a statement signed by Proposer and the employer of each designated Key Personnel position, committing to maintain such individual's availability for and active involvement in the Project. The Proposal also shall include copies of the resumes and contact information described in Section 3.2.5.1 for each designated Key Personnel position. Refer to the Development Agreement Documents and CMA Documents, as applicable, for information regarding time commitment requirements for Key Personnel and TxDOT's rights if it determines

that any such personnel are not devoting sufficient time to the prosecution and performance of the work required for the Project. Proposer may not make any changes in its Key Personnel after receipt of TxDOT approval as specified in this Section 3.2.5.1, except as provided in the Development Agreement Documents and CMA Documents, as applicable.

3.2.5.2 Information Regarding Key Personnel in Proposal

The individuals with direct responsibility for each of the following categories of work are considered Key Personnel:

- overall management of the Project (Project Manager, Deputy Project Director – Design, and Deputy Project Director – Construction);
- public relations and community outreach (Public Information Coordinator as described in Section 3.2.2 of the Technical Provisions);
- right-of-way (ROW Manager/ROW Acquisition Manager as described in Section 7.2.7 of the Technical Provisions);
- utility adjustment (Utility Manager as described in Section 6.2.3 of the Technical Provisions);
- design of the Project (Design Manager, Lead Roadway Design Engineer, Lead Bridge Design Engineer as described in Section 2.2.7.4 of the Technical Provisions);
- construction, coordination of subcontractors and scheduling (Superintendent/Construction Manager);
- control of quality, and the implementation and operation of the Project's quality systems (Lead Quality Manager, Design Quality Manager, and Construction Quality Control Manager as described in Sections 2.2.6, 2.2.7.4 and 2.2.8.1.1 of the Technical Provisions);
- environmental compliance (Environmental Compliance Manager);
- independent quality acceptance (Construction Quality Acceptance Manager as described in Section 2.2.8.1.3 of the Technical Provisions); and
- Project maintenance management and maintenance quality control (O&M Manager and Maintenance QC Manager as described in the CMA).

3.2.6 Letters Approving Key Personnel and Changes in Proposer's Organization

The Proposal shall include a copy of the approval letter(s) issued by TxDOT pursuant to Section 3.2.5.1 approving the Key Personnel. If Proposer's organization has changed since submission of the QS, Proposer shall specifically describe such

changes and, if applicable, include a copy of TxDOT's approval letter provided under ITP Section 2.11.

3.2.7 Certification Regarding Buy America

The Proposal shall include Form G, regarding Buy America requirements.

3.2.8 DBE Requirements

The Proposal shall include a Certification of DBE Goal Attainment or Good Faith Efforts (Form H) confirming that Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to substantiate its attempts to meet the goal.

3.2.9 Child Support Statement for State Grants, Loans and Contracts.

The Proposal shall include Form I regarding child support obligations, for Proposer and each Major Participant.

3.2.10 Organizational Conflict of Interest Disclosure

Attention is directed to TxDOT's rules on conflicts of interest, which are set forth at 43 Texas Administrative Code §27.8. The Proposal shall include a certification on Form J describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest.

3.2.11 Certification Regarding Equal Employment Opportunity

The Proposal shall include Form P, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

3.2.12 Guarantor Letter

The Proposal shall include (if a guaranty is required): (a) an irrevocable letter signed by the guarantor in the form of Form U committing to provide a guaranty in the form of Exhibit 13 of the Development Agreement ~~(if a guaranty is required by TxDOT)~~ and a guaranty in the form of Exhibit 9 of the CMA, concurrently with execution and delivery of the Development Agreement Documents and CMA Documents by Proposer, (b) evidence of authorization of the signatory to that letter, (c) Form B-1 for the guarantor, (d) financial information described in Section 2.0 of Exhibit C-1; and (e) such other information concerning the guarantor as TxDOT may request. A guaranty of Developer's obligation under the Development Agreement is required under the following circumstances: (i) Proposer identified a guarantor in its QS or was advised by TxDOT that a guaranty would be required as a condition to the shortlisting of Proposer, (ii) ~~Proposer's-Developer's~~ organization is a newly formed corporation or a limited liability entity, (iii) the combined Tangible Net Worth of ~~Proposer-Developer~~ and its ~~e~~Equity ~~m~~Members is less than \$200,000,000; or (iv) the form of organization of

Proposer and/or the financially responsible parties comprising Proposer changes and TxDOT determines, in its sole discretion, to require a guarantor as a condition to approving such change under ITP Section 2.11. A guaranty of Maintenance Contractor's obligations under the CMA is required under the circumstances set forth in (i) – (iv) above, provided that the test will apply to the Maintenance Contractor's organization.

If a guaranty is required, the combined Tangible Net Worth of the guarantor, Proposer/Developer or Maintenance Contractor, as applicable, and its Equity Members must be at least \$200,000.000. Tangible Net Worth shall be determined based on audited financial statements for the fiscal year most recently ended. ~~A guaranty of Maintenance Contractor's obligations under the CMA is required from all Equity Members of the Proposer.~~

3.2.13 Surety Information

The Proposal shall include the following information regarding the Surety for the bonds to be provided in accordance with Section 8 of the Development Agreement and Section 7 of the CMA:

- (a) Name of bonding company (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company) and the name and address of the agent.
- (b) Whether or not the listed bonding company defaulted on any obligation within the past ten years, and the details in the event of such default.

3.2.14 Certification Regarding Ineligible Contractors

The Proposal shall include Form S, certifying that Proposer and its Subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended or ineligible from doing transactions with the Federal Government or any of its agencies, and making other certifications as described on Form S.

3.2.15 Key Subcontractors

The Proposal shall include a list in the form of Form Q of the names of all Key Subcontractors that Proposer intends to use to complete the Work under the Development Agreement.

3.2.16 Substantial Completion Deadline(s)

The Proposal shall include Form O. Proposer shall indicate the number of calendar days between NTP1 and its proposed Substantial Completion date for each of Segments F-1, F-2 and G from the Preliminary Project Baseline Schedule on Form O.

3.2.17 Payment for Work Product Agreement

Proposer, at its option, may submit with the Proposal an executed copy of the Payment for Work Product Agreement in the form of Exhibit H. Although submission of an executed Payment for Work Product Agreement is at the Proposer's election, submission of an executed Payment for Work Product Agreement with the Technical Proposal shall be a condition to eligibility for the payment for work product as provided under Section 6.3 of the ITP. Any failure to submit an executed Payment for Work Product Agreement with the Technical Proposal will constitute a rejection of the payment for work product and render the Proposer ineligible for such payment.

4.0 Project Development Plan

Proposer shall submit a Project Development Plan which shall consist of the following three components:

- Technical Solutions (Section 4.1),
- Project Management Plan (Section 4.2), and
- Quality Management Plan (Section 4.3).

The Project Development Plan shall provide the information relevant for developing the Proposer's schematic, the project management philosophy, plan and schedule for executing the Project including management structure and personnel; and the quality control procedures for any related contract administration, describing how Proposer plans to achieve and satisfy the project requirements.

4.1 Technical Solutions

The Technical Solutions component of the Proposal shall describe Proposer's approach to implementing the work and shall include a Design and Construction Plan, a Maintenance Plan, a Preliminary Project Baseline Schedule and additional associated information, as described in this Section 4.1. The Technical Solutions shall also include information with respect to approved ATCs, perceived added value items and the incorporation of new technologies as follows:

- (a) Specifically, for all ATCs, Proposer shall:
- Specifically state whether any approved ATCs are included in the Proposal, with reference to the ATC identification number assigned by TxDOT; and
 - Describe how the ATC is used and provide cross-references to other elements of the Proposal that are affected by the ATC.

- (b) For perceived added value components of the Proposal, Proposer shall:

Specifically identify characteristics of its Proposal which Proposer considers to improve upon the Project's technical requirements, as set forth in the Development Agreement Documents and the CMA Documents, and which bring additional benefits and/or value to TxDOT and the public; and

Provide an estimate of the value of such benefits.

4.1.1 Design and Construction Plan

The Design and Construction Plan shall include information identified in Section 4.1.1.1 through Section 4.1.1.14 relevant to Developer's schematic and proposed approach.

Developer's schematic shall clearly identify the work to be completed by Developer. Changes in alignments or other elements proposed by Developer's schematic to the extent they will require an evaluation for compliance with the TxDOT-Provided Approvals and possibly re-evaluations and delays associated with such re-evaluations will be at Developer's risk.

Items which do not apply to Developer's proposed approach are to be specifically noted as such. For all of the items not required, backup information is to be provided which supports the non-applicability of the items.

4.1.1.1 Construction Staging, Sequencing and Traffic Management

The Proposal shall provide a description of the construction staging, sequencing and traffic control to maintain traffic during the construction of the Project. The information shall include at least the following:

- (a) The overall traffic management and control and sequencing approach.
- (b) Concept drawings and description of the proposed construction staging including those at major interchanges and steps that will be taken to minimize disruptions to the traveling public and impacts on the Stakeholders and communities.
- (c) A description of how the right of way and adjacent roads and properties will be maintained and protected business, airport and residential access will be maintained throughout the Project corridor during the construction including the intended measures to be used to mitigate and minimize noise, vibration, light, dust, erosion/run-off and local road damage.
- (d) Concept drawings and description of the Early Completion Work and Option Work described in Sections 1.3.2.2 and 1.3.2.3 of the Technical Provisions, respectively, that clearly indicate the configuration of the completed Work, including limits of Work, transitions, temporary construction, traffic control and construction sequencing, access control, toll facilities, and provisions for future ultimate construction.

4.1.1.2 Geotechnical and Earthwork Plan

The Proposal shall provide a description of the methods for taking into account the surface and subsurface conditions of the Project in designing and constructing the Project. The information shall include at least the following:

- (a) The proposed plan for geotechnical investigations, identifying the objectives, scope of the work, and the information to be obtained, and the manner in which Proposer will address property owners' concerns and minimize intrusiveness of investigations.
- (b) Details of proposed ground and groundwater control methods during construction.
- (c) Conceptual instrumentation plan to monitor pore pressures, settlements and stability.
- (d) Approach to mass haul operations and locations of potential borrow/waste sites and resulting impact on existing roads.
- (e) Plans to mitigate and correct potential settlement and heave.

