

-- STATE OF NORTH CAROLINA--
DEPARTMENT OF TRANSPORTATION
RALEIGH, N.C.

**REQUEST FOR PROPOSALS, VOLUME I
INSTRUCTIONS TO PROPOSERS**

TIP I-3311C, I-5405, I-4750AA

August 8, 2013

**Addendum No. 1: Issued August 29, 2013
Addendum No. 2: Issued November 13, 2013
Addendum No. 3: Issued December 20, 2013**



DATE AND TIME OF PROPOSAL SUBMISSION:

Technical Proposal Due Date: **FEBRUARY 20, 2014 BY 3:00 PM**
Financial Proposal Due Date: **MARCH 13, 2014 BY 3:00 PM**

CONTRACT ID: C 203406
WBS ELEMENT NO. 45454.3.P3S1
FEDERAL-AID NO. NHPF-077-1(216)
COUNTY: Mecklenburg and Iredell Counties
ROUTE NO. I-77 and I-277
LOCATION: I-77 from I-277 to Exit 36, and I-277 from I-77 to Exit 3A/B
TYPE OF WORK: PUBLIC PRIVATE PARTNERSHIP FOR I-77 HOT LANES AS SPECIFIED
IN THE RFP

NOTICE:

ALL PROPOSERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA WHICH REQUIRES THE PROPOSER TO BE LICENSED BY THE N.C. LICENSING BOARD FOR CONTRACTORS WHEN BIDDING ON ANY NON-FEDERAL AID PROJECT WHERE THE PROPOSAL IS \$30,000 OR MORE, EXCEPT FOR CERTAIN SPECIALTY WORK AS DETERMINED BY THE LICENSING BOARD. PROPOSERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA. NOT WITHSTANDING THESE LIMITATIONS ON BIDDING, THE PROPOSER WHO IS AWARDED ANY PROJECT SHALL COMPLY WITH CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA FOR LICENSING REQUIREMENTS WITHIN 60 CALENDAR DAYS OF ANNOUNCEMENT OF APPARENT BEST VALUE PROPOSER, REGARDLESS OF FUNDING SOURCES.

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Form D	Industrial Safety Record for Major Participants
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification
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Form I	Conflict of Interest Disclosure Statement
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Exhibit E	Summary and Order of Proposal Contents
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INSTRUCTIONS TO PROPOSERS
(Request for Proposals: I-77 HOT Lanes Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals is issued by the North Carolina Department of Transportation (“NCDOT”), an agency of the State of North Carolina, to seek Proposals for a public-private partnership to be evidenced by a Comprehensive Agreement (“CA” or “Agreement”). The CA provides that Developer shall develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project (the “Project”). The form of CA is included in Volume II of the RFP.

Refer to Exhibit A hereto for the meaning of capitalized terms and acronyms used but not defined herein, and refer to Exhibit 1 to the CA for the meaning of capitalized terms and acronyms used, but not defined herein or in Exhibit A.

NCDOT is issuing the RFP to those Proposers shortlisted based on NCDOT’s evaluation of Statements of Qualification (“SOQs”) delivered to NCDOT by March 15, 2012 in response to the Request for Qualifications for the Project issued by NCDOT on February 15, 2012 (as amended, the “RFQ”).

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their Proposals. Proposals shall also take the Project goals identified in Section 1.2 below into consideration. The provisions and requirements of Division One of NCDOT’s 2012 Standard Specifications for Roads and Structures (“Standard Specifications”) related to procurement requirements and activities prior to final award do not apply to the Project, unless otherwise specifically referenced in the RFP.

All forms named in this ITP are found in Exhibit D unless otherwise noted.

1.2 Project Goals

NCDOT’s goals for the Project are as follows:

- (a) Improving mobility within the Project area after the construction period;
- (b) Implementing safe construction, operation and maintenance;
- (c) Obtaining cost-effective financing and leveraging available state funds and toll revenue to maximize funding for the Project;

(d) Securing quality design and construction to optimize the operational life cycle performance of the Project and accommodate Related Transportation Facilities with minimal impact;

(e) Expediting delivery of Project improvements;

(f) Maintaining mobility through the Project area during construction and renewal activities through the term of the CA while minimizing impacts to business, communities and adjacent property owners through communication, cooperation and coordination with Stakeholders;

(g) Obtaining high quality operation and maintenance that meets or exceeds NCDOT technical requirements, including interoperability requirements, meeting or exceeding NCDOT's standards for the operation and maintenance of the HOT Lanes and General Purpose Lanes, and allowing handback to NCDOT upon termination of the CA, in accordance with NCDOT requirements; and

(h) Facilitating participation by Disadvantaged Business Enterprises ("DBEs"), consistent with the CA Documents and applicable Laws and regulations.

1.3 General Project Description and Scope of Developer's Obligations

1.3.1 General Project Description

The Project involves the design, construction, financing, operation and maintenance of the HOT Lanes along the I-77 corridor. The Project is comprised of three Project Sections as described in Section 1 of the Technical Provisions. Developer will be required to operate and maintain the Project Sections and the associated General Purpose Lanes in accordance with the requirements of the CA Documents. The Project will be tolled through all electronic tolling (including video), toll plaza-free open road system requiring no reduction in speed.

1.3.2 Scope of Developer's Obligations

Developer's obligations under the CA will generally include all efforts required to develop, design, construct, finance, operate and maintain the Project in accordance with the requirements of the CA Documents. A specific description of the Project Sections and Developer's scope of work is contained in the Technical Provisions (Volume II, CA Documents). Developer's authorization to commence and pursue the Work shall be pursuant to the issuance of two notices to proceed, NTP1 and NTP2, each as described and defined in the CA Documents. Each of the notices to proceed includes schedule requirements, performance requirements and limitations concerning the implementation of the Work.

1.4 Status of Federal Environmental Approval

NCDOT is currently developing the environmental documentation under FHWA's guidelines for compliance with the National Environmental Policy Act ("NEPA"). It is important for Proposers to note, at this time, that the proposed Project remains in the environmental process. Additional alternatives, including a no-build alternative, are always considered in the environmental process, and it is possible that the Project scope may need to be modified to comply with the environmental process, or that a no-build alternative may be adopted. Nothing contained in the RFP is intended to modify, limit, or otherwise constrain the environmental process or commit NCDOT or any other entity to undertake any action with respect to the Project, including any procurement or the final design and construction of the Project.

1.4.1 Central Section

A Categorical Exclusion for the Central Section was obtained on July 31, 2012. This Categorical Exclusion will be incorporated into the Environmental Assessment with the South Section and North Section.

1.4.2 South Section

An Environmental Assessment for the South Section was prepared on July 1, 2013, with a Finding of No Significant Impact signed on October 16, 2013.

1.4.3 North Section

A Categorical Exclusion was originally anticipated for the level of environmental impacts in the North Section. However, the North Section will now be incorporated, along with the Categorical Exclusion completed for the Central Section, into the Environmental Assessment for the South Section, which will result in one environmental document containing all Project Sections. This Environmental Assessment was prepared on July 1, 2013, with a Finding of No Significant Impact signed on October 16, 2013.

1.5 Contents of the Request for Proposals; Examination of Site; Reference Information Documents

1.5.1 RFP Contents

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

- (a) Volume I – this ITP (including exhibits and forms);
- (b) Volume II – the CA Documents; and
- (c) Volume III – the Reference Information Documents.

1.5.2 Examination of Site; Reference Information Documents

Articles 102-6 and 102-7 of the Standard Specifications shall apply to this procurement. In case of conflict among these two Articles and the RFP, the RFP shall govern.

Further, except as may be expressly provided otherwise in the CA Documents, NCDOT shall not be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages or losses whatsoever suffered by any Proposer by reason of (a) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Reference Information Documents, or (b) any action or forbearance in reliance on the Reference Information Documents. Although the Reference Information Documents may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and construction means and methods, such interpretations, extrapolations, analyses and recommendations are (i) preliminary in nature and, in many cases, are obsolete; (ii) not intended to express the views or preferences of NCDOT or any other Governmental Entity or represent any statement of approval or acceptance thereof by NCDOT or any other Governmental Entity; and (iii) not intended to necessarily form the basis of a Proposer's design solutions, technical solutions or construction or tolling means and methods. Proposers shall use or not use the Reference Information Documents at their sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to site conditions, geotechnical conditions, utilities, environmental conditions, and traffic, (y) the preparation of their Proposals, and (z) any design, tolling and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents, except as otherwise expressly provided in the CA Documents.

NCDOT does not represent or warrant that the information, opinions and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions and recommendations are in conformity with the requirements of the RFP, Governmental Approvals or applicable Laws. Proposers shall have no right to compensation, time extension or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Reference Information Documents, except as otherwise expressly provided in the CA Documents.

1.6 Procurement Schedule

The following represents the key procurement milestones:

<u>EVENT</u>	<u>DATE and TIME</u>
Issue final Request for Proposals	August 8, 2013
Technical Proposal Due Date	February 20, 2014 at 3:00 p.m. eastern

<u>EVENT</u>	<u>DATE and TIME</u>
Financial Proposal Due Date	March 13, 2014 at 3:00 p.m. eastern

Further, Commercial Close must occur no earlier than 60 days after the date of NCDOT's report to the Joint Legislative Transportation and Oversight Committee, as required under applicable Law. NCDOT may, in its sole discretion, extend the deadline for Commercial Close by written notice to the Apparent Best Value Proposer; provided that such extension is within the 210-day Proposal validity period. Developer shall be required to achieve Financial Close on or before the Project Financing Deadline as set forth in the CA. Additional procurement events and deadlines are set forth in the Procurement Schedule. All events and dates set forth in the Procurement Schedule and elsewhere in the ITP are subject to change in NCDOT's sole discretion, and Proposer shall be solely responsible for monitoring the Procurement Schedule for any such changes.

All times listed in the Procurement Schedule and elsewhere in the RFP are for local, eastern time in Raleigh, North Carolina for the applicable date. If any of the time periods set forth in the Procurement Schedule or this ITP fall on a non-Business Day, then such period shall automatically be extended to the next Business Day.

1.7 General Provisions Regarding Proposals

1.7.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including (a) a Technical Proposal, including narrative, plans and properly completed Proposal forms, and (b) a Financial Proposal, including a Financial Plan, a Financial Model and properly completed Proposal forms, all to be delivered directly to NCDOT. 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 shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or submittal of a Proposal subject to any unauthorized reservations, qualifications, conditions or assumptions may result in NCDOT's rejection of the Proposal. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive changes shall be made in the Proposal forms by Proposer.

1.7.2 Inclusion of Proposal in CA

Portions of the successful Proposer's Proposal will become part of the CA Documents, as specified in the CA. All other information is for evaluation purposes only and will not become part of the CA Documents.

1.7.3 Proposer Commitments in the Proposal

Each Proposal will be interpreted and evaluated based on the level of commitment required by the RFP and provided by Proposer. Tentative commitments will be given no consideration. For example, phrases such as “we may” or “we are considering” will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.7.4 Ownership of Proposal and Applicability of Public Records Law

Except for those documents delivered into escrow pursuant to Section 6.2.1(f), all documents submitted by Proposer in response to the RFP, and all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to NCDOT during this procurement process, whether included in the Proposal or otherwise submitted, shall become the property of NCDOT and will not be returned to the Proposer, unless otherwise decided by NCDOT in its sole discretion. Additionally, if Proposer accepts the stipend offered by NCDOT, as specified herein, NCDOT shall have the exclusive right to use the concepts, ideas and other information contained in the Proposal or submitted to NCDOT during the procurement process free of all intellectual property rights of Proposer and claims against NCDOT, without further action on NCDOT’s part. The foregoing does not apply to materials required to be delivered into escrow, which shall be delivered to the escrow agent in accordance with, and the parties’ rights with respect to such escrowed materials shall be governed by, the Intellectual Property Escrow Agreement.

Proposers shall familiarize themselves with the provisions of North Carolina General Statute § 132-1 et seq. (“Public Records Law”) and any other laws and regulations applicable to the disclosure of documents submitted under the RFP, including North Carolina General Statute § 136-28.5(c). All materials submitted by Proposers, including the Proposals, shall be subject to such laws. In no event shall NCDOT or any of its agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP.

In the event the Proposer submits any documents which the Proposer believes are not subject to disclosure pursuant to the Public Records Law, it must conspicuously mark each document “CONFIDENTIAL” or “CONFIDENTIAL TRADE SECRETS” in the header or footer of each such page affected. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for NCDOT to treat the entire Proposal as public information.

NCDOT will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Law or other applicable laws, as to the interpretation of such laws, or as to definition of trade secret. Nothing contained in this provision shall modify or amend requirements and obligations imposed on NCDOT by the Public Records Law or other applicable Law. The provisions of the

Public Records Law or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law.

Information submitted by Proposers may be made available to USDOT representatives. NCDOT intends to follow procedures established by USDOT to avoid disclosure, to the extent possible, of such information under the Freedom of Information Act.

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, NCDOT will be the custodian retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that NCDOT 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 NCDOT in connection with any litigation, proceeding, or request for disclosure shall be reimbursed and paid by Proposer objecting to disclosure. Each Proposer shall be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

Except to the extent provided under applicable Law, in no event shall NCDOT, or any of its board members, agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Proposal submitted under the RFP.

Submission of a Proposal constitutes the Proposer's agreement to the provisions of this Section 1.7.

1.8 Federal Requirements and Funding

Because the Project is on the federal interstate system and will involve the use of federal funding, the procurement process and CA Documents must comply with applicable federal Law and regulations.

1.8.1 DBE Requirements

Pursuant to applicable federal regulations, NCDOT has an approved DBE Program and a Project-specific DBE goal as described and identified in Exhibit F. Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the CA Documents and Exhibit F.

As set forth in Section 7.7 of Exhibit B, each Proposer shall submit with its Technical Proposal a DBE Commitment Certification (Form G).

Failure to provide the required DBE Commitment Certification may render a Proposal non-responsive.

The Developer will also be required to comply with the DBE requirements in accordance with the CA and NCDOT's DBE Program.

1.8.2 Federal Funding, TIFIA and Private Activity Bonds

NCDOT has been invited to apply for credit assistance for the Project under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program, and will submit an application for an allocation from the United States Department of Transportation ("USDOT") for private activity bonds ("PABs") for the Project as described below. NCDOT will provide reasonable cooperation upon request by the Apparent Best Value Proposer with respect to the use of TIFIA and/or the PABs allocation.

1.8.2.1 TIFIA Credit Assistance

On November 8, 2012, NCDOT received a response from the TIFIA Joint Program Office in reference to a letter of interest ("LOI") submitted by NCDOT on August 7, 2012. The November 8, 2012 letter authorized the Project to advance to the next phase in the TIFIA LOI review process on the assumption that the TIFIA loan will be sized at 33% of the eligible project costs under the MAP-21 application process for Federal Fiscal Years 2013 and 2014.

Based on discussions between NCDOT and the TIFIA Joint Program Office, NCDOT has furnished Proposers with a TIFIA Term Sheet that includes assumptions, terms and conditions that Proposers must use in developing their Financial Proposals. NCDOT will bear the risk and have the benefit of certain quantitative changes in the TIFIA Term Sheet Assumptions (either positive or negative) in accordance with the CA Documents. If the changes in TIFIA Term Sheet Assumptions result in an adjustment to the Public Funds Amount that exceeds the Maximum Available Funds, then the Parties shall have the rights set forth in the CA Documents.

The Proposers shall not independently contact the TIFIA Joint Program Office prior to the Financial Proposal Due Date with respect to the TIFIA application for the Project. The Apparent Best Value Proposer will be expected to reimburse FHWA for all credit processing costs it incurs in connection with the Project, including without limitation outside financial and legal consultant costs.

1.8.2.2 PABs Allocation

On January 25, 2013, NCDOT submitted an application requesting that the USDOT reserve an allocation for the issuance of a principal amount of PABs in an amount up to \$350 million. On April 16, 2013, USDOT provisionally allocated up to \$350 million in PABs for the Project.

If the Initial Project Debt includes PABs, then NCDOT will serve as the issuer of the PABs ("PABs Issuer"). Proposers shall be solely responsible for obtaining ratings, bond counsel opinions, credit enhancement (as applicable) and an underwriting commitment

or placement of the PABs, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of State and federal tax laws. Proposers may directly contact USDOT prior to the Financial Proposal Due Date to discuss the specifics of its finance plans, including cost and revenue projections, with respect to any PABs allocation provided for the Project. Such communications shall be subject to the terms set forth in Section 2.2.3.

Proposer's lead underwriter(s) ("Lead Underwriter(s)") must be (a) nationally recognized firm(s) with experience in transportation infrastructure finance. Proposer's bond counsel, which shall be responsible for issuing all bond and tax opinions, must be a nationally recognized firm licensed in North Carolina with experience in PABs and transportation infrastructure finance and cannot serve as counsel for the lenders. Counsel for the Lead Underwriter(s) must be a nationally recognized firm with experience in transportation infrastructure finance and cannot serve as bond counsel. Proposer must obtain NCDOT's approval of its Lead Underwriter(s), bond counsel and Lead Underwriter's counsel prior to the Technical Proposal Due Date in accordance with Section 2.4, which approval will not be unreasonably withheld. Proposer may submit more than one Lead Underwriter for NCDOT's approval. Proposer shall provide the qualifications of Proposer's Lead Underwriter(s), bond counsel and Lead Underwriter's counsel in advance of the Technical Proposal Due Date no later than the date set forth in the Procurement Schedule. For each proposed Lead Underwriter, Proposer shall specifically provide information regarding the underwriter's experience with PABs (or other market as applicable), investment grade project financings and transportation infrastructure finance. Qualifications shall be no more than seven pages, in 12 point font. NCDOT shall use reasonable efforts to respond to the submittal of the Proposer's Lead Underwriter(s), bond counsel and Lead Underwriter's counsel within 5 Business Days after receipt thereof. If a Lead Underwriter, bond counsel or Lead Underwriter's counsel is not pre-approved by NCDOT, Proposer shall submit a different candidate by the date set forth in the Procurement Schedule, and NCDOT shall use reasonable efforts to respond within 5 Business Days to the re-submission. It is the Proposer's sole responsibility to ensure that approval occurs prior to the Technical Proposal Due Date.

The Apparent Best Value Proposer may request that NCDOT allow the bond counsel to also act as the Apparent Best Value Proposer's local counsel and NCDOT will consider allowing the same under the following circumstances:

- NCDOT will not sign any conflict waivers;
- If there is a dispute between Developer and NCDOT that creates a conflict of interest for counsel, the firm must resign as Developer's counsel upon NCDOT's request;
- NCDOT may hire additional PABs Issuer's counsel, in its sole discretion and at its cost; and

- The counsel will not be entitled to participate on Developer's behalf in any dispute or action between NCDOT and Developer.

The foregoing approach has been developed by NCDOT as an accommodation to the Proposers and in order to attempt to facilitate the use of PABs by Proposers. NCDOT makes no representation as to, nor guarantees the amount, if any, of PABs that can be issued for the Project or the use of proceeds to finance the Project as a matter of federal tax law. Proposers should seek the advice of their own tax consultants. Should a Proposer elect to include PABs in its Financial Proposal, it does so at its own risk and cost, and NCDOT shall have no liability with respect thereto.

1.9 Pre-Qualification of Lead Contractor and Lead Design Firm

Proposer's Lead Contractor and Lead Design Firm must be prequalified by NCDOT prior to the Technical Proposal Due Date. If the Lead Contractor and/or the Lead Design Firm is a consortium, partnership or any other form of joint venture, all members of such consortium, partnership or other form of joint venture must be prequalified individually prior to the Technical Proposal Due Date. In addition, other members of the Proposer team that will be undertaking work that requires prequalification and/or a license must be prequalified and licensed prior to performing the applicable work assigned to such member. For the NCDOT prequalification process and requirements, refer to Article 102-2 of the Standard Specifications and the following website:

<http://www.ncdot.org/business/howtogetstarted/>

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP is issued in accordance with the provisions of North Carolina General Statute § 136-18(39) et seq., as amended (the “Statute”), NCDOT’s Public Private Partnerships Policy & Procedures (the “P3 Policy”) and other applicable provisions of Law.

NCDOT will award the CA (if at all) to the Apparent Best Value Proposer, through evaluation based upon the criteria set forth in this ITP, in order to provide the best value to NCDOT and be in the best interest of the State of North Carolina.

NCDOT will accept Proposals for the Project only from those Proposers that NCDOT has shortlisted for the procurement based on their responses to the RFQ. Except for pre-approved ATCs as described herein, NCDOT will not review or consider alternative proposals.

NCDOT, in accordance with the provisions of *Title VI of the Civil Rights Act of 1964* (78 Stat. 252) and the Regulations of the Department of Transportation (*49 C.F.R., Part 21*), issued pursuant to such act, hereby notifies all Proposers that it will affirmatively insure that the CA entered into pursuant to the RFP will be awarded to the Proposer offering the best value to NCDOT pursuant to the criteria set forth in this ITP without discrimination on the ground of race, color, or national origin.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

All draft versions of the RFP will be issued to shortlisted Proposers in electronic format on the FTP Site or in a manner deemed appropriate by NCDOT. The final RFP, and any Addenda thereto, will be issued to shortlisted Proposers in electronic format on the FTP Site and posted on the Procurement Website, or in a manner deemed appropriate by NCDOT.

Each Proposer is responsible for monitoring the FTP Site and the Procurement Website for information concerning the RFP and the procurement.

2.2.1 Authorized Representative

NCDOT has designated the following individual to be its authorized representative for the procurement (the “Authorized Representative”):

Rodger Rochelle
North Carolina Department of Transportation
Transportation Program Management
Century Center, Building B, Door B2
1020 Birch Ridge Drive
Raleigh, NC 27610
Phone: (919) 707-6601
E-mail: rdrochelle@ncdot.gov

From time to time during the procurement process or during the term of the CA, NCDOT may designate another Authorized Representative or representatives to carry out some or all of NCDOT's obligations pertaining to the Project.

2.2.2 Identification of Proposer Representative

If a Proposer changes its designated representative to receive documents, communications or notices in connection with the procurement subsequent to its submission of the SOQ, Proposer shall provide NCDOT's Authorized Representative with the name and address of such new designated representative. Failure to identify a designated representative in writing may result in Proposer failing to receive important communications from NCDOT. NCDOT is not responsible for any such failure.

2.2.3 Rules of Contact

From and after the date of issuance of the first draft version of the RFP and ending on the earliest of (i) execution and delivery of the CA, (ii) rejection of all Proposals by NCDOT or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members through their employees, agents or representatives with regard to the RFP or either team's Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any NCDOT sponsored informational meetings.

(b) Each Proposer shall designate one representative responsible for contacts with NCDOT, and shall correspond with NCDOT regarding the RFP only through NCDOT's Authorized Representative and Proposer's designated representative.

(c) No Proposer or representative thereof through their employees, agents or representatives shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Board or the Authority Board or with any NCDOT or NCTA staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the NCDOT Chief Operating Officer, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Board or any public or Proposer workshop related to the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of NCDOT.

(d) Proposers shall not contact the following identified Stakeholders regarding the Project, including employees, representatives and members of the entities listed below, it being the intent of NCDOT that NCDOT provide any necessary coordination during the RFP stage with such entities in order that, among other things, the procurement be implemented in a fair, competitive and transparent manner and with uniform information:

- Mecklenburg-Union Metropolitan Planning Organization
- Lake Norman Rural Planning Organization
- Lake Norman Transportation Commission
- The City of Charlotte, and the Towns of Cornelius, Davidson, Huntersville, and Mooresville
- The Counties of Mecklenburg and Iredell
- The USDOT TIFIA Joint Program Office, USDOT Tolling and Pricing Team or USDOT Secretary's Office
- FHWA
- CSX
- Norfolk Southern
- Environmental, regulatory and permitting agencies

Information requests concerning these entities should be sent to NCDOT's Authorized Representative. Notwithstanding the provisions of this clause (d), Proposers may contact William Deal of the Charlotte Mecklenburg Utilities with respect to its utilities in the Project vicinity.

(e) Any communications determined by NCDOT, in its sole discretion, to be improper may result in disqualification. “Improper” as used herein means detrimental or prejudicial to the integrity of the procurement.

(f) Any official information regarding the Project will be in writing, on NCDOT letterhead, and signed by NCDOT’s Authorized Representative or designee.

(g) NCDOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this Section 2.3.

(h) Without limiting the generality of the foregoing and except as expressly allowed under Section 1.8.2, Proposers shall not contact any FHWA or USDOT project or program office, or any representative or consultant of FHWA or USDOT regarding the TIFIA application process, credit decisions, form of term sheet, form of credit agreement, other matter relating to NCDOT’s application for TIFIA credit assistance for the Project, any requests for a PABs allocation for the Project, any SEP-15 or other applications that may be submitted to FHWA or USDOT.

Proposer shall note that no correspondence or information from NCDOT or anyone representing NCDOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(f).

2.2.4 Land Development

Prior to award of the CA, no Proposer, including team members or Affiliates, may (i) secure, acquire title to or close on a purchase of land included within the Project Right of Way (“Restricted Property”), (ii) enter into an option to purchase or a purchase contract relating to the Restricted Property unless (a) it gives the seller the unilateral and unconditional right to cancel without charge or penalty if Proposer does not become Developer and achieve financial closing; and (b) Proposer notifies NCDOT in writing within 10 days after entering into such agreement; or (iii) engage in any predatory land or property acquisition practice.

2.2.5 Language Requirement

All correspondence regarding the RFP, ATCs, Proposal, and CA Documents are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Response Regarding the RFP and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by NCDOT prior to the Financial Proposal Due Date, and for requesting written clarification

or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by NCDOT. Proposers shall submit, and NCDOT will respond to, requests for written clarification in accordance with this Section 2.3.1. NCDOT reserves the right not to respond to any such clarification requests received after the last date for Proposer submittal of questions regarding the RFP, as set forth in the Procurement Schedule. To the extent responses are provided, they will not be considered part of the RFP or CA Documents nor will they be relevant in interpreting the CA Documents, except as expressly set forth in the RFP or CA Documents.

NCDOT will only consider questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the Authorized Representative, by hard copy, facsimile, or other electronic transmission.

Such comments/questions may be submitted at any time prior to the applicable last date specified in the Procurement Schedule and shall: (i) be submitted in Word using the form set forth in Form M; (ii) be sequentially numbered; (iii) identify the document (i.e., the Comprehensive Agreement, Technical Provisions, etc); (iv) identify the relevant section number and page number (i.e., Technical Provisions, Section 3.2.2, page 3-9) or, if it is a general question, indicate so; (v) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information; and (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any Person other than NCDOT's Authorized Representative will be considered. Questions may be submitted only by Proposer's designated representative, or another representative of Proposer on the condition that the designated representative is copied on such communication, and must include the requestor's name, address, telephone and e-mail address, and Proposer he/she represents.

Answers to questions posed regarding any version of the draft RFP or the final RFP will be provided by revising the draft RFP or the final RFP (as applicable) and through

issuance of the final RFP or Addendum to the final RFP (as applicable). Questions submitted related to the second Addendum of the final RFP, NCDOT's responses thereto, and subsequent Addenda will be in writing and will be delivered to all Proposers in accordance with this ITP, except that NCDOT intends to respond individually to those questions identified by a Proposer and deemed by NCDOT as containing confidential or proprietary information. If a Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as "confidential". NCDOT reserves the right to disagree with the confidentiality of information, in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, NCDOT will inform the Proposer and may allow the Proposer, within a time period set by NCDOT, to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if NCDOT determines that it is appropriate to provide a general response, NCDOT will modify the question to remove information that NCDOT determines is confidential. If a Proposer fails to respond to NCDOT within the time frame identified by NCDOT, such failure shall be deemed to allow NCDOT to answer the question non-confidentially. NCDOT may rephrase questions as it deems appropriate and may consolidate similar questions. NCDOT may also create and answer questions independent of those submitted by Proposers. NCDOT contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to the issuance of Addenda, the last set of responses will be issued no later than the applicable last date specified in the Procurement Schedule. A consolidated, final set of questions and answers for those questions posed after issuance of the second Addendum to the final RFP will be compiled and delivered to the Apparent Best Value Proposer prior to final award.

Proposers may, at their option, elect to submit revised drafts, in redline, of the ITP and CA (but not the Technical Provisions) in connection with the submission of their comments/questions. Except as reflected in the RFP or Addenda, NCDOT will not circulate each Proposer's revised drafts submitted, nor make such revised drafts public. NCDOT will not respond to any such revised drafts, nor is NCDOT obligated to review any such revised drafts. NCDOT will, however, respond to the questions/comments properly submitted and delivered pursuant to this Section 2.3.1.

