

# **Attachment A**

## **Revisions to the ITP Documents**

**REQUEST FOR PROPOSALS  
TO DEVELOP, DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN  
THE  
DFW CONNECTOR PROJECT**

**THROUGH A COMPREHENSIVE DEVELOPMENT AGREEMENT**

**VOLUME I  
INSTRUCTIONS TO PROPOSERS**

**A PROJECT OF THE  
TEXAS DEPARTMENT OF TRANSPORTATION**

**ISSUED MARCH 28, 2008**

**ADDENDUM 1 ISSUED APRIL 14, 2008  
ADDENDUM 2 ISSUED APRIL 30, 2008  
ADDENDUM 3 ISSUED JUNE 4, 2008  
ADDENDUM 4 ISSUED JUNE 17, 2008  
ADDENDUM 5 ISSUED JULY 3, 2008  
ADDENDUM 6 ISSUED JULY 8, 2008  
ADDENDUM 7 ISSUED DECEMBER 10, 2008**

**Texas Department of Transportation  
125 East 11<sup>th</sup> Street – Fifth Floor  
Austin, Texas 78701**

**CERTAIN KEY DATES**

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
<del>Last date for Proposers to Submit Comments to the Industry Review Package</del> <u>Last Date for Proposers to Submit Written Questions</u>	January 11, 2008 <u>November 14, 2008</u>
<del>One-on-One Meetings with Proposers to Discuss the Industry Review Package</del> <u>TxDOT Response to Proposers' Written Questions Due</u>	January 29-30, 2008 <u>November 21, 2008</u>
<u>Final One-on-One Meetings with Proposers</u>	<u>December 1, 2008</u>
<u>Issue Request for Proposal Revisions and Best and Final Offer</u> <del>Final Request for Proposals</del>	March 28, 2008 <u>December 8<sup>10</sup>, 2008</u>
<del>Proposal</del> <u>Best and Final Offer Due Date</u>	July 15 <u>January 12, 2008<sup>9</sup></u>
CDA and CMA Conditionally Awarded (anticipated)	August 28 <u>February 26, 2008<sup>9</sup></u>

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
CDA and CMA Executed and Delivered (anticipated)	<del>October 3</del> <u>March 31,</u> <u>2008</u>

## A. Revisions to the ITP

1. The Exhibits List following the ITP Table of Contents is revised to read as follows:

### EXHIBITS

Exhibit A Definitions and Acronyms

Exhibit B Technical Proposal Instructions

Exhibit C Financial Proposal Instructions

Exhibit D Required Forms

Form <u>BAFO A</u>	<u>Proposal Letter</u>
Form <u>B-1</u>	<u>Identification of Proposer and Equity Participants</u>
Form <u>B-2</u>	<u>Information About Proposer Organization</u>
Form <u>B-3</u>	<u>Information About Major Participants, Major Professional Services Firms and Identified Subcontractors</u>
Form <u>C</u>	<u>Responsible Proposer Questionnaire</u>
Form <u>D</u>	<u>Industrial Safety Record for Team Members Performing Installation or Construction Work</u>
Form <u>E</u>	<u>Personnel Work Assignment Form</u>
Form <u>F</u>	<u>Non-Collusion Affidavit</u>
Form <u>G</u>	<u>Buy America Certification</u>
Form <u>H</u>	<u>DBE Certification</u>
Form <u>I</u>	<u>Child Support Statement for State Grants, Loans and Contracts</u>
Form <u>J</u>	<u>Conflict of Interest Disclosure Statement</u>
Form <u>BAFO K-1</u>	<u>Replacement Proposal Bond</u>
Form <u>BAFO K-1.a</u>	<u>Rider to Original Proposal Bond</u>
Form <u>BAFO K-2</u>	<u>Replacement Letter of Credit (Proposal)</u>
Form <u>BAFO K-2.a</u>	<u>Amendment to Letter of Credit (Proposal)</u>
Form <u>L</u>	<u>Escrow Agreement</u>
Form <u>BAFO L-1</u>	<u>Escrow Agreement Amendment</u>
Form <u>M</u>	<u>Opinion of Counsel</u>
Form <u>N-1.a</u>	<u>Development Price – Configuration 1</u>
Form <u>N-1.b</u>	<u>Development Price – Configuration 2</u>
Form <u>N-1.c</u>	<u>Development Price – Configuration 3</u>
Form <u>N-1.1.a</u>	<u>Development Price – Configuration 1</u>
Form <u>N-1.1.b</u>	<u>Development Price – Configuration 2</u>
Form <u>N-1.1.c</u>	<u>Development Price – Configuration 3</u>
Form <u>N-1.2.a</u>	<u>Development Price – Configuration 1</u>
Form <u>N-1.2.b</u>	<u>Development Price – Configuration 2</u>
Form <u>N-1.2.c</u>	<u>Development Price – Configuration 3</u>
Form <u>N-2.a</u>	<u>Cash Flow Adjustment Table/Maximum Payment Curve – Configuration 1</u>

<u>Form N-2.b</u>	<u>Cash Flow Adjustment Table/Maximum Payment Curve – Configuration 2</u>
<u>Form N-2.c</u>	<u>Cash Flow Adjustment Table/Maximum Payment Curve – Configuration 3</u>
<u>Form O.a</u>	<u>Maintenance Price – Configuration 1</u>
<u>Form O.b</u>	<u>Maintenance Price – Configuration 2</u>
<u>Form O.c</u>	<u>Maintenance Price – Configuration 3</u>
<u>Form P</u>	<u>Completion Deadline</u>
<u>Form Q</u>	<u>Equal Employment Opportunity Certification</u>
<u>Form R</u>	<u>Title 49, Code of Federal Regulations, Part 29 Debarment and Suspension Certification</u>
<u>Form S</u>	<u>Certification Regarding Use of Contract Funds for Lobbying</u>

- Exhibit E Summary and Order of Proposal Contents
- Exhibit F Right of Entry Process
- Exhibit G Minute Order
- Exhibit H Sanctions

2. Section 1.1 of the ITP is amended by adding a new second paragraph to read as follows:

Any reference to the Project throughout the RFP shall mean the Project as modified by Addendum 7. All references to the “Proposal” and “Proposal Revision” contained in the RFP shall be deemed to refer to the Proposal as supplemented or revised by the BAFO, and all references to the “Proposal Due Date” shall be deemed to refer to the “BAFO Due Date,” except where the context otherwise requires.

3. Section 1.3 of the ITP is revised to read as follows:

**1.3 General Project Description and Scope of Developer’s Obligations**

**1.3.1 General Project Description**

TxDOT is planning improvements to the SH 114/SH 121 Corridor, including the addition of tolled managed lanes to be located along SH 114 from east of FM 1709 to east of International Parkway. The Project involves the reconstruction of, and increased capacity for, SH 114 from SH 114L Business to east of International Parkway and SH 121 from north of FM 2499 to south of SH 360. The proposed improvements include the reconstruction of several directional interchanges, highway merge/diverges, arterial flyover connections and cross-street interchanges. In addition, construction of collector-distributor roads, a managed lane facility, braided ramps, system ramps and frontage roads is included in the overall Project scope.

The initial configuration of the Project is dependent on various factors, including funding availability. The initial configuration of the Project will include all of the elements described in Section 1 of Book 2 as Configuration 1, and at TxDOT’s option may also

include the elements described in Section 1 of Book 2 as Configuration 2 and Configuration 3. As set forth in CDA Section 4.1, TxDOT shall have the option, at its sole discretion, to direct Developer to commence Work on Configuration 2 or Configuration 3, or both. The deadline for exercising all such options is six months after issuance of NTP 1. If TxDOT does not issue an Option Notice to Proceed within 180 days after the BAFO Due Date, the Option Price will be subject to adjustment in accordance with Section 12.1.7 of the CDA.

TxDOT will also hold three five-year options, exercisable by TxDOT, in its sole discretion, to require that Developer perform capital maintenance on the Project. TxDOT's right to exercise the second and third options will be contingent on the immediately preceding option being exercised.

TxDOT is developing this project as a toll project and anticipates that the Project will be designated by the Texas Transportation Commission as a toll road project following environmental clearance. After designation, the provisions of Transportation Code Section 203.092 and Texas Administrative Code, Title 43, Section 21.23 will determine reimbursable relocation costs.

The design, installation, operation and maintenance of the toll collection system for the managed lanes portion of the Project will not be included in Developer's scope of work, and TxDOT will retain responsibility for such work. Developer will be required to coordinate its work with the toll systems integrator retained by TxDOT to perform the toll collection systems work and the toll systems operator, as more particularly set forth in the CDA Documents.

### **1.3.2 Scope of Developer's Obligations**

Developer's obligations will generally include all efforts required to develop, design, and construct the Project in accordance with the requirements of the CDA Documents and, at TxDOT's sole option, provide capital maintenance for the Project in accordance with the requirements of the CMA Documents.

### **1.3.3 Project Environmental Status**

TxDOT currently anticipates that a Finding of No Significant Impact (FONSI) will be issued for the Project in ~~Summer~~ early 2009. A draft Environmental Assessment ("EA") is currently under review by TxDOT and FHWA, and TxDOT has provided Proposers with anticipated environmental parameters in the form of a draft environmental commitments document ("Environmental Commitments Document") upon which Proposers should base their Proposals. The CDA addresses the possibility that a NEPA Approval issued by FHWA might diverge from those parameters.

Proposers are advised that it is possible that the NEPA process will result in a no-build alternative for the Project or an alignment that differs from the preferred alignment identified in the EA. Although federal regulations permit a CDA to be awarded and preliminary design work to be performed before FHWA issues a NEPA decision, nothing contained in this RFP or the CDA commits TxDOT or a Proposer to the construction of

the Project or any Project alternative unless a NEPA Approval is obtained (and then only to the extent set forth in the NEPA Approval). The CDA addresses pricing and scheduling adjustments available to the Developer if NTP2 is delayed more than 90 days after issuance of NTP1 due solely to delay in the issuance of the NEPA Approval.

4. Section 1.6 of the ITP is revised to read as follows:

**1.6 Procurement Schedule**

The following is added to the table in Section 1.6:

<b><u>EVENT</u></b>	<b><u>DATE and TIME</u></b>
<u>Issue Request for Proposal Revisions and BAFO</u>	<u>December 8<del>10</del>, 2008</u>
<u>BAFO Due Date</u>	<u>January 12, 2009, 12:00 p.m.</u>
<u>Conditional Award by Commission (anticipated)</u>	<u>August 28<del>February 26</del>, 2009<del>8</del></u>
<u>CDA and CMA Executed (anticipated)</u>	<u>October 3, 2008<del>March 31</del>, 2009</u>

All dates set forth above and elsewhere in the RFP are subject to change, in TxDOT's sole discretion, by Addendum.

5. ITP Section 1.7 will be revised to read as follows:

**1.7.1 Proposal Contents and Best and Final Offer Contents**

(a) As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including a (a) Technical Proposal, and (b) Financial Proposal. Requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in TxDOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

(b) The Best and Final Offer (BAFO) evaluation process will consider the entire original Proposal, as revised by the BAFO. Each Proposer must submit a BAFO that includes the items identified in the portion of ITP Exhibit E that is entitled "Revised Proposal for BAFO". Proposers shall also include revised narrative sections of the original Proposal as described in Section 9.2, including the revised sections specified in Section 4.1.1 of Exhibit B. The BAFO shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Although it is not necessary to resubmit the entire original

Proposal that was submitted on July 15, 2008, each Proposer is responsible for assuring that its Proposal Revisions and BAFO submittals are clearly indexed, organized and explained with regard to the applicable ITP requirements and corresponding portions of the original Proposal.

6. Section 2.6.3 of the ITP is revised to read as follows:

### **2.6.3 Public Disclosure of Proposal Documents**

Proposers are advised that the information contained in Form J (Conflict of Interest Disclosure Statement) and the Executive Summary of each Proposal and Proposal Revision may be publicly disclosed by TxDOT at any time, in TxDOT's sole discretion.

Proposers are advised that upon recommendation to the Commission of the selection of an apparent best value Proposer and in TxDOT's sole discretion, TxDOT may publicly release any of the selected apparent best value Proposer's Forms N-1.a, N-1.b, N-1.c, N-1.1.a, N-1.1.b, N-1.1.c, N-1.2.a, N-1.2.b or N-1.2.c (Development Price), Forms N-2.a, N-2.b, or N-2.c (Cash Flow Adjustment Table/Maximum Payment Curve), and Forms O.a, O.b, or O.c (Maintenance Price), or any of the information contained therein. In the event TxDOT is unable to reach agreement on the CDA with the selected apparent best-value Proposer and TxDOT, in accordance with applicable law, chooses to enter into negotiations with the next highest ranking Proposer, then the Forms N-1, N-2 and O same forms included in the Proposal of by the next such highest ranking Proposer and any information contained in those formstherein may be disclosed as described in the previous sentence for the selected apparent best-value Proposer.

Prior to recommendation to the Commission of the selection of an apparent best-value Proposer, any of the forms identified in the preceding paragraph Form N-1, N-2 or O submitted by Proposers and the information contained therein in those forms shall be subject to disclosure as described in Section 2.6.4.

After recommendation to the Commission of the selection of an apparent best-value Proposer, but prior to execution of the CDA, any Form N-1, N-2 or O of the forms identified above submitted by Proposers and the information contained in those formstherein, other than those that of the apparent best-value Proposer (or that of the next highest ranking Proposer, if such Proposer is in CDA negotiations with TxDOT) shall be subject to disclosure as described in Section 2.6.4.

After final award, or in the event that the procurement is cancelled by TxDOT, TxDOT shall have the right to publicly disclose any and all portions of all the Proposals, except the Escrowed Materials EPDs and non-public financial statements. The Escrowed Materials EPDs and non-public financial statements shall be subject to disclosure as described in Section 2.6.4.

7. The last paragraph of Section 2.6.4 of the ITP is revised to read as follows:



In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, including ~~Escrowed Materials~~EPDs and non-public financial statements submitted by Proposer, Proposer shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Proposer whose Proposal is the subject thereof.

8. ITP Sections 4.1 and 4.1.1 are revised to read as follows:

#### **4.1 General Submittal Requirements**

Each Proposal shall include a Technical Proposal and a Financial Proposal meeting the requirements set forth in Exhibits B and C. The Proposal shall be submitted in sealed non-metallic containers in the format and manner set forth in Sections 4.2 and 4.3. See Section 9.0 for additional discussion of submittal requirements applicable to the BAFO.

##### **4.1.1 Proposal Due Date**

The completed Proposal (including BAFOs) shall be delivered in sealed non-metallic containers no later than the Proposal Due Date, which in the case of BAFOs will be the BAFO Due Date.

9. ITP Section 4.1.7 is revised to read as follows:

##### **4.1.7 Additional Requirements for Proposal BAFO Delivery**

The completed Proposal Revision and BAFO shall be submitted and delivered in sealed non-metallic containers no later than the Proposal BAFO Due Date and time specified in Section 1.6. The Proposal Revision and BAFO is to be delivered to TxDOT at the following address, except for the ~~Escrowed Materials~~EPDs, which shall be delivered to the Escrow Agent as specified in Section 4.3.2:

Mark Tomlinson, TTA Division Director  
Texas Department of Transportation  
CDA Program Office  
7600 Chevy Chase Drive, Suite #400  
Austin, TX 78752  
Texas Turnpike Authority  
~~125 East 11<sup>th</sup> Street~~  
Austin, Texas 78701-2483

Each binder of the Proposal Revision and BAFO shall be labeled to indicate its contents. The original Technical and Financial Proposals Revisions shall be clearly identified as "original"; copies of the Proposals Revisions shall be sequentially numbered, labeled and bound.

10. ITP Section 4.2.2 is revised to read as follows:

#### **4.2.2 Proposal Security and Escrow Agreement**

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the TxDOT DFW Connector Project.” A copy of the Escrow Agreement shall be provided with the Technical Proposal, in a separate envelope labeled “[Proposer Name]: Escrow Agreement for the TxDOT DFW Connector Project.”

The same requirements shall apply to Proposal Security documents and Escrow Agreement Amendments provided with a Proposal Revision and BAFO.

11. ITP Section 4.3 is revised to read as follows:

#### **4.3 Financial Proposal Submittal and Escrowed Proposal Documents**

The Financial Proposal (including the Financial Proposal for the BAFO) shall be submitted directly to TxDOT by the Proposal Due Date, which in the case of BAFOs will be the BAFO Due Date, as set forth in Section 4.3.1, below, and the Escrowed Proposal DocumentsEPDs shall be submitted to escrow as set forth in Section 4.3.2 below.