- (f) Quality processes to be employed during construction of pavements for reduction in long-term maintenance costs.
- (g) Preliminary pavement design report providing details of the proposed designs, material types, roadway classifications, traffic loading and design life considerations, including the approach to address non-swell requirements, in accordance with Section 8 of the Technical Provisions.

4.1.1.3 Bridges and Surface Structures

The Proposal shall provide a description of the bridges and surface structures (representative retaining and noise walls) for the Project. The information shall include at least the following:

- (a) Concept plans for bridges indicating proposed modifications to any bridge plans included with the RFP with sufficient detail to indicate bridge type, foundation types, width, controlling clearances, and span arrangement. Calculated vertical clearances shall be shown in all profile views. Lane configurations and clear zones of crossing roadways and railroads shall be clearly indicated as applicable.
- (b) Concept plans for retaining and noise walls shall indicate wall types (including a typical section for each type), proposed locations and limits.
- (c) Specifically for bridges and surface structures, Proposer shall include the following:
 - identification of type, material, appearance and design life considerations;
 - cross-sectional drawings of all proposed bridge types; and
 - a description of the methods of construction for build-out on structures for the ultimate configuration.

4.1.1.4 Connectivity/Interconnections

The Proposal shall identify connectivity/interconnections with existing transportation and utility infrastructure in the Project area and describe the procedures for coordinating with other governmental agencies and Stakeholders to obtain planned transportation and utility infrastructure in the Project area.

4.1.1.5 Right-of-Way Services

The Proposal shall provide a description of its approach to performing right-of-way services for the Project. The information shall include at least the following:

- (a) The approach describing how the acquisition of right-of-way and any necessary relocation services will be managed by Proposer in conjunction

with TxDOT, local officials and the Office of the Attorney General. The approach must also describe how acquisition of right of way will be incorporated into the Project schedule to avoid delays.

- (b) A description of the quality control methods that Proposer will employ to assure that all property owners' rights under the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, are being satisfied, including, without limitation, the safeguards and policies Proposer will implement to ensure, that no coercive actions, as described in 49 CFR 24.102(h), will result from advancing a portion of right of way to the construction stage or any other actions that may be undertaken that could adversely affect the right-of-way acquisition process.
- (c) A description of the acquisition and relocation process that will maintain the Project schedule but be sensitive to the needs and concerns of property owners, lessees, licensees and other occupants.

4.1.1.6 Utilities

The Proposal shall provide a description of the utility work required for the Project. The information shall include at least the following:

- (a) The proposed methods of locating utilities horizontally and vertically that encroach upon the footprint of the Project.
- (b) The intended means of communication and planning of construction to keep Utility Owners informed of the construction schedule, the means of construction and changes that may affect their facilities.
- (c) The proposed methods of design and construction related to utility relocation and protection.
- (d) The proposed methods to minimize utility conflicts during design and construction and the approach for managing conflicts.
- (e) The proposed methods to facilitate cooperation from Utility Owners, including, without limitation, the approach to negotiating utility adjustment agreements and resolving betterment issues.

4.1.1.7 Life Cycle Cost Methodology

The Proposal shall provide a description of the methodology to be used for life cycle cost analysis for the Project over the duration of the Development Agreement and CMA, including the capital maintenance period.

4.1.1.8 Environmental Permitting, Mitigation and Impacts

The Proposal shall provide a description of its approach to complying with the environmental requirements of the Project and any environmental issues that may arise. The information shall include at least the following:

- (a) A list of environmental permits, permit amendments and other approvals, whether state, federal or local, that will or may be required, together with the name of the issuing agency and a plan for obtaining required permits and permit amendments in a timely manner.
- (b) A description of the measures that will be undertaken to ensure compliance with environmental permits and approvals and approvals relating to cultural resources.
- (c) A description of the environmental issues anticipated to be encountered on the Project and how design and construction will address the anticipated impacts and be sensitive to the environment.

4.1.1.9 Drainage

The Proposal shall provide a description of the drainage for the Project. The information shall include at least the following:

- (a) Description of the drainage system including identification of contributing drainage areas, major crossings, mitigation of discharges and detention requirements.
- (b) General concept plan drawing(s) showing the preliminary overall surface water collection system along with a general layout of the identified major drainage trunk lines and cross drainage structures , including outfall locations to accommodate the ultimate configuration.
- (c) Proposer's concept plan for providing temporary drainage or construction sequencing of portions of the drainage network prior to completion of entire drainage system.
- (d) Description of the approach for connecting to existing or proposed drainage system(s), including identification of impacted owners and/or operators.
- (e) Description and plan drawing(s) defining the approximate limits of temporary construction and drainage easements necessary for completion of the Project drainage work.

4.1.1.10 Roadway

The Proposal shall provide a description of the roadway components for the Project. The information shall include at least the following:

- (a) Preliminary plan and profile schematic sheets for mainlanes, frontage roads, interchanges and crossing roadways for the Schematic Design.
- (b) Schematic sheets shall include typical sections and general project roadway information such as right of way and Project limits, design speeds and functional classification(s).
- (c) Proposed refinements in the horizontal and vertical geometric configuration of the Schematic Design.
- (d) Roadway and interchange geometry to accommodate the ultimate configuration.
- (e) A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project.

4.1.1.11 Tolling Facility Infrastructure

The Proposal shall provide a description of its plan to coordinate and interface its work with the toll systems integrator. The information shall include at least the following:

- (a) The proposed method for coordinating with the toll systems integrator to ensure on-time opening of the Project.
- (b) The approach to quality acceptance and quality control.
- (c) A compliance table cross-referencing all of the ETCS requirements and the location(s) within the Proposal that describes the proposed solution for each requirement.

4.1.1.12 Intelligent Transportation Systems

The Proposal shall provide a description of the Intelligent Transportation Systems for the Project. The information shall include at least the following:

- (a) A schematic plan and layout showing the locations of ITS equipment, including cameras, DMS signs, traffic monitoring stations, and lane marking points.
- (b) A description of how the system will be monitored and connected to area traffic management centers to provide the required level of service to users, maintain interoperability for monitoring and control of subsurface systems.
- (c) A description for methods of coordinating information with other ITS systems in the region and for incorporation into the Houston-Galveston Regional ITS Architecture.

4.1.1.13 Signing, Delineation, Pavement Markings, Signalization and Lighting

The Proposal shall provide a description of the signing, delineation, pavement markings, signalization and lighting for the Project. The information shall include at least the following:

- (a) A preliminary operational signing schematic layout in sufficient detail and in a format that demonstrates Proposer's knowledge of the required signing standards, signing work for the Project and specialized signing appropriate for a Toll Road.
- (b) A description of the approach for safety lighting at the ramps and high mast lighting at the interchanges.

4.1.1.14 Landscape and Aesthetic Design

The Proposal shall provide a description of the aesthetic design for the Project. The information shall include at least the following:

- (a) A preliminary Aesthetics Plan, including a description and concept drawings showing Proposer's approach for implementing the Green Ribbon Project Guidelines;
- (b) A description and concept drawing(s) of aesthetics items that may have not been covered by the Project details or are additional items proposed to be completed as a portion of Proposer's work.
- (c) A preliminary Landscape Plan, including a description of items to be included in the Landscape Allowance and additional items proposed to be completed as part of the Work; and
- (d) A description of how the Proposer plans to work with TxDOT to enhance the design and aesthetic details.

4.1.2 Maintenance Plan

The Proposal shall provide a Maintenance Plan which shall describe how Proposer will meet the performance requirements set forth in the Capital Maintenance Agreement. For the Maintenance Plan, the Proposal shall address at least the following:

- (a) The plan and approach to transitioning and phasing from construction to capital maintenance activities.
- (b) The plan and approach to annual capital maintenance and capital maintenance reporting, and how they will be used to manage the Project.

- (c) The plan and approach for transfer of capital maintenance responsibility for the Project to TxDOT at the expiration or termination of the CMA, including a preliminary list of specialized maintenance equipment that will be turned over to TxDOT.
- (d) Management tools (such as communications, computers, software and equipment).
- (e) The approach to traffic control and operations during capital maintenance activities, including lane closures and other traffic restrictions.
- (f) Inspection and testing of Project items (including pavements, shoulders, bridges, sound and retaining walls, embankments and cut slopes) and the identification and classification of defects and inspection failures.
- (g) The proposed quality control plan including a description of the processes and procedures to be used in the performance of Maintenance Services and associated activities.
- (h) How defects or faults in any aspect of the Project's infrastructure shall be classified and rectified within appropriate time limits.
- (i) The proposed program for the planning, implementation and completion of future capital maintenance repairs, and capital asset replacement activities during the term of the CMA. The information shall describe the approach to programming of works and costing and ensuring that maintenance transition requirements from construction to maintenance of the capital assets will be met.
- (j) The plans, policies and procedures for ensuring the health and safety of personnel involved in the Project and the general public affected by the Project for the term of the CMA.
- (k) The processes and procedures for communication of Project information between the Maintenance Contractor and TxDOT.
- (l) The proposed plan and approach for performing maintenance activities for the Early Completion Work and Option Work, if exercised by TxDOT, prior to commencement of the Capital Maintenance Agreement. The information shall describe the activities and approach to programming of works and provide details for the transition of maintenance services from the Development Agreement to CMA.

4.1.3 Preliminary Project Baseline Schedule

The Proposal shall provide a Preliminary Project Baseline Schedule and narrative for all portions of the Project and include at least the following:

- (a) Narrative which describes the proposed execution of the work for the term of the Development Agreement.
- (b) A description of the approach used for preparing, controlling and updating the Baseline Schedule, for calculating progress performance, and preparing Draw Requests on a monthly basis;
- (c) Preliminary Project Baseline Schedule containing all major work activities or milestones to WBS Level IV for the design and construction period, including both Early Completion Work and Option Work as described in Sections 1.3.2.2 and 1.3.2.3 of the Technical Provisions, as well as for the warranty/maintenance period, as set forth for the respective WBS Level in Attachment 2-2 to the Technical Provisions. This Preliminary Project Baseline Schedule shall be included in an Appendix in Section D of the Technical Proposal.
- (d) A description of the approach used for preparing and updating the Schedule of Values;
- (e) A description of the approach to integrate subcontract activities into the Proposer's scheduling and reporting system;
- (f) A description of the approach to managing resources and activities, both its own and subcontractors, and if necessary to recover schedule slippage; and
- (g) The Preliminary Project Baseline Schedule shall show achievement of Substantial Completion separately for each of Segments F-1, F-2 and G by no later than 1092 days from NTP1.