NCDOT may convene pre-Proposal meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to NCDOT for such pre-Proposal meetings and to discuss any matters they submit to NCDOT under this Section 2.3.1. If NCDOT determines, in its sole discretion, that its interpretation or clarification requires a change in the final RFP, NCDOT will prepare and issue an Addendum.

2.3.2 Addenda

NCDOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time. Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP Site and

the Procurement Website, or in a manner deemed appropriate by NCDOT, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in NCDOT's sole discretion, NCDOT may change either or both the Technical Proposal Due Date or the Financial Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Proposer shall acknowledge in its Technical Proposal Letter (see Form A-1) and Financial Proposal Letter (see Form A-2) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. NCDOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. NCDOT does not anticipate issuing any Addenda later than 5 Business Days prior to the Technical Proposal Due Date. However, if the need arises, NCDOT reserves the right to issue Addenda after such date, including changes to conform the RFP to applicable legal requirements and address any changes in the scope of the Project arising from the environmental analysis process. If NCDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Technical Proposal Due Date or the Financial Proposal Due Date determined necessary by NCDOT in its sole discretion.

2.4 Pre-Proposal Submittals

The pre-Proposal submittals ("Pre-Proposal Submittals") are required as follows:

- Pursuant to Section 1.8.2.2 (regarding Proposer's Lead Underwriter(s) and bond counsel and Lead Underwriter's counsel);
- Pursuant to Section 2.10 (regarding changes in a Proposer's organization and changes in Key Personnel);
- Pursuant to Section 2.11 (regarding Toll System Integrator(s));
- Pursuant to Section 3.1.1 (regarding Alternative Technical Concepts);
- Pursuant to Section 3.2 (regarding the draft preliminary tolling plan);
- Pursuant to Section 3.3 (regarding the GP Lanes pavement design);
- Pursuant to Section 6.1.2 (regarding the Model Auditor); and
- Pursuant to Section 6.1.4 (regarding the Benchmark Credit Spread).

The applicable deadlines for submission of the Pre-Proposal Submittals, and the last date for NCDOT to respond, are set forth in the Procurement Schedule.

Proposers are encouraged to submit Pre-Proposal Submittals at any time prior to the stated deadlines, and NCDOT will endeavor to respond to the Pre-Proposal Submittals within the time periods set forth in this ITP; provided, however, that the time period for NCDOT's response may be extended in NCDOT's sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. NCDOT reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.1.1 must make its submittal no later than the due date for ATCs set forth in the Procurement Schedule.

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

NCDOT may hold joint informational meetings with all Proposers at any time prior to the Technical Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and NCDOT. NCDOT will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

Each Proposer shall attend informational meetings with appropriate members of its proposed key management personnel, and if required by NCDOT, senior representatives of proposed team members identified by NCDOT.

2.5.2 One-on-One Meetings

NCDOT intends to conduct one-on-one meetings with each Proposer on the dates set forth in the Procurement Schedule to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by NCDOT or the Proposers (including the RFP) and Proposer's ATCs. NCDOT reserves the right to disclose to all Proposers any responses NCDOT provides to issues raised during the one-on-one meetings if NCDOT believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable Law, except to the extent that NCDOT determines, in accordance with applicable Law, such disclosure would impair the confidentiality of an ATC, or would reveal a Proposer's confidential business strategies. Participation at such meetings by Proposers shall be mandatory. Representatives of FHWA, advisors of NCDOT and other Stakeholders may attend and participate in one-on-one meetings.

The one-on-one meetings are subject to the following rules:

- The meetings are intended to provide Proposers with a better understanding of the Project and Project-related documents or communications provided by NCDOT.
- NCDOT, except as provided in this ITP, will not discuss with any Proposer any information submitted by a Proposer as part of this procurement (including other Proposals or other Proposers' ATCs) other than its own.
- Proposers shall not seek to obtain commitments from NCDOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers.
- The discussions or any statements made by either party in one-on-one meetings shall not be binding on such entity.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and NCDOT may provide responses. However, any responses provided by NCDOT during one-on-one meetings may not be relied upon unless questions were submitted in writing and NCDOT provided written responses in accordance with Section 2.3.1 (and then, only to the extent provided in Section 2.3.1 and in the CA Documents). Such questions and responses will be provided in writing to all Proposers, except to the extent such questions are deemed by NCDOT to contain confidential or proprietary information relating to a particular Proposer's Proposal, ATCs (unless NCDOT believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable Law). Nothing stated at any pre-Proposal meeting or included in a written record or summary of a meeting will modify any part of the final RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.6 NCDOT Studies and Investigations

NCDOT is currently completing certain Site investigations, studies and reports, and does not anticipate undertaking any further investigative activities during the procurement process. To the extent NCDOT undertakes any additional investigative activities, the information obtained by NCDOT from such activities may be made available to Proposers. All information provided by NCDOT will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, NCDOT makes no representation or warranty as to the accuracy, completeness or suitability of the additional information. See Section 1.5.2 for further limitations on the use of and reliance on Reference Information Documents.

2.7 Existing Construction; Access to Site; Utility Coordination Meeting

2.7.1 Existing Construction Work Site Information

After issuance of the RFP and until the Technical Proposal Due Date, Proposers will be provided with Project updates concerning the status of any existing construction work that may impact I-77 within the Project limits. These updates will be considered additions to the Reference Information Documents, subject to Section 1.5.2.

2.7.2 Access to Site

Proposers may be allowed access, until the Technical Proposal Due Date, to those portions of the Project on which NCDOT has right of way for purposes of inspecting in-place assets and determining Site conditions, subject to the written approval of, and any requirements, conditions and/or traffic control plan requirements imposed by, the Division Engineer for Division 10 or his/her duly authorized representative. NCDOT will also use reasonable efforts to assist Proposers with obtaining access to other portions of the Project owned by Governmental Entities, subject to the terms and conditions specified by the applicable Governmental Entity for purposes of inspecting Site conditions.

2.7.3 Utility and Railroad Coordination Meetings

Proposers shall attend one-on-one utility and railroad coordination meetings that NCDOT will coordinate with Utility Owners and railroads impacted by the Project. The purpose of these meetings is for Proposers to obtain further information regarding how utilities and railroads will impact the Project, to facilitate discussions regarding any potential Utility Adjustments and agreements with railroads, and to enable the identification of cost and/or risk mitigation opportunities for the Project. The Procurement Schedule will set forth the date of the initial one-on-one utility and railroad coordination meetings. NCDOT will contact Proposers regarding any subsequent utility and railroad coordination meetings. NCDOT cannot, and will not, make any guarantees or representations that all applicable Utility Owners or railroads will attend any meetings or that they will be universally available to all Proposers.

2.8 Errors

If any mistake, error, or ambiguity is identified by Proposer at any time during the procurement process in any of the documents supplied by NCDOT, Proposer shall have a duty to notify NCDOT of the recommended correction in writing in accordance with Section 2.3.1.

2.9 Improper Conduct

2.9.1 Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification

Article 102-9 of the Standard Specifications shall apply to this procurement.

By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (a) have a contract with a governmental agency; or
- (b) have performed under such a contract within the past year; or
- (c) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. § 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

Proposer and each Major Participant shall execute the Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification (Form F).

2.9.2 Organizational Conflicts of Interest; Ethics Policy

2.9.2.1 Organizational Conflicts of Interest

It is NCDOT's policy that any person under contract, or previously under contract, with NCDOT to prepare preliminary plans, planning reports or other project development products for the Project will not be allowed to participate in any capacity on a Proposer team. Exceptions to this policy may be granted by NCDOT, upon written request from such person, if it is determined that the person's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit such written request as soon as possible because NCDOT shall not extend the Technical Proposal Due Date or Financial Proposal Due Date or be responsible for any inability or failure by NCDOT to respond prior to the Technical Proposal Due Date to any such request.

In addition to the foregoing, the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, also apply to this procurement. 23 CFR § 636.103 defines an “organizational conflict of interest” as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer shall provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or key personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect relating to the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, including, but not limited to:

- RayStrategies LLC
- KPMG LLP and KPMG Corporate Finance LLC
- Nossaman LLP
- Parsons Brinckerhoff
- Stantec
- ECONorthwest
- Atkins
- Rummel, Klepper & Kahl, LLP
- AECOM
- Ames & Gough
- TGS Engineers
- Affiliates (meaning includes parent companies, subsidiary companies, entities under common ownership, joint venture members and partners, and other financially liable parties for an entity) of any of the above

Such persons and entities are also prohibited from participating on a Proposer team as an Equity Member, Major Participant, contractor, subcontractor, consultant or subconsultant.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to NCDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, NCDOT may, at its sole discretion, cancel the procurement, disqualify Proposer with a conflict or take other action as necessary to mitigate the conflict. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose exists and the Proposer has entered into a CA as Developer, NCDOT may, at its sole discretion, terminate the CA. In either case, NCDOT reserves all legal rights and remedies.

Proposers are also advised that NCDOT's guidelines in this ITP are intended to augment applicable federal and state Law, including federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable Law will also apply to Proposer teams and teaming and may preclude certain firms and their entities from participating on a Proposer team.

2.9.2.2 Ethics Policy

In the event of engagement of a former employee of NCDOT, Proposer and any of its Contractors shall restrict such person or persons from working on any of Proposer's contracted projects in which the person or persons were "formerly involved" while employed by the State. The restriction period shall be for the duration of the contracted project with which the person was involved. Former involvement shall be defined as active participation in any of the following activities for the contracted project:

- Drafting the contract
- Defining the contract scope of the contract
- Proposer selection
- Negotiation of the contract cost (including calculating manhours or fees); and
- Contract administration

An exception to these terms may be granted when recommended by the Secretary of Transportation and approved by the Board of Transportation. Failure to comply with the terms stated above shall be grounds for termination of the CA and/or not being considered for selection of work on future contracts for a period of one year.

2.9.3 Equitable Treatment of Proposers

Subject to a Proposer's right to protect confidential information from disclosure pursuant to Section 1.7.4, Proposers are assured that, during the procurement process (including the process for evaluation of ATCs and Proposals), NCDOT will make every reasonable effort to treat Proposers equitably.

2.10 Changes in Proposer's Organization and Key Personnel; Identification of Developer

2.10.1 Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by NCDOT, Proposer's organization as identified in the SOQ must remain intact until execution of the CA. Changes in organization by the Developer after execution of the CA shall be in accordance with the CA Documents.

If a Proposer wishes to make changes in the Major Participants identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to NCDOT a written request for approval of the change from NCDOT as soon as possible, but in no event later than the applicable last date set forth in the Procurement Schedule. Any such request shall be addressed to NCDOT at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ, and shall contain a statement by Proposer that such entities or individuals do not have a conflict of interest under the applicable Law. If a request is made to allow deletion or role change of any Major Participant identified in its SOQ, Proposer shall submit such information as may be required by NCDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each such request package. NCDOT shall use reasonable efforts to respond to the Proposer's request within 10 Business Days after receipt thereof. NCDOT is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the CA, a Proposer may not make any changes in the Major Participants identified in its SOQ after the applicable last date set forth in the Procurement Schedule. Between the deadline set forth in the Procurement Schedule and execution of the CA, NCDOT, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

2.10.2 Changes in Key Personnel

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by NCDOT, the Proposer's Key Personnel as identified in the SOQ must remain intact until execution of the CA.

Changes in Key Personnel by the Developer after execution of the CA shall be in accordance with the CA Documents.

If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to NCDOT a written request for its approval of the change from as soon as possible but in no event later than the date and time set forth in the Procurement Schedule. Any such request shall be addressed to NCDOT at the address set forth in Section 2.2.1, accompanied by the information specified for such individuals in the RFQ. If a request is made to allow deletion of any Key Personnel identified in its SOQ, the Proposer shall submit such information as may be required by NCDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical) and that the proposed Key Personnel replacement meets the applicable qualifications set forth in Section 2.14 of the Technical Provisions. Proposer shall submit an original and five copies of each such request package. NCDOT shall use reasonable efforts to respond to the Proposer's request within 10 Business Days after receipt thereof. NCDOT is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the CA, a Proposer may not make any changes in any Key Personnel identified in its SOQ after the deadline set forth in the Procurement Schedule. Between the deadline set forth in the Procurement Schedule and execution of the CA, NCDOT, in its reasonable discretion, will consider requests by Proposers to make changes in the Proposers' Key Personnel based only on unusual circumstances beyond the Proposer's control. NCDOT's consent to change Key Personnel shall not be required due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, but Proposer shall submit the resume of any proposed replacement Key Personnel in accordance with this Section 2.10.2 and such proposed replacement shall be subject to the approval of NCDOT, in its sole discretion.

NCDOT shall have the right to approve or reject any personnel to be assigned to the Project by Proposer and any of its proposed Contractors.

2.10.3 Identification of Developer

The RFP permits a Proposer to identify and form an entity other than Proposer to enter into the CA Documents as Developer. However, if the entity identified as the proposed Developer in the Apparent Best Value Proposal is not formed as required by the RFP, or fails to comply with the requirements set forth in the RFP, the entity(ies) that signed the Proposal shall have the joint and several obligation to enter into the CA Documents itself.

2.11 Toll System Integrator

2.11.1 Pre-approval

Toll collection system integration and operation is the responsibility of Developer under the CA Documents. Accordingly, in advance of submission of the Proposal, each

Proposer must have its selected Toll System Integrator(s) pre-approved by NCDOT, which approval will not be unreasonably withheld. The Toll System Integrator(s) may be a member of a Proposer team that was included in the SOQ or may be added to the Proposer team. In each case, the terms of this Section 2.11 shall apply. Proposers may submit more than one Toll System Integrator for pre-approval .

No later than the date specified in the Procurement Schedule, Proposer shall submit to NCDOT one electronic copy in Adobe (.pdf) format, one original and five copies of the qualifications of the proposed Toll System Integrator(s). The submittal shall set forth the experience of the proposed entity(ies), as applicable, in the planning, design, construction, testing, documentation, installation, integration, implementation, maintenance and operation of an Electronic Toll Collection System (“ETCS”) supporting Open Road Tolling (“ORT”) as described in Section 24 of the Technical Provisions. The qualifications shall include the past experience and present contracts of the Toll System Integrator(s) for toll facilities of a similar size, complexity and nature as the Project, and provide details, as to such toll facilities, on system hardware and software utilized, facilities management, system operations, system maintenance, and any other appropriate information related to the development, implementation and operation of the programs. The qualifications shall be no more than seven pages, in 12 point font.

NCDOT will review the qualifications and advise the Proposer as to whether any Toll System Integrator is pre-approved. NCDOT shall use reasonable efforts to respond to the submittal of the Proposer’s Toll System Integrator(s) within 10 Business Days after receipt thereof. If at least one Toll System Integrator is not pre-approved by NCDOT, Proposer shall submit a different candidate by the date set forth in the Procurement Schedule, and NCDOT shall use reasonable efforts to respond within 10 Business Days to the re-submission. It is the Proposer’s sole responsibility to ensure that pre-qualification of at least one Toll System Integrator occurs prior to the Technical Proposal Due Date.

2.11.2 Tolling Collection Services

A Proposer shall use NCDOT (acting through the North Carolina Turnpike Authority) for certain ETC Services, including Central Clearing House (“CCH”) and Customer Service Center (“CSC”) services in accordance with Exhibit 18 of the CA.

2.12 Non-Exclusive Relationship with Monoline Insurers and Rating Agencies

The market for monoline insurers and rating agencies is small enough that exclusive teaming arrangements between monoline insurers, rating agencies and Proposers would give Proposers in exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with monoline insurers and rating agencies.

2.13 Non-Exclusive Relationship with Bond Counsel and Multiple Lead Underwriter(s)

The market for North Carolina bond counsel with PABs experience is small enough that exclusive teaming arrangements between such entities and Proposers would give Proposers in exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with bond counsel.

With respect to Lead Underwriters, Proposers are allowed to enter into an exclusive relationship with a single Lead Underwriter. If a Proposer wishes to engage additional underwriters, such additional underwriters must be engaged on a non-exclusive basis.

2.14 Release of Exclusive Relationship with Lender(s), Lead Underwriter and Toll System Integrator

Each unsuccessful Proposer shall release its Lender(s), Lead Underwriter and Toll System Integrator of any exclusivity obligations no later than 5 days after being notified by NCDOT that NCDOT has executed the CA with another Proposer. Failure to satisfy the requirements of this Section 2.14 may result in forfeiture of the Proposer's Proposal Security under Section 4.7.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPTS; DRAFT TOLLING PLAN AND GP LANES PAVEMENT DESIGN REVIEWS; DESIGN EXCEPTIONS

3.1 Alternative Technical Concepts

To accommodate innovation that may or may not be specifically allowed by the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, Proposer has the option of submitting Alternative Technical Concepts (“ATCs”).

An ATC is a private query to NCDOT that requests a variance to the requirements of the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, that is equal or better in quality or effect as determined by NCDOT, in its sole discretion, and that has been used elsewhere under comparable circumstances.

Proposer may include an ATC in the Technical Proposal only if the ATC has been received by NCDOT and approved by NCDOT by the dates so designated in the Procurement Schedule.

Should NCDOT revise the RFP or issue an Addendum after a Formal ATC has been approved, Proposer shall be solely responsible for reviewing the RFP and determining if the ATC deviates from the revised requirements of the CA Documents. If necessary, Proposer must submit a request for approval of all additional required variance(s) within 10 Business Days after the revised RFP or Addendum distribution (as applicable).

An ATC shall in no way take advantage of an error or omission in the Technical Provisions, or other documents incorporated into the Technical Provisions by reference. If, at the sole discretion of NCDOT, an ATC is deemed to take an advantage of an error or omission in the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, the RFP will be revised without regard to confidentiality. If, at any time, NCDOT receives a question on the Project similar to a concept submitted in the form of a Preliminary ATC or Formal ATC, NCDOT reserves the right to revise the RFP without further regard for confidentiality.

Approval of any ATC in no way relieves Proposer of its obligation to satisfy (1) other requirements of the Technical Provisions not specifically identified in the ATC submittal; (2) any obligation that may arise under applicable Laws; (3) any obligation mandated by Governmental Entities as a condition of a Governmental Approval; and (4) all other conditions imposed in connection with the approved ATC.

3.1.1 ATC Submittals

Each ATC submittal shall include three individually bound hard copies and an electronic .pdf file of the entire ATC submittal, and shall be submitted to the Authorized Representative at the address specified in [Section 2.2.1](#), until the applicable last date and time identified in the Procurement Schedule for ATC submittals.

All ATCs shall be submitted with a cover sheet identifying Proposer and stating “I-77 HOT Lanes Project – Confidential ATCs.” Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP.

3.1.2 Formal ATCs

Each Formal ATC submittal shall include the following information:

(a) Description. A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information (including, if appropriate, product details (i.e., specifications, construction tolerances, special provisions) and a traffic operational analysis, if appropriate);

(b) Usage. Where and how the ATC would be used on the Project;

(c) Deviations. Express and specific references to all requirements of the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, including any Design Exceptions, and a request for approval of such deviation(s);

(d) Analysis. An analysis justifying use of the ATC and why the deviation to the requirements of the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, should be allowed;

(e) Impacts. Discussion of potential impacts, including on vehicular traffic, environmental impacts identified, community impact, safety and life-cycle Project impacts, and infrastructure costs (including impacts on the cost of operations, repair and maintenance);

(f) History. A detailed description of other projects where the ATC has been used, the success of such usage, and names and telephone numbers of project owners that can confirm such statements;

(g) Risks. A description of added risks to NCDOT and other entities associated with implementing the ATC;

(h) Costs. An estimate of the ATC implementation costs to NCDOT, Proposer, and other entities (i.e., right-of-way, utilities, toll system, mitigation, long term operations and maintenance);

(i) Operations. Any changes in operations requirements associated with the ATC, including ease of operations;

(j) Maintenance. Any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;

(k) Handback. Any changes in Handback Requirements associated with the ATC;

(l) Longevity. Any changes in the anticipated life of the item(s) comprising or affected by the ATC;

(m) Payments. A preliminary analysis of potential impacts on the Public Funds Amount or Concession Payment, as applicable; and

(n) Revenues. A preliminary analysis of potential impacts on Project revenue.

3.1.3 Review of ATCs

A panel will be selected to review each ATC, which may or may not include members of the Technical Review Committee. Proposer shall make no direct contact with any member of the review panel, except as may be permitted by the Authorized Representative. Unapproved contact with any member of the review panel will result in a rejection of that ATC and potential disqualification from the procurement.

NCDOT may request additional information regarding a proposed ATC at any time. To the extent reasonably possible, NCDOT will return responses to, or request additional information from, Proposer within 10 Business Days after receipt of the original submittal of a Formal ATC. If additional information is requested, NCDOT will use reasonable efforts to provide a response within 5 Business Days of receipt of all requested information.

NCDOT may conduct confidential one-on-one meeting(s) to discuss Proposer's ATC. Under no circumstances will NCDOT be responsible or liable to Proposer or any other party as a result of disclosing any ATC materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of NCDOT or their respective officers, employees, contractors, or consultants.

In the event that NCDOT receives ATCs from all Proposers that are deemed by NCDOT to represent the same concept, NCDOT reserves the right to modify the CA Documents without further regard for confidentiality.

3.1.4 NCDOT's Response to Formal ATCs

NCDOT will review each Formal ATC and will respond to Proposer with one of the following determinations:

(a) The ATC is approved (with or without conditions);

(b) The ATC is not approved;

(c) The ATC is not approved in its present form, but may be approved upon satisfaction, in NCDOT's sole discretion, of certain identified conditions that shall be met or certain clarifications or modifications that shall be made;

(d) The submittal does not qualify as an ATC but may be included in the Proposal without an ATC (i.e., the concept appears to comply with the requirements of the RFP and CA Documents);

(e) The submittal does not qualify as an ATC and may not be included in the Proposal;

(f) The ATC is deemed to take advantage of an error or omission in the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, in which case the ATC will not be considered, and the RFP will be revised to correct the error or omission.

(g) A question has been received outside of the ATC process on the same topic and the RFP will be revised to address that question; or

(h) The concept represented in the ATC has been submitted as ATCs from all Proposers and NCDOT has elected to exercise its right to revise the RFP. This response could also follow and supersede one of the other previously supplied responses above.

Only those deviations expressly included in an ATC that is approved or conditionally approved by NCDOT may be included in a Proposal. Deviations that are included within an ATC submittal, but which are not expressly and specifically referenced in the narrative submitted pursuant to Section 3.1.2(c) above, shall not be considered part of any approval or conditional approval by NCDOT. If an ATC is not approved pursuant to Section 3.1.4(c) or approved pursuant to Section 3.1.4(a) above, then Proposer may, at its option, resubmit an ATC to demonstrate that it has satisfied any conditions or made clarifications or modifications identified by NCDOT.

3.1.5 Formal ATC Inclusion in Technical Proposal

Proposer may incorporate one or more approved Formal ATCs as part of its Proposal. If NCDOT responded to a Formal ATC by stating that it would be approved if certain conditions were met, Proposer shall demonstrate in the Technical Proposal that these conditions have been met, or make a commitment in the Technical Proposal to meet those conditions and such conditions shall be incorporated into the CA Documents pursuant to Section 3.1.7.

In addition to outlining each implemented Formal ATC, and providing assurances to meet all attached conditions, Proposer shall also include a copy of the Formal ATC approval letter from the Authorized Representative in each copy of the Technical Proposals submitted. This letter will be included in the distribution of the Technical Proposals to the Technical Review Committee.

Approval of a Formal ATC in no way implies that the Formal ATC or the Technical Proposal will receive a favorable review from the Technical Review Committee. The Technical Proposals will be evaluated in regards to the evaluation criteria found in this ITP, regardless of whether or not Formal ATCs are included.

Except for incorporating approved Formal ATCs, the Technical Proposal may not otherwise contain exceptions to, or deviations from, the requirements of the RFP or the CA Documents, or other documents incorporated into the RFP or CA Documents by reference.

3.1.6 Preliminary ATCs

At Proposer's option, a Preliminary ATC submittal may be made that presents a concept and a brief narrative of the benefits of said concept. The purpose of allowing such a Preliminary ATC is to limit Proposer's expense in the pursuit of a Formal ATC that may be quickly denied by NCDOT.

To the extent reasonably possible, NCDOT will review Preliminary ATCs within 10 Business Days of submittal and provide written comments and one of the responses noted below. NCDOT's response to a Preliminary ATC submittal will be:

- (a) that the Preliminary ATC is denied;
- (b) that the Preliminary ATC would be considered as a Formal ATC if the Proposer so elects to pursue a Formal ATC submission;
- (c) that an ATC is not required;
- (d) a documented question has been received outside of the ATC process on the same topic and the RFP will be revised to address that question; or
- (e) that the ATC takes advantage of an error or omission in the Technical Provisions or other documents incorporated into the Technical Provisions by reference, in which case the ATC will not be considered and the RFP will be revised to correct the error or omission.

NCDOT in no way warrants that a favorable response to a Preliminary ATC submittal will translate into a favorable response to a Formal ATC submittal. Likewise, a favorable response to a Preliminary ATC submittal is not sufficient to include the ATC in a Technical Proposal.

3.1.7 Incorporation of ATCs in the CA Documents

Following notification of the Apparent Best Value Proposer, the ATCs that were pre-approved for acceptance by NCDOT and incorporated in the Technical Proposal by the Apparent Best Value Proposer shall be included in the CA Documents. If NCDOT responded to any ATC with a conditional approval or by stating that the ATC would be

acceptable if certain conditions were met, those conditions will become part of the CA Documents. The CA Documents will be conformed after notification of the Apparent Best Value Proposer, but prior to execution of the CA, to reflect the ATCs, including any NCDOT conditions thereto. Notwithstanding anything to the contrary herein, if Developer does not comply with one or more NCDOT conditions of pre-approval for an ATC or Developer fails to obtain a required third party approval for an ATC, Developer will be required to comply with the original requirements of the RFP and the CA Documents without regard to the ATC and without being entitled to a Change Order or other Relief Event.

ATCs from unsuccessful Proposers will not be disclosed by NCDOT to the Apparent Best Value Proposer until after execution of the CA. Following execution of the CA, ATCs from any unsuccessful Proposer may, in NCDOT's sole discretion, be presented to the Developer as a NCDOT Change Order in accordance with the CA; provided that NCDOT has paid the applicable unsuccessful Proposer the stipend.

3.1.8 ATCs Requiring Design Exceptions

If an ATC requires a Design Exception, NCDOT may approve the ATC, conditioned on Developer obtaining approval of the Design Exception after CA award at Developer's sole risk and expense. If NCDOT notifies Proposer of NCDOT's approval of such ATC, Developer may, at its sole election, seek approval of the Design Exception in accordance with Section 3.4, Proposer shall notify NCDOT in writing of such election after receiving NCDOT's conditional approval of the applicable ATC.

In the event that Proposer seeks approval of the Design Exception in accordance with Section 3.4, then Proposer waives any confidentiality with respect to such Design Exception and any supporting documentation, and such Design Exception may be disclosed to FHWA and other Proposers in accordance with Section 3.4. If such Design Exception is not approved 30 days prior to the Technical Proposal Due Date and provided that such Design Exception was not rejected, Proposer may include the applicable ATC as part of its Proposal, conditioned on Developer obtaining approval of the Design Exception after CA award at Developer's sole risk and expense.

NCDOT's conditional approval of an ATC requiring a Design-Exception shall not diminish or waive any of NCDOT's rights to review and reject the Design Exception as set forth in Section 3.4 nor NCDOT's rights to review and reject the Design Exception after CA award in accordance with Section 2.9.1 of the Technical Provisions.

3.2 Draft Preliminary Tolling Plan

Proposers shall submit a draft preliminary tolling plan for NCDOT's review of responsiveness to the requirements of the RFP pertaining to tolling regulations set forth in Exhibit 4 to the CA and Exhibit B, Section 6.4 of this ITP. Proposers must submit their plan by the applicable last date and time set forth in the Procurement Schedule. Submittals shall consist of the limits of Toll Segments, general location of toll gantries, and the location of HOV enforcement zones.

NCDOT shall use reasonable efforts to respond in writing to submittals within 10 Business Days after receipt of a complete submittal from the Proposer. NCDOT's response will indicate whether the draft preliminary tolling plan, as presented, appears to be responsive to the requirements of the CA Documents and the RFP or whether the submittal is non-responsive. Where the draft preliminary tolling plan is found non-responsive, NCDOT may reasonably attempt to identify the general areas of the submittal that are non-responsive, and at NCDOT's sole discretion, NCDOT may request that the plan be resubmitted if it is deemed non-compliant by NCDOT. If a resubmittal is requested, Proposer shall do so and NCDOT shall use reasonable efforts to respond within 5 Business Days to the re-submission. It is the Proposer's sole responsibility to ensure that the tolling plan complies with the requirements of the CA Documents and RFP and nothing contained herein, including any statement or indication that a draft preliminary tolling plan appears to be generally consistent to the requirements of the CA Documents and the RFP shall be binding or dispositive on NCDOT or limit, modify or waive any of the requirements of the CA Documents.