12. Section 4.3.2 of the ITP is revised to read as follows:

#### **4.3.2 Escrowed Proposal Documents Submitted to Escrow**

(a) Proposer shall assemble and deliver in accordance with this Section 4.3.2 certain escrowed proposal documents (“EPDs”) containing information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the CDA and Section 18.1 of the CMA. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based. The EPDs shall be delivered into escrow not later than seven days after the Proposal Due Date.

Proposer shall provide TxDOT with the name, address and contact information of Proposer’s selected Escrow Agent by the applicable last date set forth in Section 1.6. Proposer shall submit one set of EPDs (~~“Escrowed Materials”~~) to the Escrow Agent chosen by Proposer, along with three completed original Escrow Agreements executed by Proposer in substantially the form attached as Form L. The documents shall be in separately sealed non-metallic containers labeled “[Proposer Name]: ~~Escrowed Materials~~EPDs for the TxDOT DFW Connector Project” and delivered to the Escrow Agent at the address identified in the Escrow Agreement, which shall be located within a 10 mile radius of 125 East 11<sup>th</sup> Street, Austin, Texas. The Escrow Agent chosen by Proposer must be unaffiliated with Proposer and otherwise must be free of any conflict of interest. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

(b) For its BAFO submittal Proposer shall, either 1) replace the EPDs provided with its original Proposal with an entirely new set of EPDs ("Replacement EPDs"), or 2) add Supplemental EPDs ("Supplemental EPDs") to the existing EPDs. The Replacement EPDs or Supplemental EPDs shall contain information regarding Proposer's assumptions made in determining the scope of work and calculating the Proposal prices for each configuration in its BAFO and shall meet all requirements of Section 21.1 of the CDA and Section 18.1 of the CMA. The Replacement EPDs or Supplemental EPDs shall include detailed information for each configuration from all subcontractors identified in the BAFO and any other potential subcontractors who provided data upon which the BAFO is based. The Replacement EPDs or Supplemental EPDs shall be delivered into escrow not later than seven days after the BAFO Due Date.

Proposer shall submit one set of Replacement EPDs or Supplemental EPDs to the Escrow Agent chosen by Proposer, along with three completed originals of Amendment No. 1 to the Escrow Agreement executed by Proposer in substantially the form attached as BAFO Form L-1. The documents shall be in separately sealed non-metallic containers labeled "[Proposer Name]: Escrowed Materials for the TxDOT DFW Connector Project" and delivered to the Escrow Agent at the address identified in the Escrow Agreement. A copy of the executed Amendment No. 1 to the Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

13. ITP Section 4.5.2 is replaced in its entirety by the following:

#### **4.5.2 Withdrawal and Validity of Proposals**

No Proposal may be withdrawn on or after the time due on the BAFO Due Date and any attempt to do so will result in a draw by TxDOT upon the Proposal Security. Proposals, (including BAFOs) must initially be valid for a period of 180 days after the BAFO Due Date. TxDOT shall have the right to extend this period for up to an additional 90 days, provided that the Development Price for each Configuration will be subject to adjustment in accordance with Section 12.1.3 of the CDA if NTP1 does not occur within 180 days after the BAFO Due Date. A Proposer shall not withdraw its Proposal, which shall remain valid for an additional 90 days, if notified by TxDOT that it is selected for negotiation of the CDA and the CMA within such 180-day period. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

14. Section 5.2 of the ITP is revised to read as follows:

#### **5.2 Best Value Determination**

The best value determination will be based on an 80-20 point scale. The Price Score will represent up to 80 points of the total score, and the Technical Score will represent up to 20 points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score computed based on the following formula:

$$\text{Total Proposal Score (max. 100 points)} = \text{Price Score (max. 80 points)} + \text{Technical Score (max. 20 points)}$$

## **5.2.1 Calculation of the Price Score**

5.2.1.1 Except as otherwise set forth in this Section 5.2.1, the Price Score for each of the three Configurations will be calculated independently based on the following formula:

Configuration 1 Price Score = (Lowest PV/PV) \* 60

Configuration 2 Price Score = (Lowest PV/PV) \* 15

Configuration 3 Price Score = (Lowest PV/PV) \* 5

Lowest PV = Lowest Price Value for the relevant Configuration submitted by a Proposer as determined pursuant to Section 5.5.

PV = Proposer's Price Value for the relevant Configuration as determined pursuant to Section 5.5.

5.2.1.2 If one or more responsive Proposals provides an Option Price for Configuration 2 within the Maximum Payment Curve shown in Column D of Form N.2.b, then the Configuration 2 Price Score for such Proposals will be worth a maximum of 75 points, the Configuration 1 Price Score will not be independently calculated, and any Proposal providing an Option Price for Configuration 2 that is not within the Maximum Payment Curve shown in Column D of Form N.2.b will receive no points for Configurations 1 and 2.

5.2.1.3 In the event that one or more responsive Proposals provides a Development Price for Configuration 1 at or below \$608.9 million on Form N-1.a and no responsive Proposal provides an Option Price for Configuration 2 within the Maximum Payment Curve shown in Column D of Form N.2.b, then for any Proposal that does not provide a Development Price for Configuration 1 on Form N-1.a at or below \$608.9 million the Price Score for Configuration 1 will be zero.

5.2.1.4 In the event that no responsive Proposal provides a Development Price for Configuration 1 on Form N-1.a at or below \$608.9 million, then the Price Score (maximum of 80 points) will be comprised of the sum of the Price Scores for each of the three configurations, as set forth in the following formula:

Price Score (maximum of 80 points) = Configuration 1 Price Score (maximum of 60 points) + Configuration 2 Price Score (maximum of 15 points) + Configuration 3 Price Score (maximum of 5 points)

~~The Price Score for each of the three Configurations will be calculated independently based on the following formula:~~

~~Configuration 1 Price Score = (Lowest PV/PV) \* 60~~

~~Configuration 2 Price Score = (Lowest PV/PV) \* 15~~

~~Configuration 3 Price Score = (Lowest PV/PV) \* 5~~

~~Lowest PV = Lowest Price Value for the relevant Configuration submitted by a Proposer as determined pursuant to Section 5.5.~~

~~PV = Proposer's Price Value for the relevant Configuration as determined pursuant to Section 5.5.~~

## **5.2.2 Calculation of the Technical Score**

The Technical Score will be calculated based on the ESRC evaluation score for the Project Development Plan (maximum of 100 points) as described in Section 5.4.2. The Technical Score will be calculated using the following formula:

Technical Score = ESRC evaluation score \* 0.20

**15.** Sections 5.3.1(d) and (e) of the ITP are revised to read as follows:

(d) Proposer has delivered Proposal Security in the form of either 1) a complete, properly executed replacement proposal bond using Form BAFO K-1 that complies with the requirements of Exhibit B, Section 3.3.1 or a complete, properly executed rider to its original proposal bond, using Form BAFO K-1.a, that together with the original proposal bond complies with the requirements of Exhibit B, Section 3.3.1, or 2) a letter of credit using BAFO Form K-2 that complies with the requirements of Exhibit B, Section 3.3.2, or a complete, properly executed amendment to its original letter of credit using Form BAFO K-2.a that together with the original letter of credit complies with the requirements of Exhibit B, Section 3.3.2.

(e) The Proposal provides for Substantial Completion of Configuration 1 no later than within 1734-1644 days from NTP1, Substantial Completion of Configuration 2 no later than 1734 days from NTP1, and Substantial Completion of Configuration 3 no later than 1734 days from NTP1.

**16.** Section 5.3.2 of the ITP is revised to read as follows:

## **5.3.2 Financial Proposals**

Financial Proposals will be evaluated based on the following pass/fail criteria:

(a) Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial data submitted in the QS and its original Proposal submitted on July 15, 2008, such that Proposer continues to have the financial capacity to develop, design, construct and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:

(i) Profitability;

- (ii) Capital structure;
- (iii) Ability to service existing debt; and
- (iii) Other commitments and contingencies.

If TxDOT determines that a Proposer is undercapitalized, it will offer Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to TxDOT.

(b) Proposer has provided a Development Price and Option Prices using Forms N-1.a, N-1.b, N-1.c, N-1.1.a, N-1.1.b, N-1.1.c, N-1.2.a, N-1.2.b and N-1.2.c that complies with the requirements of Exhibit C, Section 3.1.

(c) Proposer has provided a Cash Flow Adjustment Table/Maximum Payment Curves using Forms N-2.a, N-2.b and N-2.c that complies with the requirements of Exhibit C, Section 3.1.

(d) Proposer has provided a Maintenance Prices using Forms O.a, O.b and O.c and that complies with the requirements of Exhibit C, Section 3.2.

17. Section 5.5 of the ITP is revised to read as follows:

### **5.5 Evaluation of Financial Proposal by FPES**

After completion of the pass/fail and responsiveness review, the Financial Proposal will be evaluated by the FPES. The FPES will conduct "blind" reviews and evaluations of the Financial Proposals to determine the Price Value of the Financial Proposal ("PV"). For each Configuration, the PV will be the sum total of the present value of the Development Price as determined in accordance with Section 5.5.1, the net present value of the cost adjustments as determined in accordance with Section 5.5.2 and the present value of the Maintenance Price as determined in accordance with Section 5.5.3.

#### **5.5.1 Present Value of the Development Price**

The present value of the Development Price will be the Development Price for each Configuration as set forth in Forms N-1.a, N-1.b, N-1.c discounted monthly using a discount rate of 5% per annum, using the discount factors shown in Forms N-2.a, N-2.b and N-2.c.

#### **5.5.2 Net Present Value of Cost Adjustments**

For each Configuration, the net present value of the ATC Adjustment will be the costs identified by TxDOT pursuant to Section 3.2 regarding the use of an ATC in a Proposal discounted monthly using a discount rate of 5% per annum, and set forth on Forms N-1.2.a, N-1.2.b and N-1.2.c.

### 5.5.3 Present Value of the Maintenance Price

The present value of the Maintenance Price will be the Maintenance Price for each Configuration for the maximum term of the CMA as set forth in 2008 dollars on Forms O.a, O.b and O.c.

18. The last paragraph of Section 5.8 of the ITP is revised to read as follows:

Upon receipt of Proposal Revisions, the ESRC, with assistance from the Technical or Financial Proposal pass/fail and responsiveness subcommittees, DPES, or FPES, as appropriate, will re-evaluate the Proposals as revised, and will determine revise ratings and value estimates as appropriate following the process described above.

19. Section 5.12.2(c) of the ITP is revised to read as follows:

(c) Allif security for Proposer's obligations under the CDA and CMA, as required by TxDOT pursuant to Exhibit C, Section 2.0, in the form of the proposed guarantees, which shall be in form and substance acceptable to TxDOT, in its sole discretion.

During the negotiation period, as a condition to final award, Proposer shall deliver drafts of the deliverables identified in Section 6.1.1, for pre-approval by TxDOT.

20. Section 6.1.1(c) of the ITP is revised to read as follows:

(c) ~~**RESERVED**~~if security for Proposer's obligations under the CDA is required by TxDOT pursuant to ~~Exhibit C, Section 2.0~~, Proposer shall submit one or more guarantees from guarantor(s) acceptable to TxDOT, in its sole discretion.

21. Section 6.3 of the ITP is revised to read as follows:

#### 6.3 Payment to Unsuccessful Proposers

Each Proposer that submits a responsive, but unsuccessful, BAFO Proposal shall be entitled to receive payment from TxDOT for work product that is not returned to Proposer, on the terms and conditions described herein and in the Minute Order issued by the Commission, a copy of which is attached hereto as Exhibit G. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

The amount of the payment may not exceed 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, up to the maximum stipulated amount per Proposer. The maximum stipulated payment for work product per Proposer for this procurement is ~~\$500,000~~\$750,000. The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the CDA and CMA, is posted on the FTP site, 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. Payments will be made within 30 days of receipt of an invoice therefor.

In accordance with Section 223.203(m) of the Code, each Proposer agrees that TxDOT shall be entitled to use all work product that is not returned to Proposer (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) contained in its Proposal or generated by or on behalf of Proposer for the purpose of developing its Proposal, in consideration for TxDOT's agreement to make payment as provided herein, without any further compensation or consideration to Proposer.

Each Proposer acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the CDA and CMA, and that the CDA Documents and CMA Documents may incorporate the above-described work product or concepts based thereon. Upon Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to use such work product in the performance of its functions. As provided in Section 223.203(m) of the Code, the use of any of the work product by TxDOT is at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer. Each Proposer acknowledges and agrees that it does not have the right to refuse the payment hereunder and keep the contents of its Proposal from being used by TxDOT, as described herein.

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive a payment for work product under this Section 6.3.

22. Section 6.4 of the ITP is revised to read as follows:

#### **6.4 Disposition of EPDs~~Escrowed Materials~~ Following Conclusion of Procurement Process**

Following execution of the CDA and the CMA, the EPDs~~Escrowed Materials~~ of the successful Proposer will be available for review as specified in the CDA Documents and the CMA Documents, as applicable.

In accordance with the procedures set forth in the Escrow Agreement (Form L), each unsuccessful Proposer shall have the right to retrieve its EPDs~~Escrowed Materials~~ after the CDA Documents and the CMA Documents have been executed and delivered, after TxDOT rejects all of the Proposals or after TxDOT terminates this procurement.

23. The following is added to the ITP as new Section 9.0:

#### **9.0 BEST AND FINAL OFFERS (BAFOs)**



## 9.1 Submission of BAFOs

Each BAFO shall be delivered to TxDOT in sealed non-metallic boxes, each of which shall be clearly labeled so that it is apparent it is a part of a proposal responding to this RFP. The BAFO shall be accompanied by a transmittal letter listing the number of boxes submitted and identifying the contents of each box. The original and all required copies of the BAFO shall be delivered prior to the time and date given in Section 1.6 for the BAFO Due Date.

Failure to use sealed boxes or to properly identify the BAFO may result in an inadvertent opening of the BAFO before the time and place for the opening of BAFOs and may result in disqualification of the BAFO. Proposer shall be entirely responsible for any consequences, including disqualification of the BAFO, resulting from any inadvertent opening of unsealed or improperly identified boxes. It is Proposer's sole responsibility to see that its BAFO is received as required. BAFOs received after the specified time will be rejected without consideration or evaluation. Proposers shall provide responses to all information requested in this RFP. Failure to respond or to provide requested information may result in a determination by TxDOT, in its sole discretion, that a BAFO is non-responsive. Except as provided in Section 6.3, TxDOT shall have no obligation to compensate any unsuccessful Proposer for its efforts in preparing a Proposal.

## 9.2 Contents

The BAFO shall include a revised Executive Summary, narrative revisions to the original Technical Proposal as applicable for each Configuration, and other information as deemed appropriate by the Proposer to respond to the modifications to the RFP included in this Request for BAFOs. It is not necessary, however, to revise the Proposal to address minor inconsistencies between the original Proposal and the requirements contained herein. The BAFO shall also include all revised forms as required by ITP Exhibit E and an index identifying which portions of the original Proposal have been revised.

Updated incumbency certificates, and evidence of authorization, and other certificates, documents and forms required to be included in the original Proposal are not required to be resubmitted unless the information contained in the original Proposal has changed. Instead, the BAFO shall include a statement signed by the Proposer's Authorized Representative confirming that no change has occurred to those documents.

If there are changes to the originally submitted Forms B-1, B-2, B-3, C, D, E, F, I, J, Q, R and S, new forms shall be provided using the original ITP forms, and BAFO Form A shall include a list of the newly submitted forms. If there are no changes to these forms included in the Proposal, they are not required to be resubmitted. Form BAFO A shall include a statement identifying the forms for which no change has occurred and stating that the information and authorities identified in the original forms are still accurate and valid as of the BAFO Due Date.

### 9.3 Format

The BAFO shall be set up so as to enable TxDOT to easily ascertain what changes have been made to the original Proposal. Proposer may cross-reference provisions in the BAFO and/or original Proposal, or may restate provisions, as deemed appropriate, with the goal of providing a readily understandable proposal.

The revised Executive Summary, narrative revisions and revised forms shall be labeled with the word "BAFO" in the footer. The remainder of the BAFO shall also be labeled with the word "BAFO" in the footer, so that they can easily be distinguished from the original Proposal.

### 9.4 Number of Copies

Proposer shall provide the same number of copies of its BAFO as set forth in Section 4.2 for its original Proposal, except that only five (5) copies of full-size drawings and schematics are required.