Proposer's Preliminary Project Baseline Schedule submission shall not limit, modify or alter TxDOT's ability to review and approve the Preliminary Project Baseline Schedule, and selection of a Proposer shall not be deemed to be acceptance or approval of Proposer's Preliminary Project Baseline Schedule.

4.2 Project Management Plan

The Project Management Plan shall set out Proposer's management approach to design, construction, traffic management, maintenance, handback upon completion of the CMA, documentation, testing and auditing/reporting for the Project, risk, community outreach and organizational structure. The minimum information to be provided within the Project Management Plan is detailed in this Section 4.2.

4.2.1 General Project Management

The Project Management Plan shall describe Proposer's overall Project management plan and approach to the work (including design, construction, and maintenance), including at least the following:

- (a) A description of the methods to be used to assure necessary communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel.
- (b) A description of how Proposer intends to: (i) provide the experienced personnel, facilities and equipment, and to integrate such resources, to complete each aspect of the Project; (ii) control and coordinate the various Subcontractors; (iii) interface with TxDOT, its consultants and relevant federal, State and local agencies; (iv) interface with applicable railroads and Utility Owners; (v) control Project schedules and minimize Project costs; and (vi) comply with applicable Laws.
- (c) A description of Proposer's plan to manage permitting and third-party coordination and approvals.
- (d) An organization chart outlining the basic structure of Proposer's Project organization (including the design, construction and maintenance sub-organizations) and a description of the roles, responsibilities, interrelation and work to be accomplished by each member of the management team and each sub-organization, including identified Subcontractors and Suppliers (at all tiers).
- (e) Information describing how each of the Key Personnel will fit into the organization, including a description of each key person's function and responsibility relative to the Project, and indicating the percent of time that the person will devote to the Project.
- (f) A detailed description of how the team members will work together to provide a unified design, construction, maintenance, and quality approach to all elements of the work in respect of the operational life-cycle management.
- (g) A description of the team decision making process, how internal disputes between team members will be resolved and how Proposer will avoid adverse impacts to the Project (cost, schedule or quality) in the event of such disputes.
- (h) All major training program(s) to ensure that continuous improvement practices are being implemented.
- (i) Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants), including the Proposer's or team member's plan for allocating its resources and personnel among the projects.
- (j) A preliminary safety plan meeting the requirements set forth in the Technical Provisions.

4.2.2 Risk Management

The Project Management Plan shall describe the approach to identification, management, mitigation, and allocation of Project-specific risks, including a risk matrix which shall identify the following at a minimum:

- (a) Significant risk categories during the design, construction and maintenance of the Project.
- (b) The potential consequences of the identified risks.
- (c) The probability/likelihood of risks.
- (d) Proposed procedures and tools to conduct a risk sensitivity analysis.
- (e) Risk-mitigation strategies to eliminate or reduce specific risks.

4.2.3 Construction and Traffic Management During Construction Period

The Project Management Plan shall provide a description of Proposer's plan and approach for performing construction and traffic management on the Project, including at least the following:

- (a) A narrative description of how Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities and traveling public while still providing acceptable construction performance.
- (b) A description of the intended laydown, recycling, staging, disposal and maintenance locations (with approximate areas) to be used during construction.
- (c) A description of how the right of way and adjacent roads and properties will be maintained and protected, including the intended measures to be used to mitigate and minimize noise, vibration, light, dust, erosion/run-off and local road damage.
- (d) A description of how Proposer will coordinate its construction work with other projects that are expected to be under construction during the work.
- (e) A description of how Proposer will manage and control traffic during construction.

4.2.4 Schedule and Cost Control Management

The Project Management Plan shall provide a description of Proposer's plan and management approach for schedule and cost control on the Project, including at least the following:

- (a) Describe Proposer's document, cost control and schedule management system to be used to control and coordinate the cost and schedule of the work during the term of the Development Agreement and the CMA, including during design, construction, and maintenance.
- (b) Describe the proposed Project schedule methodology and cost control approach and include at least the following:
 - A description of the system used for preparing and updating the Project schedule.
 - A description of the system used for preparing and updating the schedule of values.
 - A description of the proposed plan to integrate Subcontractor activities into Proposer's scheduling and reporting system.
 - A description of the proposed approach for calculating progress performance on a monthly basis and preparing payment requests.
 - A description of how Proposer will approach re-scheduling of its work to achieve schedule recovery objectives and how these objectives will be enforced with its work force and Subcontractors.
 - The number of full-time equivalent personnel who will perform scheduling, reporting, invoicing and other project controls functions for the Project.

4.2.5 Public Information and Communications

The Project Management Plan shall provide a description of Proposer's plan and management approach for public information and communication, including at least the following:

- (a) Proposer's approach to positively implement and manage community relations and liaison with Stakeholders during the design, construction and maintenance stages of the Project, including consideration of all outreach activities, impacts on commuter travel and the adjacent community, and other specific aspects, such as air quality, noise impacts, fugitive light, construction traffic, Project marketing and advertising. Proposer shall describe its approach to public information activities, including identification of personnel for such effort and how Proposer will manage interaction with TxDOT, elected officials, public agencies, the communities, and other Stakeholders. Proposer shall address all elements of the proposed public information and communications plan as required in Technical Provisions.
- (b) Proposer's preliminary public information and communications plan, which shall specifically address the following:

- Qualifications and experience of proposed key staff members who will be engaged for purposes of community outreach.
- Adjustments to construction and maintenance activities in response to community and Stakeholder concerns.
- Proposed communications strategies, such as, a newsletter, websites, and hotlines.
- The proposed methodology for capturing and resolving complaints, concerns or questions from the public.
- The proposed methodology for dealing with the news media.

4.2.6 Environmental Management

The Project Management Plan shall provide a description of Proposer's plan and management approach to environmental compliance and permitting, including at least the following:

- (a) Applicable laws, rules and regulations.
- (b) The method Proposer will use to ensure planning commitments are integrated into design, construction and maintenance of the Project.

4.2.7 Design Management

The Project Management Plan shall provide a description of Proposer's plan and management approach for performing design on the Project, including at least the following:

- (a) A description of how Proposer intends to manage the development and coordination of design, including issues such as design of connecting projects, right of way, survey, environmental permitting, utilities, community relations and safety issues.
- (b) A description of the proposed approach for delivering the design for the Project, including where the designers will be located, how designs are to be developed by different firms, how offices will be integrated and work coordinated to ensure consistency and quality.
- (c) A description of how the design personnel will interface with the construction and maintenance personnel to achieve a quality constructed Project that minimizes long-term maintenance.

4.2.8 Maintenance and Traffic Management During Maintenance Period

The Project Management Plan shall provide a description of Proposer's plan and management approach for providing maintenance for the Project, including at least the following:

- (a) The approach to interfacing and coordinating with TxDOT, contractors, consultants, other Governmental Entities and Stakeholders, operators of the main lane facilities and adjacent sections of roads and adjacent landowners.
- (b) A description of how Proposer will manage and control traffic with simultaneous maintenance activities and other ongoing construction projects during the term of the Capital Maintenance Agreement.

4.2.9 Mentoring and Job Training

The Project Management Plan shall provide a description of Proposer's plan and management approach for mentoring and job training on the Project, including at least the following:

- (a) A description of Proposer's concept to utilize and train DBEs, including:
 1. A description of standard subcontracting methods to effectively manage subcontractor performance as it relate to the Technical Provisions.
 2. An outline of areas of work where DBEs may be utilized.
 3. A description of the training program to be utilized to educate and train employees in various job functions as well as training for environmental and site specific issues.
- (b) A description of Proposer's plan to mentor DBEs and other small businesses, including:
 1. Eligibility criteria for participation in the program.
 2. Program goals for mentoring on public private partnerships, design, construction and maintenance.
 3. A mentoring program for educational workshops, including the following:
 - A description of targeted technical disciplines;
 - Identification of specific audiences;
 - Development of a short term plan;
 - Development of a long term plan;

- Identification of workshop administrative procedures; and
 - Identification of frequency of the workshops;
4. Educational workshops for bonding and insurance requirements.
 5. Procedures and methodologies for dividing work into economically feasible units to encourage small business participation.
- (c) Criteria for evaluating the effectiveness of the small business program.
- (d) A description of Proposer's individual job training plan 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 shall include 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.

Proposer's Mentoring and Job Training plan, as approved by TxDOT, shall be incorporated into the Development Agreement Documents as Exhibit 8 and into the CMA Documents as Exhibit 5 following award of the Development Agreement and CMA, and shall be subject to TxDOT review, comment and approval.

4.3 Quality Management Plan

The Quality Management Plan shall provide a description of Proposer's plan and approach to quality management during all stages of the Project through mobilization, the design and construction of the Project and the maintenance and handback of the Project at the end of the CMA, if a CMA is used. The Quality Management Plan will outline the systems that will be employed to ensure that the work is executed with minimal requirement for corrective work. The plan shall detail the systems employed to detect noncompliance, correct the consequences of noncompliance and to prevent the reoccurrence of repeat noncompliance.

The Quality Management Plan shall include at least the following:

- (a) A description of the proposed design, construction and maintenance quality program organization, including the name and resume of Key Personnel responsible for quality management.
- (b) An organization chart showing the quality management structure, along with a staffing plan by position title.
- (c) A description of Proposer's quality management plan, including:
 - How the quality management staff will be functionally independent so that such individuals will have the authority to effect changes in the event of

Developer's failure to comply with the Development Agreement Documents and CMA Documents.

- A description of the both the formal and the informal process for design submittals, design reviews, design deficiency corrections and change tracking.
- Quality Assurance and Quality Control procedures for design, construction and maintenance.
- A description of the approach to acceptance testing and inspection.
- The interface between the design quality, construction quality and maintenance quality processes.
- Proposed quality management documentation procedures.
- The approach to implement TxDOT oversight procedures.
- The approach to ensuring conformance with federal oversight requirements.
- Interfacing with third parties and other Stakeholders.
- The proposed audit regime.
- The approach to documenting and curing construction deficiencies and noncompliance issues and ensuring that repeat mistakes are avoided.