3.3 GP Lanes Pavement Design

Proposers shall submit a GP Lanes pavement design for any new full-depth pavement that will serve as General Purpose Lanes for NCDOT's review of responsiveness to the requirements of the RFP pertaining to the GP Lanes pavement designs set forth in Section 11.1 of the Technical Provisions. Proposers must submit their plan by the applicable last date and time set forth in the Procurement Schedule.

NCDOT shall use reasonable efforts to respond in writing to submittals within 10 Business Days after receipt of a complete submittal from the Proposer. NCDOT's response will indicate whether the GP Lanes pavement design for such new full-depth pavement that will serve as General Purpose Lanes, as presented, appears to be generally responsive to the requirements of the CA Documents and the RFP or whether the submittal is non-responsive. The GP Lanes pavement design shall include typical cross sections for asphalt and/or concrete and calculation sheets. Where the GP Lanes pavement design for such new full-depth pavement that will serve as General Purpose Lanes is found non-responsive, NCDOT may reasonably attempt to identify the areas of the submittal that are non-responsive, and at NCDOT's sole discretion, NCDOT may request that the plan be resubmitted if it is deemed non-compliant by NCDOT. If a resubmittal is requested, Proposer shall do so and NCDOT shall use reasonable efforts to respond within 5 Business Days to the re-submission. It is the Proposer's sole responsibility to ensure that the GP Lanes pavement design complies with the requirements of the CA Documents and RFP and nothing contained herein, including any statement or indication that a GP Lanes pavement design appears to be generally consistent to the requirements of the CA Documents and the RFP, shall be binding or dispositive on NCDOT or limit, modify or waive any of the requirements of the CA Documents.

The GP Lanes pavement design for such new full-depth pavement that will serve as General Purpose Lanes ultimately deemed by NCDOT as generally responsive to the

requirements of the CA Documents and the RFP shall be reflected in Proposer's Technical Proposal and shall be binding upon Proposer, unless otherwise approved by NCDOT. The Proposer may submit an ATC for the GP Lanes pavement design in accordance with Section 3.1.1.

3.4 Design Exceptions

NCDOT recognizes that certain Design Exceptions may be needed for the Project. As such, NCDOT and FHWA have entered into discussion with regards to providing Proposers certain conditional risk relief for certain Design Exceptions.

Approved Design Exceptions are listed in Section 2.9.1 of the Technical Provisions, with supporting documentation posted on the FTP Site. Other design exceptions currently under review by FHWA but not yet approved are also posted on the FTP Site.

Except as provided in Section 3.1.8, if Proposer intends to submit a Proposal that requires a Design Exception that is not listed in Section 2.9.1 of the Technical Provisions, Proposer shall seek approval of the Design Exception no later than 45 days prior to the Technical Proposal Due Date in accordance with this Section 3.4 and the process for approving Design Exceptions described in Section 2.9.1 of the Technical Provisions shall only apply to Design Documents developed after CA award or Design Exceptions that have been submitted as part of a conditionally approved ATC pursuant to Section 3.1.8.

Proposer shall submit to NCDOT all information, plans, data, reports and analyses required by NCDOT, in its sole discretion, to process the Design Exception, and Proposer waives all confidentiality with respect to the Design Exception and any information submitted in connection with the Design Exception or the approval thereof.

If the Design Exception is approved by NCDOT and FHWA on or before 30 days prior to the Technical Proposal Due Date, the Design Exception will be added to the list of approved Design Exceptions in Section 2.9.1 of the Technical Provisions via Addendum and all Proposers will be able to use the Design Exception in their respective Proposals.

Except as provided in Section 3.1.8, if Proposer submits a Proposal that requires a Design Exception that is not listed in Section 2.9.1 of the Technical Provisions, such Proposal may be deemed not responsive to the requirements of the RFP and may be excluded from further consideration.

NCDOT has no obligation to approve the Design Exception, and reserves the right, in its sole discretion, to discontinue the review and processing of the Design Exception at any time and for any reason.

SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY NCDOT

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, respectively.

4.1.1 Proposal Due Dates

The completed Technical Proposal shall be delivered to the Authorized Representative in sealed containers no later than the Technical Proposal Due Date. The completed Financial Proposal shall be delivered to the Authorized Representative in sealed containers no later than the Financial Proposal Due Date.

4.1.2 Signatures Required

The Technical Proposal Letter (Form A-1) and the Financial Proposal Letter (Form A-2) shall be signed in ink by all Equity Members, and shall be accompanied by evidence of signatory authorization as specified in Form A-1 and Form A-2, respectively.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words “Certified True Copy” and have the mark oversigned by Proposer’s designated representative. The over-signature can be undertaken by graphic reproduction.

4.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if NCDOT determines that Proposer did not follow the foregoing instructions. It is Proposer’s sole responsibility to see that its Proposal is received as required. Proposals received after the time due will be rejected without consideration or evaluation.

4.2 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits and forms, it may be considered non-responsive.

Each Proposal must be submitted in the format which is specified by NCDOT in the RFP. Proposer shall sign the original copy of the Proposal submitted to NCDOT. Multiple or alternate proposals or proposals with options may not be submitted.

Proposals may be considered non-responsive and may be rejected for any of the following reasons:

(a) If the Proposal is submitted in paper or electronic form other than that specified by NCDOT; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;

(b) If NCDOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including due to illegible text, omissions, erasures, alterations, or unauthorized additions;

(c) If multiple or alternate Proposals or Proposals with options are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a CA following award;

(d) If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided, and/or if requested information deemed material by NCDOT is not provided; and

(e) The Proposal contains a material alteration, as determined by NCDOT, in its sole discretion, to the ITP forms or exhibits, including any material alteration to the form of Proposal Security.

If a Proposal is deemed non-responsive, NCDOT may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

4.3 Format

The Proposal shall contain concise written material in Volumes 1 and 3 of the Technical Proposal and the Financial Proposal, and drawings in Volume 2, enabling a clear understanding and evaluation of the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Financial Proposal are essential. Volume 1 of the Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2.0. No page limit applies to Volumes 2 and 3 of the Technical Proposal or the Financial Proposal (excluding the financial executive summary), and associated appendices, dividers, tables of contents and exhibits; however, NCDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8 ½ by 11-inch format (1/2 inch margins) is required for typed submissions and an 11 by 17-inch format is required for drawings in Volume 2, except that folded design drawings that depict interchanges may be submitted in a format not to exceed 22 by 34 inches with a scale of 1 inch – 100 feet.

Submittals must be bound in a binder, and those submittals having page limitations must be sequentially numbered. Printed lines may be single-spaced. The use of 11 by 17-inch (or larger for interchange designs) foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17–inch foldout included in Volume 1 or Volume 2 will be considered one page.

4.4 Additional Requirements for Proposal Delivery

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

4.4.1 Technical Proposal

The Technical Proposal shall be contained in three volumes, as more fully described in Exhibit B:

- (a) Volume 1 - Executive Summary, Narrative and Resumes
- (b) Volume 2 - Preliminary Plans, and appendices
- (c) Volume 3 – Administrative Materials and Forms, and appendices.

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more CD-ROMs, DVDs or flash drives and the envelopes described in Section 4.4.2, shall be packaged in a single container, clearly addressed to NCDOT as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for the NCDOT I-77 HOT Lanes Project.” Proposer shall provide **one (1) original and 15 certified copies** of the Technical Proposal (except (i) (A) for the Proposal Security, which shall be provided in accordance with Section 4.4.2; and (B) one (1) original certified copies of all roll form technical drawings that are required under Exhibit B, Section 5.0 and (ii) that only 10 copies of the executed contracts, term sheets or heads of terms described in Section 7.2 of Exhibit B to this ITP are required). The containers that include the required hard copies of the Technical Proposal shall be labeled “Copies of Technical Proposal for the NCDOT I-77 HOT Lanes Project.”

The electronic copy shall be in a searchable Adobe (.pdf) format on CD-ROM(s), DVDs or flash drives; provided, however, that (a) scanned documents containing signatures do not have to be in a searchable format; (b) Proposal forms may be submitted in either Adobe (.pdf) or Word format, and (c) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership

agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.4.2 Proposal Security

One original and three certified copies of the Proposal Security shall be provided with the Financial Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the NCDOT I-77 HOT Lanes Project.”

4.4.3 Financial Proposal

The following components of the Financial Proposal shall be delivered to NCDOT as specified below:

(a) One original and three certified copies of the Financial Proposal (excluding the components identified in Section 4.4.3(b)), together with one electronic copy on a CD-ROM, DVD or flash drive of the Financial Capacity Information and Financial Plan in either Adobe (.pdf) or Word format. The documents shall be included in a sealed container labeled “[Proposer Name]: Financial Proposal for the NCDOT I-77 HOT Lanes Project.”

(b) One or more sealed containers labeled: “[Proposer Name]: Financial Proposal for the NCDOT I-77 HOT Lanes Project – Financial Model” containing the following (see Exhibit C, Section 6.0):

(i) One original and 15 certified copies of the Financial Model output sheets and the Assumptions Book and Instructions Guide;

(ii) One electronic copy of the Financial Model on a CD-ROM, DVD or flash drive, including a summary document (as a clearly labeled document in either Adobe (.pdf) or Word format) identifying the names of all the workbooks and identifying their respective functions; and

(iii) One electronic copy of the Assumptions Book and Instructions Guide in either Adobe (.pdf) or Word format on a CD-ROM, DVD or flash drive.

4.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2013 dollars, such pricing shall be as of the Financial Proposal Due Date.

4.6 Withdrawals and Validity of Proposals

Proposer may withdraw its Proposal at any time prior to the time due on the Financial Proposal Due Date by means of a written request signed by Proposer or its properly authorized representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to

file a new Technical Proposal or Financial Proposal, provided that the Technical Proposal is received before the time due on the Technical Proposal Due Date and the Financial Proposal is received before the time due on the Financial Proposal Due Date, as applicable. Proposals shall be valid for a period of 210 days after the Financial Proposal Due Date, unless a Proposer, in its sole discretion, elects to extend the validity of its Proposal beyond such 210-day period. No Proposer shall withdraw its Proposal within this 210-day period, unless notified by NCDOT that: (a) no CA for the Project will be awarded by NCDOT pursuant to the RFP, (b) NCDOT has awarded the CA to another Proposer and has received the executed CA and other required documents, (c) NCDOT does not intend to award the CA to the Proposer; or (d) such Proposer is not notified during the 210-day period that NCDOT has selected the Proposer as the Apparent Best Value Proposer to enter into negotiations of the CA.

Notwithstanding the foregoing, if a Proposer's commitment for a Bank Debt Financing expires on or after 120 days after the Financial Proposal Due Date but before Commercial Close, then Proposer shall conduct negotiations with the Lender(s) from whom Proposer has obtained commitments to renew or extend their commitments to a date no earlier than 210 days after the Financial Proposal Due Date; provided, however, that Proposer shall not have any obligation to obtain such renewal or extension if Proposer, despite exercising good faith efforts, is unable to achieve successful negotiations with such Lender(s).

4.7 Forfeiture of Proposal Security; Relief from Obligation to Achieve Commercial Close by Specified Deadline

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security:

(a) If the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet any commitments made in its Proposal while the Proposal Security is required to be in effect;

(b) If the Proposer does not release its Lender(s), Lead Underwriter and Toll System Integrator from exclusivity pursuant to Section 2.14; or

(c) If the Proposer is selected as the Apparent Best Value Proposer and any of the following occur:

(i) Following notification from NCDOT that it is the Apparent Best Value Proposer, the Apparent Best Value Proposer fails to finalize the CA in good faith as defined in Section 6.1.1, unless such failure is directly attributable to (1) NCDOT's cancellation of the procurement or decision not to reach Commercial Close; provided that such cancellation or decision is not caused by the Apparent Best Value Proposer or (2) NCDOT requiring the Apparent Best Value Proposer to negotiate material changes from the form of CA Documents included in the RFP;

(ii) Following notification from NCDOT that it is the Apparent Best Value Proposer, the Apparent Best Value Proposer fails to provide the documents required under, or satisfy the conditions set forth in Sections 6.2.1 and 6.3.1, unless such failure is directly attributable to NCDOT's cancellation of the procurement or decision not to reach Commercial Close; provided that such cancellation or decision is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Apparent Best Value Proposer; or

(iii) Following notification from NCDOT that it is the Apparent Best Value Proposer, Commercial Close does not occur within 120 days from the date of NCDOT's report to the Joint Legislative Transportation and Oversight Committee, as required under applicable Law (or such later period as may be designated by NCDOT pursuant to ITP Section 1.6), unless such failure to close is directly attributable to:

(1) NCDOT's failure to provide timely responses to Post-Selection Deliverables in accordance with Section 6.2.2;

(2) NCDOT's failure to provide the Execution Documents and other NCDOT deliverables set forth in Section 6.3.2 after the Apparent Best Value Proposer's satisfaction of all conditions thereto and execution and delivery of the Execution Documents by the Apparent Best Value Proposer to NCDOT;

(3) Absence of concurrence in the award by FHWA (as required by Section 6.3), where such absence is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Apparent Best Value Proposer;

(4) NCDOT's cancellation of the procurement or decision not to reach Commercial Close; provided that such cancellation or decision is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Apparent Best Value Proposer; or

(5) NCDOT's failure to provide any other deliverable NCDOT is required to deliver to Developer as a condition precedent to Commercial Close or to take any other action required by NCDOT under the ITP as a condition precedent to Commercial Close, where such failure is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Apparent Best Value Proposer.

For purposes of this Section 4.7, the Apparent Best Value Proposer's obligation to achieve Commercial Close shall be satisfied when the Apparent Best Value Proposer has executed and delivered to NCDOT the CA and all documents in accordance with Section 6.3.1 and Section 6.3.2.

4.8 Acceptance of Delivery by NCDOT

NCDOT will provide a receipt for Proposals that are timely delivered to NCDOT as specified herein.

SECTION 5.0 EVALUATION AND DETERMINATION OF APPARENT BEST VALUE PROPOSER

NCDOT's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable Laws governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal (Technical Proposal and Financial Proposal) for responsiveness and pass-fail criteria, an evaluation of Volumes 1 and 2 of the Technical Proposal, an evaluation of the Financial Proposal and a best value determination. The steps in the process and evaluation criteria are set forth in Sections 5.2 through 5.10. The evaluation and selection process is subject to modification by NCDOT, in its sole discretion.

5.1 Organization of the NCDOT Evaluation Committees

Evaluation of Proposals will be conducted by NCDOT's Technical Review Committee ("TRC") and Financial Review Committee ("FRC"), with assistance from advisory groups, including an Administrative/Legal Advisory Group, a Technical Proposal Pass/Fail and Responsiveness Advisory Group, a Financial Proposal Pass/Fail and Responsiveness Advisory Group, a Technical Proposal Evaluation Advisory Group, and a Financial Proposal Evaluation Advisory Group.

The TRC and FRC will be comprised of representatives from NCDOT. The advisory groups will be comprised of representatives from NCDOT and other qualified individuals. The TRC and FRC may also be assisted by advisors, including NCDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the TRC and FRC in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from federal, state or other agencies with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to NCDOT conflict of interest control requirements.

The review of the Financial Proposal and Technical Proposals will be done independently and concurrently with one another. No NCDOT representative or advisor will be associated with both the TRC and FRC, with the exception of members of the Administrative/Legal Advisory Group.

5.2 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the relevant pass/fail and responsiveness advisory groups. They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposal that fails to achieve

a passing score on any of the pass/fail portions of the evaluation may be considered non-responsive and may not be eligible for recommendation for award. Responsiveness shall be assessed on the basis of overall responsiveness, with NCDOT retaining the sole discretion to disregard or waive minor irregularities, omissions, nonconformities and discrepancies.

Regarding the recommendations of the pass/fail and responsiveness advisory groups, the TRC and FRC may accept the recommendations provided by the advisory groups, may request the advisory groups to reconsider their recommendations, or may develop its own recommendations.

In the event that a Proposal contains or omits information that may potentially result in a “fail” determination, the Authorized Representative may request additional or clarifying information from Proposer prior to a final pass/fail determination.

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and the Proposer will be so advised. NCDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. NCDOT reserves the right to waive minor informalities, irregularities, discrepancies, omissions and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

5.2.1 Technical Proposal Pass/Fail Evaluation

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

(a) The Proposer has provided an executed DBE Commitment Certification (Form G).

(b) The information, certifications, signed statements and documents as identified in Exhibit B, Section 7.0 are included in the Technical Proposal and do not identify any material adverse information.

(c) The Technical Proposal contains the required materials as identified in Exhibit B, Sections 4.0, 5.0 and 6.0.

(d) If Proposer anticipates execution of the CA by a special purpose entity, Proposer has delivered either (i) pro formas of the special purpose entity organizational formation documents (i.e. certificate of formation/charter, bylaws/partnership agreement/operating agreement or (ii) indicative term sheets of such organizational formation documents, in either case that will be used to establish the entity should NCDOT select it as Apparent Best Value Proposer.

(e) If the Developer is to be a partnership, a joint venture, or other form of legal entity with joint and several liability of its members, Proposer has provided a letter signed by each Equity Member and any other member who will make up the Developer

indicating they accept joint and several liability for Developer's obligations under the CA Documents.

(f) Proposer has delivered executed contracts, or if a contract has not been executed, detailed, signed term sheets or heads of terms outlining the key commercial terms, between the Proposer (or proposed Developer) and (as applicable):

- Design-Build Contractor; and
- Lead O&M Contractor (unless the Proposer or proposed Developer will self-perform at least thirty percent of the value of the O&M Work and expressly so indicates).

(g) Proposer has provided a statement that the Major Participants, including Equity Members, and key personnel listed in the Proposer's SOQ have not changed since the Proposer's submission of the SOQ, or the Proposer has previously advised NCDOT of a change, NCDOT has consented to such change, and the Proposal attaches a true and correct copy of NCDOT's written consent thereto.

(h) The Proposer has received NCDOT's approval of the Pre-Proposal Submittals.

(i) Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement (Form I).

(j) Proposer has delivered either certificates of insurance policies evidencing proof of insurance coverages required by the CA Documents, or written evidence from an insurance company(ies), broker(s) or agent(s) indicating the signatories have read the CA Documents and insurance requirements set for the therein and that the entities required to obtain insurance under the CA Documents have the capability of obtaining such insurance in the coverages and under the conditions listed in the CA Documents.

5.2.2 Financial Proposals Pass/Fail Evaluation

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

(a) Based on the information furnished in response to Exhibit C, Section 4.0, Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that Proposer continues to have the financial capacity to develop, design, construct, operate, 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;
- iv. Ability to invest equity; and
- v. Other commitments and contingencies.

If NCDOT determines that a Proposer no longer appears to have the financial capability to fulfill its obligations under the CA Documents, it may offer Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to NCDOT.

(b) Proposer's Financial Proposal demonstrates the following:

- i. that it identifies sufficient financing for the Project, including all design, construction, operation, maintenance and Renewal Work;
- ii. that it is sufficiently developed and (1) has attracted sufficient commitment and/or support letters from the Lender(s) and Lead Underwriter(s), as applicable; (2) that the Lender(s) and Lead Underwriter(s), as applicable, have completed certain due diligence (i.e. legal, insurance, and technical due diligence) and (3) has attracted sufficient support and commitments from equity investors, in each case, to satisfy NCDOT that there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:
 - A. Execution and delivery of the CA;
 - B. Achievement of Financial Close;
 - C. Completion of the design and construction of the Project by the Substantial Completion Deadline set forth in the CA and in accordance with the CA requirements; and
 - D. Operation and maintenance of the Project throughout the Term in accordance with the requirements of the CA, including ETCS and Handback Requirements.
- iii. that it contains key milestones that are consistent with the Preliminary Project Baseline Schedule submitted pursuant to Exhibit B, Section 4.5 and the milestone deadlines set forth in Exhibit 7 to the CA.
- iv. that Proposer has received NCDOT's approval of the Lead Underwriter(s), bond counsel or Lead Underwriter's counsel (if bonds are used by the Proposer as part of its Financial Proposal).

(c) The Proposer's Financial Proposal includes TIFIA facilities in accordance with the TIFIA Term Sheet;

(d) The Proposer's Financial Proposal is likely to result in Financial Close and meets a minimum level of feasibility.

(e) Proposer has provided the required commitment and/or support letters evidencing the willingness of the Lender(s) and Lead Underwriter, as applicable, to provide funding pursuant to Exhibit C, Section 5.4.

(f) Proposer has provided assurance that private equity will be in place in the amounts required in order to fully fund the Project in accordance with Section 4.1.3.1 of the CA, including the required letters from Proposer's Equity Members and Financially Responsible Parties (if applicable) evidencing their commitment to provide equity funding pursuant to Exhibit C, Section 5.5.

(g) The Proposal is in compliance with the Toll Regulation attached to the CA as Exhibit 4.

(h) The Financial Proposal contains all the materials required by Exhibit C.

(i) The DRAM Aggregate Cap Amount is in compliance with the requirements set forth in Exhibit C, Section 7.3.

(j) Proposer has delivered a letter(s) of support from a qualified surety or bank/financial institution, or both (if applicable) for the Payment Bonds and Performance Security, as described in Exhibit C, Section 8.0.

(k) Proposer has delivered the Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit C, Section 9.1 or letter of credit that complies with the requirements of Exhibit C, Section 9.2.

If PABs are included as part of a Financial Proposal, approval of the issuance by NCDOT, in its role as conduit issuer, shall not be required as of the Financial Proposal Due Date in order for the Financial Proposal to be considered committed financing.

5.3 Best Value Determination

5.3.1 General

The best value determination will be based on the amount of the Concession Payment or Public Funds Amount (as applicable) and the Risk Adjusted DRAM Aggregate Cap Amount, adjusted for quality of the Technical Proposal. Proposers will provide both the nominal amount and net present value of the Concession Payment or Public Funds Amount as required in Form J. Net present value shall be calculated using 5% as the discount rate. The lowest Adjusted Proposal (largest negative number if any one or more Proposals results in a negative Adjusted Proposal or smallest positive number if all Proposals result in a positive Adjusted Proposal) will determine the Apparent Best Value Proposer and the ranking of Proposers.

The “Total Net Present Value of Concession Payment” from Box 4 of Form J will be entered into the formula below as a negative number and the “Total Net Present Value of Public Funds Amount” from Box 2 of Form J will be entered into the formula below as a positive number. The “DRAM Aggregate Cap Amount” from Box 5 of Form J will be entered into the formula below as a positive number.

$$\text{Adjusted Proposal (\$)} = [[\text{PFA or (CP)}] + \text{Risk Adjusted DRAM Cap}] - \text{TQC}$$

Where: CP = Total Net Present Value of Concession Payment, if applicable (\$)

PFA = Total Net Present Value of Public Funds Amount, if applicable (\$)

Risk Adjusted DRAM Cap = DRAM Aggregate Cap Amount (\$), multiplied by 0.15

TQC = Technical Score Quality Credit (\$), which is determined by multiplying the Technical Score x \$375,000

The Technical Score will range between 0 and 200 points.

5.3.2 Technical Score

After or concurrent with the pass/fail and initial responsiveness review, Volumes 1 and 2 of the Technical Proposal will be evaluated by the TRC, with assistance from the Technical Proposal Evaluation Advisory Group, based on the factors set forth below and as detailed within Exhibit B.

The Technical Score will be calculated based on the TRC evaluation score for the Volume 1 and 2 of the Technical Proposal as described in Section 5.4. The evaluation of the Technical Proposal will be divided into three parts: (a) General Project Management elements as further described in Section 5.4.1 (with a maximum of 25 points); (b) Design-Build Technical Solutions elements as further described in Section 5.4.2 (with a maximum of 100 points); and (c) Operations and Maintenance Technical Solutions elements as further described in Section 5.4.3 (with a maximum of 75 points).

5.4 Evaluation of Technical Proposal

The evaluation factors for Volumes 1 and 2 of the Technical Proposal are as follows:

- (a) General Project Management;
- (b) Design-Build Technical Solutions; and
- (c) Operations and Maintenance Technical Solutions.

5.4.1 General Project Management (maximum 25 points)

Objectives: An organization that is designed with clear lines of responsibility, appropriate personnel and well-defined roles that respond to the Project obligations. The General Project Management evaluation subfactors, presented in no specific order of importance or evaluation weighting, are:

- (a) Management structure and personnel;
- (b) Organizational systems;
- (c) Public information and communications management;
- (d) Environmental management;
- (e) DBE performance plan;
- (f) Schedule, cost control and risk management;
- (g) Safety; and
- (h) Quality management.

5.4.2 Design-Build Technical Solutions (maximum 125 points)

Objective: A well-defined and executable approach for design and construction that incorporates technical solutions with innovative features that achieve the obligations of the Project. The Design-Build Technical Solutions evaluation subfactors, in order of importance and evaluation weighting, are:

- (a) Roadway, bridges and surface structures and permanent drainage;
- (b) Construction sequencing and traffic management;
- (c) Erosion and sedimentation control;
- (d) Signing, delineation, pavement markings, signalization and lighting; and
- (e) ITS systems.

5.4.3 Operations and Maintenance Technical Solutions (maximum 50 points)

Objective: A well-defined and executable approach for operations and maintenance, providing a well operated and maintained facility responding to the needs of the Project, the adjacent communities and the traveling public. The Operations and Maintenance Technical Solutions subfactors, in order of importance and evaluation weighting, are:

- (a) HOT lanes tolling operations and ETCS performance;
- (b) Routine maintenance;
- (c) Renewal Work; and
- (d) Roadway operations.

5.5 Evaluation of Financial Proposal

After or concurrent with the pass/fail and initial responsiveness review, the Financial Proposal will be evaluated by the FRC, with assistance from the Financial Proposal Evaluation Advisory Group, to provide the applicable information from the Financial Proposal required to perform the calculations set forth in Section 5.3.1.

5.6 Requests for Clarification

NCDOT may, at any time, issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within three Business Days (or within such other time as specified by NCDOT) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, NCDOT.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.7 Proposal Revisions (Best and Final Offer)

NCDOT may, at any time after receipt of Proposals and prior to announcement of the Apparent Best Value Proposer, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). Only Proposers that submitted responsive Proposals will be permitted to submit Proposal Revisions. If Proposal Revisions are requested, NCDOT will follow the procedures for revised proposals described in 23 CFR Part 636. NCDOT may request Proposal Revisions with or without discussions as described therein from all Proposers that submitted a responsive Proposal. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revision. A Proposer may, but is not required to, respond to a request for a Proposal Revision. In the event a Proposer elects not to respond to a request for a Proposal Revision, such Proposer shall not be eligible for award of the CA, but (a) such Proposer shall remain eligible for the stipend (provided it has satisfied all other conditions thereto and eligibility requirements set forth in this ITP and the Stipend Agreement) and (b) the

Proposal Security shall not be subject to forfeiture and will be returned to such Proposer.

Upon receipt of Proposal Revisions, the TRC and FRC, with assistance from the Technical or Financial Pass/Fail and Responsiveness Advisory Groups, Technical Proposal Evaluation Advisory Group, or Financial Proposal Evaluation Advisory Group as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.8 Identification of Apparent Best Value Proposer and Announcement of Apparent Best Value Proposer

Once the TRC and FRC have determined an Adjusted Proposal value for each Proposal and assigned rankings to the Proposals based on the Adjusted Proposal, NCDOT will announce the Apparent Best Value Proposer and rankings of the Proposers. The Adjusted Proposal and scoring of each Proposer will be signed and sealed and put into escrow until execution of the CA. Within 5 Business Days after execution of the CA, NCDOT shall disclose the Adjusted Proposal and scoring of all Proposers.

5.9 Recommendation to Secretary of Transportation

If the CA Documents are finalized in a manner satisfactory to NCDOT, the Authorized Representative will provide a recommendation for award and execution of the CA to the Secretary of Transportation.

SECTION 6.0 FINALIZATION OF CA DOCUMENTS; POST-SELECTION DELIVERABLES; CONTRACT AWARD AND EXECUTION; POST AWARD ACTIONS

6.1 Finalization of the CA Documents; Post-Selection Process

6.1.1 Finalization of CA Documents

NCDOT will proceed with the Apparent Best Value Proposer to finalize the CA Documents. NCDOT may agree to finalize various aspects of the CA Documents with the Apparent Best Value Proposer, including aspects of the Proposal that will be incorporated into the CA Documents. By submitting its Proposal, each Proposer commits to enter into the form of CA Documents included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of CA indicates is required from the Proposal (e.g., ATCs).