#### **B. Revisions to the ITP Exhibits**

1. The following definitions in ITP Exhibit A are revised as indicated:

~~**Escrowed Materials** means the EPDs delivered into escrow pursuant to ITP Section 4.3.2.~~

**Proposal** means the documents original Proposal submitted by a Proposer in response to the RFP, as modified by the BAFO in accordance with ITP Section 5.8.

2. The following definitions are added to ITP Exhibit A:

**BAFO** means Best and Final Offer, as described in ITP Section 9.0.

**BAFO Due Date** means the deadline (date and time) for submission of BAFOs identified in ITP Section 1.6.

**Configuration(s) 1, 2 or 3** mean the Project configuration(s), individually or collectively as applicable, described in ITP Section 1.3.

**Option Notice to Proceed** means the notice to be issued by TxDOT in order to exercise an Option pursuant to Section 4.1.5 of the Agreement.

**Option Price** means the Proposer's Development Price for Configuration 2 or Configuration 3, reflected in Form N-1.b or N-1.c, as applicable, with ATC adjustments reflected in Form N-1.2.b or N-1.2.c, as applicable, and Maintenance Price reflected in Form O.b or O.c, as applicable.

**Request for Best and Final Offer** or **Request for BAFO** means Addendum 7 to the RFP.

3. The following language is added as a new paragraph at the end of Section 2.0 of ITP Exhibit B:

There is no page limit applicable to any part or portion of a BAFO submittal.

4. The introductory paragraph of Section 3.1 of ITP Exhibit B is revised to read as follows:

### **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. However, there is no page limit applicable to the Executive Summary of a BAFO submittal. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

5. Section 3.2.13 of ITP Exhibit B is revised to read as follows:

### **3.2.13 Guarantor Letter**

The Proposal shall include: (a) an irrevocable letter signed by the guarantor committing to provide a guaranty in the form of Exhibit 13 of the CDA (if a guaranty is required by TxDOT) and a guaranty in the form of Exhibit 9 of the Capital Maintenance Agreement (as applicable), concurrently with execution and delivery of the CDA Documents and Capital Maintenance Agreement 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; and (e) such other information concerning the guarantor as TxDOT may request. A guaranty of Developer's obligations under the CDA 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 organization is a newly formed corporation or a limited liability entity, (iii) the combined Tangible Net Worth of Proposer and its equity 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. If a guarantor is required, the combined Tangible Net Worth of the guarantor, Proposer 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 Developer's obligations under the CMA is required from all Proposers.

6. The first paragraph of Section 3.3 of ITP Exhibit B is revised to read as follows:

### 3.3 Proposal Security

The Proposal shall include either a proposal bond or irrevocable standby letter of credit as specified below. For purposes of the BAFO, as an alternative to submitting a new proposal bond or letter of credit, Proposer may submit 1) a duly authorized and executed rider to the proposal bond, using Form BAFO K-1.a, or 2) an amendment to the original letter of credit, using Form BAFO K-2.a, as applicable, evidencing that the term of its original proposal bond or letter of credit has been extended to accommodate the timeframe described below (i.e., up to 270 days from BAFO Due Date).

7. The last sentence of Section 3.3.1 of ITP Exhibit B is revised to read as follows:

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 ~~Proposal~~BAFO Due Date.

8. The last sentence of Section 3.3.2 of ITP Exhibit B is revised to read as follows:

The letter of credit shall be valid for 270 days after the ~~Proposal~~BAFO Due Date.

9. Section 3.4 of ITP Exhibit B is revised to read as follows:

### 3.4 Escrow Agreement

A copy of the Escrow Agreement (Form L) shall be provided with the Technical Proposal, in a separate envelope labeled “[Proposer Name]: Escrow Agreement for the DFW Connector Project.”

For the BAFO submittal, a copy of the Escrow Agreement Amendment No. 1 (Form BAFO L-1) shall be provided with the Technical Proposal, in a separate envelope labeled “[Proposer Name]: Escrow Agreement Amendment No. 1 for the DFW Connector Project.”

10. Section 4.1.1. of ITP Exhibit B is revised to read as follows:

#### 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 for each Configuration 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.

11. Section 4.1.1.1 of ITP Exhibit B is revised to read as follows:

#### **4.1.1.1 Construction Staging, Sequencing and Traffic Management**

~~The Proposal shall~~ For each Configuration, 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 and steps that will be taken to minimize disruptions to the traveling public and impacts on the Stakeholders and communities.
- (c) A description how business, airport and residential access will be maintained throughout the Project corridor during the construction.

12. Section 4.1.1.3 of ITP Exhibit B is revised to read as follows:

#### **4.1.1.3 Bridges and Surface Structures**

~~The Proposal shall~~ For any additional bridges or surface structures for which a description was not provided in the original Technical Proposal, ~~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 with sufficient detail to indicate bridge type, foundation types, width, controlling clearances, and span arrangement. 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 existing and proposed structures.

13. Section 4.1.1.9 of ITP Exhibit B is revised to read as follows:

#### **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, material(s) and components.
- (b) For each Configuration, Ggeneral concept plan drawing(s) showing the preliminary overall surface water collection system along with a general layout of the identified major drainage trunk lines, including outfall locations.
- (c) Proposer's concept plan for construction sequencing of portions of the drainage network prior to completion of entire drainage system.
- (d) For each Configuration, Ddescription of the approach for connecting to existing drainage system(s), including identification of impacted owners and/or operators.
- (e) For each Configuration, Ddescription and plan drawing(s) defining the approximate limits of temporary construction and drainage easements necessary for completion of the Project drainage work.

14. Section 4.1.1.10 of ITP Exhibit B is revised to read as follows:

#### **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 for each Configuration:

- (a) General project roadway information including right of way and Project limits, design speeds and functional classification(s).
- (b) Proposed refinements in the horizontal and vertical geometric configuration of the Schematic Design.
- (c) Plans, typical sections and profiles of mainline, frontage roads, interchanges and crossing roadways for the Schematic Design.
- (d) Roadway and interchange geometry.
- (e) A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project.

15. Section 4.1.1.12 of ITP Exhibit B is revised to read as follows:

#### **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, accompanied by a narrative description of how, if at all, the locations for ITS equipment in Configurations 1 and 2 will differ from those in Configuration 3.
- (b) A narrative description for each Configuration 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 narrative description for each Configuration offer methods of coordinating information with other ITS systems in the region and for the incorporation into the North Texas Regional ITS Architecture.

16. Section 4.1.1.13 of ITP Exhibit B is revised to read as follows:

**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 for each Configuration, in sufficient detail and in a format acceptable for FHWA submittal.
- (b) A description of the approach for lighting of the general purpose lanes, managed lanes, frontage roads, intersections, ramps and interchanges.

17. Section 4.1.3 of ITP Exhibit B is revised to read as follows:

**4.1.3 Preliminary Project Baseline Schedule**

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

- (a) Narrative which describes the proposed execution of the work for the term of the CDA.
- (b) Preliminary Project Baseline Schedule to WBS Level V for the design and construction period and WBS Level IV for the maintenance period in accordance with the Technical Provisions.
- (c) The schedule shall contain all key activities or milestones relating to maintenance at WBS Level IV.

- (d) The Preliminary Project Baseline Schedule shall show achievement of Substantial Completion for Configuration 1 no later than ~~1734~~ 1644 days from NTP1, Substantial Completion for Configuration 2 no later than 1734 days from NTP1, and Substantial Completion for Configuration 3 no later than 1734 days from NTP1. Proposer shall indicate the number of calendar days between NTP1 and its proposed Substantial Completion date for each Configuration on Form P.

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.

18. Section 4.2.1(d) of ITP Exhibit B is revised to read as follows:

- (d) An organization chart for each Configuration 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).

19. The first paragraph of Section 2.0 of ITP Exhibit C will be revised to read as follows:

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the QS. For Proposal Revisions submitted as part of a BAFO, in lieu of updated financial capacity information, Proposers may submit a letter from the chief financial officer or treasurer for each equity member and guarantor, certifying that there have been no material adverse changes in financial condition since submission of Proposer's July 15, 2008 Proposal. However, if there have been material adverse changes in financial condition since submittal of the original Proposal for any of the equity members or guarantors, Proposers shall submit a letter from the chief financial officer or treasurer of such equity member(s) and guarantor(s), providing information on those material changes in financial condition as set forth in paragraph 3.e of this Section 2.0.

20. Paragraph 3(b) of Section 2.0 of ITP Exhibit C will be revised to read as follows:

**Guarantor Letter of Support** — A guaranty regarding Developer obligations under the CMA is required from all Proposers. A guaranty regarding Developer obligations under the CDA may also be required by ITP Section 3.2.13. If financial statements of a parent company or affiliate company are provided to demonstrate financial capability of Proposer or Equity Participants, an appropriate The letter from the guarantor must be provided confirming unequivocally that it will guarantee all the obligations of Proposer or Equity Participants with respect to the CMA and, if applicable, the CDAProject. 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.

21. Section 3.1 of ITP Exhibit C is revised to read as follows:

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

Proposer shall submit a Development Price for Configurations 1, 2 and 3 using Forms N-1.a, N-1.b and N-1.c, respectively, setting forth the total price for the work required under the CDA, and using Forms N-1.1.a, N-1.1.b, and N-1.1.c showing an itemized breakdown of the Development Price for each Configuration, and also including pricing adjustments for any approved (or conditionally approved) ATCs incorporated in the Proposal, using Forms N-1.2.a, N-1.2.b and N-1.2.c. Forms N-2.a, N-2.b and N-2.c shall set forth the cash flow for each Configuration corresponding to the anticipated draw requests for the work required under the CDA and shall not exceed the maximum payment curve set forth as Form N-2.a, N-2.b or N-2.c, as applicable, at any point in time for the Configuration covered by the applicable maximum payment curve form. The monthly draw requests shall be established by the amount of Work anticipated to be completed percentage complete on a monthly basis, and shall be limited to the lesser of the anticipated cash flow or the applicable maximum payment curve, both shown on Forms N-2.a, N-2.b and N-2.c.

22. Section 3.2 of ITP Exhibit C is revised to read as follows:

**3.2 Maintenance Price**

The Financial Proposal shall include Forms O.a, O.b, and O.c for Configurations 1, 2 and 3, respectively, setting forth the annual lump sum price, in year 2008 dollars, for maintenance services for the years 1 through 5, 6 through 10 and 11 through 15 of the Capital Maintenance Agreement, as well as a breakdown of such price into routine pavement operations, pavement maintenance operations, bridge maintenance (1) roadway, (2) drainage facilities, (3) structures, noise walls and retaining walls, traffic control, and (4) earthworks, embankments and cuttings, slopes, and miscellaneous maintenance items, as such concepts are described in the Capital Maintenance Agreement. The Capital Maintenance Agreement provides for the adjustment procedures and index for annual adjustments in the price for maintenance services.

In developing the Maintenance 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.

23. The following table is added at the end of ITP Exhibit E.

Proposal Component	Form (if any)	ITP Section Cross-Reference
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Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>Revised Proposal For BAFO</b>		
Proposers shall follow the order of this checklist in their submissions. A reference copy of this document shall be submitted with the Financial Proposal.		
<b>A. Executive Summary</b>		
Executive Summary for BAFO ( <b>Exclude price information</b> )	No forms are provided	<u>Exhibit B, Section 3.1</u> , and instructions in the Request for BAFOs
<b>B. Proposer Information, Certifications &amp; Documents</b>		
Revised Proposal Letter For BAFO	<u>Form BAFO - A</u>	<u>Exhibit B, Section 3.2.1</u> , and instructions in the Request for BAFOs
Revised Forms B-1, B-2, B-3, C, D, E, F, I, J, Q, R and S (If any)	<u>Provide new information on original forms</u>	<u>ITP Section 9.2</u>
<b>C. Project Development Plan</b>		
Narrative Explanation of BAFO Revisions to Technical Solutions, Project Management Plan and Quality Management Plan	No forms are provided	<u>Exhibit B, Sections 4.1, 4.2 and 4.3</u> , and instructions in the Request for BAFOs
BAFO Project Baseline Schedule for each Configuration	<u>Form BAFO P</u>	<u>Exhibit B, Section 4.1.3</u> , and instructions in the Request for BAFOs
Revised Drawings See Attachment 1 to this ITP <u>Exhibit E</u>	No forms are provided	<u>Exhibit B, Section 4.1</u> , and instructions in the Request for BAFOs
<b>E. Proposal Security (Proposal Bond or Letter of Credit)</b>		
Replacement Proposal Bond, or an executed rider to the proposal bond evidencing that the term of the original proposal bond has been extended to accommodate the BAFO timeframe (i.e., up to 270 days from BAFO Due Date).	<u>Form BAFO K-1 or Form BAFO K-1.a</u>	<u>Exhibit B, Sections 3.3 and 3.3.1</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Replacement Letter of Credit or amendment to the letter of credit, evidencing that the term of the original proposal letter of credit has been extended to accommodate the BAFO timeframe (i.e., up to 270 days from BAFO Due Date).	<u>Form BAFO K-2</u> or <u>Form BAFO K-2.a</u>	<u>Exhibit B, Sections 3.3 and 3.3.2</u>
<b>F. Escrow Agreement</b>		
Amendment No. 1 to Escrow Agreement	<u>Form BAFO L-1</u>	<u>ITP Section 4.3.2 and Exhibit B, Section 3.4,</u> and instructions in the Request for BAFOs
<b>Financial Proposal</b>		
BAFO Development Price for Configurations 1, 2 and 3	<u>Forms BAFO N-1.a, BAFO N-1.b, BAFO N-1.c, BAFO N-1.1a, BAFO N-1.1b, BAFO N-1.1c, BAFO N-1.2.a, BAFO N-1.2.b, and BAFO N-1.2.c</u>	<u>Exhibit C, Section 3.1,</u> and instructions in the Request for BAFOs
BAFO Cash Flow Adjustment Table/Maximum Payment Curve	<u>Forms BAFO N-2.a, BAFO N-2.b, and BAFO N-2.c</u>	<u>Exhibit C, Section 3.1,</u> and instructions in the Request for BAFOs
BAFO Maintenance Price	<u>Forms BAFO O.a, BAFO O.b, and BAFO O.c</u>	<u>Exhibit C, Section 3.2,</u> and instructions in the Request for BAFOs
<u>Supplemental or Replacement EPDs</u> (to be delivered separately into escrow as provided in ITP Section 4.3.2)	No forms are provided	<u>Exhibit C, Section 3.3,</u> and instructions in the Request for BAFOs

24. The following information is contained in new Attachment 1 to ITP Exhibit E.

**Additional or Revised Drawings Required for  
Proposal Revisions and BAFO Submittals**

Below is the list of required additional and/or revised (for Configuration 3) drawings that correspond to ITP Exhibit B requirements for the Proposal Revisions and BAFO submittals. Information from more than one item below can be combined into one drawing where appropriate. Please note that information required from each configuration is for “**additional or revised drawings**” and not just “revised drawings”.

1. Developer’s schematic for each configuration in accordance with ITP Exhibit B, Section 4.1.1
2. Concept drawings and description of the proposed construction staging in accordance with ITP Exhibit B, Section 4.1.1.1
3. Concept plan for bridges, retaining walls and noise walls in accordance with ITP Exhibit B, Section 4.1.1.3
4. General concept plan drawings in accordance with ITP Exhibit B, Section 4.1.1.9
5. Plans, typical sections and profiles of mainline, frontage roads, interchanges and crossing roadways for the Schematic Design in accordance with ITP Exhibit B, Section 4.1.1.10
6. Schematic plan and layout in accordance with ITP Exhibit B, Section 4.1.1.12
7. Preliminary Operational Signing Schematic in accordance with ITP Exhibit B, Section 4.1.1.13

26. The following new Exhibit G is added to the ITP to replace the prior Exhibit G:

TEXAS TRANSPORTATION COMMISSION

TARRANT County

MINUTE ORDER

Page 1 of 2

FORT WORTH District

Transportation Code, Chapter 223.201 authorizes the Texas Department of Transportation (department) to enter into a comprehensive development agreement (CDA) with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand various types of projects.

On March 30, 2006, by Minute Order 110469, the Texas Transportation Commission (commission) authorized and directed the department to issue a request for qualifications (RFQ) to develop, design, and construct and to potentially finance, maintain, and operate SH 114 from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (the SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway, as well as other facilities to the extent necessary for connectivity, mobility, safety, and financing (formerly known locally as the Funnel but now known as the DFW Connector project).