Exhibit C-1

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C-1 describes the submission format for Financial Proposals and outlines the required information that will comprise the Financial Proposal for the Development Agreement and CMA.

Proposer shall submit the information required by this Exhibit C-1 in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

1.1 Format of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

A copy of the checklist for the Financial Proposal set forth in Exhibit E shall be included in the Financial Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

2.0 Financial Capacity Information

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the QS.

The Financial Proposal shall include the following information for Proposer, all Equity Members and any required guarantors:

- Audited financial statements (fiscal year end and quarterly) for all periods subsequent to those included in the QS.
- In addition, interim unaudited financial statements for the period since the most recent completed fiscal year or quarter for Proposer, Equity Members and any required guarantors are to be provided.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

1) Financial statement information must include:

- i. Opinion Letter (Auditor's Report)
- ii. Balance Sheet
- iii. Income Statement
- iv. Statement of Changes in Cash Flow
- v. Footnotes.

2) Financial statements must meet the following requirements:

- a. **GAAP** – Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”). If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP.
- b. **U.S. Dollars** - Financial statements must be provided in U.S. dollars. If financial statements are not available in U.S. dollars, Proposer must include summaries of the Income Statements, Statement of Cash Flows, and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.
- c. **Audited** – Fiscal year end financial statements must be audited by an independent party qualified to render audit opinions (e.g. certified public accountant). If audited financials are not available for an Equity Members and any required guarantors, the Financial Proposal shall include unaudited financial statements for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.
- d. **English** – Financial statement information must be prepared in English. If audited financial statements are prepared in a language other English, translations of all Financial statement information must be accompanied with the original financial statement information.

3) Other information and requirements:

- a. **Newly Formed Entity** - If Proposer is a newly formed entity and does not have independent financial statements, financial statements for the Equity Members and any required guarantors shall be provided (and Proposer shall

expressly state that Proposer is a newly formed entity and does not have independent financial statements).

- b. **Guarantor Letter of Support** – ~~A One or more guaranties regarding Developer Maintenance Contractor's obligations under the CMA is required from all Equity Members of the Proposer. – and A one or more guaranties~~ regarding Developer's obligations under the Development Agreement may also be required by ITP Exhibit B, Section 3.2.12. The letter from the guarantor must confirm unequivocally that it will guarantee all the obligations of Developer and/or Maintenance Contractor with respect to the CMA or Development Agreement or both, as appropriate. Proposers are advised that TxDOT may, in its discretion based upon the review of the information provided, specify that an acceptable guarantor is required as a condition to eligibility for award.
- c. **SEC Filings** - If the team or any other entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.
- d. **Credit Ratings** - Appropriate credit ratings must be supplied for each Proposer and Equity Member, and guarantor to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.
- e. **Material Changes in Financial Condition** - A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the QS and those that are pending. Additionally, Proposers shall be required to provide updated information following the Technical Proposal Due Date as long as the dissemination of such information is permitted by law.

The following list identifies certain items that TxDOT would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of TxDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material

changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the QS and the most recent completed periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Material Changes

- A. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;
 - B. A downward change in tangible net worth of 10% of shareholder equity;
 - C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;
 - D. A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;
 - E. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
 - F. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity; and
 - G. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition since submission of the QS or may be pending for the next reporting period.
- f. **Off-Balance Sheet Liabilities** - A letter from the certified public accountant, chief financial officer, treasurer or certified public accountant for each entity

for which financial information is submitted, identifying all material off balance sheet liabilities

The information required under this Section 2.0 (for Proposer, all Equity Members and any required guarantors) shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in Proposer's organization (i.e., Equity Members, lead design firm, subcontractor, etc.).

Exhibit C-2

PRICE PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C-2 describes the submission format for Price Proposals and outlines the required information that will comprise the Price Proposal for the Development Agreement and CMA.

Proposer shall submit the information required by this Exhibit C-2 in the organization and format specified herein. Each component of the Price Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. Pricing forms are provided in Word and Excel formats. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.1 Format of Price Proposal

All price and cost information provided in the Price Proposal shall be in U.S. Dollar currency only and all amounts, except the amounts on Form N and Form N-1, shall be stated as nominal dollars. Form N and Form N-1 amounts shall be stated as 2012 dollars as of the Price Proposal Due Date.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Price Proposal, the hard copy version will prevail. If there are any differences between individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Price Proposal

All parts of the Proposal that indicate price are to be included in the Price Proposal.

A copy of the checklist for the Price Proposal shall be included in the Price Proposal. Proposer shall not amend the order or change the contents of the checklist.

The Price Proposal shall consist of the following major elements:

- (a) Proposer Information, Certifications and Documents (including Forms A-2, F and R);
- (b) Price information (including Forms M-1, M-1.1, M-1.2, M-1.3, M-2, M-2(a) through (c), M-3, M-3(a) through (h), N, and N-1, N-1.1, N-1.2, N-2, N-2(a), N-2(b), N-2(c), N-3, N-3.1, N-3.2, N-3.3, N-3(a) through (h));
- (c) Proposal Security (including Form K); and
- (d) The proposed complexity point adjustment (Form T).

2.0 Proposer Information, Certifications and Documents

2.1 Price Proposal Letter

The Proposal shall include the Price Proposal Letter (Form A-2). Proposer shall attach to the Price Proposal Letter the documents and information (“Authorization Documents”) described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A-2.

2.2 Non-Collusion Affidavit

The Price Proposal shall include Form E, certifying that the Proposal is not the result of and has not been influenced by collusion.

2.3 Certification Regarding Use of Contract Funds For Lobbying

The Price Proposal shall include Form R to be executed by the Proposer, all members or joint venturers of the Proposer and all other Major Participants including Equity Members, certifying that no federal appropriated funds have been or will be paid for lobbying activities and no other funds have been paid or will be paid to influence governmental decisions regarding this Project.

3.0 Price Information

3.1 Base Development Price and Cash Flow Adjustment Table/Maximum Payment Curve

Proposer shall submit a Base Development Price using Forms M-1 and M-1.1 and an Option Price using Forms M-1 and M1.3 setting forth the total price for the work required under the Development Agreement, including Option Work. The Proposal shall include Form M-1.2 which shall set forth any ATC adjustment costs identified by TxDOT in its ATC approval letters for ATCs that are incorporated into the Proposal. The Price Proposal shall include Form M-2, setting forth the cash flow corresponding to the anticipated draw requests for the Work required under the Development Agreement (i.e. the Maximum Payment Curve) and Forms M-2 (a), M-2 (b) and M-2 (c) setting forth the cash flows/maximum payment curve for Segments F-1, F-2 and G, respectively.

The Price Proposal shall include a completed Form M-3, which sets forth the proposed adjustments to the Base Development Price cashflows if Options A through Option H are all exercised in accordance with Section 13.2.4 of the Development Agreement. The Price Proposal shall also include Forms M-3 (a) through M-3 (h) setting forth the incremental adjustment to the Base Development Price cash flow for the applicable Segment corresponding to the anticipated draw requests for the work required under each of Option A through H, respectively. For purposes of completing Form M-3 and Forms M-3 (a) through M-3 (h) and for evaluation purposes only, Proposers should assume TxDOT will exercise the options set forth in Section 13.2.4 of the Development Agreement as of the date of NTP1. The Developer shall not be entitled to any Change Order or increase in the Price in the event TxDOT timely exercises such option after

NTP1. The draw requests shall be established by anticipated percentage complete on a monthly basis, and shall be limited to the anticipated cash flow. The maximum payment to Developer prior to NTP2 shall not exceed \$50,000,000.00.

3.2 Maintenance Price

The Price Proposal shall include Form N setting forth the annual price (the Maintenance Price), in year 2012 dollars (as of the Price Proposal Due Date), for Maintenance Services for the years 1 through 5, 6 through 10 and 11 through 15 of the CMA, and Form N-1 setting forth the present value Maintenance Price as calculated on Form N-2. The Price Proposal shall also include a breakdown of the Maintenance Price into the categories included on Form N-1.1, in year 2012 dollars (as of the Price Proposal Due Date). The services required for each of the major categories are more particularly described in the CMA, including the Maintenance Specifications (see Attachment 2 to the Maintenance Specifications for section references). The CMA provides for the adjustment procedures and index for annual adjustments in the price for Maintenance Services.

Proposer shall submit a base price for the Maintenance Services using Form N-2 setting forth the total price for the work required under the CMA and Forms N-2(a) through N-2(c) setting forth such price for each of Segments F-1, F-2 and G.

The Price Proposal shall also include Form N-3 setting forth the proposed adjustments to the Maintenance Price cashflows (the Maintenance Option Price) for the Maintenance Services, in year 2012 dollars (as of the Price Proposal Due Date), if Option A through Option H are all exercised under the Development Agreement. The Price Proposal shall also include a breakdown of the Maintenance Option Price into the categories listed on Form N-1.2. Forms N-3.1, N-3.2 and N-3.3 shall be used to set forth such Maintenance Option Price for each of Segments F-1, F-2 and G. The Price Proposal shall also include Forms N-3 (a) through, N-3 (h) setting forth the incremental adjustment to the base price for the Maintenance Services and cash flow corresponding to the anticipated draw requests for the work required for the applicable Segment under each of Options A through H, respectively.

In developing the Maintenance Price and Maintenance Option Price, the Proposers shall consider the limitations on private use under Section 141 of the Internal Revenue Code of 1986, as amended, and the management contract rules under Section 1.141-3(b)(4) of the Regulations of the Treasury Department.

3.3 Complexity Points Adjustment

The Proposal shall include the proposed complexity points adjustment on Form T, which shall set forth any adjustment amounts to be deducted, for evaluation purposes only, from the Base Development Price. Proposer shall indicate (1) a description of the Proposal revisions from the Schematic Design that eliminate the acquisition of certain parcels or improvements described in Table 3.3 below, as well as the relevant parcel number(s), (2) the number of complexity points assigned to such eliminated parcel or

improvement in Table 3.3, and (3) the amount by which the Base Development Price is reduced as a result of such elimination as set forth in Table 3.3. For the Proposer to receive complexity points credit for parcel numbers where the conflict is described as "Reduction of ROW", the Proposer's design must avoid the parcel in its entirety. Where the conflict is listed as "Improvements/Structures," "Oil Well," "Cell Tower" or "Gas Well," only the listed structures, facilities and associated improvements (including but not limited to parking lots) must be avoided to receive the complexity points credit.