If a CA satisfactory to NCDOT, in its sole discretion, cannot be finalized with the Apparent Best Value Proposer, NCDOT will formally end attempts to finalize the CA with that Proposer and take action consistent with the direction provided by the Secretary of Transportation. Such action may include (a) requiring the Apparent Best Value Proposer to enter into the form of CA Documents included in the RFP, without further discussions or variation except to fill in blanks and include information that the form of CA Documents indicates is required from the Proposal (e.g., ATCs); (b) rejection of all Proposals, or (c) proceeding to the next most highly ranked Proposal to finalize a CA with that Proposer in accordance with this Section 6.1.1 and applicable Law.

In the event NCDOT elects to commence finalization of a CA with a Proposer, such Proposer will be deemed to have failed to engage in good faith efforts to finalize the CA with NCDOT and shall forfeit its Proposal Security as set forth in Section 4.7 if Proposer fails to attend and actively participate in reasonably scheduled meetings with NCDOT or insists upon terms or conditions for any documents to be provided by Developer hereunder that are inconsistent with the CA Documents.

6.1.2 Financial Model Audit

As a condition precedent to award and execution of the CA, the Apparent Best Value Proposer shall cause a preliminary independent audit of the Apparent Best Value Proposer's Financial Model to be conducted by a firm engaged by the Apparent Best Value Proposer and approved by NCDOT (the "Model Auditor"), at the Apparent Best Value Proposer's sole cost and expense. Neither party will be entitled to any adjustment to the Public Funds Amount or Concession Payment based on the results of the model audit.

Copies of the preliminary audit report(s) and opinion(s) shall be co-addressed to NCDOT, and NCDOT shall be expressly identified therein as an entity entitled to rely upon such audit, subject to the Model Auditor's contractual caps on liability. The contract for such services may limit the Model Auditor's liability to NCDOT for the Model Auditor's opinion's failure to identify any error(s) in the Financial Model to five years

from completion of services and in an amount of no less than \$2,000,000; provided that such caps shall be effective only if the Model Auditor maintains professional liability insurance in the amount and for the duration of the cap. The Apparent Best Value Proposer shall cause the drafts or pro formas of the preliminary audit report(s) and opinion(s) to be delivered to NCDOT no later than 10 days after the date of announcement of the Apparent Best Value Proposer.

Prior to engaging the Model Auditor, each Proposer will provide NCDOT with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must include NCDOT as an additional insured and which must cover claims by NCDOT arising from any errors or omissions by the Model Auditor in connection with the model audit). The Model Auditor chosen by the Proposer must be unaffiliated with the Proposer and otherwise be free of any conflict of interest.

The information to be submitted by the Proposer to NCDOT pursuant to this Section 6.1.2 shall also include, at a minimum, the following: (a) the name and address of the proposed Model Auditor; (b) a list of transportation projects, grouped by geographic location, for which the proposed Model Auditor has provided model auditing services; (c) a list of the Model Auditor team members; and (d) a resume for each Model Auditor team member. The required information is a Pre-Proposal Submittal and shall be submitted by the deadline set forth in the Procurement Schedule. NCDOT shall use reasonable efforts to respond to the submittal of the Proposer's Model Auditor within 5 Business Days after receipt thereof. If the Model Auditor is not pre-approved by NCDOT, Proposer shall submit a different candidate by the date set forth in the Procurement Schedule, and NCDOT shall use reasonable efforts to respond within 5 Business Days to the re-submission. It is the Proposer's sole responsibility to ensure that approval occurs prior to the Technical Proposal Due Date.

The Proposer assumes the risk of errors, omissions, defects and deficiencies in its Financial Model. Any amendment to the Financial Model required due to the results of the Financial Model Audit will be implemented without any adjustment to the Public Funds Amount (if any), Concession Payment (if any) or revenue payment provisions. The Apparent Best Value Proposer shall also provide NCDOT with an opinion from the Model Auditor stating that the Financial Model is suitable for use in connection with the Compensation Event and/or Relief Event procedures set out in the Agreement. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with GAAP. This opinion, on which NCDOT shall be a co-addressee and expressly entitled to rely, may also result from an independent review of the Financial Model required by the Apparent Best Value Proposer's Lenders. The opinion is to be provided at the Apparent Best Value Proposer's cost.

The preliminary audit report(s) and opinion(s) required under this Section 6.1.2 shall be delivered in accordance with Section 6.3.1.

6.1.3 Market Interest Rate Adjustment

The interest rate adjustment will be based on the movement, if any, in the Benchmark Interest Rate(s) underlying the financing contained in Proposer's Financial Plan and Financial Model. The Benchmark Interest Rate(s) must be independently verifiable by NCDOT using Bloomberg U.S.-based screens or another independently verifiable source acceptable to NCDOT, as appropriate.

Proposers are instructed to use in their Financial Plans and Financial Models the appropriate Benchmark Interest Rate(s) based on the corresponding yield curve(s) provided by NCDOT in Attachment B of Exhibit C. Proposer shall use Table 7 of the Financial Plan Summary (Form R) to record and submit the applicable Baseline Interest Rate(s) using such yield curve(s) for each debt facility underlying the financing contained in the Proposer's Financial Plan and Financial Model based on the tenor of the debt facility(ies).

NCDOT will bear the risk and have the benefit of changes in Benchmark Interest Rates (either positive or negative) during the Interest Rate Protection Period in accordance with the CA Documents.

6.1.4 Credit Spread Adjustment

The credit spread adjustment will be based on the movement, if any, in the Benchmark Credit Spread(s). The credit spread adjustment will not provide any protection for changes in the margins associated with a bank financing solution.

No later than the date specified in the Procurement Schedule, each Proposer must submit to NCDOT for approval the Benchmark Credit Spread(s) that the Proposer intends to use in its Financial Model. Proposer shall use Table 6 of the Financial Plan Summary (Form R) for purposes of the Benchmark Credit Spread(s) submittal. As part of the Benchmark Credit Spread(s) submittal, Proposer shall provide the targeted indicative credit rating(s), approximate average life of the financing instruments, market comparables and/or other supporting data. No later than the date specified in the Procurement Schedule, NCDOT will provide written approval to each Proposer of the Benchmark Credit Spread(s) to be assumed in the Proposer's Financial Model; provided, however, that if NCDOT has a clarification or issue regarding a Proposer's submittal, NCDOT may extend the date by which it must approve the Benchmark Credit Spread(s) while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the credit spreads shall be included in the Proposal (and the delay in approval shall not affect the dates of the credit spread adjustment under the CA).

NCDOT will bear 100% of the risk and have 100% of the benefit of Credit Spread Fluctuations (either positive or negative) during the Credit Spread Protection Period up to the Maximum Available Funds in accordance with the CA. If Credit Spread Fluctuations result in an adjustment to the Public Funds Amount that exceeds the

Maximum Available Funds, then the Parties shall have the rights set forth in the CA Documents.

6.2 Post-Selection Deliverables

6.2.1 Documents To Be Submitted Following Notification of Apparent Best Value Proposer

As a condition precedent to award of the CA, the Apparent Best Value Proposer shall deliver the following to NCDOT within 15 days after notification that it is the Apparent Best Value Proposer, unless otherwise noted:

(a) Evidence of authority to transact business in the State of North Carolina for Developer, its Equity Members and each of the other Major Participants to the extent such entity will transact business in the State of North Carolina, dated no earlier than 30 days prior to the Financial Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in North Carolina along with a Certificate of Good Standing from the state of organization of the member; (ii) a Certificate of Good Standing from the North Carolina Secretary of State; or (iii) other evidence acceptable to NCDOT. Each such entity shall also provide a valid North Carolina business license.

(b) The name and qualifications of counsel to Developer that will provide the written opinion(s) of counsel pursuant to Section 6.3.1(c), which counsel(s) shall be subject to approval by NCDOT, in its reasonable discretion.

(c) Drafts of the deliverables identified in Sections 6.3.1 for pre-approval by NCDOT.

(d) If not delivered with the Technical Proposal pursuant to Exhibit B, Section 7.2, deliver copies of the final form of the Key Contract between Developer and Design-Builder and Developer and the Lead O&M Contractor (unless the Proposer or proposed Developer will self-perform at least thirty percent of the value of the O&M Work and expressly so indicates in its Proposal).

(e) Executed copies of the Intellectual Property Escrow Agreement(s) in the form attached hereto as Form Q (with such changes as agreed to by NCDOT, in its sole discretion).

(f) Delivery of the Cost and Pricing Data into escrow in accordance with the Intellectual Property Escrow Agreement(s).

(g) Delivery of the name and resume of Developer's Toll System Integrator Manager for NCDOT's approval that meets the qualifications set forth in Section 2.14 of the Technical Provisions.

(h) Delivery of the information required under clause (5)(vii) and (ix) of subdivision (f) of North Carolina General Statute § 136-18(39a), which shall be provided within 5 days after notification that it is the Apparent Best Value Proposer and shall be part of the report furnished to the Joint Legislative Transportation Oversight Committee under applicable Law.

6.2.2 NCDOT Comments On Post-Selection Deliverables

NCDOT shall provide comments on any Post-Selection Deliverable required to be delivered to NCDOT for review and/or approval hereunder within 10 Business Days after the date of NCDOT's receipt of such deliverable. NCDOT shall have three Business Days to review and respond to subsequent submittals of the deliverable.

6.2.3 Review of Escrowed Materials

NCDOT shall be entitled to access and review the Escrowed Materials of the Apparent Best Value Proposer following the notification thereof, such review to be jointly undertaken with the Apparent Best Value Proposer in accordance with the Intellectual Property Escrow Agreement. NCDOT's review shall assess the completeness and accuracy of the Escrowed Materials and NCDOT and the Apparent Best Value Proposer shall jointly develop and countersign a detailed index and catalogue of the contents of the Escrowed Materials. Completion of such review and indexation shall be a condition to award and execution of the CA.

6.3 Award, Execution and Delivery of CA

The following are conditions precedent to award of the CA: (a) successful finalization of the CA Documents, (b) concurrence in award by FHWA, as required, (c) receipt by NCDOT of all of the documents required to be provided prior to execution of the CA under this Section 6.3, (d) review and indexation of the Escrowed Materials in accordance with Section 6.2.3 above, (e) completion of the report to the Joint Legislative Transportation Oversight Committee as required under applicable Law; and (f) any other conditions to award expressly set forth in the ITP or otherwise mutually agreed to between NCDOT and the Apparent Best Value Proposer.

6.3.1 Documents To Be Delivered By Apparent Best Value Proposer

The Apparent Best Value Proposer shall deliver the documents listed below to NCDOT concurrently with the executed sets of the CA and other Execution Documents, as a condition to execution of the CA and the other Execution Documents by NCDOT. On or before the date that NCDOT delivers the execution sets of the CA and other Execution Documents to be executed in connection therewith to the Apparent Best Value Proposer, NCDOT shall notify the Apparent Best Value Proposer regarding the number of originals and copies of the documents listed below required to be delivered.

(a) If not previously submitted, a copy of the executed organizational documents for Developer, and, if Developer is a limited liability company, partnership or

joint venture, the articles of incorporation/certification of formation/charter of each member or partner of Developer. The executed organizational documents may not differ materially from the draft organizational documents or term sheets/heads of terms included with the Proposal.

(b) Evidence of approval of the final form of the CA Documents and of due authorization, execution, delivery and performance of the CA Documents by Developer and (if Developer is a joint venture) by its joint venture members. Such evidence shall be in form and substance reasonably satisfactory to NCDOT. If Developer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Developer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Developer is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (3) if there is no managing member, a resolution from each member certified by an appropriate officer of such member. If Developer 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.

(c) Written opinion or opinions from counsel for Developer, which counsel shall be approved by NCDOT (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the entity for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in North Carolina and the enforceability opinion shall be provided by an attorney licensed in the State of North Carolina), in substantially the form attached hereto as Form L (with such additional opinions as are reasonably requested by NCDOT, such changes as agreed to by NCDOT in its sole discretion, and such qualifications and assumptions as agreed to by NCDOT in its reasonable discretion); provided, however, that (1) the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware but who will issue an opinion under Delaware law and (2) opinions from multiple legal counsel are acceptable as long as the letters in the aggregate provide the opinions requested in Form L.

(d) Evidence that Developer and Major Participants under contract with Developer hold all licenses required for performance of the Work, except for any licenses which are not required to have been obtained as of such time.

(e) Copies of the Model Auditor's preliminary audit report(s) and opinion(s) of the Apparent Best Value Proposer's Financial Model.

(f) Copies of the executed Design-Build Contract, certified as accurate and complete by the Apparent Best Value Proposer.

(g) Copies of the executed contract between the Design-Build Contractor and Lead Design Firm (if applicable), certified as accurate and complete by the Design-Build Contractor.

(h) Copies of the executed contract between the Design-Build Contractor and Lead Contractor (if applicable), certified as accurate and complete by the Design-Build Contractor.

(i) Copies of the executed contract between Developer and Lead O&M Contractor (if applicable), certified as accurate and complete by the Apparent Best Value Proposer.

(j) Copies of the detailed, signed term sheets or heads of terms outlining the key commercial terms, between Developer and a Toll System Integrator that was pre-approved by NCDOT pursuant to Section 2.11.1.

(k) If the Performance Security will be in the form of a bond, a letter from a Surety licensed in North Carolina and listed on the Department of the Treasury's Listing and Approved Sureties (<http://fms.treas.gov/c570/c570.html>) and rated at least A minus (A-) or better by at least two of the Rating Agencies or rated Class VIII or better according to A.M. Best's Financial Strength Rating and Financial Size, signed by an authorized representative of such Surety as evidenced by a current certified power of attorney, committing to provide the Performance Bond in the form acceptable to NCDOT as described in the CA and penal sum as prescribed in the CA. If multiple Surety letters are provided, the Proposal (and each Surety letter) shall identify which Surety will be the lead Surety, such lead Surety expressly agreeing in its letter to fill such role. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award, issuance of NTP2 and execution and delivery of the CA; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the CA or the Technical Provisions prior to the date the Performance Bond is issued, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a Performance Bond, the Surety letter must commit to issuance of a Performance Bond on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's respective work under the Design-Build Contract or prime Contract.

(l) If the Performance Security will be in the form of a letter of credit, a letter from a bank or financial institution having long-term, unsecured debt ratings of not less than "A-/A3" from one of the Rating Agencies and with an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means, signed by an authorized representative as evidenced by a current certified

power of attorney, committing to provide a letter of credit as described in the form acceptable to NCDOT as described in the CA and for the stated amount as prescribed in the CA. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award, issuance of NTP2 and execution and delivery of the CA; provided, however, that the bank or financial institution may reserve in its letter the right to reasonably approve any material adverse changes made to the CA or the Technical Provisions prior to the date the letter of credit is issued, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a letter of credit, the bank or financial institution letter must commit to issuance of a letter of credit on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's respective work under the Design-Build Contract or prime Contract.

(m) A letter from a Surety licensed in North Carolina and listed on the Department of the Treasury's Listing and Approved Sureties (<http://fms.treas.gov/c570/c570.html>) and rated at least A minus (A-) or better by at least two of the Rating Agencies or rated Class VIII or better according to A.M. Best's Financial Strength Rating and Financial Size, signed by an authorized representative of such Surety as evidenced by a current certified power of attorney, committing to provide the Payment Bond in the form acceptable to NCDOT as described in the CA and penal sum as prescribed in the CA. If multiple Surety letters are provided, the Proposal (and each Surety letter) shall identify which Surety will be the lead Surety, such lead Surety expressly agreeing in its letter to fill such role. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award, issuance of NTP2 and execution and delivery of the CA; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the CA or the Technical Provisions prior to the date the Payment Bond is issued, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a Payment Bond, the Surety letter must commit to issuance of a Payment Bond on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's respective work under the Design-Build Contract or prime Contract.

(n) If required pursuant to Exhibit C, Section 4.0.3)(ii), guarantees from Guarantor(s) in the form previously approved by NCDOT.

(o) Financial Close Security in accordance with the requirements of Section 6.7.

(p) If the Design-Builder is a consortium, partnership or any other form of joint venture, evidence that the consortium, partnership or joint venture itself has been prequalified by NCDOT.

(q) Any other deliverables mutually agreed to by NCDOT and the Apparent Best Value Proposer as a condition to award or determined during pre-award finalization of the CA.

6.3.2 Execution of CA Documents

NCDOT will deliver to the Apparent Best Value Proposer four sets of execution versions of the CA and other documents to be executed by NCDOT in connection therewith (“Execution Documents”). The Apparent Best Value Proposer shall obtain all required signatures and deliver all of the execution sets to NCDOT within 7 days after receipt, together with the required documents described in Section 6.3.1. If Developer is a joint venture or a partnership, the CA must be executed by all joint venture members or general partners, as applicable.

Within 15 Business Days after NCDOT’s receipt of all such documents and satisfaction of all conditions precedent to award set forth in Section 6.3, NCDOT will execute such documents, retain two sets and deliver the remaining executed sets to the Apparent Best Value Proposer. NCDOT will also deliver to the Apparent Best Value Proposer a legal opinion from NCDOT’s legal counsel (which counsel may be the North Carolina Attorney General’s Office) in a form acceptable to the Proposer, in its reasonable discretion, regarding NCDOT’s authority to execute the Execution Documents to which NCDOT is a party and the enforceability against NCDOT of the Execution Documents to which NCDOT is a party. The CA will be executed by the Secretary of Transportation or his designee, on behalf of NCDOT, and award shall be deemed to have occurred upon NCDOT’s delivery of the fully executed sets to Proposer.

6.4 Debriefings

All Proposers submitting Proposals will be notified in writing of the announcement of the Apparent Best Value Proposer. Proposers may request a debriefing. If a debriefing is requested, debriefings shall be provided at the earliest feasible time after execution of the CA or at such earlier time as NCDOT, in its sole discretion, may elect. The debriefing shall be conducted by an NCDOT procurement official familiar with the rationale for the selection decision and CA award.

Debriefings shall:

- (a) Be limited to discussion of the unsuccessful Proposer’s Proposal and may not include specific discussion of a competing Proposal or how a competing Proposal was scored;
- (b) Be factual and consistent with the evaluation of the unsuccessful Proposer’s Proposal; and
- (c) Provide information on areas in which the unsuccessful Proposer’s Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the TRC or FRC, but may include a summary of the rationale for the selection decision and CA award.

6.5 Stipend

Except as set forth in this Section 6.5 and the Stipend Agreement, NCDOT will offer to pay a stipend for work product to Proposers that have executed the Stipend Agreement as follows:

(a) If NCDOT cancels the procurement between issuance of the final RFP and the Financial Proposal Due Date, NCDOT will pay a stipend in the amount of \$250,000 to each Proposer that NCDOT determines (i) is actively participating in the procurement (e.g., attending all required meetings, submitting questions on documents, etc.), (ii) has not withdrawn from the procurement and (iii) has not been disqualified at the time of cancellation. Such stipend shall be paid within 90 days after the cancellation of the procurement.

(b) NCDOT will pay a stipend in the amount of \$750,000 to each unsuccessful Proposer who submits a compliant and responsive Proposal. Such stipend shall be paid within 90 days of the award and execution of the CA or the cancellation of the procurement by NCDOT.

(c) If NCDOT cancels the procurement between notification of Apparent Best Value Proposer and award and execution of the CA, NCDOT will pay the Apparent Best Value Proposer a stipend in the amount of \$1,000,000 if the Apparent Best Value Proposer is in compliance with the post-selection requirements of the RFP and the cancellation has not been caused in whole or in part by the acts or omissions of the Apparent Best Value Proposer. Such stipend shall be paid within 90 days after the cancellation of the procurement.

After execution of the CA, Developer's rights to the stipend (if any) shall be as set forth in the CA.

Notwithstanding the foregoing, no stipend shall be payable to a Proposer in the following circumstances:

(1) If such Proposer has not executed and delivered the Stipend Agreement to NCDOT on or before 10 days after the date that NCDOT sends the Stipend Agreement to such Proposer (but in no event later than the Technical Proposal Due Date) with instructions to execute and return the Stipend Agreement to NCDOT;

(2) If such Proposer withdraws from the procurement;

(3) If such Proposer has not complied with the terms and conditions of the RFP;

(4) If such Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 6.5, including delivering an invoice within the time periods specified herein and the waiver and release as described herein;

(5) If such Proposer has filed a protest of, or otherwise challenges, the procurement process, award or cancellation of the procurement process and such protest or challenge is dismissed or otherwise unsuccessful in whole or in part; or

(6) If such Proposer was the Apparent Best Value Proposer and (i) it proceeds with commercial and financial closing or (ii) it fails to proceed with commercial or financial closing for any reason other than failure of one or more express closing contingencies that are set forth in the RFP or the CA, the failure of which do not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Proposer; or NCDOT's election to cancel the procurement after the Financial Proposal Due Date, which election does not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Apparent Best Value Proposer.

In order to receive payment, each Proposer must submit an invoice to NCDOT and must execute an irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against NCDOT, in the form attached as Form S. Upon receipt of the invoice and executed Form S from a Proposer, NCDOT agrees to and shall pay the stipend in accordance with this Section 6.5.

Each Proposer agrees that if it accepts the stipend, NCDOT shall have the right to and be entitled to use all work product submitted by such Proposer to NCDOT during the procurement (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) and any work product contained in its Proposal, in consideration for NCDOT's agreement to make payment as provided herein and in the Stipend Agreement, without any further compensation or consideration to Proposer.

If the stipend is accepted by a Proposer, NCDOT will have the right to inform the Apparent Best Value Proposer regarding the contents of the other Proposals after award and execution of the CA, and that the CA may incorporate the above-described work product. Upon Proposer's receipt of payment hereunder, this right shall extend to allow NCDOT to use such work product in the performance of its functions and liability with respect to such use shall be in accordance with the terms of the Stipend Agreement.

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Sections 6.1 and 6.2 be entitled to receive a stipend under this Section 6.5. Any ideas contained in such Proposer's Proposal will be the property of NCDOT without any requirement to make payment therefor.

Once executed, the Stipend Agreement shall constitute the irrevocable election by Proposer to accept the stipend in accordance with and subject to the terms of this Section 6.5 and the Stipend Agreement.

6.6 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before award and execution of the CA, including costs incurred for any interviews, payment owing to Proposer's Escrow Agent, costs associated with Post-Selection Deliverables and costs relating to the Commercial Close and finance process, shall be borne by Proposer, except for any costs paid in accordance with Section 6.5 and the Stipend Agreement.

6.7 Financial Close Security and Return of Proposal Security

In accordance with Section 6.3.1(o), the Apparent Best Value Proposer shall submit either: (a) a financial close bond in the form of Form K-3 from a Surety licensed in North Carolina, listed on the Department of the Treasury's Listing and Approved Sureties (<http://fms.treas.gov/c570/c570.html>), and rated at least A minus (A-) or better by at least two Rating Agencies or rated Class VIII or better by A.M. Best's Financial Strength Rating and Financial Size with an amount equal to \$15 million; or (b) a financial close letter of credit in the form of Form K-4 issued by a financial institution having long-term, unsecured debt ratings of not less than "A-/A3" from one of the Rating Agencies and has an office in the United States at which the letter of credit can be presented for payment, in the stated amount of \$15 million. Potential forfeiture and return of Financial Close Security is addressed in the CA.

Except for any Proposal Security which has been forfeited, the Proposal Security as to each unsuccessful Proposer will be returned to the respective Proposers upon the earliest to occur of: (i) the end of the 210-day Proposal validity period; (ii) Commercial Close; or (iii) cancellation of the procurement by NCDOT. The Proposal Security for the Apparent Best Value Proposer shall be returned at such time as (x) the Proposer has satisfied all conditions of execution and award of the CA, (y) the 210-day Proposal validity period, as may be extended by the Apparent Best Value Proposer, has expired, or (z) NCDOT cancels the procurement.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 sets forth the exclusive protest remedies available with respect to the RFP. These provisions prescribe the exclusive procedures for protests regarding:

- (a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed NCDOT's authority;
- (b) a determination as to whether a Proposal is responsive to the requirements of the Request for Proposals, as applicable; and
- (c) announcement of the Apparent Best Value Proposer and rankings.

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with NCDOT, following the procedures for those discussions prescribed in this Section 7.0. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to NCDOT's Authorized Representative. The written request shall include an agenda for the proposed one-on-one meeting. NCDOT will meet with the Proposer as soon as practicable to discuss the nature of the allegations. If necessary to address the issues raised in a protest, NCDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing addenda.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 45 days prior to the Technical Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five Business Days after the Addendum is issued (but in any event, prior to the Technical Proposal Due Date).

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five Business Days after receipt of the notification of non-responsiveness.

7.3.3 Protests concerning the issues described in Section 7.1(c) must be filed no later than ten Business Days after announcement of Apparent Best Value Proposer and rankings.

7.4 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient

detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to NCDOT's Chief Operating Officer with a copy to the North Carolina Department of Justice, 1505 Mail Service Center, Raleigh, NC 27699-1505, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained by contacting NCDOT's Authorized Representative.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. NCDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 Burden of Proof

The protestant shall have the burden of proving its protest. NCDOT may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 Decision on Protest

NCDOT's Chief Operating Officer or his designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest described in Section 7.4. If necessary to address the issues raised in a protest, NCDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 7.0, and expressly waives all other rights and remedies that may be available to Proposer under Law. These provisions are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section, it shall indemnify and hold NCDOT and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8.0 NCDOT RIGHTS AND DISCLAIMERS

8.1 NCDOT Rights

NCDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform Developer's obligations under the CA Documents.

In connection with the RFP, NCDOT reserves to itself all rights (which rights shall be exercisable by NCDOT in its sole discretion) available to it under the Statute, the P3 Policy and applicable Law, including without limitation, with or without cause and with or without notice, the right to:

- (a) Develop the Project in any manner that it, in its sole discretion, deems necessary;
- (b) Reject any or all of the Proposals;
- (c) Modify any dates set or projected in the RFP;
- (d) Cancel, modify or withdraw the RFP in whole or in part at any time prior to execution by NCDOT of a CA, without incurring any cost obligations or liabilities, except as otherwise provided in Section 6.5 of this ITP;
- (e) Terminate this procurement and commence a new procurement for part or all of the Project;
- (f) Terminate evaluations of Proposals received at any time;
- (g) Modify the procurement process (with appropriate notice to Proposers);
- (h) Waive or permit corrections to data submitted with any response to the RFP until such time as NCDOT declares in writing that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- (i) Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by NCDOT until such time as NCDOT declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- (j) Appoint personnel to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (k) Disclose information contained in a Proposal to the public as described herein;

- SOQ;
- (l) Approve or disapprove changes in the Key Personnel identified in the SOQ;
 - (m) Approve or disapprove changes in Proposer's organization;
 - (n) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
 - (p) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge;
 - (q) Request Proposal Revisions as specified herein;
 - (r) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the CA by a third party;
 - (s) Not pursue a PABs allocation, TIGER Discretionary Grant and/or the TIFIA credit approval on behalf of the Proposers;
 - (t) Not issue a notice to proceed after execution of the CA;
 - (u) Develop some or all of the Project itself;
 - (v) Disqualify any Proposer that violates the terms of the RFP; and
 - (w) Exercise any other right required by, reserved or afforded to NCDOT under the RFP, the P3 Policy and applicable Law, including issuing Addenda to the RFP to address changes to conform the RFP to applicable Law and address changes in the scope of the Project arising from the NEPA process.

8.2 NCDOT Disclaimers

The RFP does not commit NCDOT to enter into a contract. Except as expressly set forth in Section 6.5, NCDOT assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

Except as expressly set forth in the RFP, in no event shall NCDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the CA Documents, in form and substance satisfactory to NCDOT, has been authorized and executed by NCDOT and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Proposer is specifically acknowledging these disclaimers.

EXHIBIT A

DEFINITIONS AND ACRONYMS

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

“**Adjusted Proposal**” means the Proposal value determined pursuant to Section 5.3 which is used to determine the Apparent Best Value Proposal and rankings of Proposals.

“**Alternative Technical Concepts**” or “**ATCs**” has the meaning set forth in ITP Section 3.1.

“**Apparent Best Value Proposal**” means the Proposal of the Apparent Best Value Proposer.

“**Apparent Best Value Proposer**” means the Proposer with the Apparent Best Value Proposal.

“**Assumptions Book**” means the data book Proposers must submit with their Financial Models, pursuant to Section 6.4 of Exhibit C to the ITP, which must fully describe all assumptions underlying the financial projections within the Financial Model.