On December 29, 2006 the department issued an RFQ for the DFW Connector project. The department determined that three of the proposing teams submitting qualification submittals in response to the RFQ were qualified to be on the short list of teams requested to submit detailed proposals.

Transportation Code, §223.203(m) allows the department to pay an unsuccessful private entity that submits a responsive proposal in response to an RFP a stipulated amount in exchange for work product contained in that proposal. The stipulated amount must be stated in the request for proposals 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. In accordance with Title 43, Texas Administrative Code, §27.4, in determining whether to approve a payment, the commission shall consider: 1) the effect of a payment on the department's ability to attract meaningful proposals and to generate competition; 2) the work product expected to be included in the proposal and the anticipated value of that work product; and 3) the costs anticipated to be incurred by a private entity in preparing a proposal.

In the RFP, the department anticipates requesting detailed engineering, design, finance, and other information from the short listed proposers that may 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 DFW Connector project and for other department projects without further payment to the applicable proposers. Payment for the work product of proposers is also anticipated to increase the quality of detailed proposals submitted for the DFW Connector project and to increase competition for the DFW Connector project.

As the department and the three proposers have progressed through the industry review period, the DFW Connector project has been revised and become more complex. The proposers were originally required to submit a single proposal for the CDA. The current procurement requires each proposer to examine and prepare three bid submittals for the project options. The additional project options require a greater level of engineering effort associated with the examination of transitions and staging than originally required.

TEXAS TRANSPORTATION COMMISSION

TARRANT County

MINUTE ORDER

Page 2 of 2

FORT WORTH District

IT IS THEREFORE ORDERED that the department is authorized to pay to each proposer that submits a responsive, but unsuccessful, detailed proposal to develop, design, construct, and to potentially finance, maintain, and operate the DFW Connector project an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or his designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$750,000 and that provisions in Minute Order 111102 dated October 25, 2007 regarding payment for work product are superseded by this order.

IT IS FURTHER ORDERED that compensation may only be paid if the work product submitted also meets the minimum criteria and other conditions for payment identified by the department in the DFW Connector project procurement documents.

Submitted and reviewed by:

  
Director, Texas Turnpike Authority Division

Recommended by:

  
Executive Director

111529 SEP 25 08

Minute Number	Date Passed
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**C. Revisions to the ITP Forms**

1. The following ITP Forms are revised as indicated:

**TEXAS DEPARTMENT OF TRANSPORTATION  
DFW CONNECTOR PROJECT  
INSTRUCTIONS TO PROPOSERS—Form BAFO A**

**PROPOSAL LETTER**

PROPOSER: \_\_\_\_\_

Proposal Date: \_\_\_\_\_, 20098

Texas Department of Transportation  
Texas Turnpike Authority Division  
125 East 11th Street  
Austin, Texas 78701-2483  
Attn: Phillip E. Russell, P.E.

The undersigned ("Proposer") submits this Proposal Revision and Best and Final Offer (this "Proposal") in response to ~~that certain~~ the Request for Proposal Revisions and Best and Final Offers ("BAFOs") set forth in Addendum #7 to the Request for Proposals (the "RFP") issued by the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, dated \_\_\_\_\_, December 810, 20098, to develop, design, construct and potentially maintain the DFW Connector Project (the "Project"), as more specifically described herein and in the documents provided with the RFP (the "RFP Documents"). The term "Proposal" as used herein shall mean the original Proposal, as supplemented and amended by this BAFO. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for TxDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words "jointly and severally" and delete the brackets; otherwise delete the entire phrase]:*

a) to keep this Proposal open for acceptance initially for 180 days after the ~~Proposal-BAFO Due Date~~, and if requested by TxDOT within such 180-day period, for an additional 90 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of TxDOT, in TxDOT's sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the due performance of the Comprehensive Development Agreement ("CDA") and, if TxDOT exercises the capital maintenance option(s), the Maintenance Agreement ("Maintenance Agreement"), as stipulated in the CDA Documents, the Maintenance Agreement Documents and the RFP.



If selected by TxDOT, Proposer agrees to do the following or to cause Developer to do the following: (a) if requested by TxDOT in its sole discretion, enter into good faith negotiations with TxDOT regarding the terms of the CDA Documents and the Maintenance Agreement Documents, in accordance with the requirements of the RFP; (b) enter into the CDA Documents and the Maintenance Agreement Documents without varying or amending its terms (except if requested to by TxDOT in its sole discretion) and satisfy all other conditions to award of the CDA Documents and the Maintenance Agreement Documents; and (c) perform its obligations as set forth in the ITP, the CDA Documents and the Maintenance Agreement Documents, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Proposer Authorized Representative in accordance with Section 2.2.2 of the ITP: \_\_\_\_\_

The following individual(s) is/are authorized to enter into negotiations with TxDOT on behalf of the Proposer and Developer in connection with this RFP, the Project, the CDA and the Maintenance Agreement: \_\_\_\_\_

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Executive Summary
- Technical Proposal, including Proposer Information, Certifications and Documents, Proposal Security and Escrow Agreement
- Financial Proposal

Information originally provided on the following forms has changed since the original Proposal Due Date and new forms providing currently correct and valid information, statements of authority and certificates are included with this Proposal Revision and Best and Final Offer: [Specify Forms B-1, B-2, B-3, C, D, E, F, I, J, Q, R and S, as applicable.]

Information originally provided on the following forms has NOT changed since the original Proposal Due Date and Proposer certifies that the information provided on those forms constitute correct, accurate and valid information, statements of authority and certificates as of the BAFO Due Date: [Specify Forms B-1, B-2, B-3, C, D, E, F, I, J, Q, R and S, as applicable.]

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

- Addendum 1 issued April 14, 2008
- Addendum 2 issued April 30, 2008
- Addendum 3 issued June 4, 2008
- Addendum 4 issued June 17, 2008
- Addendum 5 issued July 3, 2008

Addendum 6 issued July 8, 2008  
Addendum 7 issued December 810, 2008

Responses issued April 23, 2008, June 3, 2008, and  
June 27, 2008 and November 21, 2008

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda and TxDOT's responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Developer and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal; and that it has notified TxDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the QS previously delivered to TxDOT (as amended and resubmitted) and the Proposal submitted on July 15, 2008, are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal Revision and BAFO and revised Proposal forms submitted herewith. Proposer agrees that such QS and Proposal submitted on July 15, 2008, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein and shall remain binding on Proposer for the entirety of the procurement process that is the subject of the RFP Documents.

Proposer understands that TxDOT is not bound to accept the Proposal offering the lowest price to TxDOT or any Proposal TxDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer consents to TxDOT's disclosure of its Proposal pursuant to Section 223.204(a), Texas Transportation Code, to any Persons in TxDOT's sole discretion after conditional award of the CDA and Maintenance Agreement by TxDOT. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6. Proposer expressly waives any right to contest such disclosures under Section 223.204(a).

Proposer agrees that TxDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Texas.

Proposer's business address:

\_\_\_\_\_  
(No.) (Street) (Floor or Suite)

\_\_\_\_\_  
(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[insert appropriate signature block from following pages]*

1. Sample signature block for corporation or limited liability company:

*[Insert the proposer's name]*

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

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

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

2. Sample signature block for partnership or joint venture:

*[Insert the proposer's name]*

By: *[Insert general partner's or member's name]*

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

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

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

*[Add signatures of additional general partners or members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert the proposer's name]*

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

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

Attorney in Fact

## ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. Describe in detail the legal structure of the Proposer/Developer and Equity Participants.
1. If the Proposer/Developer/Equity Participant is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for Proposer/Developer/Equity Participant and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
  2. If the Proposer/Developer/Equity Participant is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
  3. If the Proposer/Developer/Equity Participant is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
  4. If the Proposer/Developer/Equity Participant is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that this information will be provided prior to award.

Attach evidence to the Proposal and to each letter that the person signing has authority to do so.

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.
- C. The Developer's partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to TxDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to TxDOT and identify on a cover page where in the agreement the provision can be found. If the Developer is not yet formed, provide draft organizational documents and indicate where the provision is found.

**PROPOSAL SECURITY—Form BAFO K**

(Separate Documents)

PROPOSAL BOND—BAFO Form K-1

Bond No. \_\_\_\_\_ [Replaces Bond No. \_\_\_\_\_]

KNOW ALL PERSONS BY THESE PRESENTS, that the \_\_\_\_\_ **[NOTE: insert name of Proposer as the Principal and delete this bracketed text]**, as Principal and \_\_\_\_\_, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation (“TxDOT”), in the sum of \$\_\_\_\_\_ **[NOTE: insert amount and delete this bracketed text – amount must be \$30 million if a single bond is provided; multiple bonds in lesser amounts may be provided if the sum equals \$30 million]** (the “Bonded Sum”).

**WHEREAS**, the Principal is herewith submitting its Proposal to design, construct and potentially maintain the DFW Connector Project through a Comprehensive Development Agreement (“CDA”) and a Maintenance Agreement (“Maintenance Agreement”), which Proposal is incorporated herein by this reference and has been submitted pursuant to TxDOT’s Request for Proposals dated as of \_\_\_\_\_, 2008 (as amended or supplemented, the “RFP”) in accordance with the Instructions to Proposers, as amended (“ITP”) included in the RFP;

**NOW, THEREFORE,**

1. The condition of this Proposal Bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to TxDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the “Co-Sureties”) of notice of such forfeiture from TxDOT:

- (a) Principal's receipt of written notice from TxDOT that either (i) no CDA or Maintenance Agreement for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT has awarded a CDA and Maintenance Agreement for the Project, has received the executed CDA, Maintenance Agreement and other required documents, and does not intend to award the contract to the Principal;
- (b) Except as expressly provided otherwise in the RFP and/or agreed to by TxDOT in writing, Principal's performance of its obligations to provide the Proposal Security meeting the requirements of the RFP for the period of extension up to 270 days beyond the Proposal BAFO Due Date; or



- (c) If TxDOT has not previously delivered notice of forfeiture hereunder, failure of TxDOT to conditionally award the CDA and the Maintenance Agreement to Principal within 180 days (or 270 days if TxDOT has extended the 180 day period to 270 days pursuant to the terms of the ITP) after the ~~Proposal~~ BAFO Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to TxDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

- (a) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the CDA and Maintenance Agreement under the ITP, as such time may be extended pursuant to ITP Section 4.5.2, without TxDOT's consent; or
- (b) Principal is selected for negotiations and fails to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1;
- (c) Principal is the apparent best value Proposer and fails to provide the documents required under ITP Sections 6.1 and 6.1.1.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal 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). Principal 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 Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this Proposal Bond:

- (a) This Proposal Bond shall not be subject to forfeiture in the event that TxDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
- (b) If suit is brought on this Proposal Bond by TxDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by TxDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
- (c) Any extension(s) of the time for award of the CDA and the Maintenance Agreement that Principal may grant in accordance with the CDA and Maintenance Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
- (d) Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address:

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**SIGNED and SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 20089

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Co-Surety

By: \_\_\_\_\_  
Attorney in Fact

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

\_\_\_\_\_  
Co-Surety

By: \_\_\_\_\_  
Attorney in Fact

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

\_\_\_\_\_  
Co-Surety

By: \_\_\_\_\_  
Attorney in Fact

**ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

**RIDER TO PROPOSAL BOND EXTENDING EFFECTIVE PERIOD**  
**FORM BAFO K-1.a**

**RIDER**

**Revising Paragraphs 1(b)**  
**and 1(c) to reference BAFO Due Date**

\_\_\_\_\_ To be attached to and form a part of

Bond No. \_\_\_\_\_

Type of  
Bond: **Proposal Bond**

dated  
effective  
(MONTH-DAY-YEAR)  
**[Developer]**

\_\_\_\_\_ as Principal,

(PRINCIPAL)

and by

\_\_\_\_\_ as Surety,

in favor of **Texas Department of Transportation**  
(OBLIGEE)

\_\_\_\_\_ In consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

**[Replace Paragraph 1 in its entirety with the following language:]**

1. The condition of this Proposal Bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to TxDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from TxDOT:

- (a) Principal's receipt of written notice from TxDOT that either (i) no CDA or Maintenance Agreement for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT has awarded a CDA and Maintenance Agreement for the Project, has received the executed CDA, Maintenance Agreement and other required documents, and does not intend to award the contract to the Principal;

(b) Except as expressly provided otherwise in the RFP and/or agreed to by TxDOT in writing, Principal's performance of its obligations to provide the Proposal Security meeting the requirements of the RFP for the period of extension up to 270 days beyond the Best and Final Offer ("BAFO") Due Date; or

(c) If TxDOT has not previously delivered notice of forfeiture hereunder, failure of TxDOT to conditionally award the CDA and the Maintenance Agreement to Principal within 180 days (or 270 days if TxDOT has extended the 180 day period to 270 days pursuant to the terms of the ITP) after the BAFO Due Date.

Nothing herein contained shall vary, alter or extenany provision or condition of this bond except as herein expressly stated.

\_\_\_\_\_This rider  
is effective

(MONTH-DAY-YEAR)

Signed and  
Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
Attorney in fact

**FORM OF LETTER OF CREDIT (PROPOSAL)--Form BAFO K-2**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

**ISSUER:**

**PLACE FOR PRESENTATION OF DRAFT:** (Name and Address of Bank/Branch)

**APPLICANT:**

**BENEFICIARY:** Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

**LETTER OF CREDIT NUMBER:**

**PLACE AND DATE OF ISSUE:**

**AMOUNT:** Thirty Million Dollars (\$30,000,000)

**STATED EXPIRATION DATE:** \_\_\_\_\_ *[Note: Insert date that is 270 days after the Proposal BAFO Due Date and delete this bracketed text]*

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of TxDOT, for the amount of Thirty Million United States Dollars (\$30,000,000), available by draft at sight drawn on the Issuer. Any draft under this Credit shall be in the amount of Thirty Million United States Dollars (\$30,000,000) and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by the Beneficiary's signed and dated statement stating one of the following:
  - (a) "This drawing is due to \_\_\_\_\_'s withdrawal, repudiation, or other indication in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the CDA and Maintenance Agreement under the ITP, as such time may be extended pursuant to ITP Section 4.5.2, without TxDOT's consent."

Or

- (b) "This drawing is due to \_\_\_\_\_'s failure to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1."

Or

- (c) "This drawing is due to \_\_\_\_\_'s failure to provide the documents required under ITP Sections 6.1 and 6.1.1.

All drafts will be honored if presented to \_\_\_\_\_ (Bank/Branch - Name & Address) on or before the Stated Expiration Date described above.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central time, on any weekday (i.e., Monday through Friday, excluding Texas state holidays and U.S. federal holidays) (a "Business Day"), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than our close of business, local time of the location of the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: \_\_\_\_\_

Routing Number: \_\_\_\_\_

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

Account Number to Credit: \_\_\_\_\_

Reference: \_\_\_\_\_

Attention: \_\_\_\_\_

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 (the "Uniform Customs"), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.



This Letter of Credit is issued under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to Texas courts and law.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at \_\_\_\_\_, Attention: \_\_\_\_\_, specifically referring to the number of this Letter of Credit.

Issuer:

By: \_\_\_\_\_ (Authorized Signature of Issuer)

**FORM OF AMENDMENT TO LETTER OF CREDIT (PROPOSAL)**  
**EXTENDING ITS TERM**  
**FORM BAFO K-2.a**

**AMENDMENT No. 1**  
**to**  
**IRREVOCABLE STANDBY LETTER OF CREDIT**

**ISSUER:**

**PLACE FOR PRESENTATION OF DRAFT:** (Name and Address of Bank/Branch)

**APPLICANT:**

**BENEFICIARY:** Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

**LETTER OF CREDIT NUMBER:**

**PLACE AND DATE OF ISSUE:**

**AMOUNT:** Thirty Million Dollars (\$30,000,000)

**Amendment**

**The STATED EXPIRATION DATE in the letter of credit referenced above is amended to read as follows:**

**STATED EXPIRATION DATE:** \_\_\_\_\_ ***[Note: Insert date that is 270 days after the BAFO Due Date and delete this bracketed text]***

Issuer:

By: \_\_\_\_\_ (Authorized Signature of Issuer)

Name:

Title:

\_\_\_\_\_  
Date

**FORM BAFO L-1**  
**AMENDMENT No. 1 TO ESCROW AGREEMENT**  
**(DFW Connector Project)**

THIS AMENDMENT TO ESCROW AGREEMENT is made and entered into as of this \_\_\_\_\_, 2008, by and between \_\_\_\_\_ a ("Proposer"), and \_\_\_\_\_ ("Escrow Agent"), to and for the benefit of the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, with reference to the following facts:

A. Proposer submitted a proposal to TxDOT on July 15, 2008 relating to the DFW Connector Project (the "Original Proposal"), and has recently submitted a Best and Final Offer to TxDOT (the "BAFO"), amending the Original Proposal, in response to a Request for BAFOs issued by TxDOT on \_\_\_\_\_, 2008.