In addition, Proposers may identify additional parcels, not shown on Table 3.3, that will be eliminated by Proposer's design for review and consideration of adjustment amounts, for evaluation purposes only, to be deducted from the Base Development Price. Proposer shall receive an adjustment of \$10,000 for each full acre eliminated from the Schematic ROW by avoiding the need to acquire the parcel; provided that for parcels that include less than one acre of Schematic ROW, the Proposer shall receive an adjustment of \$10,000. For the Proposer to receive credit for such elimination of a parcel, the Proposer's design must avoid the parcel in its entirety. For parcels identified pursuant to this paragraph, Proposer shall indicate on Form T, (1) a description of the Proposal revisions from the Schematic Design that eliminate the acquisition of the parcel, including the parcel number, (2) the number of full acres of Schematic ROW reduced by the elimination of the parcel, and (3) the Complexity Point Value at \$10,000 per acre, or for parcels that include less than one acre of Schematic ROW, \$10,000 per parcel.

Partial credit shall not be given for proposed Schematic ROW revisions that do not meet the above criteria. The Proposer shall include the sum of all the adjustments for eliminated parcels and improvements in the last row and column of Form T.

Table 3.3

<u>Parcel</u>	Complexity Point	Point Value at \$50,000	Conflict	Approximate X Coordinate	Approximate Y Coordinate
111	5	\$250,000	Reduction of ROW		
114	5	\$250,000	Reduction of ROW		
119	5	\$250,000	Reduction of ROW		
135	6	\$300,000	Reduction of ROW		
137	6	\$300,000	Reduction of ROW		
137	9	\$450,000	Oil Well	3021489.4211	13946506.7291
142 Pt 1	9	\$450,000	Oil Well	3026821.7239	13946688.6011
142 Pt 1	9	\$450,000	Oil Well	3026860.8382	13946526.8146
148	5	\$250,000	Reduction of ROW		
149	9	\$450,000	Gas Well	3038361.09	13947234.31
152	10	\$500,000	Oil Well	3039720.853	13947556.79
153	9	\$450,000	Improvements/Structures		
Total potential point value		\$3,900,000			

F-2

<u>Parcel</u>	Complexity Point	Point Value at \$50,000	Conflict	Approximate X Coordinate	Approximate Y Coordinate
203	4	\$200,000	Reduction of ROW		
217	5	\$250,000	Improvements/Structures		
218	4	\$200,000	Improvements/Structures		
237	9	\$450,000	Oil Well	3057237.7140	13955464.7497
239	6	\$300,000	<u>Improvements/Structures</u> <u>Cell Tower</u>		
287	8	\$400,000	Improvements/Structures		

290	3	\$150,000	Improvements/Structures		
316	9	\$450,000	Oil Well	3074855.2532	13963862.2082
329	5	\$250,000	Reduction of ROW		
330	6	\$300,000	Reduction of ROW		
341 Pt 2	8	\$400,000	Oil Well	3079788.8337	13963804.7788
345	9	\$450,000	Oil Well	3080718.6052	13963817.5266
350	6	\$300,000	Improvements/Structures		
351	6	\$300,000	Improvements/Structures		
354	5	\$250,000	Improvements/Structures		
357	3	\$150,000	Reduction of ROW		
359	4	\$200,000	Reduction of ROW		
360	8	\$400,000	Reduction of ROW		
361	6	\$300,000	Improvements/Structures		
371	3	\$150,000	Reduction of ROW		
372	3	\$150,000	Reduction of ROW		
381	9	\$450,000	Cell Tower	3095771.497	13964275.172
382	5	\$250,000	Reduction of ROW		
383	5	\$250,000	Reduction of ROW		
384	5	\$250,000	Reduction of ROW		
385	4	\$200,000	Reduction of ROW		
386	4	\$200,000	Reduction of ROW		
387	5	\$250,000	Reduction of ROW		
390	1	\$50,000	Reduction of ROW		

1. Survey Datum for XY Coordinates: Texas Coordinate System, South Central Zone, North American Datum of 1983, 1993 Adjustment. All distances and coordinates shown are Surface values and may be converted to Grid by dividing by a combined adjustment factor of 1.00013.

2. OIL AND GAS WELL DATA:

The above data sets were generated from the Geographic Information System of the Railroad Commission of Texas. Base map information was obtained from U.S. Geological Survey 7.5 minute quadrangle maps. Patent Survey lines from Texas General Land Office maps were interpreted onto the U.S. Geological Survey base. Oil and gas well data and pipeline data were obtained from public records at the Railroad Commission of Texas (the Commission).

The data sets provided by this system are continually being updated and refined and are intended solely for the internal use of the Commission. The Commission shall not be held liable for use of these data sets, which are provided as a public service for informational purposes only. PLEASE NOTE that these data sets are NOT intended

to be used as an authoritative public record for any geographic location or as a legal document and have no legal force or effect.

Users are responsible for checking the accuracy, completeness, currency and/or suitability of these data sets themselves. The Commission makes no representation, guarantee or warranty as to the accuracy, completeness, currency, or suitability of these data sets, which are provided "AS IS." The Commission specifically disclaims any and all warranties, representations or endorsements, expressed or implied, with regard to these data sets, including, but not limited to, the warranties of merchantability, fitness for a particular purpose, or non-infringement of privately owned rights.

4.0 Proposal Security

The Price Proposal shall include a proposal bond as specified below.

4.1 Forfeiture of Security

Forfeiture of Proposal Security in accordance with Section 4.8 of the ITP will constitute liquidated damages. By submitting its Proposal, Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the CDA program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Proposer.

4.2 Form of Proposal Bond

A proposal bond in the amount of \$50 million and in the form of Form K shall be provided by a Surety rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company. The proposal bond shall be subject to forfeiture in accordance with ITP Section 4.8. Each proposal bond will be retained until the Development Agreement

Documents and CMA Documents have been fully executed, after which the proposal bond for each unsuccessful Proposer, except those proposal bonds which have been forfeited, will be returned to the respective Proposers. The proposal bond for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution and award set forth in ITP Section 6.1. If the next best value Proposer is notified during the 180-day period that it is selected for negotiations, such Proposer shall obtain an extension of the Proposal Bond for the period until 270 days after the Price Proposal Due Date.

Exhibit D
REQUIRED FORMS
(see attached)