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

“**Authority Board**” means the board of the North Carolina Turnpike Authority.

“**Bank Debt Financing**” has the meaning set forth in Section 5.4 of Exhibit C to the ITP.

“**Board**” means the North Carolina Board of Transportation.

“**Bond Financing**” has the meaning set forth in Section 5.4 of Exhibit C to the ITP.

“**Concession Payment**” has the meaning set forth in Section 7.2 of Exhibit C to the ITP.

“**Commercial Close**” means the execution and signing of the Comprehensive Agreement by Developer and NCDOT.

“**Cost and Pricing Data**” means the detailed back-up information regarding the basis for the Apparent Best Value Proposer’s cost estimates for design, construction, operations and maintenance of the Project, including copies of all offers and all data and information received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for

the Detailed Costing Form (Form N) and Financial Plan Summary (Form R) of its Proposal.

“**Design-Build Contractor**” means the entity entering into the Design-Build Contract with Developer.

“**DRAM Aggregate Cap Amount**” has the meaning set forth in Section 7.3 of Exhibit C to the ITP.

“**Equity Member**” means (a) each entity with a direct equity interest in Proposer (whether as a member, partner, joint venture member, or otherwise), and (b) each entity proposed to have a direct equity interest in Developer.

“**Execution Documents**” has the meaning set forth in ITP Section 6.3.2.

“**Financial Close Security**” means the bond or letter of credit as described in ITP Section 6.7.

“**Financial Model**” means the tool described at Section 6.0 of Exhibit C to the ITP that a Proposer will use to calculate projections in support of its Financial Proposal.

“**Financial Model Audit**” means the audit conducted in accordance with ITP Section 6.1.2.

“**Financial Plan**” means the information that Proposers must provide pursuant to Section 5.0 of Exhibit C to the ITP, which must describe the strength of financial commitments from Lenders and Lead Underwriters (as applicable) and equity investors in detail, including information about timing, amount, terms and conditions of each commitment.

“**Financial Proposal**” means that part of the Proposal described in Exhibit C to the ITP.

“**Financial Proposal Due Date**” means the submission deadline for the Financial Proposal to NCDOT, as set forth in ITP Section 1.6.

“**Financially Responsible Party(ies)**” has the meaning set forth in Section 4.0 of Exhibit C to the ITP.

“**Formal ATC**” means an ATC submitted pursuant to ITP Section 3.1.2.

“**FTP Site**” means the file sharepoint site for sharing and transferring information and documents to Proposers.

“**Instructions to Proposers**” or “**ITP**” means the documents and information contained in Volume I and described in ITP Section 1.5.1.

“**Lead Contractor**” shall mean the entity with primary responsibility of the construction of the Project.

“**Lead Design Firm**” shall mean the entity with primary responsibility of the design of the Project.

“**Lead O&M Contractor**” shall mean the entity with primary responsibility for the operations and maintenance of the Project.

“**Lead Underwriter(s)**” has the meaning set forth in ITP Section 1.8.2.2.

“**Lender(s)**” means at least one experienced project finance lenders (bank and/or financial institution) who are identified in Proposer’s Financial Proposal.

“**Major Participant**” means each Equity Member and (a) the Lead Design Firm; (b) the Lead Contractor; (c) the Lead O&M Contractor; and (d) a proposed Key Contractor.

“**Maximum Available Funds**” has the meaning set forth in Section 7.1.1 of Exhibit C to the ITP.

“**Model Auditor**” has the meaning set forth in ITP Section 6.1.2.

“**Post-Selection Deliverables**” means the documents identified in ITP Section 6.2.1.

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

“**Preliminary ATC**” means an ATC submitted pursuant to ITP Section 3.1.6.

“**Procurement Website**” means the website established for posting certain procurement documents and information as set forth in the ITP at: http://www.ncdot.org/doh/preconstruct/altern/design_build/.

“**Procurement Schedule**” means the procurement schedule posted on the FTP Site.

“**Proposal Revision**” has the meaning set forth in ITP Section 5.7.

“**Proposal Security**” means the proposal bond or letter of credit as described in Section 7.14 of Exhibit B to the ITP.

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

“**Public Funds Amount**” has the meaning set forth in Section 7.1.2 of Exhibit C to the ITP.

“**Reference Concept**” means the schematic plans for the Project provided as part of the Reference Information Documents.

“Reference Information Documents” means the documents and information included in Volume III and described in ITP Section 1.5.1.

“Request for Qualifications” or **“RFQ”** means NCDOT’s Request for Qualifications issued on February 15, 2012, as amended.

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

“Stakeholder” means entities that may have a stake in the Project by virtue of their location or funding, including the State of North Carolina, those organizations, cities, counties, and towns identified in ITP Section 2.2.3(d), USDOT, and FHWA, and their respective officers, directors, and employees.

“Statement of Qualifications” or **“SOQ”** means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by NCDOT.

“Stipend Agreement” means the agreement between NCDOT and Proposer, in the form of Form I to the ITP.

“Technical Proposal” means that part of the Proposal described in Exhibit B to the ITP.

“Technical Proposal Due Date” means the submission deadline for the Technical Proposal to NCDOT, as set forth in ITP Section 1.6.

“Technical Score Quality Credit” means the value of the quality credit attributable to the scoring of the Technical Proposal as defined in ITP Section 5.3.

“Toll System Integrator” shall mean the entity with primary responsibility for the installation and integration of the toll system for the Project.

For definitions of other initially capitalized terms, see the CA Documents and Article 101-3 of the Standard Specifications.

EXHIBIT B

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

Proposers shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E (except for appendices that may be included in the appropriate volume), and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

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

Evidence of signature authority shall be provided for all individuals signing forms. The additional information attachment to Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter and other submissions with the Proposal. Similar authorization shall be provided for all other signatories.

2.0 Format and Contents

The Technical Proposal shall be contained in three volumes, as more fully described in Exhibit B:

- (a) Volume 1 - Executive Summary, Narrative and appendices
- (b) Volume 2 - Preliminary Plans and appendices
- (c) Volume 3 – Administrative Materials and Forms, and appendices.

Volume 1 of the Technical Proposal shall be limited to an aggregate of 80 pages. The Executive Summary and the appendices to Volume 1 will not count against the 80-page limit.

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit E. Proposers must provide all the information set out in this Exhibit B, in the order prescribed in this Exhibit B, and tabbed, or otherwise conspicuously indexed, to the provisions of this Exhibit B. A copy of the checklist for the Technical Proposal shall be included in each volume of the Technical Proposal showing compliance with all the prescriptions for the Technical Proposal. Proposers shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal. The Technical Proposal shall not contain any information relating to the Project development costs or

the Public Funds Amount, Concession Payment or DRAM Aggregate Cap Amount, as applicable.

3.0 Technical Proposal

3.1 Volume 1

3.1.1 Executive Summary

The Executive Summary shall contain sufficient information for reviewers to become familiar with the Technical Proposal and Proposer's ability to satisfy the technical requirements of the Project. The Executive Summary shall not exceed 15 single-sided pages. It shall, at a minimum, include the following:

- (a) An explanation of the organization and contents of the Technical Proposal;
- (b) A summary of any changes to information provided in Proposer's SOQ;
- (c) A summary of all Major Participants and identification of any changes in Proposer's organization, Equity Members, and Key Personnel since submission of the SOQ;
- (d) A summary of the following:
 - 1. A summary of the proposed management, decision making, and day-to-day operational structure of Proposer;
 - 2. A summary of Proposer's approach to quality management of the Project throughout the Term;
 - 3. A summary describing Proposer's approach for working with NCDOT and third parties, including the approach to resolving conflicts;
 - 4. A summary of Proposer's approach to addressing public information, interactions and communications for the Project;
 - 5. A summary of Proposer's approach to satisfy the safety, environmental and DBE requirements of the Project;
 - 6. A summary of Proposer's Project schedule, key milestones, anticipated milestones for development, design, construction, and commencement of revenue operations, and maintenance of the Project;
 - 7. A summary of Proposer's approach for delivering the design and construction components of the Project;

8. A summary description of Proposer's plan and any innovative concepts, approved ATCs;
9. A summary of Proposer's approach to construction sequencing, traffic management and mobility during construction;
10. A summary of Proposer's approach to addressing tolling, including system integration and interoperability during the Term; and
11. A summary of Proposer's approach to operations, maintenance, renewal work and handback.

Each Proposer shall attach to the Executive Summary the following two organization charts:

- (i) A table indicating the roles of the Equity Members and Major Participants (other than Equity Members) and their shares of ownership of any joint venture or other entities; and
- (ii) A chart showing the relationship between any of the Equity Members and Major Participants (other than Equity Members) and any Guarantors and Financially Responsible Parties.

The table and chart shall not count towards the page limit for the Executive Summary.

3.1.2 General Project Management, Design-Build Technical Solutions, and Operations and Maintenance and Management Technical Solutions Narrative

The remainder of the narrative contained in Volume 1 shall address the General Project Management information contained in Section 4.0, the Design-Build Technical Solutions contained in Section 5.0, and the Operations and Maintenance Technical Solutions information contained in Section 6.0, and a narrative supporting the contents of Volume 2 of the Technical Proposal (plans and appendices).

3.2 Volume 2

Generally, Volume 2 shall contain the plan sheets that depict the Proposer's Design-Build Technical Solutions and Operations and Maintenance Technical Solutions providing, at a minimum, the information required under Section 5.0 and Section 6.0, respectively. Volume 2 shall not be used to provide additional narrative that is otherwise required in Volume 1. Volume 2, may, however, be used for supporting items, such as ATC letters and graphs.

3.3 Volume 3

Unless expressly provided otherwise, Volume 3 shall contain the Administrative Materials and Forms as required in Section 7.0 or other provisions of the ITP.

4.0 General Project Management

General Project Management shall set out Proposer's organizational structure and management approach to all Project activities including design, construction, traffic management, tolling, operations (including ITS), maintenance (routine and capital), quality, handback, documentation, DBE participation, scheduling, testing, auditing/reporting, risk analysis, and mitigation, user service and community outreach. Information presented shall apply to all phases of the Work. For tolling, operations, maintenance, and community outreach, the information presented shall be for the Term. The General Project Management approach shall address the information requested in Sections 4.1 through 4.8.

4.1 Management Structure and Personnel

The General Project Management approach shall describe the proposed overall Project management organization, identifying participating firms/organizations and individuals. It shall include:

- (a) An organization chart outlining the structure of Proposer's Project management organization (including the design, construction, operations, maintenance, tolling, and quality sub-organizations) and a description of the roles allocated, 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);
- (b) Information describing how each of the Key Personnel will fit into the organization, including a description of each key person's function and responsibility relative to the Project; and
- (c) Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants), and a description of Proposer's plan and overall ability to provide the experienced personnel, equipment, and facilities required to successfully complete all aspects of the Project on a timely basis and within any applicable time frames set forth in the CA Documents and/or the Technical Provisions.

4.2 Organizational Systems

The General Project Management approach shall describe the organizational systems to be used by the Proposer, and shall include:

- (a) A detailed description of how Proposer's team members and personnel will work together to provide a unified design, construction, operations, maintenance, and quality approach to all elements of the Work;
- (b) A description of Proposer's team decision-making process, how internal disputes between team members will be resolved, and how Proposer will avoid adverse impacts to the Project (cost, schedule, or quality) in the event of such disputes;
- (c) A description of the methods to be used to establish lines of communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel;
- (d) A description of how Proposer intends to communicate with and interface with NCDOT, its consultants, applicable third parties, and relevant federal, State, regional and local agencies (including submittals and reports);
- (e) A description of how the quality process will be structured for the Project, and how the quality process will function independently of design, construction, operations and maintenance;
- (f) A description of how the Proposer will meet and monitor the condition and operational performance of the Project; and
- (g) A description of how the Proposer will assure a seamless toll user experience and transportation experience throughout the Term.

4.3 Public Information and Communications Management

The public information and communications component of the General Project Management approach shall include:

- (a) A description of the qualifications and experience of the Public Information Coordinator; and
- (b) A description of the approach to addressing public information and communications for the Project.

4.4 Environmental Management

The General Project Management approach shall describe the management approach to environmental compliance and permitting. The management approach shall include:

- (a) A description of the qualifications and experience of the Environmental Compliance Manager described in Section 2.14.1.8 of the Technical Provisions;

- (b) Identification of the environmental commitments, permits, mitigation, potential re-evaluations and documentation, necessary to complete the Project;
- (c) A description of the Proposer's methods to develop Environmental Permits, Issues and Commitment (EPIC) sheets and ensure those permits, issues and commitments are integrated into design, construction, operations and maintenance; and
- (d) Identification of the potential environmental risk and description of the approach to mitigate, eliminate or reduce those risks.

4.5 Preliminary DBE Performance Plan

The General Project Management approach shall include a Preliminary DBE Performance Plan describing how Proposer will comply with the DBE requirements for the Project. The Preliminary DBE Performance Plan shall include at least the following:

- (a) A description of the approach to achieving the DBE goal for the Project;
- (b) A description of the approach to encourage participation of DBE firms;
- (c) A description of the approach to outreach and assistance for potential DBE firms who are, or may be eligible to become certified, and participate as DBEs; and
- (d) A description of how Proposer will assist and support technical, management and business capabilities of participating DBE firms by incorporating mentoring, training and assistance efforts for DBE firms wishing to expand their capabilities.

4.6 Schedule, Cost Control, and Risk Management

The General Project Management approach shall describe the proposed Project schedule methodology, cost control and risk management, and include at least the following:

- (a) A description of the approach used for preparing, controlling and updating the Project Schedule, for calculating progress performance on a monthly basis, and preparing monthly payment requests;
- (b) A description of the approach used for preparing and updating the Schedule of Values;
- (c) A description of the approach to integrate subcontract activities into Proposer's scheduling and reporting system;

- (d) A description of the approach to managing resources and activities, both those of Proposer and subcontractors, in order to achieve the Project Schedule, and if necessary to recover schedule slippage;
- (e) A narrative describing the Preliminary Project Baseline Schedule. The Preliminary Project Baseline Schedule shall be included in the appendix to Volume 1 and follow the guidelines for the Project Baseline Schedule set forth in Section 2.2.1 of the Technical Provisions. The Preliminary Project Baseline Schedule shall be a high level Critical Path Method schedule representing the Proposer's plan for completing the Work in accordance with the milestone deadlines set forth in Exhibit 7 to the CA;
- (f) A narrative describing the preliminary Renewal Work Schedule. The preliminary Renewal Work Schedule shall be included in the appendix to Volume 1 and shall generally show the approach to scheduling the Renewal Work to indicate the timing of period maintenance activities, rehabilitation activities and other Renewal Work, planned capacity improvements, and planned upgrades from Final Acceptance until the end of the Term for the HOT Lanes;
- (g) A description of Proposer's document, cost control, and schedule management system to be used to control, review and coordinate the cost and schedule of the Work during the Term, including during design, construction, operations, and maintenance;
- (h) A description of Proposer's approach to utility coordination and scheduling of Utility Adjustments;
- (i) A description of Proposer's approach to furnishing Project Right of Way services and scheduling Project Right of Way acquisition; and
- (j) A description of the approach to identify, assess, manage, mitigate and allocate Project-specific risks. The Technical Proposal shall include at a minimum:
 - 1. Identification of significant risk categories, such as capacity, planning, design, construction completion, operations, maintenance, demand, inflation, financing, legislative policy, technology, and residual value;
 - 2. Description of the potential consequences of the identified risks;
 - 3. Description of the probability of identified risks;
 - 4. Proposed procedures and tools to conduct a risk sensitivity analysis; and

5. Proposed or desirable allocation of risks among Proposer and its team members.

4.7 Safety

The safety component of the General Project Management approach shall include:

- (a) A description of the preliminary Safety Plan meeting the requirements set forth in Section 23.1.4.3 of the Technical Provisions;
- (b) An industrial safety record on Form D for each Major Participant that will perform or supervise installation and/or construction Work for the Project, including information for any entity in which such team member holds a controlling interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture and have a controlling interest in such joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D. As used herein, “**controlling interest**” means the possession, directly or indirectly, of the power to cause the direction of the management of the entity, whether through voting securities, by contract, family relationship or otherwise. The completed Form D shall be included in the appendix to Volume 1; and
- (c) A description of how Proposer proposes to coordinate with governmental agencies on issues related to fire, security, and life safety.

4.8 Quality Management

The Quality Management approach shall describe Proposer's quality approach to design, construction, tolling, operation and maintenance for the Project, including at least the following:

- (a) For the design quality component, a description of the design deliverable process and a description of the internal process for design reviews, a description of quality assurance and quality control functions. The design quality component shall also present Proposers approach to reporting relationships and responsibilities, including NCDOT oversight procedures to be implemented; conformance with federal oversight requirements; how design quality management will be documented; and how changes will be made to correct design deficiencies; and
- (b) For the construction quality component, a description of the approach to acceptance testing and inspection, and how construction deficiencies and non-compliance issues will be documented and corrected. The

construction component shall also describe how the program will integrate with the design activities, including NCDOT oversight and all quality-related activities and conformance with federal oversight requirements.

- (c) For the tolling quality component, a description of the approach to self-monitoring degradation of the HOT Lanes as described in Exhibit 4 of the CA and conformance with interoperability requirements. The tolling component shall also present the Proposer's approach to the relationships and responsibilities with NCTA.
- (d) For the operations and maintenance quality component, a description of the approach to the self-monitoring program in order to ensure a safe and reliable roadway system with the main objective of maximizing public safety, reliability, roadway availability, and overall compliance with the Performance Requirements for operation and maintenance. The operations and maintenance component shall describe how the program will integrate quality assurance activities into daily oversight, including NCDOT oversight and quality assurance programs.

5.0 Design-Build Technical Solutions

Design-Build Technical Solutions shall present Proposer's approach to Design-Build Technical Solutions as required in Sections 5.1 through 5.5.

The Design-Build Technical Solutions shall include information identified herein relevant to Proposer's schematic and proposed approach to the topics identified, and that meet the requirements set forth, in Sections 5.1 through 5.5. Proposer's schematic shall be presented in 11 by 17-inch format, except that folded design drawings that depict interchanges may be submitted in a format not to exceed 22 by 34 inches with a scale of 1 inch – 100 feet.

Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number, and shall describe how the ATC is used and provide cross-references to other elements of the Technical Proposal that are affected by the ATC. Each Proposer shall also identify characteristics of its Technical Proposal and schematic which vary from NCDOT's Schematic (provided in the Reference Information Documents) or which exceed Project requirements. Further, Proposer may provide supporting documentation for the change outlining the overall benefits to the Project. Responsibility for changes in alignments or other elements proposed by Proposer's schematic is addressed in the CA.

5.1 Roadway, Bridges and Surface Structures, and Permanent Drainage

Roadway concepts shall include:

- (a) Proposer's pavement design including details of the proposed design method, material types, roadway classifications, traffic loading and design life considerations. The design year for such concept shall be 30 years;
- (b) A description and discussion on the Proposer's proposed design for the Project for the I-85/I-77 interchange and the extent to which the Proposer's proposed design for the Project will impede or facilitate (1) any future improvements to this interchange as depicted in the feasibility concept posted to the FTP Site and (2) future direct connectivity to managed lanes on I-85;
- (c) A description and discussion on the Proposer's proposed design for the Project for the I-277/I-77 interchange and the extent to which the Proposer's design for the Project will impede or facilitate any future improvements to this interchange as depicted in the feasibility concept posted to the FTP Site;
- (d) A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project;
- (e) A description of the Project design's impact on utilities and minimizing any costs thereof; and
- (f) Proposer's schematic, which shall include:
 - 1. General Project roadway information including Project limits, design speeds, functional classification(s), and minimum design values met;
 - 2. Project horizontal alignments including PI station/location, degree of curve, radius, length of curve, PC and PT (graphical location) and bearings;
 - 3. Project planimetrics including curbs and barriers, driveways, edge of pavement, and surface roadways' edge of shoulders;
 - 4. Directional arrows indicating the number of lanes;
 - 5. Project ingress/egress points;
 - 6. Project Toll Segments;
 - 7. Proposed Right of Way limits and control of access limits;
 - 8. Project profiles for "independent alignments" as defined in Section 10 of the Technical Provisions including existing/natural ground,

vertical clearance, grades, VPI station, vertical curve length and K-values; and

9. Typical sections including existing ground, pavement cross slope, super elevation, lane and shoulder widths, and slope ratio for fills and cuts.

Bridges and surface structures concepts shall include:

- (a) A description of the Voluntary Aesthetic Elements;
- (b) A description of bridges and surface structures (including representative permanent and sound barrier walls) for the Project; and
- (c) Proposer's schematic shall include:
 1. Sufficient detail to indicate bridge locations and limits, bridge types, foundation types, controlling vertical clearances, and typical span arrangements; and
 2. Preliminary wall types, proposed locations and limits for retaining and noise walls.

Permanent drainage concepts shall include:

- (a) Plans for the overall surface water collection system identifying the proposed location of major drainage trunk lines and outfall locations to accommodate the Project;
- (b) Exhibit drawing(s) defining the approximate limits of temporary construction easements and drainage easements necessary for completion of the Project drainage work; and
- (c) Plans for adequate cross slopes that ensure that no calculated hydraulic spread intrudes into the Travelway and that adequate design features are included to minimize the potential for hydroplaning.

5.2 Construction Sequencing and Traffic Management

The Technical Proposal shall include a description of the construction staging and traffic control and sequencing proposed to accommodate traffic during the construction of the Project. The construction traffic control shall include the following:

- (a) The overall traffic management and control and sequencing approach;
- (b) Conceptual construction staging diagrams including initial and ultimate proposed treatment of ramps and staging of major drainage trunk line(s);

- (c) A description of how business and residential accesses will be provided;
- (d) A description of how Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities and traveling public while still providing acceptable construction performance;
- (e) A description of the intended laydown, recycling, staging, disposal and maintenance locations to be used during construction; and
- (f) A description of how materials and equipment will be delivered to the Project along with general plans for complying with the hauling requirements and restrictions in Section 22.1.6 of the Technical Provisions.

5.3 Erosion and Sedimentation Control

The Technical Proposal shall provide a description of the drainage and erosion and sedimentation control for the Project. The information shall include a description of the approach to implementing and adhering to the requirements and obligations in the Erosion and Sedimentation Control Plan.

5.4 ITS Systems

The Technical Proposal shall include information pertaining to ITS systems, which shall include at least the following:

- (a) A schematic plan and layout showing the locations of ITS equipment, including cameras, DMS signs, traffic monitoring stations, and lane marking points;
- (b) A description of how the ITS system will be monitored and connected to area traffic management centers to maintain interoperability for monitoring and control of subsurface systems; and
- (c) A description of the approach to coordinating information with NCDOT and other ITS systems in the region.

5.5 Signing, Delineation, Pavement Markings, Signalization and Lighting

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

- (a) A preliminary operational guide signing schematic; and
- (b) A general description of the approach for striping, signalization and lighting of the facility.

6.0 Operations and Maintenance Technical Solutions

The Operations and Maintenance Technical Solutions shall present the Proposer's approach to roadway operations, routine maintenance, Renewal Work, and HOT Lanes tolling operations and ETCS performance as set forth in Sections 6.1 through 6.4. The approach should ensure safe and reliable roadway system with the main objective of maximizing public safety, reliability, and roadway availability. Proposer's schematic shall be presented in 11 by 17-inch format, except that folded design drawings that depict interchanges may be submitted in a format not to exceed 22 by 34 inches.

6.1 Roadway Operations

The Technical Proposal shall describe how the daily roadway operations functions will be handled including:

- (a) The approach for detection and response to Emergencies, hazardous weather, breakdowns, and accidents;
- (b) The approach for liaising and handling Incidents;
- (c) The approach to traffic management and operation of ITS systems;
- (d) A description of how the roadway's geometry and ingress/egress points will maximize safety and minimize the operational impact of the HOT Lanes on the General Purpose Lanes; and
- (e) A description of the approach to accident analysis and implementation of improvements to user safety.

6.2 Routine Maintenance

For routine maintenance, the following maintenance items shall be addressed, including:

- (a) A description of the approach used for life cycle cost analysis over the Term, including how material durability will be determined and price variation (i.e. future energy costs, future labor costs, etc.) will be assessed;
- (b) Details and locations of proposed maintenance yard(s) and facilities;
- (c) A preliminary list of specialized maintenance equipment proposed for use throughout the Term and any proposed use of NCDOT-owned facilities;
- (d) A description of the approach to supply and management of maintenance spare parts;

- (e) The approach to general sweeping, cleaning, and removal of debris, abandoned vehicles, graffiti, and other O&M Work required to be performed by Developer under the CA Documents;
- (f) The approach to traffic management during maintenance work;
- (g) The approach to inspection and testing of Project items, and the identification, classification and rectification of defects and inspection failures; and
- (h) A description of the system to be used for maintaining accurate as-built records, and records of inspections and maintenance activities for the O&M Work required to be performed by Developer under the CA Documents.

6.3 Renewal Work

The Technical Proposal shall describe the approach to Renewal Work, which shall include, at a minimum, the following items:

- (a) The processes that will be employed for developing a rolling program of major maintenance repairs and/or replacements for the HOT Lanes; and
- (b) A description of the approach to programming of works and costing and ensuring that Handback Requirements will be met.

6.4 HOT Lanes Tolling Operations and ETCS Performance

The Technical Proposal shall provide a preliminary HOT Lanes tolling plan, which shall include, at a minimum, the following items:

- (a) Documentation of pre-approval of the Toll System Integrator(s) pursuant to Section 2.11.1 of the ITP and of pre-approval of the preliminary tolling plan pursuant to Section 3.2 of the ITP;
- (b) The Proposer's approach for performance monitoring of the HOT Lanes and Electronic Tolling Collection System (ETCS);
- (c) The Proposer's toll collection methodology that includes a schematic plan showing toll zones, informational signing, and other pertinent information as well as the following:
 - 1. Limits of proposed Toll Segments;
 - 2. Typical cross sections;
 - 3. Access points locations and configurations;

4. Separation between General Purpose Lanes and HOT Lanes;
 5. Typical toll zone plan, including the locations of toll gantries, detectors, utility cabinets, and enforcement observation pads; and
 6. Location of enforcement zones.
- (d) Form U with the information required to complete Table B-1 of Exhibit 4 to the CA;
 - (e) The Proposer's preliminary approach to the ETCS Plan, including how the ETCS meets or exceeds the performance requirements. The description shall also include hardware and software specifications to describe all of the aspects of the system and its functionality;
 - (f) A description of the proposed secure network communications system;
 - (g) The Proposer's approach to interoperability. The information shall include at least the following:
 1. A description of how the Proposer would achieve interoperability with other in-State and out-of—State toll facilities, including E-ZPass® IAG;
 2. An explanation of the capabilities of the Proposer's system to read transponders of various manufacturers and in particular, the transponders used by NCTA, toll agencies in Florida, Georgia and South Carolina, and E-ZPass® IAG; and
 3. An explanation of any limitations to interoperability that may exist with the Proposer's systems, including issues of intellectual property.
 - (h) A description of the parameters to be used for setting, increasing, and decreasing tolls dynamically;
 - (i) A description of the approach to a seamless customer service experience, with NCDOT retaining ownership of the User account and other tolling services as more fully described in Exhibit 18 of the CA; and
 - (j) A description of the approach to marketing the HOT Lanes to potential Users.

7.0 Administrative Materials and Forms

All materials in Sections 7.1 through 7.14 shall be contained in Volume 3 unless otherwise noted. If a form required under this Section 7.0 calls for execution or

information concerning a Major Participant and that Major Participant is a joint venture (such as the Design-Build Contractor), the form must be provided for the joint venture and the individual members of the joint venture; provided, however, that execution of the form, if required, on behalf of the joint venture need only be by an authorized signatory of the joint venture.

7.1 Technical Proposal Letter, Organizational and Authorization Documentation

The Technical Proposal shall include the Technical Proposal Letter (Form A-1). Proposer shall attach to the Technical Proposal Letter evidence of authorization to execute and deliver the Technical Proposal, the CA and all other documents required to be executed by Proposer or Developer in connection with the CA, and shall identify its authorized representative(s), as set forth in further detail in the attachment to the form of Technical Proposal Letter at Form A-1. If Proposer is a consortium, partnership or any other form of joint venture, then the Equity Members of Proposer may each execute a single document authorizing a nominated and identified representative to execute documents on each of their behalf in respect of the Proposer.

The Technical Proposal shall include copies of the other organizational documentation described in further detail in the attachment to Form A-1.