B. Escrow Agent is currently holding certain documents in escrow (the "EPDs") relating to the Original Proposal, pursuant to that certain Escrow Agreement dated \_\_\_\_\_, between Proposer and Escrow Agent.

C. Proposer wishes to supplement the EPDs to include the documents contained in \_\_\_\_\_ separately sealed containers, labeled "[Proposer Name]: Supplemental EPDs for the TxDOT DFW Connector Project." ("Supplemental EPDs"), providing documentation for the revisions to the pricing included in the Original Proposal, as required under Section 4.3.2 of the Instructions to Proposers, as modified by the Request for BAFOs. **[OR use the following language if putting Replacement EPDs into escrow:** Proposer wishes to entirely replace the EPDs to include the a new set of documents ("Replacement EPDs") contained in \_\_\_\_\_ separately sealed containers, labeled "[Proposer Name]: Replacement EPDs for the TxDOT DFW Connector Project.", providing documentation for the revisions to the pricing included in the Original Proposal, as required under Section 4.3.2 of the Instructions to Proposers, as modified by the Request for BAFOs.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Proposer hereby deposits with Escrow Agent the Supplemental EPDs [or Replacement EPDs]. The parties agree that the Supplemental EPDs [or Replacement EPDs] shall be considered as part of the EPDs and shall be held by Escrow Agent, subject to review by those individuals identified by TxDOT's authorized representative as having need for access, as specified in the Escrow Agreement.

2. This Amendment may be executed in one or more counterparts, all of which together shall be deemed an original.

3. Except as expressly amended hereby, all terms and conditions set forth in the Escrow Agreement are hereby affirmed by Proposer, TxDOT and Escrow Agent and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Amendment No. 1 to Escrow Agreement to be executed the date first above written.

**PROPOSER**

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

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

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

The Supplemental EPDs [or Replacement EPDs]  
addressed by this Amendment No. 1 to Escrow  
Agreement are hereby accepted by Escrow Agent.

\_\_\_\_\_

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

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

**DEVELOPMENT PRICE —Form N-1.a**  
**BAFO – Configuration 1**

DFW Connector CDA	Amount	NPV on Form N-2.a
<b>Development Price</b>		

Proposer is requesting the above total amount from TxDOT for the design and construction phase of the Project under the CDA.

An itemized breakdown of the Configuration 1 Development Price is shown on Form N-1.1.a.

Timing of payment is as shown on Form N-2.a.

**DEVELOPMENT PRICE —Form N-1.b**  
**BAFO – Configuration 2**

<b>DFW Connector CDA</b>	<b>Amount</b>	<b>NPV on Form N-2.b</b>
<b>Development Price</b>		

Proposer is requesting the above total amount from TxDOT for the design and construction phase of the Project under the CDA.

An itemized breakdown of the Configuration 2 Development Price is shown on Form N-1.1.b.

Timing of payment is as shown on Form N-2.b.

**DEVELOPMENT PRICE —Form N-1.c**  
**BAFO – Configuration 3**

<b>DFW Connector CDA</b>	<b>Amount</b>	<b>NPV on Form N-2.c</b>
<b>Development Price</b>		

Proposer is requesting the above total amount from TxDOT for the design and construction phase of the Project under the CDA.

An itemized breakdown of the Configuration 3 Development Price is shown on Form N-1.1.c.

Timing of payment is as shown on Form N-2.c.



**DEVELOPMENT PRICE —Form N-1.1.a**  
**BAFO – Configuration 1**

ITEM / LINE NO.	DESCRIPTION	ITEM TOTAL (US Dollars)
<b>A</b>	<b>Professional Services</b>	\$0.00
1	Professional Services Development Management & Community Outreach	
2	Development Design, Design Survey, & Landscape Design	
3	Environmental Permitting Activities	
4	Right-of-Way Acquisition Services & ROW Survey/Mapping	
5	Utility Locates, Utility Survey, and Utility Adjustment Design	
6	Professional Services Quality Review Firm, Construction Quality Acceptance Firm, and Environmental Team	
7	Miscellaneous Professional Services not covered by Lines 1-6	
8	<b>Subtotal Professional Services (Sum Lines 1 through 7)</b> <span style="float:right">Subtotal</span>	\$0.00
<b>B</b>	<b>Construction</b>	
9	Construction Development Management	
10	Mobilization	
11	Traffic Control	
12	Earthwork	
13	Subbase and Base Course	
14	Pavement	
15	Structures	
16	Lighting and Signing	
17	Aesthetics and Landscaping Allowance	
18	Environmental Mitigation	
19	Utility Adjustments	
20	Developer Designated ROW	
21	Electronic Communications Allowance	
22	Bond Premiums	
23	Insurance Premiums	
24	<b>Subtotal Construction (Sum Lines 9 through 23)</b> <span style="float:right">Subtotal</span>	\$0.00
25	<b>Total Price (Line 8 + Line 24)</b> <span style="float:right">TOTAL</span>	\$0.00

**DEVELOPMENT PRICE —Form N-1.1.b**  
**BAFO – Configuration 2**

ITEM / LINE NO.	DESCRIPTION	ITEM TOTAL (US Dollars)
<b>A</b>	<b>Professional Services</b>	\$0.00
1	Professional Services Development Management & Community Outreach	
2	Development Design, Design Survey, & Landscape Design	
3	Environmental Permitting Activities	
4	Right-of-Way Acquisition Services & ROW Survey/Mapping	
5	Utility Locates, Utility Survey, and Utility Adjustment Design	
6	Professional Services Quality Review Firm, Construction Quality Acceptance Firm, and Environmental Team	
7	Miscellaneous Professional Services not covered by Lines 1-6	
8	<b>Subtotal Professional Services (Sum Lines 1 through 7)</b>	<b>Subtotal \$0.00</b>
<b>B</b>	<b>Construction</b>	
9	Construction Development Management	
10	Mobilization	
11	Traffic Control	
12	Earthwork	
13	Subbase and Base Course	
14	Pavement	
15	Structures	
16	Lighting and Signing	
17	Aesthetics and Landscaping Allowance	
18	Environmental Mitigation	
19	Utility Adjustments	
20	Developer Designated ROW	
21	Electronic Communications Allowance	
22	Bond Premiums	
23	Insurance Premiums	
24	<b>Subtotal Construction (Sum Lines 9 through 23)</b>	<b>Subtotal \$0.00</b>
25	<b>Total Price (Line 8 + Line 24)</b>	<b>TOTAL \$0.00</b>

**DEVELOPMENT PRICE —Form N-1.1.c**  
**BAFO – Configuration 3**

ITEM / LINE NO.	DESCRIPTION	ITEM TOTAL (US Dollars)
<b>A</b>	<b>Professional Services</b>	\$0.00
1	Professional Services Development Management & Community Outreach	
2	Development Design, Design Survey, & Landscape Design	
3	Environmental Permitting Activities	
4	Right-of-Way Acquisition Services & ROW Survey/Mapping	
5	Utility Locates, Utility Survey, and Utility Adjustment Design	
6	Professional Services Quality Review Firm, Construction Quality Acceptance Firm, and Environmental Team	
7	Miscellaneous Professional Services not covered by Lines 1-6	
8	<b>Subtotal Professional Services (Sum Lines 1 through 7)</b>	<b>Subtotal \$0.00</b>
<b>B</b>	<b>Construction</b>	
9	Construction Development Management	
10	Mobilization	
11	Traffic Control	
12	Earthwork	
13	Subbase and Base Course	
14	Pavement	
15	Structures	
16	Lighting and Signing	
17	Aesthetics and Landscaping Allowance	
18	Environmental Mitigation	
19	Utility Adjustments	
20	Developer Designated ROW	
21	Electronic Communications Allowance	
22	Bond Premiums	
23	Insurance Premiums	
24	<b>Subtotal Construction (Sum Lines 9 through 23)</b>	<b>Subtotal \$0.00</b>
25	<b>Total Price (Line 8 + Line 24)</b>	<b>TOTAL \$0.00</b>

**DEVELOPMENT PRICE —Form N-1.2.a**  
**BAFO – Configuration 1**

**DFW Connector**  
**ATC Adjustment for Additional Impact to TxDOT Associated with Approved ATCs**

Approved ATC #	DESCRIPTION of APPROVED ATC	NPV of Costs (Benefits) to TxDOT
<b>TOTAL</b>		

DEVELOPMENT PRICE —Form N-1.2.b  
BAFO – Configuration 2

DFW Connector

ATC Adjustment for Additional Impact to TxDOT Associated with Approved ATCs

<u>Approved ATC #</u>	<u>DESCRIPTION of APPROVED ATC</u>	<u>NPV of Costs (Benefits) to TxDOT</u>
<u>TOTAL</u>		



**CASH FLOW ADJUSTMENT TABLE/MAXIMUM PAYMENT CURVE – Form N-2.a**  
**DFW Connector BAFO – Configuration 1**

(all figures are in U.S. dollars)

Months after NTP1	Anticipated Draw / Cash Flow	Developer's Cumulative Draw	Discount Factor at 5% per annum	PV of Anticipated Draw / Cash Flow
	A	B	C	A x C
1	\$0.00	\$0.00	0.99594	\$0.00
2			0.99190	
3			0.98788	
4			0.98387	
5			0.97988	
6			0.97590	
7			0.97194	
8			0.96800	
9			0.96407	
10			0.96016	
11			0.95626	
12			0.95238	
13			0.94852	
14			0.94467	
15			0.94083	
16			0.93702	
17			0.93322	
18			0.92943	
19			0.92566	
20			0.92190	
21			0.91816	
22			0.91444	
23			0.91072	
24			0.90703	
25			0.90335	
26			0.89968	
27			0.89603	
28			0.89240	
29			0.88878	
30			0.88517	
31			0.88158	
32			0.87800	
33			0.87444	
34			0.87089	
35			0.86736	
36			0.86384	
37			0.86033	
38			0.85684	
39			0.85336	
40			0.84990	
41			0.84645	
42			0.84302	
43			0.83960	
44			0.83619	
45			0.83280	
46			0.82942	
47			0.82605	
48			0.82270	
49			0.81936	
50			0.81604	
51			0.81273	
52			0.80943	
53			0.80615	
54			0.80288	
55			0.79962	
56			0.79637	
57			0.79314	
58			0.78992	
59			0.78672	
60			0.78353	
61			0.78035	
62			0.77718	
63			0.77403	
64			0.77089	
65			0.76776	
66			0.76464	
67			0.76154	
68			0.75845	
69			0.75537	
70			0.75231	
71			0.74926	
<b>TOTALS</b>	\$0.00			\$0.00

Max Allowable Cumulative Draw	Developer Draw ≤ Max Allowable?
D	(B < D)
\$ 1,397,701	\$0.00
\$ 3,562,660	
\$ 8,250,425	
\$ 14,311,599	
\$ 17,746,420	
\$ 21,696,886	
\$ 29,601,756	
\$ 39,480,644	
\$ 51,334,051	
\$ 65,448,068	
\$ 78,924,950	
\$ 91,517,951	
\$ 102,982,200	
\$ 115,115,864	
\$ 133,880,473	
\$ 152,679,547	
\$ 169,407,342	
\$ 187,206,126	
\$ 207,791,751	
\$ 226,082,043	
\$ 242,790,811	
\$ 259,865,625	
\$ 273,130,842	
\$ 284,079,330	
\$ 293,219,948	
\$ 300,141,496	
\$ 307,401,986	
\$ 314,766,947	
\$ 322,339,802	
\$ 331,253,093	
\$ 342,177,841	
\$ 353,402,264	
\$ 364,927,553	
\$ 378,063,379	
\$ 389,520,317	
\$ 399,916,067	
\$ 408,957,451	
\$ 416,845,925	
\$ 424,240,923	
\$ 432,541,172	
\$ 440,739,951	
\$ 450,186,769	
\$ 461,500,928	
\$ 472,664,984	
\$ 483,702,741	
\$ 495,892,363	
\$ 506,031,014	
\$ 514,825,069	
\$ 522,296,991	
\$ 527,851,875	
\$ 534,923,767	
\$ 541,559,541	
\$ 547,724,120	
\$ 554,379,965	
\$ 561,731,827	
\$ 568,398,262	
\$ 574,480,594	
\$ 580,603,280	
\$ 585,177,911	
\$ 588,177,911	
\$ 591,648,164	
\$ 593,639,675	
\$ 595,888,915	
\$ 598,012,974	
\$ 599,593,741	
\$ 601,811,132	
\$ 603,762,349	
\$ 605,359,659	
\$ 606,655,379	
\$ 606,900,000	
N/A	N/A

Total Value of Development Payments To Form N-1.a

PV of Development Payments To Form N-1.a

**CASH FLOW ADJUSTMENT TABLE/MAXIMUM PAYMENT CURVE – Form N-2**

**DFW Connector**

**Cash Flow Adjustment Table / Maximum Payment Schedule**

(all figures are in U.S. dollars)

Months-after NTP	Anticipated Draw / Cash-Flow	Developer's Cumulative-Draw	Discount Factor at 5% per annum	PV-of Anticipated-Draw / Cash-Flow	Max-Allowed Cumulative-Draw as-% of Total	Max-Allowed Cumulative-Draw-in \$
	A	B	C	A x C	D	(D x A)
1	\$0.00	\$0.00	0.99594	\$0.00	4.93%	\$0.00
2			0.99190		4.50%	
3			0.98788		7.08%	
4			0.98387		8.07%	
5			0.97988		9.12%	
6			0.97590		10.52%	
7			0.97194		12.03%	
8			0.96800		13.63%	
9			0.96407		15.25%	
10			0.96016		16.88%	
11			0.95626		18.67%	
12			0.95238		21.07%	
13			0.94852		23.42%	
14			0.94467		25.70%	
15			0.94083		28.06%	
16			0.93702		30.09%	
17			0.93322		33.00%	
18			0.92943		36.00%	
19			0.92566		37.90%	
20			0.92190		39.01%	
21			0.91816		40.96%	
22			0.91444		43.24%	
23			0.91072		45.27%	
24			0.90703		47.06%	
25			0.90335		50.32%	
26			0.89968		52.69%	
27			0.89603		55.06%	
28			0.89240		57.43%	
29			0.88878		59.79%	
30			0.88517		62.16%	
31			0.88158		64.44%	
32			0.87800		66.73%	
33			0.87444		69.02%	
34			0.87089		71.30%	
35			0.86736		73.59%	
36			0.86384		75.19%	
37			0.86033		76.90%	
38			0.85684		78.66%	
39			0.85336		80.53%	
40			0.84990		82.07%	
41			0.84645		83.75%	
42			0.84302		85.44%	
43			0.83960		87.12%	
44			0.83619		88.81%	
45			0.83280		90.45%	
46			0.82942		91.69%	
47			0.82605		93.28%	
48			0.82270		94.87%	
49			0.81936		96.06%	
50			0.81604		97.19%	
51			0.81273		97.96%	
52			0.80943		98.69%	
53			0.80615		99.26%	
54			0.80288		99.45%	
55			0.79962		99.64%	
56			0.79637		99.82%	
57			0.79314		100.00%	
58			0.78992			
59			0.78672			
60			0.78353			
61			0.78035			
62			0.77718			
<b>TOTALS</b>	<b>\$0.00</b>			<b>\$0.00</b>		

Total Value of Development Payments To Form N-1

PV of Development Payments To Form N-1



**CASH FLOW ADJUSTMENT TABLE/MAXIMUM PAYMENT CURVE – Form N-2.b**

**DFW Connector BAFO – Configuration 2**

(all figures are in U.S. dollars)