Exhibit E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Proposal Component	Form (if any)	ITP Section Cross-Reference
Technical Proposal		
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.		
A. Executive Summary		
Executive Summary (Exclude price information)	No forms are provided	<u>Exhibit B, Section 3.1</u>
B. Proposer Information, Certifications & Documents		
Technical and Financial Proposal Letter	<u>Form A-1</u>	<u>Exhibit B, Section 3.2.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 3.2.1</u>
Identification of Proposer and Equity Members	<u>Form B-1</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Proposer Organization	<u>Form B-2</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Major Participants, Major Professional Services Firms and Identified Subcontractors	<u>Form B-3</u>	<u>Exhibit B, Section 3.2.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.2.3</u>
Industrial Safety Record for Team Members Performing Installation or Construction Work	<u>Form D</u>	<u>Exhibit B, Section 3.2.4</u>
Personnel Work Assignment Form	<u>Form E</u>	<u>Exhibit B, Section 3.2.5</u>
Key Personnel statement of availability	No forms are provided	<u>Exhibit B, Section 3.2.5</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Letter(s) Approving Key Personnel	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Letter(s) Approving Changes in Proposer's Organization	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Buy America Certification	<u>Form G</u>	<u>Exhibit B, Section 3.2.7</u>
DBE Certification	<u>Form H</u>	<u>Exhibit B, Section 3.2.8</u>
Child Support Statement for State Grants, Loans and Contracts	<u>Form I</u>	<u>Exhibit B, Section 3.2.9</u>
Conflict of Interest Disclosure Statement	<u>Form J</u>	<u>Exhibit B, Section 3.2.10</u>
Equal Employment Opportunity Certification	<u>Form P</u>	<u>Exhibit B, Section 3.2.11</u>
Surety Information	No forms are provided.	<u>Exhibit B, Section 3.2.13</u>
Certification Regarding Ineligible Contractors	<u>Form S</u>	<u>Exhibit B, Section 3.2.14</u>
Key Subcontractors	<u>Form Q</u>	<u>Exhibit B, Section 3.2.15</u>
Substantial Completion Deadline(s)	<u>Form O</u>	<u>Exhibit B, Section 3.2.16</u>
Payment for Work Product Agreement (Optional)	Exhibit H	<u>Exhibit B, Section 3.2.17</u>
C. Project Development Plan		
Technical Solutions	No forms are provided	<u>Exhibit B, Section 4.1</u>
Project Management Plan	No forms are provided	<u>Exhibit B, Section 4.2</u>
Quality Management Plan	No forms are provided	<u>Exhibit B, Section 4.3</u>
D. Appendices		
Key Personnel Resumes and References	No forms are provided	<u>Exhibit B, Section 3.2.5.1</u>
Technical Drawings, Graphs and Data	No forms are provided	<u>Exhibit B, Section 4.1</u>
Preliminary Project Baseline Schedule	No forms are provided	<u>Exhibit B, Section 4.1.3(c)</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Financial Proposal		
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.		
Updated Financial Information		
Audited fiscal financial statements for all periods subsequent to the QS and unaudited interim financial statements	No forms are provided	<u>Exhibit C-1, Section 2.0</u>
Guarantor Letter (if required)	Form U, <u>Form B-1</u> is also required for the guarantor.	<u>Exhibit B, Section 3.2.12;</u> <u>Exhibit C-1, Section 2.0</u>
For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the QS	No forms are provided	<u>Exhibit C-1, Section 2.0</u>
Credit ratings	No forms are provided	<u>Exhibit C-1, Section 2.0</u>
Letter regarding material change in financial condition since submission of the QS and for next reporting period	No forms are provided	<u>Exhibit C-1, Section 2.0</u>
Letter disclosing all material off balance sheet liabilities	No forms are provided	<u>Exhibit C-1, Section 2.0</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Price Proposal		
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Price Proposal.		
A. Proposer Information, Certifications and Documents		
Price Proposal Letter	<u>Form A-2</u>	<u>Exhibit C-2, Section 2.1</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit C-2, Section 2.2</u>
Certification Regarding Use of Contract Funds for Lobbying	<u>Form R</u>	<u>Exhibit C-2, Section 2.3</u>
B. Price Information		
Base Development Price	<u>Form M-1</u>	<u>Exhibit C-2, Section 3.1</u>
Total Base Development Price	<u>Form M-1.1</u>	<u>Exhibit C-2, Section 3.1</u>
ATC Adjustment	<u>Form M-1.2</u>	<u>Exhibit C-2, Section 3.1</u>
Option Price Breakdown	<u>Form M-1.3</u>	<u>Exhibit C-2, Section 3.1</u>
Developer Draws/Cash Flow Tables (Base Scope)	<u>Form M-2</u>	<u>Exhibit C-2, Section 3.1</u>
Cash Flow Adjustment Table/Maximum Payment Schedule for Segment F-1	<u>Form M-2 (a)</u>	<u>Exhibit C-2, Section 3.1</u>
Cash Flow Adjustment Table/Maximum Payment Schedule for Segment F-2	<u>Form M-2 (b)</u>	<u>Exhibit C-2, Section 3.1</u>
Cash Flow Adjustment Table/Maximum Payment Schedule for Segment G	<u>Form M-2 (c)</u>	<u>Exhibit C-2, Section 3.1</u>
Developer Draws/Cash Flow Tables (Options A, B, C, D, E, F, G and H)	<u>Form M-3</u>	<u>Exhibit C-2, Section 3.1</u>
Option A Cash Flow Adjustment Table/Incremental Payment Schedule for Segment G	<u>Form M-3 (a)</u>	<u>Exhibit C-2, Section 3.1</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Option B Cash Flow Adjustment Table/Incremental Payment Schedule for Segment G	<u>Form M-3 (b)</u>	<u>Exhibit C-2, Section 3.1</u>
Option C Cash Flow Adjustment Table/Incremental Payment Schedule for Segment G	<u>Form M-3 (c)</u>	<u>Exhibit C-2, Section 3.1</u>
Option D Cash Flow Adjustment Table/Incremental Payment Schedule for Segment F-1	<u>Form M-3 (d)</u>	<u>Exhibit C-2, Section 3.1</u>
Option E Cash Flow Adjustment Table/Incremental Payment Schedule for Segment F-1	<u>Form M-3 (e)</u>	<u>Exhibit C-2, Section 3.1</u>
Option F Cash Flow Adjustment Table/Incremental Payment Schedule for Segment F-1	<u>Form M-3 (f)</u>	<u>Exhibit C-2, Section 3.1</u>
Option G Cash Flow Adjustment Table/Incremental Payment Schedule for Segment F-1	<u>Form M-3 (g)</u>	<u>Exhibit C-2, Section 3.1</u>
Option H Cash Flow Adjustment Table/Incremental Payment Schedule for Segment F-2	<u>Form M-3 (h)</u>	<u>Exhibit C-2, Section 3.1</u>
Maintenance Price	<u>Form N</u>	<u>Exhibit C-2, Section 3.2</u>
Capital Maintenance Base Price	<u>Form N-1</u>	<u>Exhibit C-2, Section 3.2</u>
Capital Maintenance Base Price by Category	<u>Form N-1.1</u>	<u>Exhibit C-2, Section 3.2</u>
Total Capital Maintenance Option Price by Category	<u>Form N-1.2</u>	<u>Exhibit C-2, Section 3.2</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Capital Maintenance Base Price Cashflow for Segments F-1, F-2 and G	<u>Form N-2</u>	<u>Exhibit C-2, Section 3.2</u>
Capital Maintenance Base Price Cashflow for Segment F-1	<u>Form N-2(a)</u>	<u>Exhibit C-2, Section 3.2</u>
Capital Maintenance Base Price Cashflow for Segment F-2	<u>Form N-2(b)</u>	<u>Exhibit C-2, Section 3.2</u>
Capital Maintenance Base Price Cashflow for Segment G	<u>Form N-2(c)</u>	<u>Exhibit C-2, Section 3.2</u>
Total Maintenance Option Price	<u>Form N-3</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price for Segment F-1	<u>Form N-3.1</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price for Segment F-2	<u>Form N-3.2</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price for Segment G	<u>Form N-3.3</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option A)	<u>Form N-3(a)</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option B)	<u>Form N-3(b)</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option C)	<u>Form N-3(c)</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option D)	<u>Form N-3(d)</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option E)	<u>Form N-3(e)</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option F)	<u>Form N-3(f)</u>	<u>Exhibit C-2, Section 3.2</u>
Maintenance Option Price (Option G)	<u>Form N-3(g)</u>	<u>Exhibit C-2, Section 3.2</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Maintenance Option Price (Option H)	<u>Form N-3(h)</u>	<u>Exhibit C-2, Section 3.2</u>
Complexity Points Adjustment	Form T	<u>Exhibit C-2, Section 3.3</u>
C. Proposal Security		
Proposal Bond	<u>Form K</u>	<u>Exhibit C-2, Section 4.2</u>

Exhibit F
RIGHT OF ENTRY PROCESS

Exhibit F-1

RIGHT OF ENTRY PROCESS FOR NON-STATE-OWNED PROPERTY

Proposers desiring to obtain access during the procurement to property that is not owned by the State along the Grand Parkway (SH 99) – Segments F-1, F-2 and G shall submit a request to TxDOT that includes the parcel numbers and reasons for access. TxDOT shall be responsible for contacting the relevant property owner(s) and negotiating a right of entry for use by all Proposers.

Proposers are advised that the process of obtaining rights of entry from property owners other than TxDOT may take a minimum of 2-4 weeks. Developers shall be responsible for providing timely requests to TxDOT.

Developers shall comply with any requirements, conditions and restrictions of the property owner. The form of Right of Entry Agreement to be signed by the respective property owner is attached as Appendix A.

Appendix A to Exhibit F-1



Grand Parkway – SH 99

Right of Entry

Parcel No. _____ ROW CSJ No. _____

Segment _____

The Owner, or authorized representative known to be _____, hereby grants a Right of Entry to TxDOT, its contractors, consultants, agents, and all others TxDOT deems necessary, including prospective design-builders, to perform work necessary for the completion of the design, surveying, geotechnical evaluation, sounding, environmental studies, utility investigation, and other examination required to be performed in anticipation of the final design of the project and/or prior to the acquisition of property necessary for the Project.

- The Owners reserve all rights, title, and interest in and to the property, and this Right of Entry shall in no way prejudice Owner's right to contest the acquisition of the property or to receive full and just compensation as allowed by law for any interest in and to the property that may be needed by the State of Texas, and damages, if any, to the remainder of the Owner's interest to and in the property.
- This Right of Entry shall not prejudice Owner's rights to any relocation benefits for which the Owner would be eligible.
- The Owner, or authorized representative, grants TxDOT, its contractors, consultants, agents, and all others necessary to perform work required, at its own risk and expense, the right of ingress and egress over and across the property for the purpose of accessing the proposed Right of Way.
- TxDOT and all others sharing in the Right of Entry granted hereunder will attempt to utilize only non-destructive testing methods but, if necessary, will restore the property to prior condition for any damage or make reimbursement to the owner for any damage to the property.
- The Right of Entry shall be effective the date this document is executed and shall remain in

effect until the sooner of (1) the date that this Right of Entry is revoked in writing by Owner, or (2) the date that the proposed right of way is acquired in the name of the State of Texas.

- The Owner, or authorized representative, shall have the right to accompany any or all operations being performed as a result of the use of this document.

- If there are any tenants or lessees on the property who must be contacted, the Owner, or authorized representative, agrees to contact them or to provide TxDOT, and upon request, any party sharing in this Right of Entry, the names and contact numbers so that TxDOT and others sharing in this Right of Entry may give them proper notice prior to entering the property.
- The Right of Entry, unless revoked or terminated, shall extend to and bind the parties, their heirs, executors, administrators, legal representatives, successors, and assigns, including the contractors, consultants, agents and all others TxDOT has deemed necessary to share in this Right of Entry.
- If Owner is other than an individual, the undersigned representative of the Owner warrants and represents that he or she is duly authorized and empowered to enter into and to execute this Right of Entry on behalf of the Owner.

The Grand Parkway Project is progressing to the next level. TxDOT appreciates previous Right of Entry's but now requires additional access for highway design activities. If there are any questions, please contact Callie Barnes at 713-866-7050.

This Right of Entry is in addition to any prior right of entry granted to TxDOT by the Owner in respect of the parcel identified at the top of page one, is for specific purposes described in the introductory paragraph for the benefit of the persons identified in that paragraph and is subject to the terms of the Owner's grant of this Right of Entry. Should the Owner have any concerns or questions regarding the activities of any person sharing or claiming to share in this Right of Entry, the Owner shall be entitled to enlist the assistance of TxDOT as follows:

Mark Johnson at mark.johnson@txdot.gov and 817.781.5768.

IN WITNESS WHEREFORE, this instrument is executed on and shall be effective as of this _____ day of _____, 2012.

OWNER Telephone Number

PRINT NAME Cell Number

Exhibit F-2

RIGHT OF ENTRY PROCESS FOR STATE-OWNED ROW

Proposers must comply with the following steps in order to obtain a right of entry from TxDOT to the Grand Parkway (SH 99) – Segments F-1, F-2 and G Right of Way at various locations prior to execution of the Development Agreement.

1. The Proposer shall complete the Agreement for Engineering Investigations on State Highway Right of Way and forward a signed original agreement and Exhibit B, TxDOT Form 1560, Certificate of Insurance, to Eddie Sanchez, P.E..
2. Exhibit A, Development Agreement Site Investigation on Highway Right of Way in the Houston District, shall be completed by the Proposer for each request for right of entry upon State highway Right of Way. One Exhibit A can cover a request for multiple days of access. Exhibit A may be turned in with the signed original Agreement for Engineering Investigations on State Highway Right of Way and Exhibit B, or may be turned in subsequent to the Proposer's receipt of the fully executed copy of the agreement.
3. Dependant upon the location of the Right of Way for which the Proposer seeks entry, the Proposer shall submit Exhibit A to Eddie Sanchez, P.E.
4. Prior to a Proposer's entry onto State Highway Right of Way, the Proposer must receive Approval from the appropriate area office.
5. The Proposer may perform investigations in areas only as requested in each Exhibit A.