7.2 Information About Proposer, Developer, Equity Members, Major Participants, and Other Contractors

- (a) The Technical Proposal shall include a completed chart on Form B-1 for Proposer and all Equity Members.
- (b) The Technical Proposal shall include a completed Form B-2, with further documentation required by Form B-2 (or with a sheet referring NCDOT to the information in the attachments to Proposer's Technical Proposal Letter).
- (c) The Technical Proposal shall include a completed Form B-3 providing information regarding (i) each Major Participant (excluding Equity Members that do not fall into clauses (a) through (d) of the definition of Major Participants); and (iii) all other Contractors identified by Proposer as of the Technical Proposal Due Date, including those included in Proposer's SOQ.
- (d) The Technical Proposal shall include copies of organizational documentation described in pages 6 through 8 of Form A-1 for Proposer, Developer and Equity Members, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or, if Proposer intends to form an affiliated entity to be Developer, Proposer shall provide a brief description

of the proposed legal structure and either (i) draft copies of the underlying organizational documents (described in pages 6 through 8 of Form A-1) or (ii) indicative term sheets of such organizational formation documents for such proposed entity.

- (e) If Proposer is a consortium, partnership or any other form of joint venture, the Technical Proposal shall contain an executed teaming agreement (or similar agreement) or, if the entities making up Proposer have not executed a teaming agreement, a detailed, signed summary of the key terms of the anticipated agreement.
- (f) If the Developer is to be a partnership, joint venture, or other legal entity with joint and several liability of its members, the Technical Proposal shall contain a letter signed by each Equity Member and any other member who will make up the Developer indicating they will accept joint and several liability for the Developer's obligations under the CA Documents.
- (g) The Technical Proposal shall contain executed contracts, or if a contract has not been executed, detailed, signed term sheets or heads of terms outlining the key commercial terms, between the Proposer (or proposed Developer) and (as applicable):
 - 1. Design-Build Contractor; and
 - 2. Lead O&M Contractor (unless the Proposer or proposed Developer will self-perform at least thirty percent of the value of the O&M Work, whereupon, for purposes of this Section 7.2(g)(2), Proposer shall include a cover sheet, executed by Proposer's or Developer's authorized representative (as applicable) affirmatively stating, and committing, that Proposer or Developer (as applicable) is self-performing thirty percent of the value of the O&M Work).

Each executed contract (or signed term sheet/heads of terms) shall include a cover sheet with a table orienting NCDOT to the location within such contract (or term sheet/heads of terms) where the Key Contract provision prescribed under Article 10 of the CA is located.

7.3 Responsible Proposer and Major Participant Questionnaire

The Technical Proposal shall include Form C, the "Responsible Proposer and Major Participant Questionnaire". The form may be signed by Proposer on its own behalf and on behalf of the Equity Members and other Major Participants, or it may be provided by Proposer on its own behalf, and the individual Equity Members and other Major Participants may provide their own form individually. The form executed by Proposer shall be signed by the same individual(s) who sign the Technical Proposal Letter. The forms signed by the Proposer, Equity Members or other Major Participant shall be

signed by an authorized representative of such Proposer, Equity Member or other Major Participant, as applicable, and the Technical Proposal shall include evidence of signature authorization for such individual.

7.4 Key Personnel

The Technical Proposal shall contain copies of resumes for each Key Personnel listed in this Exhibit B, Section 7.4 (which must contain the individual's qualifications and relevant work experience) and, for those individuals that were not included in Proposer's SOQ, contact information for two references for each individual. Resumes shall be contained in an appendix in Volume 1. Each resume shall be limited to 2 pages.

Key Personnel are the following individuals:

- (a) Project Executive (if different than the Project Manager)
- (b) Project Manager
- (c) Deputy Project Manager
- (d) Public Communication Manager
- (e) Design Manager
- (f) Pavement Designer
- (g) Construction Manager
- (h) Traffic Control Supervisor
- (i) Quality Manager
- (j) Environmental Compliance Manager
- (k) Operations and Maintenance Manager

The Technical Proposal shall identify the Key Personnel and shall include Form E identifying personnel work assignments, as well as a statement signed by Proposer and the employer of each designated key person, committing to maintain such individual's availability for and active involvement in the Project. Several of the Key Personnel positions are required to be full-time positions, as indicated in Section 2.14 of the Technical Provisions. The Technical Proposal shall contain, at this section, written confirmation from the employers of such persons that the persons identified for these positions will be committed exclusively to the Project and will have no other conflicting assignments during the periods indicated in Section 2.14 of the Technical Provisions. Refer to Section 2.14 of the Technical Provisions for the duties and the applicable minimum qualifications (if any) required for Key Personnel that were not previously

identified in the SOQ and the CA for information regarding time commitment requirements for Key Personnel and NCDOT rights if it is determined that any such personnel are not devoting sufficient time to the prosecution and performance of the work required for the Project.

Form E shall be signed by Proposer and the employer of each of the Key Personnel.

A Proposer may not make any changes in its Key Personnel identified in its SOQ except as provided in ITP Section 2.10.

7.5 Letter Approving Pre-Proposal Submittals

The Technical Proposal shall include the following:

- (a) NCDOT's approval letter of Proposer's Lead Underwriter(s), bond counsel and Lead Underwriter's counsel pursuant to ITP Section 1.8.2.2.
- (b) If Proposer's organization or Key Personnel has changed since submission of the SOQ, Proposer shall specifically describe such changes and, if applicable, include a copy of NCDOT's approval letter provided under ITP Section 2.10.
- (c) NCDOT's approval letter of pre-qualified Toll System Integrator(s) pursuant to ITP Section 2.11.
- (d) NCDOT's approval letter(s) regarding any ATCs used by Proposer in the Technical Proposal provided under ITP Section 3.1.1.
- (e) NCDOT's approval letter of the draft preliminary tolling plan pursuant to ITP Section 3.2.
- (f) NCDOT's approval letter of the GP Lanes pavement design pursuant to ITP Section 3.3.
- (g) NCDOT's approval letter of the Model Auditor pursuant to ITP Section 6.1.2.
- (h) NCDOT's approval letter of the Benchmark Credit Spreads pursuant to ITP Section 6.1.4.

7.6 Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification

The Technical Proposal shall include Form F, regarding non-collusion affidavit, debarment certification and gift ban certification. Form F shall be executed by Proposer and each Major Participant. Proposer and each Major Participant shall execute the applicable Form F based on its form of legal entity (i.e. corporation, partnership, etc.)

7.7 DBE Requirements

The Technical Proposal shall include an executed DBE Commitment Certification (Form G).

7.8 Use of Contract Funds for Lobbying Certification

The Technical Proposal shall include executed copies of Form H, regarding use of contract funds for lobbying. One copy of Form H must be executed by each of the Proposer, each Equity Member, and each Major Participant and any proposed contractors.

Form H should be modified and duplicated as needed and must be executed by Proposer, Equity Members, Major Participants, and all proposed Contractors identified by the Proposer as of the Technical Proposal Due Date.

7.9 Conflict of Interest Disclosure

Each Proposer, on behalf of itself and all entities on the Proposer's team, shall voluntarily disclose to the NCDOT, in writing, any facts that may provide it with an unfair competitive advantage and/or potential or actual conflict of interest. The Technical Proposal shall include a certification on Form I by Proposer, on behalf of itself and all entities on Proposer's team, describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. Each Proposer, on behalf of itself and all entities on the Proposer's team, shall complete and deliver a certification on Form I even if Proposer, on behalf of itself and all entities on the Proposer's team, has nothing to disclose, in which case, Proposer shall so indicate on Form I. If Proposer made a disclosure regarding conflicts of interest in its SOQ, Proposer shall complete and deliver the Form I certification, appending its RFQ response to Form I.

NCDOT may preclude or disqualify a Proposer from participation in the procurement and subsequent CA if the Proposer is deemed to have an unfair competitive advantage or a conflict of interest under applicable State or federal law.

7.10 Certification Regarding Equal Employment Opportunity

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

A Form P shall be provided by the Proposer, each Equity Member, Major Participant, and each proposed Contractor identified by the Proposer as of the Technical Proposal Due Date.

7.11 Insurance

The Technical Proposal shall contain certificates of insurance policies evidencing proof of insurance coverages as required by the CA, or written evidence from an insurance company(ies), broker(s) or agent(s). For the on-site, project-specific coverages, the signatories must indicate that the insurance company(ies), broker(s) or agent(s) have read the CA and insurance requirements set forth therein and that the entities required to obtain insurance under the CA have the capability of obtaining such insurance in the coverages and under the conditions listed in the CA.

7.12 Confidential Contents Index

A page executed by the Proposer that sets forth the specific items (and the section and page numbers within the Technical Proposal at which such items are located) that the Proposer deems confidential, trade secret or proprietary information protected by applicable Law. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for NCDOT to treat the entire Technical Proposal as public information. Notwithstanding the foregoing, the list required under this Exhibit B, Section 7.12 is intended to provide input to NCDOT as to the confidential nature of a Technical Proposal, but in no event shall such list be binding on NCDOT, determinative of any issue relating to confidentiality or a request under the Public Records Act or override or modify the provisions of the Public Records Act or NCDOT's responsibilities thereunder.

EXHIBIT C

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions and Financial Proposal Letter

This Exhibit C describes the submission format for financial proposals and outlines the required information that will comprise a Financial Proposal.

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

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

The Financial Proposal shall include the Financial Proposal Letter (Form A-2). Proposer shall attach to the Financial Proposal Letter evidence of authorization to execute and deliver the Financial Proposal, and shall identify its authorized representative(s), as set forth in further detail in the attachment to the form of Financial Proposal Letter at Form A-2. If Proposer is a consortium, partnership or any other form of joint venture, then the Equity Members of Proposer may each execute a single document authorizing a nominated and identified representative to execute documents on each of their behalf in respect of the Proposer.

2.0 Format of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts shall be clearly identified as real or nominal dollars.

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

3.0 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial terms are to be included in the Financial Proposal.

The required contents and organization of the Financial Proposal are presented in this Exhibit C and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit C. A copy of the checklist for the Financial Proposal shall be included in the Financial Proposal. The Proposer shall not

amend the order or change the contents of the checklist except to provide the required cross reference to its Financial Proposal.

4.0 Financial Capacity Information

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

The Financial Proposal shall include the following information for Proposer, all Equity Members, the Lead Contractor (if the Lead Contractor is a consortium, partnership or any other form of a joint venture, all such entities comprising Lead Contractor), any Guarantor and any Financially Responsible Party:

- Audited financial statements (in printed form and on a CD) for all periods subsequent to those included in the SOQs, audited by a certified public accountant in accordance with U.S. generally accepted accounting principles (U.S. GAAP) or International Financial Reporting Standards (IFRS).
- In addition, interim unaudited statements (in printed form and on a CD) for the period since the most recent completed fiscal year for the above entities are to be provided if interim unaudited statements are maintained by such entities.

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

- 1) Financial statement information must include:
 - i. Opinion Letter (Auditor's Report)
 - ii. Balance Sheet
 - iii. Income Statement
 - iv. Statement of Changes in Cash Flow
 - v. Footnotes audited by a certified public accountant in accordance with GAAP or IFRS.
- 2) Financial statements must meet the following requirements:
 - i. **GAAP/IFRS** – Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) or International Financial Reporting Standards (IFRS). If financial statements are prepared in accordance with principles

other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.

- ii. **U.S. Dollars** - Financial statements must be provided in **U.S. dollars**. If financial statements are not available in U.S. dollars, Proposer must include summaries of the income statements and balance sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.
- iii. **Audited** – Fiscal year end financial statements must be audited by an independent party qualified to render audit opinions (e.g. Certified Public Accountant). If audited financials are not available for the Proposer, an Equity Member, the Lead Contractor, Guarantor or Financially Responsible Party, the Financial Proposal shall include unaudited financial statements for such entity, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.
- iv. **English** – Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be accompanied with the original financial statement information.

3) Other information and requirements:

- i. **Newly Formed Entity.** If Proposer, an Equity Member, the Lead Contractor, Guarantor or Financially Responsible Party is a newly-formed entity, Proposer shall expressly state that such entity is a newly formed entity and does not have independent financial statements.
- ii. **Financially Responsible Party Letter of Support.** If Financial Statements of a parent company or affiliate company (“Financially Responsible Party”) are provided to demonstrate financial capability of an Equity Member, a letter from the Financially Responsible Party must be provided confirming that it will guarantee all the obligations of the Equity Member with respect to the Project and the form of guarantee to be used thereof, which form shall be subject to NCDOT’s approval; provided, however, if an Equity Member intends to fund its equity contribution in full at Financial Close or post a letter of credit to lenders at Financial Close to secure its

obligations to fund its equity contribution and evidence of the foregoing is provided to NCDOT, the foregoing guarantee shall not be required.

If a Financially Responsible Party was identified for the Lead Contractor in the SOQ, Proposer must provide a description of how that Financially Responsible Party will financially support the Lead Contractor and include copies of all documents intended to provide that support (guaranties, letters of credit, etc.).

- iii. **SEC Filings.** If any entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their latest annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.
- iv. **Credit Ratings.** Appropriate credit ratings must be supplied for Proposer, Equity Members, Lead Contractor, any Guarantor and any Financially Responsible Party, to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.
- v. **Material Changes in Financial Condition.** A letter from the chief executive officer, chief financial officer or treasurer for each of Proposer, Equity Members, Lead Contractor, any Guarantor and any Financially Responsible Party, either (a) providing information on any material changes in financial condition since submission of the SOQs and those that are pending or (b) certifying that no such material changes have occurred. Additionally, Proposers shall be required to provide updated financial information following the Financial Proposal Due Date about such entities as such information becomes public.

The following list identifies certain items that NCDOT would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of NCDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on

revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Material Changes

- A. An event of default or bankruptcy involving the affected entity or the parent company of the affected entity;
- B. A downward change in tangible net worth of 10% or more of shareholder or partnership equity;
- C. A sale, merger or acquisition exceeding 10% of the value of shareholder or partnership equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent company of the affected entity;
- D. A downward change in credit rating for the affected entity or parent company of the affected entity;
- E. Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders, partners or other third parties;
- F. The affected entity or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder or partnership equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 10% of its workforce or involving the disposition of assets exceeding 10% of the then shareholder or partnership equity; and

G. Other events known to the affected entity or parent company of the affected entity which represents a material change in financial condition since submission of the SOQs or may be pending for the next reporting period.

- vi. **Off-Balance Sheet Liabilities.** A letter from the certified public accountant, chief financial officer, treasurer or certified public accountant for each entity for which financial information is submitted, identifying all off balance sheet liabilities in excess of \$25 million in the aggregate.

The information required under this Exhibit C, Section 4.0 shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer's organization (i.e., Equity Member, Lead Contractor, etc.). Financial statements shall be provided in electronic, searchable PDF and Microsoft Word format, in addition to "hard-copy" submissions as part of the Financial Proposal.

5.0 Financial Plan

The Financial Proposal and Financial Plan will be based upon finance plans in accordance with, and as defined by, the terms of this Exhibit C at the Proposal stage (subject to the requirements below).

5.1 Financial Plan Executive Summary

The Financial Plan shall contain a short (no more than ten pages) Financial Plan Executive Summary outlining the Proposer's plan of finance and plan, schedule and approach to achieve Financial Close.

5.2 Identity of Financial Institution

The Financial Proposal shall identify the financial institution(s) that will provide any letter of credit required under the CA and its rating information. For the avoidance of doubt, this includes the Financial Close Security, Performance Security, and letter(s) of credit provided by Equity Members meeting clause (b) of the definition of "Committed Investment." The Financial Proposal will include a statement certified by the chief financial officer or treasurer of the Proposer that it will be able to obtain all required letters of credit. The Financial Proposal shall also identify at least one Lender and/or one Lead Underwriter.

5.3 Range of Financing Sources

Proposers shall describe their Financial Plan, which shall be fully developed and (as applicable to the Financial Plan) include the following:

- Senior debt finance;

- Mezzanine debt finance;
- Equity and quasi-equity finance (including subordinated debt or loan stock);
- Use of PABs (subject to the terms and conditions of ITP Section 1.8.2.2);
- Use of TIFIA; and
- Any other forms of finance.

The proposed Financial Plan shall also provide the following information:

- Identity of the investors and include commitments from Equity Members pursuant to the requirements this Exhibit C, Section 5.5;
- Identity of the Lender(s) and/or Lead Underwriter(s); and any other lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/commitments;
- Letters of commitment and/or support, as applicable, from the Lender(s), Lead Underwriter(s), other lead arrangers, lead managers and/or underwriting banks per the requirements of this Exhibit C, Section 5.4;
- If the Financial Plan includes a Bond Financing or a senior TIFIA loan (for which TIFIA will require an investment grade rating), a letter from two or more of the Rating Agencies providing an indicative investment grade rating, together with information on the assumptions used (e.g., traffic and revenue forecasts, quantum of debt, tenor, amortization) in establishing the rating, and confirmation by the Proposer and its financial advisor that the Financial Plan is based on the same structure as rated; provided that if the Proposer has not retained a financial advisor, Proposer shall state that it has not retained a financial advisor and such confirmation by a financial advisor shall not be required. If a DRAM facility is assumed by a Rating Agency to be utilized pursuant to Section 13.3 of the CA to achieve an investment grade rating, the amount of such DRAM facility shall be expressly stated in the letter from such Rating Agency;
- If applicable to a Bond Financing, identity of monoline insurers as well as a detailed term sheet setting forth the terms and provisions upon which the bond insurer will provide such insurance;
- Type and purpose of each funding source and facility;
- Average life of each debt facility;

- If the Financial Plan includes use of the DRAM facility, information on the assumptions used and the anticipated amounts of the DRAM that will be required;
- Evidence (i.e. letters) of input from legal counsel to the Lender(s) and/or Lead Underwriter(s) on the CA Documents and unconditional acceptance by the Lender(s) and/or Lead Underwriter(s) of the CA Documents in the form included in the RFP; and
- Proposed steps and timeframes for reaching Commercial Close and Financial Close, which must be consistent with the requirements of the CA Documents and this Exhibit C, Section 5.7.

5.4 Details for Lender(s) and Lead Underwriter(s) Commitment and Support Letters

This Exhibit C, Section 5.4 provides the requirements for commitment letters with respect to bank financings (a “Bank Debt Financing”) and support letters with respect to capital markets financing (a “Bond Financing”) included in a Proposer’s Financial Plan.

Proposer should consider Bank Debt Financings and Bond Financings or a combination thereof. PABs allocations can be assumed in the financing structure in accordance with ITP Section 1.8.2.2.

With respect to a Bond Financing, a letter from a Lead Underwriter whereby such Lead Underwriter agrees to purchase and sell equal to one hundred percent (100%) of the volume of bonds to be issued at market prices shall be deemed to be a letter of support from such Lead Underwriter. In the event that a Proposer has more than one Lead Underwriter, the aggregate volume commitments of the Lead Underwriters must equal 100% of the volume.

For each Bank Debt Financing and each Bond Financing included in the Financial Plan, Proposers shall provide a letter of commitment or letter of support, as applicable, from each Lender or each Lead Underwriter, as the case may be, that includes the following:

- With respect to a letter of commitment from each Lender, if applicable, confirming that certain due diligence has been completed (i.e. legal, insurance and technical due diligence), the CA Documents are acceptable in the form included in the RFP, final credit approval has been received subject only to completion of final credit documents and satisfaction of customary conditions precedent;
- With respect to a letter of support from each Lead Underwriter, if applicable, confirmation that certain due diligence (i.e. legal, insurance, and technical due diligence) has been performed, the CA Documents are acceptable in the form included in the RFP, final credit approval has been received subject only to

completion of final documentation and satisfaction of customary conditions precedent;

- A detailed term sheet providing terms and conditions, including, but not limited to, (i) interest rates specifying the base rate and applicable margins or spreads in respect of a Bank Financing, (ii) amounts in U.S. dollars of the facilities provided, (iii) customary conditions precedent to Financial Close, required documentation, (iv) principal covenants (affirmative and negative), financing security (including guarantees), (v) events of default, (vi) structural features, (vii) cover ratios, (viii) reserve accounts and the requirements with respect to such accounts, (ix) redemption/prepayment features, (x) drawdown schedule, (xi) capital repayment grace period, (xii) repayment schedule and final maturity date, (xiii) flow of funds, (xiv) representations and warranties, (xv) any proposed hedging arrangements in relation to interest rate risk, (xvi) arrangement and other fees, as applicable and (xvii) any other material terms and conditions relevant to the financing;
- A description of the fees payable to the Lender(s) and Lead Underwriter(s) as the case may be; and
- Any other material information that would be relevant to specific forms of debt finance.

5.5 Details of Equity Source and Equity Members Letters

For each equity source, Proposers shall provide:

- Identity of the investors. In cases where the equity is contributed by a fund, identify: (i) the date the fund was established; (ii) the total amount raised in the investment fund; (iii) the total amounts of undrawn and uncommitted funds available to be invested in the Project; (iv) confirmation that the Project is an eligible investment of the fund; (v) confirmation that the amount to be contributed does not exceed the maximum investment permitted by the fund bylaws, based on the amount raised in the investment fund as of the bid date; (vi) fund managers and general characteristics of the fund investors; and (vii) the percentage of participation;
- The amount of funds the equity provider is to commit and the timing of such subscription;
- The terms and conditions of the subscription, including dividend rights attaching to shares and/or repayment terms for shareholder loans, the extent to which funds are committed and the length of time funds will remain in the project vehicle; and

- If the total amount of equity finance (including quasi equity), is expected to change during the life of the Project, the terms and conditions of any further planned equity subscription, including the expected timing and amount, and whether this will be provided by the existing shareholders, partners or by third party investors.

The Financial Proposal shall include certified copies of the board minutes or other written evidence of approval of the contents of the Financial Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval. Sufficient documentation must be provided that provides appropriate assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding.

If a Financially Responsible Party or Guarantor has been identified for a Proposer or Equity Member and a guaranty is required pursuant to this Exhibit C, Section 4.0(3)(ii), the Financial Proposal shall include written confirmation from the Financially Responsible Party stating that it is willing to provide a guaranty in relation to the availability of equity/quasi-equity for the Project, and that it has adequate funds available.

5.6 Financial Advisor Letter; Review by Performance Security and Payment Bond Issuing Entities

5.6.1 Financial Model Format Requirements

The Financial Proposal shall include an opinion letter from Proposer's financial advisor (or if one has not been appointed by Proposer as of the Financial Proposal Due Date, by Proposer's chief financial officer or treasurer) indicating the debt funding is achievable and sufficient to fulfill Proposer's commitments as set out in the Financial Proposal.

5.6.2 Review by Performance Security and Payment Bond Issuing Entities

In instances where Proposer's response to Exhibit C, Section 4.0.3)(v) contains descriptions of proposed or anticipated changes in the financial condition of Proposer or any other entity for which financial information is submitted as required hereby for the next reporting period, Proposer shall include a certification by Proposer's bonding- and, if applicable, letter of credit-issuing entity/ies that the surety's/bank's/financial institution's analysis specifically incorporates a review of the factors surrounding such changes and identifying any special conditions which may be imposed before issuance of surety bonds for the Project. If Proposer proposes to deliver a letter of credit for the Performance Security, then a certification is required from both the Payment Bond surety and from the letter of credit-issuing bank or financial institution. For purposes of this Section 5.6.2, Proposer may append the letter(s) provided pursuant to Exhibit B, Section 7.8(f).

5.7 Schedule for Commercial and Financial Close

The Financial Plan shall include a schedule for completing activities and deliverables necessary to reach Commercial Close and reach Financial Close, taking into consideration the review period for deliverables set forth in ITP Sections 6.2.1 and 6.3.1 (as to Commercial Close) and Article 4 of the CA (as to Financial Close). The schedule shall reflect Proposer's estimated date for commercial close and Financial Close, which may not be after the last applicable deadlines set forth in ITP Section 1.6 (as to Commercial Close) and the CA (as to Financial Close).

5.8 Financial Plan Summary

Proposer shall submit its completed Financial Plan Summary (Form R) to NCDOT with the Financial Proposal. Table 6 of Form R must contain the Benchmark Credit Spread(s) that have been pre-approved by NCDOT pursuant to ITP Section 6.1.4 of the ITP. Table 7 of Form R must contain the Benchmark Interest Rate(s) pursuant to ITP Section 6.1.3.

6.0 Financial Model Submittal Requirements

6.1 General Financial Model Requirements

The format of the Financial Model is at the discretion of Proposers, but must comply with the requirements set out in this Section 6.0.

6.2 Financial Model Structure and Supporting Documents

6.2.1 Financial Model Format Requirements

Proposers shall submit a Financial Model. The Financial Model shall be compatible with Microsoft Excel Version 2003 or 2007 for Windows XP or later operating system. The file name of the Financial Model shall clearly identify the Financial Model version (e.g., I-77 Financial Model_001.xls) and shall change with each successive version of the Financial Model issued. Where additional Financial Models based on the same version are issued (i.e. where the additional Financial Model is generated by changing input cells only) the file name shall reflect that the same version is being used (e.g., I-77 Financial Model_001b.xls).

The Financial Model shall also contain as a minimum the following on a title page in a separate worksheet:

- Model name;
- Proposer's name;
- Model author;

- Version;
- Date (Financial Model date and run date);
- Key to formats (e.g. blue font for inputs); and
- Key to sheet names (i.e. “Inputs” for input sheets, “Calculations” for calculation sheets etc.).

Each output sheet of the Financial Model shall identify the Financial Model version and the date of issue.

No password protection may be included in the Financial Model (including password protected macros, or hidden rows columns, cells or sheets). The Financial Model shall be formatted to facilitate printing.

6.2.2 Financial Model Consistency

The Financial Model shall be consistent in all worksheets. There are two areas where consistency is most important:

- Columns – a column shall be used for the same time period in each of its occurrence in the Financial Model worksheets; and
- Rows – a row shall contain only one formula, copied across all columns.

6.2.3 Financial Model Integrity

All calculations shall be coded to provide exactly what they purport to represent, i.e. no balancing figures. Use of a macro is acceptable provided it is appropriately documented in the model and the Assumptions Book and is functional. For purposes of clarity, the Financial Model shall present all formulae, not simply “pasted values.”

6.2.4 Financial Model Linearity

The Financial Model shall calculate in one pass (i.e., no circular references). The model shall not utilize any “add-ins” other than those provided by Microsoft.

6.3 Financial Model Organization

6.3.1 Elements of Financial Model

The Financial Model shall have three distinct elements:

- Inputs – which shall include data and assumptions but no calculations;

- Calculations – individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculations sheets; and
- Outputs – no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

6.3.2 Financial Model Inputs and Specifications

Models shall be developed with reference to the following key inputs and assumptions:

- Specific Project Dates – All milestone dates for the Project set in the RFP shall be met;
- Periods – The Financial Model shall be constructed using monthly periods from Financial Close until Final Completion and semi-annual periods from Final Completion until two years after the end of the Term and shall use a 31st December reporting year end. The periods shall also be summarized and presented on an annual basis for major summary items (i.e. cash flow, debt facilities, etc.) using a December 31st reporting year end;
- Revenues – All demand and toll rate assumptions shall be clearly stated in the Financial Model, with supporting detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual revenue assumptions. While aggregate revenue estimates may be used as an input within the Financial Model, a detailed breakdown, supported by any traffic and revenue studies undertaken by Proposer, shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between demand, toll rates and toll revenues;
- Expenditure – All cost assumptions shall be clearly stated in the Financial Model, with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual cost assumptions. Where aggregate costs are used as an input within the Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between costs and the price of the service to NCDOT;
- Contingencies and Profit Margins – The Financial Model shall make clear where contingencies and profit margins at the Developer level have been included so that the financial evaluation can be based on an appropriate understanding of the levels of risk assumed by Proposers;

- Macroeconomic Assumptions – All macroeconomic assumptions used within the Financial Model shall be clearly stated;
- Inflation – If inflation indices other than CPI are used within the model (e.g., to inflate wages) then these shall be clearly stated as separate inputs;
- Generally Accepted Accounting Principles (GAAP) – The Financial Model shall be compliant with U.S. GAAP;
- Taxation Rates – The Financial Model shall use the appropriate rates for tax in force at the submission date; and
- Tax Allowances – The Financial Model shall clearly show the assumptions regarding tax allowances being claimed.