Months after NTP1	Anticipated Draw / Cash Flow	Developer's Cumulative Draw	Discount Factor at 5% per annum	PV of Anticipated Draw / Cash Flow	Max Allowable Cumulative Draw <sup>1</sup>	Draw ≤ Allowable?	Allowable Cumul Draw as % of Total	Allowable Cumulative Draw in \$
	A	B	C	A x C	D	(B≤D)	E	E x ΣA
1	\$0.00	\$0.00	0.99594	\$0.00	\$ 1,397,701		1.93%	
2			0.99190		\$ 3,562,660		4.50%	
3			0.98788		\$ 8,250,425		7.08%	
4			0.98387		\$ 14,311,599		8.07%	
5			0.97988		\$ 17,746,420		9.12%	
6			0.97590		\$ 21,696,886		10.52%	
7			0.97194		\$ 29,601,756		12.03%	
8			0.96800		\$ 39,480,644		13.63%	
9			0.96407		\$ 51,334,051		15.25%	
10			0.96016		\$ 65,448,068		16.88%	
11			0.95626		\$ 78,924,950		18.67%	
12			0.95238		\$ 91,517,951		21.07%	
13			0.94852		\$ 102,982,200		23.42%	
14			0.94467		\$ 111,115,864		25.70%	
15			0.94083		\$ 123,880,473		28.35%	
16			0.93702		\$ 136,079,547		30.99%	
17			0.93322		\$ 147,407,342		33.00%	
18			0.92943		\$ 163,706,126		35.00%	
19			0.92566		\$ 183,791,761		37.00%	
20			0.92190		\$ 202,082,043		39.01%	
21			0.91816		\$ 216,790,811		40.96%	
22			0.91444		\$ 236,666,625		43.94%	
23			0.91072		\$ 249,130,842		46.72%	
24			0.90703		\$ 260,076,330		47.96%	
25			0.90335		\$ 269,219,948		50.32%	
26			0.89968		\$ 276,141,496		52.69%	
27			0.89603		\$ 283,401,986		55.06%	
28			0.89240		\$ 290,766,947		57.43%	
29			0.88878		\$ 298,339,802		59.79%	
30			0.88517		\$ 307,253,093		62.16%	
31			0.88158		\$ 318,177,841		64.44%	
32			0.87800		\$ 329,402,264		66.73%	
33			0.87444		\$ 340,927,553		69.02%	
34			0.87089		\$ 354,063,379		71.30%	
35			0.86736		\$ 365,520,317		73.59%	
36			0.86384		\$ 375,916,067		75.19%	
37			0.86033		\$ 394,857,431		76.80%	
38			0.85684		\$ 391,645,925		78.36%	
39			0.85336		\$ 400,240,923		80.38%	
40			0.84990		\$ 408,541,172		82.07%	
41			0.84646		\$ 416,739,051		83.75%	
42			0.84302		\$ 426,186,759		85.44%	
43			0.83960		\$ 437,500,328		87.12%	
44			0.83619		\$ 448,664,984		88.81%	
45			0.83280		\$ 469,702,741		90.49%	
46			0.82942		\$ 471,892,363		91.89%	
47			0.82605		\$ 482,031,014		93.28%	
48			0.82270		\$ 490,025,069		94.67%	
49			0.81936		\$ 498,296,991		96.06%	
50			0.81604		\$ 503,861,875		97.19%	
51			0.81273		\$ 510,923,767		97.96%	
52			0.80943		\$ 517,559,541		98.69%	
53			0.80615		\$ 523,724,120		99.26%	
54			0.80288		\$ 530,379,965		99.45%	
55			0.79962		\$ 537,731,827		99.64%	
56			0.79637		\$ 544,398,262		99.82%	
57			0.79314		\$ 550,480,594		100.00%	
58			0.78992		\$ 556,603,280		N/A	N/A
59			0.78672		\$ 561,177,911		N/A	N/A
60			0.78353		\$ 564,177,911		N/A	N/A
61			0.78035		\$ 567,648,164		N/A	N/A
62			0.77718		\$ 569,539,675		N/A	N/A
63			0.77403		\$ 571,888,915		N/A	N/A
64			0.77089		\$ 574,012,974		N/A	N/A
65			0.76776		\$ 575,893,741		N/A	N/A
66			0.76464		\$ 577,811,132		N/A	N/A
67			0.76154		\$ 579,762,349		N/A	N/A
68			0.75845		\$ 581,359,659		N/A	N/A
69			0.75537		\$ 582,655,379		N/A	N/A
70			0.75231		\$ 584,000,000		N/A	N/A
<b>TOTALS</b>	<b>\$0.00</b>			<b>\$0.00</b>				

Total Value of Development Payments To Form N-1.b      PV of Development Payments To Form N-1.b

**CASH FLOW ADJUSTMENT TABLE/MAXIMUM PAYMENT CURVE – Form N-2.c**  
**DFW Connector BAFO – Configuration 3**

(all figures are in U.S. dollars)

<u>Months after NTP1</u>	<u>Anticipated Draw / Cash Flow</u>	<u>Developer's Cumulative Draw</u>	<u>Discount Factor at 5% per annum</u>	<u>PV of Anticipated Draw / Cash Flow</u>	<u>Max Allowable Cumulative Draw as % of Total</u>	<u>Max Allowable Cumulative Draw in \$</u>
	<b>A</b>	<b>B</b>	<b>C</b>	<b>A x C</b>	<b>D</b>	<b>E x \$A</b>
1	\$0.00	\$0.00	0.99594	\$0.00	1.93%	\$0.00
2			0.99190		4.50%	
3			0.98788		7.08%	
4			0.98387		8.07%	
5			0.97988		9.12%	
6			0.97590		10.52%	
7			0.97194		12.03%	
8			0.96800		13.63%	
9			0.96407		15.25%	
10			0.96016		16.88%	
11			0.95626		18.67%	
12			0.95238		21.07%	
13			0.94852		23.42%	
14			0.94467		25.70%	
15			0.94083		28.35%	
16			0.93702		30.99%	
17			0.93322		33.00%	
18			0.92943		35.00%	
19			0.92566		37.00%	
20			0.92190		39.01%	
21			0.91816		40.96%	
22			0.91444		43.34%	
23			0.91072		45.72%	
24			0.90703		47.66%	
25			0.90335		50.32%	
26			0.89968		52.69%	
27			0.89603		55.06%	
28			0.89240		57.43%	
29			0.88878		59.79%	
30			0.88517		62.16%	
31			0.88158		64.44%	
32			0.87800		66.73%	
33			0.87444		69.02%	
34			0.87089		71.30%	
35			0.86736		73.59%	
36			0.86384		75.19%	
37			0.86033		76.80%	
38			0.85684		78.38%	
39			0.85336		80.36%	
40			0.84990		82.07%	
41			0.84645		83.76%	
42			0.84302		85.44%	
43			0.83960		87.12%	
44			0.83619		88.81%	
45			0.83280		90.49%	
46			0.82942		91.89%	
47			0.82605		93.28%	
48			0.82270		94.67%	
49			0.81936		96.06%	
50			0.81604		97.19%	
51			0.81273		97.96%	
52			0.80943		98.69%	
53			0.80615		99.26%	
54			0.80288		99.45%	
55			0.79962		99.64%	
56			0.79637		99.82%	
57			0.79314		100.00%	
58			0.78992		N/A	N/A
59			0.78672		N/A	N/A
60			0.78353		N/A	N/A
61			0.78036		N/A	N/A
62			0.77718		N/A	N/A
63			0.77403		N/A	N/A
64			0.77089		N/A	N/A
65			0.76776		N/A	N/A
66			0.76464		N/A	N/A
67			0.76154		N/A	N/A
68			0.75845		N/A	N/A
69			0.75537		N/A	N/A
70			0.75231		N/A	N/A
<b>TOTALS</b>	<b>\$0.00</b>			<b>\$0.00</b>		

Total Value of Development Payments  
To Form N-1.c

PV of Development Payments  
To Form N-1.c

**MAINTENANCE PRICE – Form O.a**  
**BAFO – Configuration 1**

**DETAILED COSTING FORM – FORM O.a**

**DFW Connector**  
**Operation and Maintenance Full Facility**

Item	Expenditure per Year			Total cost (5×A)+(5×B) +(5×C)
	Years 1-5 (A)	Years 6-10 (B)	Years 11-15 (C)	
Roadway				
Drainage Facilities				
Structures				
Earthworks, Embankments and Cuttings				
<b>Total Annual Cost</b>				

**MAINTENANCE PRICE – Form O.b**  
**BAFO – Configuration 2**

**DETAILED COSTING FORM – FORM O.b**

**DFW Connector**  
**Operation and Maintenance Full Facility**

<u>Item</u>	<u>Expenditure per Year</u>			<u>Total cost</u> <u>(5×A)+(5×B)</u> <u>+(5×C)</u>
	<u>Years 1-5</u> <u>(A)</u>	<u>Years 6-10</u> <u>(B)</u>	<u>Years 11-15</u> <u>(C)</u>	
<u>Roadway</u>				
<u>Drainage Facilities</u>				
<u>Structures</u>				
<u>Earthworks,</u> <u>Embankments and</u> <u>Cuttings</u>				
<b><u>Total Annual Cost</u></b>				

**MAINTENANCE PRICE – Form O.c**  
**BAFO – Configuration 3**

**DETAILED COSTING FORM – FORM O.c**

**DFW Connector**  
**Operation and Maintenance Full Facility**

<u>Item</u>	<u>Expenditure per Year</u>			<u>Total cost</u> <u>(5×A)+(5×B)</u> <u>+(5×C)</u>
	<u>Years 1-5</u> <u>(A)</u>	<u>Years 6-10</u> <u>(B)</u>	<u>Years 11-15</u> <u>(C)</u>	
<u>Roadway</u>				
<u>Drainage Facilities</u>				
<u>Structures</u>				
<u>Earthworks,</u> <u>Embankments and</u> <u>Cuttings</u>				
<b><u>Total Annual Cost</u></b>				

## COMPLETION DEADLINE – Form P

Description	Substantial Completion Date
<p><u>TxDOT Last Allowable Date for Substantial Completion of Configuration 1, Configuration 2 or Configuration 3, as applicable.</u></p>	<p><u>NTP1 plus <del>1734</del> 1644 calendar days (Configuration 1)</u></p> <p><u>NTP1 plus 1734 calendar days (Configuration 2)</u></p> <p><u>NTP1 plus 1734 calendar days (Configuration 3)</u></p>
<p><u>Proposal Commitment Date for Substantial Completion of Configuration 1, Configuration 2 or Configuration 3, as applicable.</u></p>	<p><u>NTP1 plus _____ calendar days (Configuration 1)</u></p> <p><u>NTP1 plus _____ calendar days (Configuration 2)</u></p> <p><u>NTP1 plus _____ calendar days (Configuration 3)</u></p>

## **Attachment B**

### **Revisions to the CDA Documents**

## **A. Revisions to the CDA**

The CDA is hereby amended as follows:

1. The Exhibits List following the CDA Table of Contents is revised to read as follows:

### **LIST OF EXHIBITS**

EXHIBIT 1	Abbreviations and Definitions
EXHIBIT 2	Developer's Proposal Commitments and ATCs
EXHIBIT 3	Federal Requirements
EXHIBIT 4	TxDOT-Provided Approvals
EXHIBIT 5	Maximum Payment Schedule
EXHIBIT 6	TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions
EXHIBIT 7	Developer's DBE Performance Plan
EXHIBIT 8	Developer's Job Training / Small Business Mentoring Plan
EXHIBIT 9	Performance Bond
EXHIBIT 10	Payment Bond
EXHIBIT 11	Retainage Bond
EXHIBIT 12	Warranty Bond
EXHIBIT 13	Form of Guaranty
EXHIBIT 14	Insurance Coverage Requirements
EXHIBIT 15	Form of Draw Request and Certificate
EXHIBIT 16	Form of Change Order
EXHIBIT 17	Liquidated Damages for Lane Closures
EXHIBIT 18	Initial Designation of Authorized Representatives
EXHIBIT 19	List of Reference Information Documents
<u>EXHIBIT 20</u>	<u>Disputes Board Agreement</u>
<u>EXHIBIT 21</u>	<u>Progress Payment Certificate</u>

2. The following two paragraphs are added to the Recitals on page 1 of the CDA:

On December 8<sup>10</sup>, 2008, TxDOT issued to the shortlisted proposers a Request for Best and Final Offers ("BAFOs") to develop, design, construct and, at TxDOT's sole option, maintain the Project.



On January 12, 2009, TxDOT received responses to the Request for BAFOs, including the response of Developer (the "Revised Proposal" or "Proposal Revision" or "BAFO").

3. Section 2.1.3 of the CDA will be revised to read as follows:

### **2.1.3 Changes in Basic Configuration**

**2.1.3.1** If as the result of an Error in the Schematic Design pertaining to Configuration 1, Configuration 2 or Configuration 3, it becomes apparent that the Basic Configuration of the Project Configuration 1, Configuration 2 or Configuration 3, as applicable, must be materially modified, such modification shall be considered a Necessary Basic Configuration Change and shall be eligible for a Change Order as provided in Section 13.8.

**2.1.3.2** If a VE results in a change in Basic Configuration of Configuration 1, Configuration 2 or Configuration 3, any cost savings from such VE shall be shared in accordance with Section 22.

**2.1.3.3** Developer shall not make any change in the Basic Configuration of Configuration 1, Configuration 2 or Configuration 3, except as approved by TxDOT and authorized by a Change Order in accordance with Section 13, and subject to the limitations contained in Section 6.10. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on Developer's costs or schedule.

**2.1.3.4** Except for a TxDOT-Directed Change (including a Necessary Basic Configuration Change) involving more than \$5,000 in additional direct costs or involving a delay to a Critical Path, Developer shall not be entitled to an adjustment in the Price or a Completion Deadline or any other relief for any changes in the Basic Configuration of Configuration 1, Configuration 2 or Configuration 3.

4. Section 4.1 of the CDA is revised to read as follows:

#### **4.1 Time of Essence; Notices to Proceed.**

**4.1.1** As a material consideration for entering into this Agreement, Developer hereby commits, and TxDOT is relying upon Developer's commitment, to develop the Project in accordance with the time periods set forth in this Agreement. Except where this Agreement expressly provides for an extension of time, the time limitations set forth in the CDA Documents for Developer's performance of its covenants, conditions and obligations are of the essence, and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance.

4.1.2 Authorization allowing Developer to proceed with Work on Configuration 1 hereunder shall be provided through TxDOT's issuance of NTP1 and NTP2. Authorization allowing Developer to proceed with Work on Configuration 2 or Configuration 3 shall be provided by an Option Notice to Proceed.

**4.1.3** TxDOT anticipates issuing NTP1 concurrently with execution and delivery of this Agreement. Issuance of NTP1 authorizes Developer to perform (or, continue performance of) the portion of the Work necessary to obtain TxDOT's approval of the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions. It also authorizes Developer to enter the Project Right of Way TxDOT owns in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations. Refer to Sections 12.1.3 and 15.9 regarding a Price adjustment to be made in certain circumstances if the effective date of the NTP1 is later than 180 days after the BAFO Proposal Due Date, and regarding Developer's remedies for certain delays in issuance of NTP1 beyond 270 days after the Proposal Due Date.

**4.1.4** Assuming that the NEPA Approval has been obtained, TxDOT anticipates issuing NTP2 concurrently with TxDOT's approval of all the foregoing component parts, plans and documentation of the Project Management Plan. Issuance of NTP2 authorizes Developer to perform all other Work and activities –pertaining to Configuration 1, Configuration 2 or Configuration 3, as applicable, for the Project. Developer's rights and remedies arising from a delay in issuance of the NEPA Approval are set forth in Sections 4.2.1.3, 12.1.8 and 15.9.

**4.1.5** TxDOT shall have the option, at its sole discretion, to direct Developer to proceed with the Work on Configuration 2 or Configuration 3, as described in Section 1 of Book 2, by issuance of an Option Notice to Proceed. The deadline for issuance of such an Option Notice to Proceed is the 180<sup>th</sup> day following the effective date of NTP1. If TxDOT issues an Option Notice to Proceed after the 180th day following the BAFO Due Date, the Option Price for the applicable Configuration will be subject to adjustment in accordance with Section 12.1.7.

5. Section 4.2 of the CDA is revised to read as follows:

## **4.2 Completion Deadlines**

### **4.2.1 Substantial Completion Deadline**

**4.2.1.1** Developer shall achieve Substantial Completion of Configuration 1, Configuration 2 or Configuration 3, as applicable, of the Project within the time frame established in Form P of the ITP, on or before 1734 days after the effective date of NTP1; provided, however, that

**4.2.1.2** If the NEPA Approval is not obtained within 90 days after NTP1, the time within which Developer must achieve Substantial Completion shall be extended by

the number of days between (i) the 90th day after issuance of NTP1 and (ii) the date on which TxDOT notifies Developer of the NEPA Approval. Said date for achieving Substantial Completion, as it may be extended hereunder, is referred to herein as the "Substantial Completion Deadline."