*** Note: Exhibit A may be faxed, e-mailed or submitted in hard copy. Approval of Exhibit A shall occur in written format which may include e-mail.

*** Exhibit A preparation:

In addition to location and general description of investigations to be performed, if the investigations require closure of a lane(s) of traffic for any reason, the Proposer shall submit a traffic control plan for TxDOT review and approval with the appropriate Exhibit A.

**AGREEMENT FOR
ENGINEERING INVESTIGATIONS
ON STATE HIGHWAY RIGHT OF WAY**



STATE OF TEXAS §

COUNTY OF TARRANT §

THIS AGREEMENT made this _____ day of _____ by the State of Texas, acting by and through the Texas Department of Transportation, referred to as "TxDOT," party of the first part, and _____, hereinafter referred to as the "Requestor," party of the second part.

WITNESSETH

WHEREAS, TxDOT owns and operates a system of highways for public use and benefit, including Grand Parkway (SH 99) – Segments F-1, F-2 & G, in Harris and Montgomery Counties; and

WHEREAS, the Requestor has requested permission from TxDOT to use Grand Parkway (SH 99) – Segments F-1, F-2 and G Right of Way at various locations to be determined based on submittal of Exhibit A for each instance of access requested. Exhibit A is attached hereto and made a part of this Agreement, for the purpose of asset assessment, engineering studies and site investigations; and

WHEREAS, in accordance with Tex. Adm. Code, § 27, TxDOT seeks to enter into a Development Agreement with a private sector partner and desires the private sector partner to have access to the proposed Project limits for performance of due diligence work in preparation of its Proposal; and

WHEREAS, this Agreement is intended to encourage and facilitate access to TxDOT highway facilities and their adjacent Right of Way for the promotion of that goal while protecting the safety of the traveling public and the integrity of state highway facilities and Right of Way.

AGREEMENT

1. The Requestor's description of the activities, including the placement of people and equipment on TxDOT highway Right of Way, will be submitted in writing as outlined in Exhibit A and shall be made part of this Agreement upon approval of TxDOT.
2. It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title, or easement in or upon its Right of Way. Furthermore, approval of this Agreement by TxDOT does not constitute approval by any other Texas State agency.
3. The Requestor agrees to accept full responsibility for coordinating and making arrangements with the local law enforcement personnel to provide adequate and safe traffic control during the above referenced activity. If, during the activity, the local law enforcement personnel determine that the above referenced use of the Right of Way is creating a traffic hazard, the Right of Way will be opened to traffic and the activity will be rescheduled to a time agreeable to TxDOT, the Requestor, and the local law enforcement personnel.
4. The Requestor shall provide necessary safeguards to protect the public during the above referenced activity, including adequate insurance for payment of any damages which might result from activities during occupation of the Right of

Way, and shall save TxDOT and the State of Texas harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so.

5. The Requestor agrees to indemnify and save harmless TxDOT and the State of Texas and its officers, agents, contractors, and employees from all suits, actions, or claims and from all liability and damages for any and all injuries or damages sustained by any person or property as a consequence of any neglect in the performance of the above referenced activity and any related activity by the Requestor and from any claims or amounts arising or recovered under the “Workers’ Compensation Laws”; V.T.C.S., Civil Practice & Remedies Code 101.021, 101.051; or any other laws.
6. The Requestor shall further indemnify TxDOT and the State of Texas and accept responsibility for all damages or injury to property of any character occurring during the prosecution of the activity resulting from any act, omission, neglect or misconduct on the part of the Requestor in the manner or method of executing the activity. The Requestor assumes all costs associated with the inspections, investigations and assessments.
7. TxDOT, having the legal right to occupy TxDOT highway Right of Way, will not be responsible or liable for damages to the Requestor’s property or operations. The Requestor’s attention is directed to the fact that utility installations owned by others exist in the Right of Way. The Requestor shall save harmless TxDOT and the State of Texas from any and all suits or claims resulting from damage to any utility installation due to the above referenced activity.

8. The Requestor shall restore the Right of Way to its original condition, free of any damage to the roadway and drainage structures, signs, and pavement and, to the extent practicable, restore the natural environment, including landscape features. The Requestor will avoid or minimize damage outside the Right of Way and will, at its own expense, restore or repair damage outside the Right of Way. The Requestor's performance shall be in compliance with all federal, State and local laws, ordinances, and regulations including:

- the Endangered Species Act of 1973, 16 USC § 1531 et seq. and the regulations there under as amended;
- TxDOT's erosion and sedimentation control standards and TxDOT's Vegetation Management Standards, which may in any way regulate or control the activity;
- all State and federal environmental laws and any conditions required by TxDOT to protect the environment.
- Any costs incurred by TxDOT for repairs to highway facilities, for the removal of debris, or for any other necessary restoration work performed by TxDOT as a result of the activity will be billed to the Requestor at cost. The Requestor shall make full and complete payment to TxDOT within thirty (30) days from receipt of TxDOT's written notification.

9. Any action by the Requestor that indicates a commencing of the activity in the Right of Way will signify that the Requestor agrees to abide by the above requirements.

10. Any changes in the time frame, character, or responsibilities of the parties as outlined on the appropriate previously approved Exhibit A shall be enacted by a written approval by TxDOT.
11. It is mutually agreed and understood that if the above referenced section of paved Right of Way is to be partially or totally temporarily closed, it will be closed in accordance with a "Traffic Control Plan" provided as part of the appropriate Exhibit A and subject to approval by TxDOT. The Requestor hereby agrees to immediately reopen any partially or totally closed section of Right of Way to emergency vehicles, law enforcement personnel, or others in case of emergency. The traffic control shall be provided by the Requester through cooperation with the appropriate law enforcement personnel at no cost to TxDOT. Each Traffic Control Plan shall be provided by the Requestor, at no cost to TxDOT, and approved by TxDOT, and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, latest edition. The Requestor hereby agrees to accept full responsibility for the complete planning, design and implementation of each Traffic Control Plan. Each Traffic Control Plan shall include a traffic enforcement plan, including a letter by mail or facsimile from the law enforcement agency that will be providing the traffic control for the event or a contact name and telephone number of the responsible law enforcement agency. Law enforcement will be present at all times during a closure unless stated otherwise in the Traffic Control Plan.

12. The Requestor has provided TxDOT with Exhibit B, covering the below listed insurance limits for the duration of the activity. Exhibit B is attached hereto and made a part of this Agreement.

A. Worker's Compensation Insurance Amount – Statutory Endorsed with a Waiver of Subrogation in favor of TxDOT and the State of Texas.

B. Comprehensive General Liability Insurance

Amounts –

Bodily Injury \$500,000 each occurrence

Property Damage \$100,000 each occurrence

OR

Commercial General Liability Insurance

Amount - \$600,000 combined single limit each occurrence and in the aggregate

which includes Contractual Coverage; and, endorsed with a Waiver of

Subrogation in favor of those parties named in paragraph A above, and

endorsed with TxDOT and the State of Texas as an additional insured.

C. Comprehensive Automobile Liability

Amounts –

Bodily Injury \$250,000 each person

\$500,000 each occurrence

Property Damage \$100,000 each occurrence

Endorsed with a Waiver of Subrogation in favor of those parties named in

paragraph A above, and endorsed with TxDOT and the State of Texas as

an additional insured.

13. This Agreement shall terminate upon execution of a Comprehensive Development Agreement, unless terminated by:

- Mutual agreement and written consent of both parties,
- TxDOT upon written notice to the Requestor as consequence of the Requestor's failure to perform the responsibilities set forth herein (TxDOT may grant allowances for circumstances beyond the control of the Requestor),
- TxDOT for reasons of its own and not subject to mutual consent of the Requestor upon not less than fifteen (15) days written notice to the Requestor, or
- By satisfactory completion of the Requestor's temporary use of the highway Right of Way.

The termination of this agreement and payment of any amount in settlement as prescribed herein shall extinguish all rights, duties, and obligations of TxDOT and the Requestor. Upon termination of this Agreement, the Requestor shall vacate the highway Right of Way and restore it to the original condition in a manner described herein within two days from the termination date of this Agreement.

14. Should disputes arise between the parties regarding the obligations and responsibilities established herein, TxDOT's decision shall be final and binding.

15. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this

Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. This Agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings and/or written or oral agreements between TxDOT and the Requestor respecting the within subject matter.
17. The undersigned for the Requestor represents and warrants that he or she is an officer of the Requestor for which he or she has executed this Agreement and that he or she has the full and complete authority to enter into this Agreement on behalf of the Requestor.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed on the dates shown below stated.

REQUESTOR NAME:

By: _____
(Signature)

Name: _____
(Typed)

(Title)

Date: _____

Address: _____

Phone: _____

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs hereto fore approved and authorized by the Texas Transportation Commission

By: _____
District Engineer

Houston District

Date: _____

LIST OF ATTACHED EXHIBITS

Exhibit	Description
A	Development Agreement Site Investigation on Highway Right of Way in the Houston District
B	TxDOT Form 1560, Certificate of Insurance



Exhibit A DEVELOPMENT AGREEMENT SITE INVESTIGATION ON HIGHWAY RIGHT OF WAY IN THE HOUSTON DISTRICT

_____ is giving written notice of proposed Work to take place within the right of way of Grand Parkway (SH 99) – Segments F-1, F-2 and G in Harris and Montgomery Counties, TX as follows:

(Give general written description of location and work to take place- Do not write "See Attached")

The Work listed above **is not to include** the following: The destructive testing of any in place pavement or structure, or other work that may be considered harmful to assets already in place. This Work is limited to Site investigations and Engineering Studies for the purposes of preparing a Proposal for the Grand Parkway Development Agreement and Capital Maintenance Agreement. This may include reviewing in place Work along the Project Right of Way, gathering pavement condition score information, subsurface soils investigations and other investigations as required in preparation of a Proposal in response to the TxDOT issued RFP.