6.3.3 Financial Model Outputs

The Financial Model shall be provided and will include:

- A summary sheet which includes a sources and applications of funds statement for construction and operation periods, graphs of cover ratios, a profile of cash balances that confirms the financial feasibility of the Project, including all required reserves as prescribed by the Lender(s), and the Concession Payment or Public Funds Amount, as applicable, under the Financial Model and revenue sharing amount payable to NCDOT;
- Construction schedules, including (1) monthly sources and uses that include construction phase drawdown requirements, capitalized interest payable or accrued, fees payable or accrued, funding of reserves, source of capital funding for the monthly requirements, investment earnings; and (2) for each source of funding, monthly schedules showing beginning drawn and undrawn balances (funded or committed), construction draws, capitalized interest payable or accrued, fees payable or accrued, funding of reserves and ending drawn and undrawn balances;
- Financial statements (cash flow, sources and uses of funds, balance sheet and profit and loss), in nominal terms for each period;
- A schedule outlining calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;
- Cash cascade in order of seniority (consistent with the CA);
- Spreadsheet representing cash flow, to include revenues, expenses and Public Funds Amount or Concession Payment (as applicable), showing debt and equity payouts;

- Spreadsheet providing debt coverage ratios, loan life coverage ratio and project coverage ratio. If there are multiple tiers of debt, ratios must be provided for each tier;
- Spreadsheet representing repayment schedule for each financial component, any accretion schedules with a separation of principal and interest included;
- Internal rate of return on pre-tax and post-tax equity and quasi-equity/subordinated debt in both real and nominal terms and a blended equity return, incorporating all sub-senior debt finance;
- Debt to equity ratio for all periods, defined as the ratio of total debt to total equity and quasi-equity;
- Spreadsheet showing notional principal outstanding on a combined basis and separate in each period;
- Weighted average cost of capital (the average cost of equity and debt weighted by the prevailing proportions of debt to equity for the initial design and construction) at the project company-level over the Term;
- Net present value of construction costs, O&M costs, public funds and revenue payment, separately and in total, discounted to the Financial Proposal Due Date using a discount rate equivalent to the stated weighted average cost of capital. Additionally, any potential Public Funds Amount or Concession Payment will be stated in nominal amounts as well.
- For each annual period of each loan, show all actual and average ratios required by the Lender(s)/Lead Underwriter(s), including as a minimum, the debt service cover ratio and loan life cover ratio (being the net present value of future net cash flow available to service debt over the loan life including cash balances but excluding the balance of the lifecycle maintenance reserve, divided by the senior debt outstanding);
- Appropriate reserves as required by the Lender(s)/Lead Underwriter(s), which may include a debt service reserve account and a maintenance reserve account. NCDOT will expect the Financial Model to incorporate the benefit of interest earned on all project company cash balances;
- If a DRAM facility is assumed in the Financial Plan to be utilized pursuant to Section 13.3 of the CA, a spreadsheet showing the DRAM Aggregate Cap Amount and the year-by-year and aggregate profile of the annual draw amounts on the DRAM Aggregate Cap Amount as required by the Rating Agencies identified in the Financial Proposal in order to provide an indicative investment grade rating;

- If a Refinancing is assumed, any cashflows associated with such Refinancing; and
- The impact of all claims for tax allowances made by the project company.

6.3.4 Financial Model Functionality and Sensitivity Analysis

The Financial Model is to provide the ability to run pre-Financial Close sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:

- traffic and revenue;
- inflation rates;
- interest rates;
- capital costs; and
- operating cost, maintenance cost, renewal, replacement and rehabilitation costs.

The methodology for running such sensitivities shall be clearly defined in the model instructions guide submitted as part of the Financial Proposal.

6.4 Financial Model Assumptions Book

Proposers shall submit an Assumptions Book describing fully all the assumptions underlying the financial projections within the Financial Model and at a minimum include the items listed below:

- Dates as listed in the RFP;
- Assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs and revenue for each year;
- Forecast capital expenditure, presented in prices at the Financial Proposal Due Date and classified in accordance with the construction cost categories outlined in the Detailed Costing Form (Form N) and Financial Plan Summary (Form R);
- Tax and GAAP depreciation assumptions – split between the various categories of fixed asset;
- O&M costs, presented in prices at the Financial Proposal Due Date analyzed in the categories outlined in the Detailed Costing Form (Form N) and Financial Plan Summary (Form R);

- Traffic assumptions underlying the revenue forecasts;
- Average actual tolls for each year of the Term; and
- All financing assumptions, including but not limited to drawdowns, capital repayment moratoria, repayment schedules and maturity, refinancing assumptions and gains, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).

Any third party reports developed to support the revenue and cost estimates used in developing the financial offer shall be appended to the Assumptions Books.

6.5 Financial Model Instructions Guide

Proposers shall provide details of how the Financial Model operates.

The instructions shall include step-by-step instructions on the procedure to run and optimize the Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions shall also explain how to print the model.

6.6 Detailed Costing Form

Proposer shall complete the Detailed Costing Form (Form N), and include the completed form in the Financial Proposal.

7.0 Request for Public Funds; Offer of Concession Payment to NCDOT; Request for Developer Ratio Adjustment Mechanism; Revenue Payment

If Proposer is requesting public funds during the design and construction phase from NCDOT for the Project, then Proposer shall complete Sections A and B of the Financial Request/Offer Form (Form J) as described in Section 7.1. Alternatively, if Proposer is offering to make a Concession Payment to NCDOT for the Project or is otherwise not requesting public funds, then Proposer shall complete Section C of Form J as described in Section 7.2. If Proposer is requesting a Developer Ratio Adjustment Mechanism in accordance with Section 13.3 of the CA, then Proposer shall complete Section D of Form J as described in Section 7.3.

7.1 Request for Public Funds

7.1.1 Maximum Availability of Public Funds Amount

Up to \$170 million in U.S. nominal dollars of public funds (“Maximum Available Funds”) may be available to pay for the Project. The Public Funds Amount requested by Proposer shall not exceed the Maximum Available Funds on a cumulative basis based on the amounts and timing set forth below:

NTP2 + 12 months: \$68 million

NTP2 + 24 months: \$136 million

NTP2 + 36 months or greater: \$170 million

Thus, Proposer may request no more than \$68 million in the aggregate during the 12 month period after issuance of NTP2, no more than \$136 million in the aggregate during the 24 month period after issuance of NTP2, and no more than \$170 million in the aggregate during the 36 month or greater period after the issuance of NTP2.

The NTP1 Work will also be paid from the Public Funds Amount. Prior to Financial Close, up to \$15 million of the Public Funds Amount will be allocated to pay for the NTP1 Work in accordance with the CA.

7.1.2 Proposer's Public Funds Amount

Proposer shall indicate the maximum allowable nominal amount of public funds it may receive during each three month period during the design and construction phase of the Project by completing Sections A and B of the Financial Request/Offer Form (Form J). Proposer shall complete Form J based upon Proposer's Financial Model. The Proposer shall insert the aggregate total amount of public funds requested in Box 1 of Form J (the "Public Funds Amount").

The net present value of Proposer's Public Funds Amount (Form J, Box 2) will be used to calculate the Adjusted Proposal pursuant to ITP Sections 5.3.

7.1.3 Maximum Payment Curve

The Maximum Payment Curve in Form J shall be calculated using the cumulative three month totals of Proposer's Public Funds Amount (i.e., the first three months' Maximum Payment Curve amount will equal the first three months' Public Funds Amount, the six months' Maximum Payment Curve amount will equal the sum of the six months' Public Funds Amount, the nine months' Maximum Payment Curve amount will equal the sum of the nine months' Public Funds Amount, etc.). The Maximum Payment Curve will be attached to the executed CA as Attachment 3 to Exhibit 5.

Payment of the Public Funds Amount (if any) by NCDOT to Developer will be subject to the limitations set forth in the CA, including:

- (a) the Maximum Payment Curve; and
- (b) that NCDOT's payment represents a pro-rata share of the costs with equity and debt also contributed on a pro-rata basis (see CA Exhibit 5, Part E).

7.2 Concession Payment

If Proposer does not request a Public Funds Amount and/or offers to make a payment to NCDOT for the Project, then Proposer shall complete Section C of the Financial Request/Offer Form (Form J). The financial offer must be in the form of an upfront lump sum payment to NCDOT (the “Concession Payment”).

7.3 Request for Developer Ratio Adjustment Mechanism

Proposers may propose that up to \$75 million in U.S. nominal dollars in the aggregate be available from NCDOT to provide defined and limited financial support to the Project through the Developer Ratio Adjustment Mechanism, as described in more detail under Section 13.3 of the CA.

If a DRAM facility is assumed by the Rating Agencies to achieve an investment grade rating, Proposer shall insert the amount of the DRAM facility assumed in the Financial Plan in Box 5 of Form J (“DRAM Aggregate Cap Amount”), which amount shall not to exceed \$75 million in U.S. nominal dollars in the aggregate. If the amount of the DRAM facility stated in the letters from the Rating Agencies differ, Proposer shall insert the higher amount in Box 5 of Form J, subject to the \$75 million limit.

If a DRAM facility is not assumed by the Rating Agencies to achieve an investment grade rating, Proposer shall insert “0” in Box 5 of Form J.

7.4 Revenue Payment

Proposer shall complete the Revenue Payment Table (Form Q) for the Project.

8.0 Surety/Financial Institution Information

The Financial Proposal shall include the following information regarding the Payment Bond and Performance Security to be provided in accordance with the CA:

- (a) Name of surety (must be licensed in North Carolina and listed on the Department of the Treasury’s Listing of Approved Sureties (<http://www.fms.treas.gov/c570/c570.html>) and rated at least A minus (A-) or better by at least two of the Rating Agencies or rated Class VIII or better according to A.M. Best’s Financial Strength Rating and Financial Size) and the name and address of the agent.
- (b) Whether the listed Surety defaulted on any obligation within the past ten years, and, if yes, the details in the event of such default.
- (c) If the Performance Security is in the form of a letter of credit, the name of the bank or financial institution issuing the letter of credit must have long-

term, unsecured debt ratings of not less than “A-/A3” from one of the Rating Agencies.

- (d) A letter from the Surety (a) acknowledging and representing its rating and listing with the Department of Treasury’s Listing of Approved Sureties, (b) stating whether the Surety defaulted on any obligation within the past ten years (and if yes, listing the details of such event) and (c) indicating that the Surety has reviewed the CA Documents and is prepared to issue the Payment Bond and the Performance Bond (if Proposer intends to deliver the Performance Security as a Performance Bond) in the form(s) and amount(s) required by the CA. *The letter must specifically state, verbatim, that the Surety has read the RFP (including the ITP) and any addenda and has evaluated the backlog and work in progress for the entity for which it will provide the bonds in determining its willingness to issue the Payment Bond and the Performance Bond (if Proposer intends to deliver the Performance Security as a Performance Bond).* Separate letters for one or more of the individual Equity Members or other Major Participants are acceptable, as is a single letter covering all Proposer team members. If more than one letter is provided, each letter shall set forth the portion of the bond amount the Surety will be issuing; provided, however, that if multiple, separate letters are provided, one of the letters shall indicate that such Surety is the “lead Surety” with respect to any NCDOT claims upon the bond(s), and the remaining letters shall indicate concurrence that the named Surety is the “lead Surety” for purposes of NCDOT claims upon the bond(s).
- (e) If a letter of credit in lieu of the Performance Bond is proposed, then the Financial Proposal must include a letter from the bank/financial institution indicating a willingness to issue a letter(s) of credit in the form and amount required by the CA, covering the Developer’s obligations under the CA Documents. The bank/financial institution letter shall also state the unsecured debt rating of the issuing institution. If a letter of credit is proposed as Performance Security, Proposers must nonetheless meet the Payment Bond requirements with a surety bond, and NCDOT will not accept a letter of credit from Proposer for such requirements.
- (f) In instances where Proposer discloses in its Financial Proposal proposed or anticipated changes in the financial condition of Proposer or any other entity for which financial information is submitted as required hereby for the next reporting period, Proposer must provide a certification with the Surety’s letter under paragraph (d) above (and, if applicable, the bank’s/financial institution’s letter under paragraph (e) above) that the Surety’s/bank’s/financial institution’s analysis specifically incorporates a review of the factors surrounding such changes and identifying any special

conditions which may be imposed before issuance of surety bonds for the Project.

For purposes of clarity, the requirements above apply only with respect to Proposer's proposed Payment Bond and Performance Security should Proposer be selected as the Apparent Best Value Proposer and NCDOT and Proposer's Developer entity enter into the CA. The requirements above do not apply with respect to the surety providing the Financial Proposal Bond.

Furthermore, the Financial Proposal must include a letter from a Surety meeting the requirements in paragraphs (a), (b), (d) and (f) above. If the Performance Security is proposed to be a surety bond, then the surety letter must encompass both the Performance Bond and the Payment Bond. If the Financial Proposal proposes to provide a letter of credit for the Performance Security, then Proposer must include an additional letter in the Financial Proposal from the issuing bank/financial institution meeting the requirements in paragraphs (c) and (e) above. In such a case, the Financial Proposal must also contain a letter from a Surety meeting the requirements listed just above for the Payment Bond.

9.0 Proposal Security

The Financial Proposal shall include either a Proposal Bond or a Proposal Letter of Credit as specified below.

Forfeiture of Proposal Security in accordance with Section 4.7 of the ITP will constitute liquidated damages. By submitting its Financial Proposal, the Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate NCDOT for damages it will incur as a result of the Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Project, NCDOT's transportation improvement program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Financial Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that NCDOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Financial Proposal, Proposer agrees to such liquidated damages in order to fix and limit the Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer.

Except for any Proposal Security which has been forfeited, the Proposal Security will be returned to the respective Proposers pursuant to Section 6.7 of the ITP.

9.1 Proposal Bond

If a proposal bond is provided, it shall be in the amount of \$10 million and in the form of Form K-1 (“Proposal Bond”) and shall be issued by a surety licensed in North Carolina and listed on the Department of Treasury’s Listing of Approved Sureties (<http://fms.treas.gov/c570/c570.html>) and rated at least A minus (A-) or better by two Rating Agencies or rated Class VIII or better according to A.M. Best’s Financial Strength Rating and Financial Size. The Proposal Bond shall be subject to forfeiture in accordance with ITP Section 4.7, and shall be valid for no less than 210 days after the Financial Proposal Due Date.

9.2 Proposal Letter of Credit

If a letter of credit is provided it shall be in the amount of \$10 million, which shall be in substantially in the form of Form K-2 (“Proposal Letter of Credit”) issued by a financial institution having long-term, unsecured debt ratings of not less than “A-/A3” from one of the Rating Agencies and has an office in the United States at which the Proposal Letter of Credit can be presented for payment (including, if elected by Proposer to be an electronic or “paperless” letter of credit, by facsimile or by electronic means). The Proposer shall attach to each letter of credit (or present each electronic or “paperless” letter of credit) evidence of the issuer’s long-term unsecured debt rating current as of 30 days before provision of the Proposal Letter of Credit. The Proposal Letter of Credit shall be subject to forfeiture in accordance with ITP Section 4.7. Proposers may submit more than one Proposal Letter of Credit substantially in the form provided in Form K-2, provided that the Proposal Letters of Credit total \$10 million in the aggregate. The Proposal Letter of Credit submitted by a Proposer shall be subject to forfeiture in accordance with ITP Section 4.7, and shall be valid for no less than 210 days after the Financial Proposal Due Date.

10.0 Confidential Contents Index

A page executed by the Proposer that sets forth the specific items (and the section and page numbers within the Financial Proposal at which such items are located) that the Proposer deems confidential, trade secret or proprietary information protected by applicable Law. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for NCDOT to treat the entire Financial Proposal as public information. Notwithstanding the foregoing, the list required under this Exhibit C, Section 10.0 is intended to provide input to NCDOT as to the confidential nature of a Financial Proposal, but in no event shall such list be binding on NCDOT, determinative of any issue relating to confidentiality or a request under the Public Records Act or override or modify the provisions of the Public Records Act or NCDOT’s responsibilities thereunder.

11.0 Verification

Each Proposer shall satisfy itself as to the revenues, payments, costs and tax consequences of entering into the CA Documents and becoming the Developer. NCDOT makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, payments, costs or the consequences of federal, state, local or other income tax treatment of Developer under the CA Documents.

ATTACHMENT A
TIFIA TERM SHEET

[see attached]

This preliminary TIFIA Loan term sheet (the “Term Sheet”) represents an indicative statement of the United States Department of Transportation’s (the “Department”) general intent only and does not purport to be and does not constitute a binding agreement of the Department. The Department will not have any legal obligation under this Term Sheet and any legal obligation of the Department shall only arise if a subsequent formal written agreement (a TIFIA Loan Agreement and other documents required by the Department to govern, evidence and secure the TIFIA Loan) is agreed to, executed and delivered by the Department and the Borrower. It is expressly understood and agreed that as an accommodation to the North Carolina Department of Transportation (“NCDOT”), in connection with its competitive bid process to select a concessionaire for the Project that would become the borrower under the TIFIA Loan, the Department is making this Term Sheet available prior to the NCDOT’s selection of such borrower and such borrower’s presentation of a financing structure to the Department and prior to the Department’s completion of its creditworthiness and eligibility due diligence, and underwriting with respect to, among other items, the selected borrower and the financing structure. A final TIFIA credit instrument must be executed on terms and conditions acceptable to the Secretary of the Department, or the designee thereof. The reliance by any party on the terms of this Term Sheet shall be at the sole risk of such party, without any liability to the Department.

UNITED STATES DEPARTMENT OF TRANSPORTATION

Preliminary TIFIA Loan Term Sheet of Indicative Terms for financing of the

I-77 HOT Lanes Project

(TIFIA Application for Credit Assistance No. _____)

Capitalized terms used in this Term Sheet and not otherwise defined shall have the respective meanings ascribed thereto in the list of defined terms which is attached hereto as Schedule 1.

TIFIA LENDER	The United States Department of Transportation, acting by and through the Federal Highway Administrator, and its successors and assigns (the “TIFIA Lender”).
PROJECT	[The project consists of the design, construction, financing, operation and maintenance of the I-77 High Occupancy Toll (HOT) Lanes in North Carolina (the “Project”) .]
BORROWER	The Borrower shall be [●] (the “Borrower”), [a special purpose entity to be formed by the successful proposer selected for the Project by the NCDOT)].
EQUITY SPONSORS	[●] [and [●]] (collectively, the “Equity Sponsors” and each individually, an “Equity Sponsor”) shall make equity contributions in the Borrower in the amounts of \$[●] [and \$[●] respectively] under an equity contribution agreement (the “Equity Contribution Agreement”) to be executed on or prior to the effective date of the TIFIA Loan Agreement (the “Effective Date”).
INITIAL PRINCIPAL AMOUNT OF THE TIFIA LOAN	The loan (the “TIFIA Loan”) made pursuant to the TIFIA loan agreement (the “TIFIA Loan Agreement”) shall be in an amount not to exceed \$[●], provided that the maximum original principal amount of the TIFIA Loan shall not exceed the lesser of (i) 33 percent of reasonably anticipated Eligible Project Costs, as defined in the Act or (ii), if the TIFIA Loan does not receive an investment grade rating, the amount of the senior obligations existing on or as of the Effective Date (the “Initial Senior Obligations”).
TERM	Determination of the final maturity (“Final Maturity”) of the TIFIA Loan shall be based on the credit evaluation and the useful life of the asset being financed, but in no event shall such maturity be later than the earlier to occur of (x) the 35th anniversary of the projected Substantial Completion Date and (y) the estimated expiration of the useful life of the Project, consistent with § 603(b)(5) of the Act.
CREDIT RATINGS	Both the Senior Obligations and the TIFIA Loan must be rated investment grade by at least two nationally recognized rating agencies; Updated ratings on the TIFIA Loan and the Senior Obligations must be provided annually until the maturity of the relevant debt instrument.

TIFIA INTEREST RATE

The TIFIA Loan shall bear interest at a fixed rate (the “TIFIA Interest Rate”) calculated by adding one basis point (.01%) to the rate of securities of a similar maturity as published on the execution date of the TIFIA Loan Agreement in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the internet at <https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>; provided that the TIFIA Interest Rate shall not be less than the yield on 30-year United States Treasury securities as of such date.

Interest shall be computed on the outstanding TIFIA Loan balance (which shall include any past due interest and any capitalized interest) on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually.

DEFAULT RATE

If the Borrower fails to pay when due interest on or principal of the TIFIA Loan, the Borrower shall pay interest on such overdue amount from its due date to the date of actual payment at an interest rate of 200 basis points (2.00%) above the TIFIA Interest Rate (the “Default Rate”). Upon the occurrence of a Development Default or an abandonment of the Project, the interest rate on the entire outstanding balance of the TIFIA Loan, including past due payments and capitalized interest, shall be the Default Rate and shall continue to bear interest at the Default Rate until such Development Default is cured or the TIFIA Loan has been paid in full.

ELIGIBLE PROJECT COSTS

Eligible Project Costs shall be those costs defined in the Act as eligible for Federal participation, including eligible Project expenditures incurred by NCDOT during the three-year period preceding the application date of [insert application date]. Eligible Project Costs shall be verified by the TIFIA Lender and must be consistent with U.S.C. Title 23 for highways and Chapter 53 of Title 49 for public transportation, for third-party contracts, 48 C.F.R. Part 31.105 relating to construction and architect-engineer contracts and the cost principles in 48 C.F.R. Part 31.2.

PROJECT REVENUES

The TIFIA Loan shall be repayable in whole or in part from tolls, user fees, payments owing to the Borrower under a public-private partnership or other dedicated revenue sources that also secure or fund the Project obligations (collectively, the “Project Revenues”). Specific components of Project Revenues will be determined on a case-by-case basis during the credit evaluation process. Subject to the forgoing, Project Revenues may include (i) (A) all income, tolls, revenues, rates, fees, charges, rentals, fares, (B) availability payments, milestone payments and

termination compensation (each as defined in the Concession Agreement) or (C) other receipts derived by or related to the operation or ownership of the Project, including all amounts from joint development or leasing of air space lease rights; (ii) any revenues assigned to the Borrower and proceeds of the sale or other disposition of all or any part of the Project; (iii) all income derived from Permitted Investments; (iv) proceeds from business interruption and delay in start-up insurance policies, delay liquidated damages, loss proceeds not used to rebuild the Project, revenue from any third party concession or lease or contract, receipts otherwise arising or derived from or paid or payable in respect of the Project, and (v) all cash payments received by the Borrower under or in connection with any Hedging Agreements.

SECURITY AND PRIORITY

The TIFIA Loan shall be secured by a security interest in Project Revenues and liens and security interests in other Project assets. The TIFIA Loan may be subordinated to Senior Debt Service in the application of the cash flow waterfall (but will be deemed to be and will automatically be on parity in all respects with the Senior Obligations upon a Bankruptcy Related Event).

The flow of funds is shown below:

1. Operations and Maintenance Expenses;
2. Required Capital Expenditures;
3. Fees, costs and expenses due under the Senior Loan Agreement and the TIFIA Loan Agreement;
4. Interest portion of Senior Debt Service and related Hedging Obligations;
5. Principal portion of Senior Debt Service and Permitted Hedging Termination Obligations;
6. Interest portion of Mandatory Debt Service;
7. Principal portion of Mandatory Debt Service;
8. Deposits to the senior debt service reserve account if any;
9. Deposits to TIFIA Debt Service Reserve Account;
10. Mandatory prepayments of the TIFIA Loan;
11. Deposits to the Major Maintenance Reserve Account, if any;
12. Deposits to a hedging acquisition account, if any;
13. Interest portion of Scheduled Debt Service
14. Principal portion of Scheduled Debt Service;
15. Discretionary capital expenditures;
16. Voluntary prepayments of the TIFIA Loan, the Senior Obligations and the related Hedging Termination Obligations;
17. Deposits to the Distribution Lock-Up Account if the Restricted Payment Conditions have not been met;
18. Deposits to the TIFIA Sinking Fund; and
19. Deposits to the Distribution Account.

Any reserve balances except for those held in the TIFIA Debt Service Reserve Account may be utilized for any purpose which has priority over the funding of such reserve in the project flow of funds.

The TIFIA Loan Agreement will include requirements for any hedging contracts entered into in connection with the Senior Obligations.

BANKRUPTCY RELATED EVENT

Bankruptcy Related Event means, with respect to any entity, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such entity or any of its debts, or of a substantial part of the assets thereof, under any insolvency law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such entity or for a substantial part of the assets thereof, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) such entity shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two or more consecutive payments of Mandatory Debt Service, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any insolvency law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any insolvency law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; or (c) solely with respect to the Borrower, (i) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the collateral (other than the equity interests) may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the liens thereon securing the Senior Obligations, or (ii) all or a substantial part of the collateral (other than the equity interests) shall be transferred pursuant to a sale or disposition of such collateral in lieu of foreclosure; or (d) solely with respect to the Borrower, (i) the Collateral Agent shall commence a process

pursuant to which all or a substantial part of the equity interests may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the liens thereon securing the Senior Obligations, or (ii) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the equity interests shall be transferred pursuant to a sale or disposition of such collateral in lieu of foreclosure or (e) solely with respect to the Borrower, the Collateral Agent shall transfer, pursuant to directions issued by the agent for the Senior Lenders, funds or deposit in any of the Project Accounts upon the occurrence and during the continuation of an event of default under the Senior Loan Agreement or related documents for application to the prepayment or repayment of any principal amount of the Secured Obligations pursuant to the Collateral Agency Agreement or otherwise other than in accordance with the provisions of the Collateral Agency Agreement.

REQUIRED RESERVE FUNDS

The TIFIA Lender will require a 12-month debt service reserve account, a major maintenance reserve account, and other reserves and liquidity support including a ramp-up reserve, depending on the credit profile of the Project. The Borrower will be required to make deposits, which shall be determined on a case-by-case basis, to such reserve accounts in accordance with the flow of funds. Failure to fund the reserves to their required balances will be an event of default under the TIFIA Loan Agreement. Releases from the ramp-up reserve will be subject to TIFIA Lender's approval and sharing.

TIFIA SINKING FUND

If the Loan Life Coverage Ratio as of any Calculation Date is less than [1.35x], the Borrower shall, cause to be transferred from the Distribution Lock-Up Account to the TIFIA Sinking Fund Account, an amount that is equal to the lesser of (1) the amount that is estimated to be necessary to increase the TIFIA Loan Life Coverage Ratio as of each Calculation Date to not less than [1.35x] or (2) 100% of all funds on deposit in the Distribution Lock-Up Account as of such Calculation Date.

If, the TIFIA Loan Life Coverage Ratio is less than [1.35x] as of two consecutive Calculation Dates, monies on deposit in the TIFIA Sinking Fund shall be used for prepayment of the TIFIA Loan in an amount that is estimated to be necessary to increase such TIFIA Loan Life Coverage Ratio to [1.35x].

SUBSTANTIAL COMPLETION DATE

The Substantial Completion Date for the Project is the date on which all three Project sections are open to vehicular or passenger traffic, or a comparable event as determined by the TIFIA Lender. (NOTE: TIFIA Lender is open to discussing this further once the terms of the concession are negotiated.)

INDEPENDENT ENGINEER

An Independent Engineer (“IE”) shall be retained by the Borrower during the construction period and shall advise the TIFIA Lender with regard to construction related matters. Provisions related to the replacement of the IE will be included in the TIFIA Loan Agreement. The Borrower shall pay for all services performed by the IE. The IE required under the TIFIA Loan Agreement may be the same entity as the IE or technical advisor engaged by the Senior Lenders.

INDEPENDENT ADVISORS

TIFIA Lender will require reliance on independent advisors’ reports provided to the Senior Lenders at and following financial close, including model audit and insurance advisors’ reports. TIFIA Lender will require the Borrower to continue to provide annual reports from such advisors for the benefit of the TIFIA Lender after the Senior Obligations have been repaid.

TIFIA DEBT SERVICE PROFILE

The TIFIA Debt Service profile will be dependent on Project cash flows and may include periods of deferred principal and interest, interest only, sculpted amortization, and mandatory and scheduled repayments. Subject to acceptable sensitivity results, repayment of the TIFIA Loan shall be structured within the following parameters:

(i) Capitalized Interest Period - deferred interest and principal payments from the Effective Date to a date which is no later than the payment date immediately prior to the 5th anniversary of the Substantial Completion Date. During this period interest will be capitalized and added to the principal amount of the TIFIA Loan.

(ii) Interest Only Period – interest only payments from the end of the Capitalized Interest Period up to a date which is no later than the payment date immediately prior to the 15th anniversary of the Substantial Completion Date.

(iii) Principal and Interest Payment Period – payments of principal of, and interest on, the outstanding balance of the TIFIA Loan from the end of the Interest Only Period through the Final Maturity. During this period annual growth of principal plus interest payments can be no more than [2.5%] p.a.¹

In addition, and notwithstanding the above, the Average TIFIA Loan Life shall be no more than [25-27 years].

¹ Degree of back loading of the TIFIA debt service will be a major consideration in TIFIA’s approval of the proposed loan.