4.2.1.3 If TxDOT issues an Option Notice to Proceed after the issuance of NTP1, the Substantial Completion Deadline shall be extended by the number of days in the period starting on the first day following the issuance of NTP1 and ending on the date TxDOT issues the Option Notice to Proceed.

6. Section 4.3.3 of the CDA is revised to read as follows:

#### **4.3.3 Maximum Payment Schedule**

The Project Schedule shall provide for payment to be made solely on the basis of progress by Developer, subject to a cap on payments shown on the Maximum Payment Schedule established for the Project. The Maximum Payment Schedule shall not limit payment for Change Order Work unless otherwise specified in the Change Order. In other words, at no time shall Developer's cumulative total progress payments (including mobilization payments but exclusive of payments for Change Order Work) exceed the cumulative total expenditure permitted by the Maximum Payment Schedule. The Maximum Payment Schedule shall be calculated based on the monthly expenditure rate set forth in Exhibit 5 for the applicable configuration. If Developer and TxDOT mutually agree in writing to a different expenditure rate at any time, then such revised rate shall thereafter be the Maximum Payment Schedule for the Project. The Maximum Payment Schedule shall be revised from time to time thereafter upon request by TxDOT or by Developer on its own initiative, as appropriate to account for any changes in the Price as evidenced by Change Orders and/or amendments. The aggregate amount of progress payments to Developer hereunder shall not exceed the amount allowed by the Maximum Payment Schedule at any time without the prior written approval of TxDOT, which approval may be withheld in its sole discretion.

7. Section 6.2.1 of the CDA is revised to read as follows:

**6.2.1** TxDOT shall be responsible for the purchase price for all parcels within the Schematic ROW. Subject to Sections 6.2.76 and 6.2.87, Developer shall be responsible for performing and the costs (excluding the purchase price) of all right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting (other than certain mitigation requirements expressly excluded under Section 6.10.1.2) and related services for all such parcels, including all costs and expenses of negotiation and, if necessary, support services for condemnation proceedings described in Section 7 of the Technical Provisions; provided however that Developer's responsibility for such support services shall terminate upon Final Acceptance of the Project. If TxDOT incurs any such costs and expenses on Developer's behalf, TxDOT may submit any invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices prior to delinquency. If TxDOT pays any such costs and expenses on Developer's behalf, Developer shall reimburse TxDOT within ten days

of TxDOT's submittal to Developer of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Developer pursuant to this Agreement. Notwithstanding the foregoing, TxDOT shall be responsible for the legal costs for the State Attorney General counsel or fees for private counsel retained as directed by the State Attorney General in connection with any condemnation actions, except for such legal fees and costs that arise out of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of a Developer-Related Entity in the performance of its obligations under the CDA Documents.

8. Section 6.8 of the CDA is revised to read as follows:

### **6.8 Utility Adjustments**

Developer is responsible for causing, in accordance with the Project Schedule, all Utility Adjustment Work necessary to accommodate the design and construction of the Project. When used in the CDA Documents with respect to Utilities, the phrase "accommodation of the Project" or similar terminology refers to accomodation of the applicable configuration of the Project then being constructed, as more particularly provided in Section 1 of the Technical Provisions. All Utility Adjustment Work performed by Developer shall comply with the CDA Documents. Developer shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the CDA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Section 13, Developer shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact the Project or be impacted by it (whether located within or outside the Project ROW) are compatible with the Project. TxDOT shall provide to Developer the benefit of any provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their own expense, subject, however, to any provisions of applicable Law affecting the easement holder's payment obligations for Utility Adjustments. Developer agrees that: (a) the Price (as it may be modified hereunder) covers all of the Utility Adjustment Work to be furnished, performed or paid for by Developer, (b) it is feasible to obtain and/or perform all necessary Utility Adjustments within the time deadlines of the CDA Documents (as they may be modified pursuant to Section 13), and (c) the Price includes contingencies deemed adequate by Developer to account for the potential risks of additional costs and delays relating to Utility Adjustments, except to the extent that an adjustment to the Price is permitted under this Section 6.8 and in accordance with Section 13.

9. Section 6.10.1 of the CDA is revised to read as follows:

**6.10.1.1** The following TxDOT-Provided Approvals have not yet been obtained: (1) the NEPA Approval, and (2) the USACE Nationwide Permit under Section 404 of the Clean Water Act and Section 401 Water Quality Certification. All conditions

and requirements, including mitigation requirements, contained in the NEPA Approval shall automatically be deemed included in the scope of the Work. ~~TxDOT shall be responsible for the cost and performance of all mitigation requirements contained in the USACE Nationwide Permit under Section 404 of the Clean Water Act and Section 401 Water Quality Certification.~~ In addition, based on the proposed TxDOT Schematic Design and Schematic ROW, several crossings will assume USACE Nationwide Permits under Section 404 and will also assume Section 401 Water Quality Certification. The assumed Nationwide Permits will not be directly coordinated with the USACE because the impact estimations are below the threshold required for the preconstruction notification to the USACE. With respect to the USACE Nationwide Permit and Section 401 Water Quality Certification, Developer shall utilize Best Management Practices and shall be responsible for performance of the anticipated general conditions and requirements described in Federal Register Volume 72, No. 47, p. 1191, published March 12, 2007 (the "General Conditions") and the Environmental Commitments Document.

**6.10.1.2** If the final USACE Nationwide Permit contains conditions or requirements that differ materially from the General Conditions and Environmental Commitments Document, and such conditions or requirements: (a) have a material adverse impact on Developer's obligations hereunder, and (b) were not caused by modifications to the Schematic Design that were initiated by Developer, Developer may request a Force Majeure Change Order pursuant to Section 13.9.3. If the NEPA Approval contains conditions or requirements that differ from the conditions or requirements described in the Environmental Commitments List, and such conditions or requirements: (a) have a material adverse impact on Developer's obligations hereunder, and (b) were not caused by modifications to the Schematic Design that were initiated by Developer, Developer may request a Force Majeure Change Order pursuant to Section 13.9.3. If the final TxDOT-Provided Approvals (other than the NEPA Approval or the USACE Nationwide Permit) incorporate mitigation requirements addressing any modification in the Final Design from the Schematic Design, (other than a TxDOT-Directed Change or a Necessary Basic Configuration Change), such additional mitigation requirements shall be Developer's sole responsibility and shall not be considered a TxDOT-Directed Change or Force Majeure Event. TxDOT will be responsible for additional mitigation requirements resulting from TxDOT-Directed Changes, Necessary Basic Configuration Changes, or as a result of modifications the NEPA Approval that require work not reasonably indicated in the Environmental Commitment List or modifications to the USACE Nationwide Permit (but not for any individual Section 404 permit) that are outside of the General Conditions and which do not arise out of modifications to the Schematic Design initiated by Developer.

**10.** Section 12.1.1 of the CDA is revised to read as follows:

## 12.1 Price

### 12.1.1 ~~Amount~~

As full compensation for the Work and all other obligations to be performed by Developer under the CDA Documents, TxDOT shall pay to Developer the lump sum amount of \$ \_\_\_\_\_ (the "Price"). The term "Price" as used herein shall mean the Configuration 1 Price, Option Price for Configuration 2, or Option Price for Configuration 3, as applicable. The Price and shall be subject to adjustment from time to time to account for Change Orders. The Price shall be increased or decreased only by a Change Order issued in accordance with Section 13, or by an Agreement amendment. The Price shall be paid in accordance with Section 12.2. The Configuration 1 Price shall be the lump sum amount of \$ \_\_\_\_\_. The Option Price for Configuration 2 shall be the lump sum amount of \$ \_\_\_\_\_. The Option Price for Configuration 3 shall be the lump sum amount of \$ \_\_\_\_\_.

11. Section 12.1.3 of the CDA is revised to read as follows:

### 12.1.3 Delay in NTP1

**12.1.3.1** TxDOT anticipates that it will issue the NTP1 concurrently with or shortly after execution and delivery of this Agreement, but shall have the right in its sole discretion to defer issuance. If the effective date of the NTP1 is more than ~~180~~184 days after the ~~Proposal BAFO~~ Due Date and such delay in issuing the NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any Developer-Related Entity, the Price will be adjusted by adding or subtracting the product of the following from ~~the following to~~ the Price:

$$\Delta = N * (\text{Price}) * ((A-B)/B)/T$$

where:

"Δ" is the adjustment amount;

"N" is the number of days in the period starting 180 days after the ~~Proposal BAFO~~ Due Date and ending on the effective date of NTP1;

"A" is the ENR Construction Cost Index (CCI) value published for the effective date of NTP1;

"B" is the CCI published for the month which contains the day which is N +15 days prior to the 15th day of the month which contains the effective date of the NTP1; and

"T" is the number of days between the 15th of the month for which the CCI value for "A" was taken and the 15th of the month for which the CCI value for "B" was taken.

**12.1.3.2** If a Change Order is issued ~~between~~ during the period starting 180 days after the ~~Proposal~~ BAFO Due Date and ending on the effective date of NTP1, the price of the Change Order, if any, shall be adjusted based on the date that the Change Order is approved to the effective date of NTP1 using the formula set forth in Section 12.1.3.1 above, with "B" being the CCI for the month in which the Change Order is approved.

**12.1.3.3** If NTP1 has not been issued on or before 270 days after the ~~Proposal~~ BAFO Due Date, the Parties may mutually agree to terms allowing an extension in time for issuance of NTP1 and adjustment of the Price. Developer shall provide evidence satisfactory to TxDOT, meeting the requirements of Section 13.4, justifying the amount of any Price increase. If the delay in issuance of NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any Developer-Related Entity and Developer does not wish to negotiate an extension or if the Parties fail to reach agreement in accordance with this Section 12.1.3.3, then Developer's sole remedy shall be to terminate this Agreement in accordance with Section 15.9.

12. CDA Section 12.1 is revised to add new Section 12.1.7, to read as follows:

#### **12.1.7 Additional Provision Relating to TxDOT Exercise of Option**

If TxDOT issues an Option Notice to Proceed pursuant to Section 4.1.5, to direct Developer to proceed with the Work on Configuration 2 or Configuration 3, after the 180<sup>th</sup> day following the BAFO Due Date, the difference in the Price and the applicable Option Price will be adjusted by adding,  $\Delta$  (set out below), to the applicable Option Price on a *pro rata* basis:

$$\Delta = N * (\text{Option Price} - \text{Proposal Price}) * (([A-B]/B)/T)$$

where:

" $\Delta$ " is the adjustment amount;

"N" is the number of days in the period starting on the first day following the 180<sup>th</sup> day after the BAFO Due Date and ending on the date TxDOT issues the Option Notice to Proceed;

"A" is the ENR Construction Cost Index (CCI) value published for the date of issuance of the Option Notice to Proceed;

"B" is the CCI published for the month which contains the day which is N +15 days prior to the 15th day of the month which contains the date TxDOT issues the Option Notice to Proceed; and

"T" is the number of days between the 15th of the month for which the CCI value for "A" was taken and the 15th of the month for which the CCI value for "B" was taken.

13. CDA Section 12.1 is revised to add new Section 12.1.8, to read as follows:

**12.1.8 Price Adjustment Due to Delay of NEPA Approval**

If TxDOT does not issue NTP2 before the 91st day following the issuance of NTP1, solely due to a delay in issuance of the NEPA Approval, the Price shall be subject to adjustment by two components, as described in this Section 12.1.8.

**12.1.8.1** The first component of Price adjustment shall reimburse Developer for certain overhead costs, as follows:

(a) The reimbursement shall exclude any costs incurred during the first 90 days after issuance of NTP1,

(b) For the period beginning on the 91st day following the issuance of NTP1 and ending on the day immediately preceding the date of issuance of NTP2, the reimbursement shall be limited to documented actual increased Developer expenditures for office lease, office equipment lease, office utilities and Key Personnel actual salaries, to the extent such increased expenditures are due solely to the delay in issuance of NEPA Approval. Developer shall be eligible for this reimbursement in an amount equal to documented actual costs and expenses incurred on and after the 91<sup>st</sup> day following issuance of NTP1 (but without duplication of amounts paid for Change Orders, Claims or other Price adjustments authorized by this Agreement). The Key Personnel salary costs are to be limited to the base wage paid to the employee exclusive of any fringe benefits, with no paid holidays, no overtime, no living allowances, and no overhead costs. No reimbursement shall be made for any cost not allowable under 48 CFR Part 31, and any reimbursement is subject to the limitations imposed by Section 13.5.1.

(c) The total amount of this component of Price adjustment shall be limited to a maximum of \$1 million per month for no more than a total of six months, with no carryover of any unused balance from preceding months.

(d) Starting at the 91<sup>st</sup> day following NTP1 and until the earlier of the date of issuance of NTP2 or the 270<sup>th</sup> day following the issuance of NTP1, Developer shall, in accordance with Section 12.2, deliver to TxDOT monthly invoices setting forth in reasonable detail a description of eligible costs incurred during the preceding month, together with reasonable evidence of Developer's payment of such costs.

**12.1.8.2** The second component of Price adjustment shall apply to the period beginning on the date of issuance of NTP2. The Development Price for Work performed on and after the date of issuance of NTP2 will be adjusted by adding the following to the Price:



$$\Delta = N * (\text{Price} - C) * (([A-B]/B)/T)$$

where:

" $\Delta$ " is the adjustment amount distributed on a *pro rata* basis over the remaining payments on Exhibit 5;

"C" is the amount paid or owing for Work performed prior to issuance of NTP2, including any reimbursement paid under Section 12.1.8.1;

"N" is the number of days in the period starting on the later of the 181st day after the BAFO Due Date or the 91<sup>st</sup> day after issuance of NTP1 and ending on the effective date of NTP2;

"A" is the ENR Construction Cost Index (CCI) value published for the effective date of NTP2;

"B" is the CCI published for the month which contains the day which is N +15 days prior to the 15th day of the month which contains the effective date of NTP2; and

"T" is the number of days between the 15th of the month for which the CCI value for "A" was taken and the 15th of the month for which the CCI value for "B" was taken.

14. Section 12.2.1 of the CDA is revised to read as follows:

#### **12.2.1 Delivery of Draw Request**

On or about the fifth Business Day of each month following NTP1 and continuing through the last date of the Maximum Payment Schedule shown on Exhibit 5, Developer shall deliver to TxDOT five copies of a Draw Request in the form attached hereto as Exhibit 15 and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Draw Request shall be executed by Developer's Authorized Representative. Developer acknowledges that TxDOT will obtain funding for portions of the Work from the federal government, local agencies and other third parties, and Developer agrees to segregate Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

15. The last paragraph of CDA Section 12.2.2 is revised to read as follows:

In addition, no Draw Request shall be considered complete unless it: (i) describes in detail the status of completion as it relates to the Project Schedule; (ii) sets forth separately and in detail the related payments which are then due in accordance with the Project Schedule and the payments which are then due in accordance with Maximum Payment Schedule, as of the end of the prior month; (iii) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other

evidence establishing the number of units delivered; (iv) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 13.7; (v) sets forth in detail the amounts paid to Subcontractors (including Suppliers and Subcontractors at lower tiers) from the payments made by TxDOT to Developer with respect to the prior month's Draw Request; and (vi) includes affidavits of payment and unconditional waivers of Liens and claims executed by Developer and each Subcontractor with respect to all amounts paid in the prior month's Draw Request.

16. CDA Section 12.2.7 is revised to read as follows:

#### **12.2.7 Payment by TxDOT**

Within ten Business Days after TxDOT's receipt of a complete Draw Request, TxDOT will review the Draw Request and all attachments and certificates thereto for conformity with the requirements of the CDA Documents, and shall notify Developer of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. Developer may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the CDA Documents related thereto. Within five Business Days after TxDOT's approval of a Draw Request, TxDOT shall pay Developer the amount of the Draw Request approved for payment less any amounts which TxDOT is entitled to withhold or deduct. In no event shall Developer be entitled to: (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit priced Work), or (b) aggregate payments hereunder in excess of: (i) the overall completion percentage for the Project times the Price (for non-unit-priced Work) or (ii) the Maximum Payment Schedule for the month to which the Draw Request applies, plus amounts allowed by Change Orders.