At no time shall any Work activity that involves digging take place any closer than three feet from the edge of pavement or back of curb.

The Requestor will use best management practices to minimize erosion and sedimentation resulting from the proposed Work, and will revegetate the Work area as indicated under "Revegetation Special Provisions."

The Requestor will ensure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained for the duration of this Work. (Approval of traffic control plans is required by area/maintenance office.)

Refer to attached location map and drawing for a more specific location and a description of the Work activity. The undersigned agrees to comply with the terms and conditions set forth in this notice.

The proposed Work will begin on the _____ day of _____, 20 ____ .

Requestor Party _____

Texas Department of Transportation

By (Print) _____

Director of Strategic Project Office

Signature _____

Signature: _____

Address _____

Date

Phone _____

COPY OF THIS DOCUMENT MUST BE KEPT ON JOBSITE

If Approved via e-mail, retain printed copy of e-mail approval on jobsite as well.

Exhibit G
MINUTE ORDER

TEXAS TRANSPORTATION COMMISSION

HARRIS AND MONTGOMERY Counties

MINUTE ORDER

Page 1 of 2

HOUSTON District

Transportation Code, Chapter 223, Subchapter E, prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement (CDA) with a private entity that provides for the design, construction, financing, maintenance, or operation of a toll project on the state highway system.

Transportation Code, § 223.203, prescribes requirements for a solicited proposal and requires the department to publish a request for qualifications in the *Texas Register* that includes the criteria that will be used to evaluate any received qualifications statements, the relative weight given to the criteria, and a deadline by which qualifications statements must be received.

On March 31, 2011, by Minute Order 112629, the Texas Transportation Commission (commission) authorized and directed the department to issue a request for qualifications (RFQ) for the development of Segments F-1, F-2, and G of US 99 (Grand Parkway), from east of US 290 in Harris County to west of US 59 in Montgomery County (project). The department issued the RFQ on November 18, 2011, and subsequently determined that five of the seven teams submitting qualifications statements in response to the RFQ were qualified to be on the short list of teams that will be requested to submit detailed proposals to develop, design, construct, and, potentially, maintain the project.

Transportation Code, § 223.203 and 43 TAC § 27.4 provide that, if authorized by the commission, the department will issue a request for proposals (RFP) from all private entities qualified for the short list. The department intends to issue an RFP for the Grand Parkway (Segment F-1, F-2, and G) project and request detailed proposals from the five short-listed teams to develop, design, construct, and, potentially, maintain the project.

Transportation Code, § 223.203(n) and 43 TAC § 27.4(f) require the department to pay an unsuccessful private entity who submits a detailed proposal that is responsive to the requirements of the RFP a stipulated amount in exchange for the work product contained in that proposal. The stipulated amount must be stated in the RFP and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the Grand Parkway project or other department projects without further payment to the unsuccessful proposer.

IT IS THEREFORE ORDERED that the department is authorized and directed to issue an RFP to develop, design, construct, and, potentially, maintain Segments F-1, F-2, and G of US 99 (Grand Parkway), from east of US 290 in Harris County to west of US 59 in Montgomery County, and other facilities to the extent necessary for connectivity, mobility, safety, and financing.

TEXAS TRANSPORTATION COMMISSION

HARRIS AND MONTGOMERY Counties

MINUTE ORDER

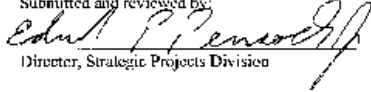
Page 2 of 2

HOUSTON District

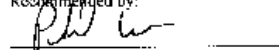
IT IS FURTHER ORDERED that the department is authorized to pay each proposer who submits a responsive, but unsuccessful, proposal for the Grand Parkway (Segments F-1, F-2, and (i)) project an amount based upon the value of the work product provided in the proposal that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$1 million.

IT IS FURTHER ORDERED that payment for work product may only be paid to the extent that the work product submitted meets the minimum criteria and other conditions of payment identified by the department in the Grand Parkway procurement documents.

Submitted and reviewed by:


Director, Strategic Projects Division

Recommended by:


Executive Director

113077 APR 26 12

Minute
Number

Date
Passed

Exhibit H

FORM OF PAYMENT FOR WORK PRODUCT AGREEMENT

PAYMENT FOR WORK PRODUCT AGREEMENT (SH 99 Grand Parkway Project)

THIS PAYMENT FOR WORK PRODUCT AGREEMENT is made and entered into as of this _____ day of 2012, by and between the Texas Department of Transportation (“TxDOT”) and

_____, a _____ duly authorized to conduct business in the State of Texas (“Proposer”), with reference to the following facts:

- A. Proposer is one of the shortlisted proposers eligible to submit Proposals for the SH 99 Grand Parkway Project (the “Project”), and wishes to submit a Proposal in response to the Request for Proposals for the Project issued by TxDOT on May 3, 2012 (as amended, the “RFP”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.
- B. The RFP requires each shortlisted proposer to execute and deliver a Payment for Work Product Agreement to TxDOT with the Technical Proposal by the date specified in the RFP, as a condition to the proposer’s eligibility to receive a payment for work product in accordance with Section 6.3 of the Instructions to Proposers (“ITP”).

NOW, THEREFORE, the Proposer hereby agrees as follows:

1 SERVICES AND PERFORMANCE

- (a) The Proposer shall prepare a responsive Proposal in response to the RFP. A “responsive” Proposal means a Proposal submitted by a shortlisted proposer which conforms in all material respects to the requirements of the RFP, as determined by TxDOT, in its sole discretion, and is timely received by TxDOT.
- (b) Subject to the provisions of the RFP Documents regarding ownership of EPDs, all work performed by Proposer and its team members pursuant to this Payment for Work Product Agreement and in connection with the Proposal shall be considered work for hire, and the products of such work shall become the property of TxDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Payment for Work Product Agreement.

2 TERM

Unless otherwise provided herein, the provisions of this Payment for Work Product Agreement shall remain in full force and effect until the earlier to occur of (a) eighteen (18) months from the date of the execution of this Agreement or (b) the date payment is delivered hereunder. The work product is due no later than the Proposal Due Date.

3 COMPENSATION AND PAYMENT

- (a) If, following receipt of Proposals as requested by the RFP, the Agreement is awarded by TxDOT to a proposer other than Proposer or the procurement is cancelled, then, subject to the terms of Section 6.3 of the ITP and this Payment for Work Product Agreement (including, without limitation, Proposer's full compliance therewith), TxDOT agrees to pay Proposer for the herein described services a lump sum in an amount equal to the lesser of (i) the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions and (ii) \$1,000,000. Proposer will not be compensated if the Proposal, including, without limitation, the Price Proposal, is determined by TxDOT to be non-responsive, and/or fails to achieve a passing score on any of the pass/fail criteria in Section 5.3 of the ITP, or if TxDOT withdraws the RFP prior to the due date for Proposals.
- (b) In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 of the ITP be entitled to receive compensation hereunder, including, without limitation, payments under Section 3(a). In addition, if TxDOT awards the Agreement to Proposer, Proposer will not be entitled to compensation hereunder, including, without limitation, payments under Section 3(a).
- (c) Payment will be made within thirty (30) days after receipt of a proper invoice submitted to TxDOT under this Section 3(c). The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the Development Agreement and CMA, is posted on the Project Website, or, if final award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best value Proposer and TxDOT), as applicable. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment.
- (d) This Payment for Work Product Agreement involves the submission of a Proposal by Proposer that must be received by the due date(s) set forth in the RFP and determined responsive by TxDOT as a condition of Proposer's eligibility for the payment set forth in Section 3(a).

4 INDEMNITIES AND SURETYSHIP

- (a) INDEMNITY. Proposer agrees that it will indemnify, defend, and hold harmless TxDOT and all of TxDOT's commission members, officers, agents, representatives, and employees from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) arising out of any acts, actions, neglect, omissions, fault, willful misconduct, violation of law or breach by Proposer, its agents, employees, or Subcontractors during the performance of this Payment for Work Product Agreement, whether direct or indirect, and whether to any person or property to which TxDOT or said parties may be subject, except that neither Proposer nor any of its Subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of TxDOT or any of its commission members, officers, agents, or employees.
- (b) Proposer's obligation to indemnify, defend, and pay for the defense or, at TxDOT's option, to participate and associate with TxDOT in defense of any claim and any related settlement negotiations, shall be triggered by TxDOT's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding TxDOT solely negligent shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by TxDOT. TxDOT's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.

5 COMPLIANCE WITH LAWS

- (a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT during this procurement process, excluding only the EPDs, are, upon their receipt by TxDOT, the property of TxDOT and are subject to the Public Information Act (Texas Government Code Section 552.001 *et seq.*).
- (b) Proposer shall comply with all federal, state, and local laws; ordinances; rules; and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Payment for Work Product Agreement.
- (c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Payment for Work Product Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Payment for Work Product Agreement.

6 EARLY TERMINATION

This Payment for Work Product Agreement may be terminated by TxDOT, in its sole discretion, in whole or in part, at any time. No payment will be owing by TxDOT in the event of any such termination, except as provided in Section 3(a), above.

7 ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Payment for Work Product Agreement without TxDOT's prior written consent, in its sole discretion. Any assignment of this Payment for Work Product Agreement without such consent shall be null and void and may, in TxDOT's sole discretion, disqualify Proposer from further consideration for the procurement and Project.

8 MISCELLANEOUS

- (a) Proposer and TxDOT agree that Proposer, its equity owners, team members, and their respective employees are not agents or representatives of TxDOT as a result of this Payment for Work Product Agreement.
- (b) If words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- (c) This Payment for Work Product Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Payment for Work Product Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- (d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Payment for Work Product Agreement is by the courts held to be illegal or in conflict with any law of the State of Texas, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Payment for Work Product Agreement did not contain the particular part, term, or provisions to be invalid.
- (e) This Payment for Work Product Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue for any proceeding relating to this Payment for Work Product Agreement shall be the courts in Travis County, Texas.
- (f) This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Payment for Work Product Agreement has been executed and delivered as of the day and year first above written.

TEXAS DEPARTMENT OF
TRANSPORTATION

By: _____
Name: _____
Title: _____

_____ [insert Proposer's name]

By: _____
Name: _____
Title: _____