17. CDA Section 12.2 is amended by adding new Section 12.2.8 to read as follows:

#### **12.2.8 Certification Regarding Payment**

TxDOT acknowledges that Developer may satisfactorily perform Work which entitles it to payment amounts in excess of the cumulative monthly amounts allowed under the Maximum Payment Schedule prior to the final payment. Upon Developer's request, TxDOT will provide reasonable certification of such amounts. Such amounts may not be subject to deductions available to TxDOT under the Agreement or a right of offset by TxDOT, provided that the Developer and TxDOT have agreed upon reasonable safeguards for issuance of the certifications; and provided further that nothing herein shall prevent TxDOT from exercising its right of offset or to deductions against sums that otherwise would be payable to Developer under the Maximum Payment Schedule or from exercising its rights under the Retainage Bond, Performance Bond, Payment Bond or Guaranty. Notwithstanding any other provision in this Agreement, Developer may assign all or any portion of its rights, title and interests in and to payment of such amounts certified by TxDOT, or to any other payment made or owed by TxDOT under

this Agreement, to any Person from which Developer obtains financing to complete any portion of the Work.

18. CDA Section 12.4 is revised to read as follows:

#### **12.4 Final Payment Reconciliation**

Final Payment Reconciliation of amounts owing for all Work will be made as follows:

**12.4.1** On or about the date of Final Acceptance, Developer shall prepare and submit a proposed Final Draw Request Reconciliation to TxDOT showing the proposed total amount due Developer as of the date of Final Acceptance, including any amounts owing from Change Orders. In addition to meeting all other requirements for Draw Requests hereunder, the Final Draw Request Reconciliation shall propose a schedule of monthly payments that do not exceed the amounts set forth on the Maximum Payment Schedule. The Final Reconciliation shall list all outstanding PCO Notices, stating the amount at issue associated with each such notice. The Final Draw Request Reconciliation shall also be accompanied by: (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners and or other third parties against Developer, TxDOT or the Project, (b) consent of any Guarantors and Surety to the proposed monthly payment schedule Final Payment, (c) such other documentation as TxDOT may reasonably require; and (d) the release described in Section 12.4.4, executed by Developer. Prior applications and payments shall be subject to correction in the Final Draw Request Reconciliation. PCO Notices filed concurrently with the Final Draw Request Reconciliation must be otherwise timely and meet all requirements under Sections 13 and 19.

**12.4.2** If the Final Draw Request Reconciliation shows no existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners or other third parties against Developer, TxDOT or the Project, and provided TxDOT has approved the Final Draw Request Reconciliation ~~has been approved~~, TxDOT, in exchange for an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to TxDOT, will pay in accordance with the monthly payment schedule described in Section 12.4.6 the entire sum found due on the approved Final Draw Request Reconciliation, less the amount of any Losses that have accrued as of the date of the Final Acceptance Payment and any other deductions permitted under Section 12.3.2 above.

**12.4.3** If the Final Draw Request Reconciliation lists any existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners or other third parties against Developer, TxDOT or the Project, or if any is thereafter filed, TxDOT may withhold from the payment of the amounts set forth on the approved Final Draw Request such amount as TxDOT deems advisable to cover any amounts owing or which may become owing to TxDOT by Developer, including costs to complete or remediate uncompleted Work or Nonconforming Work, and the amount of

any existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners and other third parties against Developer, TxDOT or the Project.

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

(a) that all Work has been performed in strict accordance with the requirements of the CDA Documents;

(b) that Developer has resolved any claims made by Subcontractors, Suppliers, Utility Owners, laborers, or other third parties against Developer, TxDOT or the Project (except those listed by Developer in accordance with Section 12.4.3);

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

(d) that all guarantees, Warranties and the Payment Bond, the Performance Bond, Retainage Bond and Warranty Bond are in full force and effect.

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

**12.4.6** TxDOT will review Developer's proposed Final Draw Request Reconciliation, and any changes or corrections, including deductions described in Section 12.4.2, will be forwarded to Developer for correction within 20 Business Days. TxDOT shall pay any undisputed amounts, less any Losses that have accrued as of the date of the Final Payment and any other deductions permitted under Section 12.3.2 above, within 30 days after its approval of such amounts on the application for Final Payment, but not earlier than the date of Final Acceptance. Any changes or corrections made pursuant to this Section 12.4.6 will be reflected in an updated monthly payment schedule showing the net amount owed to Developer by month.

**12.4.7** TxDOT shall fulfill its payment obligations under this Agreement by paying the amounts identified in Section 12.4.6, in accordance with the schedule described in Section 12.4.6.

**19.** New CDA Section 12.7 is added and reads as follows:

### **12.7 Progress Payment Certificate**

(a) Upon receipt of TxDOT's response under Section 12.4.6, Developer may request TxDOT to execute and deliver to Developer, within ten business days, a Progress Payment Certificate in a form substantially similar to Exhibit 21,

identifying a total undisputed amount owing to Developer, acknowledging its obligation to pay that amount to Developer and committing to make payments to satisfy that obligation in accordance with the schedule described in Section 12.4.6.

(b) Notwithstanding any other provision in this Agreement, Developer may assign all or any portion of its rights, title and interests in and to the Progress Payment Certificate described in Section 12.7(a), or to any other payment made or owed by TxDOT under this Agreement, to any Person from which Developer obtains financing to complete any portion of the Work.

(c) At Developer's request, TxDOT will provide subsequent certificates to the extent appropriate to reflect additional undisputed amounts determined after issuance of the initial certificate to be owing to Developer.

20. CDA Section 15.9 is revised to read as follows:

**15.9 Termination Based on Delay in NTP1 or Delay In Issuance of NEPA Approval**

(a) If NTP1 has not been issued within 270 days after the Proposal Due Date due to no act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any Developer-Related Entity, Developer, as its sole remedy, shall have the right to terminate this Agreement, which right shall be exercised by delivery of notice of termination to TxDOT. In such event, TxDOT's sole liability to Developer is to pay Developer the same payment for work product as provided to unsuccessful Proposers pursuant to Section 6.3 of the ITP, provided that all other conditions for such payment are met.

(b) If NTP2 has not been issued within 270 days after the issuance of NTP1 due solely to a delay in issuance of the NEPA Approval, Developer, as its sole remedy, may conditionally elect to terminate this Agreement by providing TxDOT with written notice of such conditional election. If Developer delivers a written notice of its conditional election to terminate, TxDOT shall have the choice of either accepting such notice of termination or continuing this Agreement in effect by delivering to Developer written notice of TxDOT's choice not later than 30 days after receipt of Developer's notice. If TxDOT does not deliver written notice of its choice within such 30-day period, then it will be deemed to have accepted Developer's election to terminate the Agreement. In such event, the termination shall be deemed a termination for convenience and handled in accordance with this Section 15. If TxDOT delivers timely written notice choosing to continue this Agreement in effect, then the Price adjustment provisions described in Section 12.1.8 shall be extended and continue in effect for the duration of the delay in issuance of NEPA Approval, or until earlier termination of this Agreement.

21. Section 17.1.1 of the CDA is revised to read as follows:

**17.1.1** Developer shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this

Agreement. Such liability shall apply even though: (a) a cure period remains available to Developer or (b) cure occurs. The amounts of such liquidated damages are as follows )("Liquidated Damages"):

(a) For Configuration 1, \$55,000 for each day after the applicable Substantial Completion Deadline and for Configurations 2 and 3, \$75,000 for each day after the applicable Substantial Completion Deadline and through the date of Substantial Completion for the applicable configuration, but for all configurations, as applicable, not to exceed 365 days; and

(b) For all configurations, \$5,000 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

Liquidated damages shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this Agreement, and shall continue to accrue until the date of Substantial Completion or Final Acceptance, as applicable, or until termination of this Agreement. Liquidated Damages shall constitute TxDOT's sole right to damages for such delay.

22. CDA Section 24.7 is revised to read as follows:

#### **24.7 Survival**

Developer's representations and warranties, the dispute resolution provisions contained in Section 19, the indemnifications and releases contained in Section 18, the express rights and obligations of the Parties following termination of this Agreement under Sections 15 and 16, the provisions regarding invoicing and payment under Section 12.2, the obligations regarding Final Reconciliation under Section 12.4, and all other provisions which by their inherent character should survive termination of this Agreement and/or completion of the Work, shall survive the termination of this Agreement and/or completion of the Work. The provisions of Section 19 shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the CDA Documents.

#### **B. Revisions to CDA Exhibit 1**

1. The following Definitions in CDA Exhibit 1 are revised as indicated.

**Basic Configuration** shall mean, for each configuration of the Project, as applicable, the following elements defining the Project as set forth in the Schematic Design plans:

(a) the Schematic ROW and control of access as shown in the Schematic Design plans;

(b) the number of lanes for the Schematic Design;

(c) the approximate location of the Tolling Zones;

- (d) the approximate location of ramps, and
- (e) the approximate location of interchanges and the type of interchanges.

**Environmental Commitments Document** shall mean the draft document describing anticipated environmental commitments released to Proposers on May 9, 2008, including any updates provided to Proposers prior to ~~June 20~~December 3, 2008.

**NTP2** means a written notice issued by TxDOT to Developer pursuant to Section 4.1.4 of the Agreement authorizing Developer to proceed with the remaining Work and other activities pertaining to Configuration 1, Configuration 2 or Configuration 3, as applicable the Project.

**Price Proposal** shall mean Forms BAFO N-1.a, BAFO N-1.b, BAFO N-1.c, BAFO N1.1a, BAFO N-1.1b, BAFO N-1.1c, BAFO N-1.2.a, BAFO N-1.2.b, BAFO N-1.2.c, BAFO O.a, BAFO O.b and BAFO O.c, as submitted with the Proposal.

**Proposal** shall mean Developer's original Proposal submitted in response to the RFP, as modified by the BAFO in accordance with ITP Section 5.8.

**TxDOT-Caused Delays** shall mean unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the Developer-Related Entities:

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make Schematic ROW available within the time period set forth in Section 6.5.3 of the Agreement, and subject to the risk allocation contained therein;
- (c) failure or inability of TxDOT to make DFW-Airport Parcels for the applicable Configuration available prior to issuance of NTP2;
- (d) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the CDA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the CDA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the CDA Documents;
- (e) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the Agreement, if such Work exposed or examined is in conformance with the requirements of the CDA Documents, the Governmental Approvals and applicable Law, unless such

conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT; and

(f) failure or inability of TxDOT to obtain the USACE Nationwide Permit based on the Schematic Design and the Schematic ROW, or a Section 401 Water Quality Certification for the Project by ~~October 1, 2008~~ the later of NTP2 or July 30, 2009, provided, however that if the USACE Nationwide Permit is not obtained because individual permits are required, then the failure to obtain the USACE Nationwide Permit shall not be a TxDOT-Caused Delay.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (g) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct Developer to suspend the Work.

2. The following Definitions are added to CDA Exhibit 1.

**BAFO** means Best and Final Offer, as described in ITP Section 9.0.

**BAFO Due Date** means the deadline (date and time) for submission of BAFOs identified in ITP Section 1.6.

**Configuration(s) 1, 2 or 3** mean the Project configuration(s), individually or collectively as applicable, described in ITP Section 1.3.

**Final Reconciliation** means the process described in Section 12.4 for determining the undisputed amount owed to Developer after Final Acceptance, and a schedule for payment of such amount.

**Option(s)** shall mean the options held by TxDOT for performance of the Configuration 2 and Configuration 3 Work.

**Option Notice to Proceed** shall mean the notice to be issued by TxDOT in order to exercise an Option pursuant to Section 4.1.5.

**Option Price** means the Proposer's Development Price for Configuration 2 or Configuration 3, reflected in Form N-1.b or N-1.c, as applicable, with ATC adjustments reflected in Form N-1.2.b or N-1.2.c, as applicable, and Maintenance Price reflected in Form O.b or O.c, as applicable.

**Request for Best and Final Offer or Request for BAFO** means Addendum 7 to the RFP.

### **C. Revisions to other CDA Exhibits**

1. The reference to Form N-2 on CDA Exhibit 5 is revised to instead reference Forms BAFO N-2.a, BAFO N-2.b and BAFO N-2.c.

2. CDA Exhibit 15 is amended to reads as follows:



**EXHIBIT 15**

**FORM OF DRAW REQUEST AND CERTIFICATE**

Draw Request # \_\_\_\_\_

Date: \_\_\_\_\_  
month/day/year

Texas Department of Transportation  
Fort Worth District Office  
2501 Southwest Loop at McCart  
Fort Worth, TX 76133

"Entry Required in Cell"

A. Draw Request for Work performed for the period: \_\_\_\_\_ to \_\_\_\_\_  
month/day/year month/day/year

B. Original Contract Amount

C. Approved Change Order Amounts

D. Revised Contract Amount (B+C)

E. Cumulative Amount Earned to Date

F. Cumulative Maximum Payment Schedule Allowance (this period from Exhibit 5)

G. Cumulative Amount of Previous Draw Requests

H. Amount Qualified for Payment this Period (~~Lesser~~ Greater of "E-G-D" or "F-G-E-D") (includes Electronic Communications Allowance and Aesthetics and Landscaping unit price and allowance work described below)

	\$0.00
	\$0.00

I. Retainage Percentage this Draw Request for Record Drawings (1% of "H")	\$0.00
J. Current Amount Due ("H" - "I" )	\$
Electronic Communications Allowance (this Draw Request)	\$
Aesthetics and Landscaping Allowance (this Draw Request)	\$

Printed Name Developer's Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 4 of 4 for Draw Request Checklist)

**DRAW REQUEST NO. \_\_\_\_\_ CERTIFICATION**

The undersigned hereby certifies that (choose applicable bracketed language):

- ◆ Except as specifically noted in this certification, all Work, including that of designers, Subcontractors, and Suppliers, which is the subject of this Draw Request has been checked and/or inspected by [the Professional Services Quality Review Firm with respect to Professional Services] [the Construction Quality Acceptance Firm with respect to construction Work];
- ◆ Except as specifically noted in this certification, all [Professional Services] [construction Work] which is the subject of this Draw Request conforms to the requirements of the CDA Documents;
- ◆ [The Professional Services Quality Program] [The Construction Quality Program] and all of the measures and procedures provided therein are functioning properly and are being followed; and
- ◆ [The Professional Services percentages and construction percentages indicated are accurate and correct.] [All quantities for which payment is requested on a unit price basis are accurate.]

Exceptions:

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Name: \_\_\_\_\_  
[PQSF] [CQAF] Representative

\_\_\_\_\_ Date

Seal:

## DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- Monthly progress report as described in Section \_\_\_\_ of the Technical Provisions
- Certifications by the Professional Services Quality Review Firm and the Construction Quality Acceptance Firm;
- Monthly report of personnel hours;
- Draw Request data sheet(s) and documents that support and substantiate the amount requested;
- DBE utilization reports;
- Cash flow curves and comparison to the Maximum Payment Schedule;
- An approved Project Status Schedule Update

3. New CDA Exhibit 21 is added, and reads as follows:

**EXHIBIT 21**

**PROGRESS PAYMENT  
CERTIFICATE**

**WHEREAS**, the Texas Department of Transportation ("TxDOT") and \_\_\_\_\_ ("Developer") are parties to a Comprehensive Development Agreement ("CDA") to develop, design, construct and at TxDOT's option, maintain the DFW Connector Project ("Project") in Tarrant County, Texas; and

**WHEREAS**, TxDOT has issued to Developer a Certificate of Final Acceptance for the design and construction of the Project; and

**WHEREAS**, pursuant to the Maximum Payment Schedule set forth in the CDA, TxDOT's payments to Developer for design and construction of the Project must continue beyond the date of Final Acceptance of Developer's design and construction work by TxDOT;; and

**WHEREAS**, TxDOT has determined that there is no dispute that it owes \$\_\_\_\_\_ to Developer, to be paid in accordance with the schedule described in Section 12.4.6 of the CDA; and

**NOW THEREFORE**, TxDOT acknowledges its obligation, subject to Texas law, to pay Developer a total of \$\_\_\_\_\_, and hereby certifies that it will pay that obligation by monthly payments as set forth on Attachment A.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**TEXAS DEPARTMENT OF TRANSPORTATION**

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Amadeo Saenz, Jr., P.E.  
Executive Director

**EXHIBIT 21**

**Attachment A**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>

## **Attachment C**

### **Revisions to the CMA Documents**



**A. Revisions to the CMA Exhibits**

1. The following definition in CMA Exhibit A is revised as indicated:

**Scheduled Substantial Completion Deadline** shall mean the scheduled date of Substantial Completion established by Developer's notice to TxDOT pursuant to Section 20.1.3-4 of the Comprehensive Development Agreement.