If the Borrower opts to propose Mandatory Debt Service and Scheduled Debt Service, the repayment profile shall be subject to the TIFIA Lender's approval and satisfactory sensitivity results, and TIFIA Revenue Sharing will be required. Mandatory and scheduled payments shall not differ during the last 15 years of the TIFIA Loan.

CONDITIONS PRECEDENT

The TIFIA Loan Agreement shall not become effective, nor shall the TIFIA Lender have any obligation to make disbursements of TIFIA Loan proceeds to the Borrower, until certain Conditions Precedent are satisfied, in form and substance satisfactory to the TIFIA Lender. Conditions Precedent for the initial disbursement shall address, inter alia, the following issues:

1. Execution and delivery of finance and security documents, including pledge agreements;
2. Evidence of funding commitments and equity contributions;
3. Legal opinion of Borrower's counsel;
4. Delivery of copies of Senior Loan Documents;
5. Delivery of non-debarment certificate;
6. Evidence and satisfaction of 23 USC §§ 134 & 135 requirements;
7. Evidence of required ratings;
8. Delivery of executed traffic and revenue study;
9. Delivery of Borrower's authorized representative certificate;
10. Demonstration of sufficiency of funds in base case projections;
11. Delivery of copies of executed Material Project Documents;
12. Written confirmation of all required permits and approvals;
13. Delivery of certified schedule as to sufficient cash flows for TIFIA Debt Service;
14. Delivery of UCC financing statements to the Collateral Agent;
15. Completed arrangements to pay the TIFIA Lender for its fees and expenses;
16. Evidence of compliance with NEPA;
17. Delivery of the TIFIA Lender's authorized representative certificate;
18. Submission of prior incurred Eligible Project Costs;
19. Delivery of draw schedule and funding sources for project elements;
20. Delivery of other related documents as required by the TIFIA Lender;
21. Evidence of DUNS number, central contractor registration and federal tax identification number;
22. Delivery of satisfactory Base Case Financial Model;
23. Delivery of the initial financial plan reflecting no amortization of Senior Obligations until all currently accruing TIFIA Loan interest is being paid;

24. Evidence of NCDOT's funding commitment under the Developer Ratio Adjustment Mechanism and delivery of an agreement with respect thereto in form and substance satisfactory to the TIFIA Lender;
25. Evidence of payment and performance security required under project documents;
26. Delivery of independent advisors' reports including IE's report, model audit and insurance advisors' reports; and
27. Delivery of insurance policies and certificates.

Conditions Precedent for each disbursement shall address, inter alia, the following issues:

1. Funding of required portion of equity commitment;
2. Delivery of new agreements, permits and information;
3. No event of default;
4. Confirmation of representations and warranties;
5. No Material Adverse Effect; and
6. Total federal assistance does not exceed 80% of Eligible Project Costs;

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The TIFIA Loan Agreement shall contain Representations and Warranties of the Borrower typical for a transaction of this nature. Such Representations and Warranties shall address, inter alia, the Representations and Warranties matters listed below. The Representations and Warranties shall be made as of the date of execution of the TIFIA Loan Agreement and, in most cases, as of each date on which any disbursement of the TIFIA Loan is made.

1. Organization, valid existence and good standing;
2. Authorization of signatory;
3. Corporate authorization; enforceability;
4. No conflicts; compliance with laws;
5. Required consents; authorizations and permits;
6. No litigation;
7. Valid and perfected liens;
8. No suspension or debarment;
9. Accuracy of representations and warranties;
10. NEPA requirements;
11. Credit ratings;
12. State and metropolitan transportation improvement plans;
13. No default under the Senior Loan Documents;
14. Effectiveness of and no defaults under Material Project Contracts;

15. Accuracy of information furnished;
16. Equity interests;
17. Compliance with applicable laws; OFAC regulations;
18. Environmental matters;
19. Sufficiency of rights and utilities; sufficiency of funds;
20. Insurance;
21. Title to personal property; absence of liens;
22. Intellectual property rights;
23. Financial statements;
24. Taxes; ERISA;
25. Transactions with affiliates; and
26. Total federal assistance does not exceed 80% of Eligible Project Costs.

**RESTRICTED PAYMENT TESTS
(I.E. PAYMENTS TO EQUITY
FROM SURPLUS FUNDS)**

There shall be no distribution of any kind of surplus funds to the Borrower or any Equity Sponsor unless and until all of the following conditions (collectively, the “Restricted Payment Conditions”) have been met (the “Restricted Payment Test”):

- i. the Debt Service Payment Commencement Date has occurred;
- ii. TIFIA Debt Service is being paid on a current basis and for the prior 24 months (for the avoidance of doubt, distributions shall not be permitted during any Capitalized Interest Period or during any period when cumulative principal payments made are less than cumulative principal payments scheduled for the same time period);
- iii. the Total Debt Service Coverage Ratio is equal to at least [1.30x] for each calculation date during the preceding 24 months and is projected to be at least [1.30x] for each calculation date during the next 24 months;
- iv. the Senior Debt Service Coverage Ratio is equal to at least [1.45x] for each calculation date during the preceding 24 months and is projected to be at least [1.45x] for each calculation date during the next 24 months;
- v. the Loan Life Coverage Ratio is greater than [1.35x] as of the relevant calculation date;

- vi. there is no event of default or potential event of default under the TIFIA Loan Agreement or the Senior Loan Documents;
- vii. there is no payment default and the Borrower has made all TIFIA Debt Service payments (mandatory or otherwise) during the 24 month period ending on the distribution date;
- viii. all reserves are funded to their required levels;
- ix. if applicable, required TIFIA Revenue Sharing and sinking fund amounts have been paid;
- x. the Borrower would not be insolvent after the distribution; and
- xi. for payments from the Distribution Lock-up Account, the satisfaction of other conditions.

Amounts then available under any liquidity support arrangements shall not be taken into account for the purpose of meeting the debt service coverage requirements.

PROJECT EQUITY

The Equity Sponsors that are funding equity commitments shall provide binding commitments in respect of their contributions prior to or on the Effective Date.

An Acceptable Letter of Credit shall be required for equity contributions to be made subsequent to the Effective Date.

The Equity Sponsors shall make equity contributions in an amount to ensure a maximum debt to equity ratio of [65%/35% - 70%/30%].

NEGATIVE AMORTIZATION OF TIFIA LOAN

The financial plan required within 60 days after the Effective Date shall not reflect amortization of Senior Obligations until all currently accruing TIFIA Loan interest is being paid.

NET CASH FLOW

“Net Cash Flow” for any period, shall mean an amount equal to Project Revenues minus the sum of (A) the Operations and Maintenance Expenses, (B) major maintenance costs, (C) Capital

Expenditures, and (D) deposits to the Major Maintenance Reserve Account for such period.

REVENUE REMEDIATION TEST

If Net Cash Flow in any year produces a Total Debt Service Coverage Ratio equal to or lower than [●] (as defined and calibrated in the Restricted Payment Tests), (the “Revenue Remediation Test”) the TIFIA Lender shall require a remedial plan [or a study] to be provided by the Borrower, provided that such plan is consistent with the managed lanes toll policy.

PREPAYMENT

The Borrower may prepay the TIFIA Loans in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in the principal amounts of \$1,000,000 or any integral multiple thereof, or if less the then outstanding balance of the TIFIA Loan), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment.

Accelerated prepayment from the TIFIA revenue share amount, revenues subject to extended lock-up, Concession Agreement termination compensation, and specified liquidated damages and loss proceeds shall be required.

ADDITIONAL SENIOR DEBT

Additional indebtedness on parity with the Initial Senior Obligations (“Additional Senior Obligations”) may be incurred, subject to the conditions described below, provided (i) no event of default under the Senior Loan Agreement or the TIFIA Loan Agreement has occurred and is continuing, (ii) the incurrence of such debt shall not result in a downgrade of credit ratings for the Senior Obligations and the TIFIA Loan, respectively, and (iii) each lender of such obligations becomes party to the Intercreditor Agreement:

1. The proceeds thereof may be used to complete the Project, provided the Borrower certifies to the TIFIA Lender, and the IE confirms, that the additional investment is necessary for Project completion and the requested amount is sufficient for Project completion. However, the aggregate amount may not, without the prior written consent of the TIFIA Lender, exceed a specified amount or percentage of the Initial Senior Obligations.

2. The proceeds thereof may be used to refurbish, upgrade, modify, expand or add to the Project, provided the Borrower certifies to the TIFIA Lender, and the IE confirms, that (i) there will be no fundamental change in the use of the Project; (ii) the proceeds of such Additional Senior Obligations, together with other funds available, shall be sufficient for the proposed purpose; (iii) the additional investment is not expected to have a Material Adverse Effect, and (iv) the Total Debt Service Coverage Ratio for each Calculation Period during the term of the TIFIA Loan is not less than [●] based on a certified revenue forecast prepared by an appropriate independent expert satisfactory to the TIFIA Lender.
3. The proceeds thereof may be used to refinance the Senior Obligations so long as (i) the net proceeds (after deducting any deposits required to satisfy the TIFIA Debt Service Reserve Required Balance and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) do not exceed the principal amount outstanding and being refinanced of the Senior Obligations and (ii) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year for the remaining term of the TIFIA Loan is less than Senior Debt Service forecast for each year in the Base Case Financial Model as of the Effective Date.
4. The proceeds thereof may be used to add to, refinance or replace the existing Senior Obligations for purposes not covered in 1-3 above, so long as (i) at least 50% of the net proceeds (after repayment of any outstanding Senior Obligations refinanced with such Additional Senior Obligations and after any deposits required to satisfy the TIFIA Debt Service Reserve Required Balance, payments required under the Concession Agreement and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) of each such Additional Senior Obligations are used to prepay the TIFIA Loan; (ii) the Additional Senior Obligations have an investment grade rating; and (iii) the Total Debt Service Coverage Ratio, after giving effect to such Additional Senior Obligations, is forecast to be [●] or more for each year of the remaining term of the TIFIA Loan (based on actual revenues for the prior 12 month period and a revenue forecast certified by an appropriate independent expert satisfactory to the TIFIA Lender). The Total Debt Service Coverage Ratio after giving

effect to the Additional Senior Debt may not be less than a specified ratio agreed to by the TIFIA Lender.

PERMITTED INVESTMENTS

Amounts on deposit in any Project Account during the period on or before one year after the Substantial Completion Date and amounts on deposit in the Debt Service Reserve Account and other reserves shall be held uninvested or invested in Permitted Investments.

“Permitted Investments” are as follows and remain in effect for so long as the TIFIA Loan remains outstanding:

1. Obligations of the United States, its agencies and instrumentalities;
2. Certificates of deposit where the certificates are collaterally secured by securities of the type described in item (1) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;
3. Repurchase agreements when collateralized by securities of the type described in item (1) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
4. Investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, in one of the two highest rating categories for comparable types of obligations by any nationally recognized rating agency; and
5. Money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, having a rating from a nationally recognized rating agency, at least equivalent to the rating of the Government;

provided, that with respect to any Permitted Investments maintained in any reserve accounts, such Permitted Investments shall mature not more than one year from the date of the creation thereof.

HEDGING

To protect against fluctuations in interest rates, the Borrower shall make arrangements for a hedge or hedges to be in place and maintained with respect to the Senior Obligations during any period in which the Senior Obligations bear interest at a variable interest rate. Such hedging arrangements must be in full force and effect at financial close and have an aggregate stated notional amount of not less than 98% and not more than 102% of the aggregate principal amount of the variable interest rate Senior Obligations incurred at financial close and projected to be outstanding during the term of the Qualified Hedges (as defined in the TIFIA Loan Agreement) and have a stated maturity or termination date not earlier than (i) the Final Maturity date and (ii) the final maturity date of the Senior Obligations being hedged.

Each Qualified Hedge shall provide for a fixed interest rate or interest rate cap resulting in fixed payment amounts payable by the Borrower which fixed or cap rate, when (in the case of bank loans) taken together with the Bank Lending Margin (as defined in the TIFIA Loan Agreement), shall be a rate which is less than or equal to the Loan Underwriting Rate. The “Loan Underwriting Rate” means for any period: (1) in the case of bank loans, the sum of the long-term fixed swap rate plus the swap margin plus the Bank Lending Margin, or (2) in the case of bonds, the long-term fixed swap rate.

TIFIA Lender’s consent shall be required for the process for selecting a subsequent Qualified Hedge and a third party fair price certificate shall be required. Further, as described below, TIFIA Lender may consider a hedging reserve fund or a hedging acquisition fund in lieu of, or in addition to, a subsequent Qualified Hedge.

Acceptable hedges are:

1. floating to fixed interest rate swaps at or below the Loan Underwriting Rate; and
2. interest rate caps at or below the Loan Underwriting Rate.

Acceptable hedges may include “rolling hedges” with a stated termination date of at least one year. A hedging reserve fund acceptable to the TIFIA Lender will be required for the replacement of any hedge whose maturity is less than that of the Senior Obligations being hedged. Hedge providers must be rated in the A category or higher by a nationally recognized rating agency.

Approval of any alternative to a fully hedged strategy or waiver of any hedging requirement is at the sole option and discretion of the TIFIA Lender.

TIFIA DISBURSEMENTS

Disbursements shall be made no more frequently than monthly to the Borrower to reimburse Eligible Project Costs incurred in connection with the Project pursuant to requisition procedures set forth in the TIFIA Loan Agreement and subject to the Borrower's compliance with disbursement conditions. All disbursement requests must be received by the TIFIA Lender on or before the first business day of a calendar month in order to obtain a disbursement by the fifteenth day of such calendar month or if such day is not a business day, the next succeeding business day.

The Borrower shall provide an annual, cumulative schedule of projected disbursements prior to the Effective Date, such schedule to be included in the TIFIA Loan Agreement. The Borrower may modify such schedule upon written notice to the TIFIA Lender.

Monthly disbursements shall be on a pro rata basis with disbursements of the proceeds of the Senior Obligations, unless otherwise agreed to by the TIFIA Lender and Borrower. No disbursements shall be made more than one year after the Substantial Completion Date.

EVENTS OF DEFAULT AND

Events of Default under the TIFIA Loan Agreement REMEDIES shall include, but not be limited to, the following:

1. The Borrower shall fail to pay any principal amount of, or interest on, the TIFIA Loan when and as the payment thereof shall be required under the TIFIA Loan Agreement or the Note.
2. Any of the Borrower's representations, warranties or certifications under the TIFIA Loan Agreement, the Senior Loan Agreement, or other related agreement(s) is materially false or misleading, in any material respect or the Borrower fails to comply with any covenants or agreements under the TIFIA Loan Agreement or the Senior Loan Agreement, in each case after a permitted 30 day cure period provided, however, that if it is not possible to correct such breach within such 30-day period, it shall not constitute an event of default if corrective action is instituted by the Borrower within such period and diligently pursued until such breach is corrected, provided such breach is corrected within 180 days from the date the event of default first arose.

3. The occurrence of a Development Default.
4. An acceleration occurs with respect to the Senior Obligations or any other indebtedness of the Borrower that is senior to, or on parity with, the TIFIA Loan.
5. The occurrence of a default by the Borrower under the Senior Loan Agreement, Financing Documents or Material Project Documents and the occurrence thereof could reasonably be expected to result in a Material Adverse Effect if no acceptable replacement contract is entered into.
6. A Bankruptcy Related Event occurs.
7. Any event described under Bankruptcy Related Event occurs with respect to a Material Project Party or a public sector sponsor.
8. The Project shall be abandoned, or the operation of the Project shall cease for an extended period (other than for force majeure events covered by insurance).
9. A judgment in excess of \$1 million and not otherwise covered by insurance is rendered against the Borrower and remains undischarged for 30 days.
10. A Change of Control shall have occurred, other than as approved by the TIFIA Lender.
11. Borrower fails to maintain its existence as a [●].
12. Any equity contribution shall fail to be made when due as required under the Equity Contribution Agreement;
13. The Concession Agreement expires or terminates or for any reason ceases to be in full force and effect.
14. Any representations, warranties, or certificates of the Borrower made or delivered in connection with the TIFIA Loan Agreement, the Note and other TIFIA Loan documents shall prove to be misleading in any material respect when made.

Upon the occurrence of an event of default under the TIFIA Loan Agreement, the TIFIA Lender may take any one or more of the following actions, at its sole option and discretion:

1. For a Development Default, (i) immediately cease making disbursements; (ii) pursue such other remedies as provided in the TIFIA Loan Agreement; and (iii) require repayment of any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.
2. For failure to make an equity contribution required under the Equity Contribution Agreement, direct the Collateral Agent to draw on any letter of credit or other credit support securing such obligation.
3. For a Bankruptcy Related Event, (i) immediately cease making disbursements; and (ii) declare all amounts due under the TIFIA Loan Agreement, the Note and other TIFIA Loan documents immediately due and payable.
4. (a) institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid under the TIFIA Loan Agreement, the Note or the other TIFIA Loan documents, (b) prosecute any judgment or final decree against the Borrower, (c) exercise all rights and remedies of a secured creditor under the UCC, and (d) take whatever action by law or in equity as may appear necessary or desirable to collect the amounts payable by the Borrower, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower, including termination of the TIFIA Loan Agreement.
5. Suspend or debar the Borrower or any of its principals from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

No action pursuant to an event of default shall relieve the Borrower from its obligations pursuant to the TIFIA Loan Agreement, all of which shall survive any such action.

ANNUAL RATING

The Borrower shall, commencing on [●], no later than the last business day of June of each year over the term of the TIFIA Loan, provide the TIFIA Lender with a credit rating on the Senior Obligations and the TIFIA Loan from one nationally recognized rating agency, together with the rating reports produced by such rating agency, in each case prepared no earlier than June 1 of such year.

INDEMNIFICATION

The Borrower shall indemnify and hold the TIFIA Lender harmless from and against any and all claims arising in

connection with (i) the execution and delivery of the TIFIA Loan Agreement and related documents, (ii) the TIFIA Loan or the use of any proceeds thereof, or (iii) the violation of any applicable law or regulation, except to the extent directly arising from the TIFIA Lender's gross negligence or willful misconduct.

ASSIGNABILITY AND SALE

The TIFIA Lender in its sole discretion may grant the Borrower the right to sell or assign its rights in and to the Project, the Concession Agreement and any subsequent lease of the Project as well as its rights and obligations under this Term Sheet and the TIFIA Loan Agreement, upon terms and conditions which are acceptable to the TIFIA Lender in its sole discretion and subject to such additional terms and conditions as the TIFIA Lender may require.

SALE OF TIFIA LOAN

After the Substantial Completion Date, the TIFIA Lender may sell the TIFIA Loan or any portion thereof to another entity or offer the TIFIA Loan into the capital markets. In making such sale or offering of the TIFIA Loan the TIFIA Lender shall not change the original terms and conditions of the TIFIA Loan or the Intercreditor Agreement without the prior written consent of the Borrower. The TIFIA Lender shall provide at least sixty (60) days' notice to the Borrower of any intention to sell or offer the TIFIA Loan. The TIFIA Lender and the Borrower agree that for so long as any Senior Obligation remains outstanding, the provisions in the TIFIA Loan Agreement which provide that the TIFIA Loan will be deemed to be and will automatically be on parity with the Senior Obligations upon a Bankruptcy Related Event shall be of no force or effect following the sale of the TIFIA Loan to any third party other than for a sale made to a Government agency or instrumentality, in which event, the Government shall have the same benefits with respect to a Bankruptcy Related Event as the TIFIA Lender.

ACCOUNTING AND INFORMATION AND REPORTING OBLIGATIONS

The TIFIA Loan Agreement shall include, inter alia, the following monitoring and reporting requirements:

1. Annual independently audited financial statements;
2. Quarterly unaudited financial statements;
3. Monthly construction progress and budget reports and/or IE's construction reports;
4. Monthly financial reports during operations;
5. TIFIA Lender's right to monitor;
6. TIFIA Lender's rights to examine books;
7. TIFIA Lender's right to conduct independent financial audits;
8. Certificates of completion and substantial completion reports;

9. Required permits;
10. Borrower's annual certified financial plans during construction (initially due within 60 days after the Effective Date), including:
 - a. Cost and budget information including any deviations;
 - b. Scheduling and milestone information including any deviations;
 - c. Current estimates of sources and uses of funds for the Project;
 - d. Updated financial model and cash flow projections including Senior Debt Service Coverage Ratio, Total Debt Service Coverage Ratio and Loan Life Coverage Ratio projections through Final Maturity;
 - e. Changes in disbursement schedule;
 - f. Cost containment measures and risk mitigation strategies;
 - g. Notification of change orders in excess of [●] and satisfaction of criteria for such change orders;
 - h. Written narrative report describing progress since initial financial plan and most recent financial plan and supporting information;
11. Borrower's annual certified financial plans following the Substantial Completion Date, including:
 - a. Detailed cash flow projections and narrative identifying changes and any potential shortfalls;
 - b. Detailed reports of revenues received, amounts deposited into each project account, and account balances;
 - c. Updated financial model (including basis for any assumption changes) and schedule of actual and projected revenues, expenses, the Senior Debt Service Coverage Ratio, the Total Debt Service Coverage Ratio and the Loan Life Coverage Ratio;
 - d. Written narrative report describing variances since initial financial plan and most recent financial plan and supporting information;
12. Copies of material contracts entered into;
13. Notification of material insurance claims;
14. Notification of any default or event that could be expected to result in a Material Adverse Effect;
15. Annual ratings of Senior Obligations and TIFIA Loan;
16. Notification of Change of Control;
17. If applicable, traffic and operating reports on a quarterly basis; and
18. Updated financial models and financial statements on dates as required by the TIFIA Lender.

The TIFIA Lender shall also be provided with such information as is: (1) required, from time to time, to be provided by the Borrower to the Senior Lenders pursuant to the Senior Loan Agreement; (2) provided by the Borrower to any nationally recognized rating agencies providing credit ratings for the Project and/ or its debt; or (3) received by the Borrower from any nationally recognized rating agencies providing credit ratings for the Project and/ or its debt.

DOLLARS

All references to dollar amounts in this Term Sheet are references to United States dollars.

FEES AND EXPENSES

The Borrower shall be responsible for paying to the TIFIA Lender the following fees and expenses:

1. Commencing in Federal Fiscal Year (FFY) [●] and continuing thereafter each year throughout the term of the TIFIA Loan Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the 15th of November. The TIFIA Lender shall establish the amount of this annual fee, and the Servicer shall notify the Borrower of the amount, at least 30 days before payment is due.

In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount utilizing the CPI. For the FFY [●] calculation, the TIFIA Lender will use the FFY [●] base amount of \$[12,500], which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

The Borrower shall cooperate and respond to any reasonable request of the TIFIA Lender or its designated loan servicer (the "Servicer") for information,

documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

2. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time on and after the date hereof for any and all fees, costs, charges and expenses actually incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of the TIFIA Loan Agreement and the other related documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorney's, engineer's, and planning fees and professional costs, including all such fees, costs and expenses actually incurred as a result of or in connection with: (i) the enforcement of, or attempt to, enforce any provision of the TIFIA Loan Agreement or any of the other related documents; (ii) any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, the TIFIA Loan Agreement or any of the other related documents, or advice in connection with the administration of the TIFIA Loan Agreement or any of the other related documents or the rights of the TIFIA Lender thereunder; and (iii) any work-out, restructuring or similar arrangement of the obligations of the Borrower under the TIFIA Loan Agreement or the other related documents during the pendency of one or more Events of Default.
3. The obligations of the Borrower under the TIFIA Loan Agreement shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of the TIFIA Loan Agreement or the other related documents, any amendments, waivers or consents, any event of default, and any workout, restructuring or similar arrangement.

SCHEDULE 1- DEFINITIONS

Acceptable Letter of Credit – a letter of credit, in form and substance satisfactory to the TIFIA Lender, issued by a bank with a minimum long term credit rating of A+ or A1, as applicable. In the event the issuing bank's long term credit rating is downgraded to A- or A3, as applicable, a replacement or confirming letter of credit, in form and substance satisfactory to the TIFIA Lender that is issued by a bank with a minimum long term credit rating of A+ or A1, as applicable, must be delivered within ten business days of the downgrade event or the letter of credit will be drawn upon in full.

Act - the Transportation Infrastructure Finance and Innovation Act of 1998 (“TIFIA”), 23 U.S.C. § 601 *et seq.*, as supplemented and amended from time to time.

Average TIFIA Loan Life – the average life of the TIFIA Loan measured from financial close and based on the maximum outstanding balance including capitalized interest.

Base Case Financial Model – the financial model delivered on the Effective Date and prepared by the Borrower forecasting the revenues and expenditures of the Project for time periods through the Final Maturity and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender.

Calculation Date - each [●], and [●] occurring after the Effective Date.

Calculation Period – a 12-month period ending on a Calculation Date.

Capital Expenditures - expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

Change of Control - means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control the management of the Borrower or a significant aspect of its business, subject to certain agreed exceptions.

Collateral Agency Agreement – Collateral Agency and Account Agreement by and among the TIFIA Lender, the Borrower, the agent for the Senior Lenders and the Collateral Agent, dated as of [●].

Collateral Agent – the agent on behalf of TIFIA Lender and the Senior Lenders under the Collateral Agency Agreement and the other security agreements.

Concession Agreement - the Concession Agreement relating to the Project, dated as of [●], by and between [NCDOT] and the Borrower.

CPI - the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, [●] as the base period.

Debt Service Payment Commencement Date – a date no later than the fifth (5th) anniversary of the Substantial Completion Date or, if such date does not fall on a semi-annual payment date, then semi-annual payment date most recently preceding the [fifth (5th) anniversary of the Substantial Completion Date].

Developer Ratio Adjustment Mechanism – a credit support mechanism between the Borrower and NCDOT for the benefit of the TIFIA Lender that can be drawn during the initial period [TBD] of debt repayment subject to certain conditions.

Development Default - (i) the Borrower fails to diligently prosecute the work related to the Project; or (ii) the Borrower fails to complete the Project in accordance with the Borrower’s financial plan, as the same may be amended from time to time with the consent of the TIFIA Lender.

Distribution Account – the distribution account established pursuant to the Collateral Agency Agreement into which funds shall be deposited following the satisfaction of Restricted Payment Conditions. The Distribution Account shall not be subject to the security interest granted in favor of the secured parties.

Distribution Lock-up Account – the lock-up account established pursuant to the Collateral Agency Agreement into which funds shall be deposited following a failure to meet the any Restricted Payment Test. Funds held by the Collateral Agent in the Distribution Lock-up Account may be released to the Distribution Account upon the satisfaction of the Restricted Payment Conditions by the Borrower for two [●] consecutive Calculation Dates.

Effective Date - the date of the execution of the TIFIA Loan Agreement.

Federal Fiscal Year - the fiscal year of the Government, which currently commences on October 1 of each calendar year and ends on September 30 of the following calendar year.

Financing Documents – inter alia, loan agreements, notes, security documents, the Intercreditor Agreement, Hedging Agreements, additional financing documents, and any other document or instrument required to be executed and delivered by the aforementioned agreements.

Government - the United States of America and its departments and agencies.

Hedging Agreements - (a) the ISDA Master Agreement(s) and the related schedules and confirmations, to be entered into by the Borrower and a hedging bank on or about the Effective Date and (b) any other agreement entered into, or to be entered into, by the Borrower and a hedging bank for a hedging transaction, in each case either similar in form and substance in all material respects, with the Hedging Agreement entered into with the initial hedging bank, or otherwise acceptable to the TIFIA Lender.

Hedging Obligations (a) all scheduled amounts payable to the hedging banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceedings with respect to the Borrower), and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the hedging banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the hedging banks to the Borrower under such Hedging Agreements; provided, that Hedging Obligations shall not include Hedging Termination Obligations.

Hedging Termination Obligations - the aggregate amount payable to the hedging banks by the Borrower upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such hedging banks upon the early unwind of all or a portion of such Hedging Agreements.

Intercreditor Agreement - Subordination and Intercreditor Agreement, dated as of [●], among the Collateral Agent, the agent for the Senior Lenders, the TIFIA Lender, [the intercreditor agent], [the hedging banks] and any other lender that becomes a party thereto (by accession or otherwise) and any amendment or supplement thereto.

Loan Life Coverage Ratio - for any Calculation Date the ratio of (i) the net present value of the Net Cash Flow for the remaining term of the TIFIA Loan, discounted at the weighted average cost to (ii) the sum of: (a) the outstanding balance of the Senior Obligations and (b) the outstanding balance of the TIFIA Loan.

Major Maintenance Reserve Account- the secured Major Maintenance Reserve Account established pursuant to the Collateral Agency Agreement.

Mandatory Debt Service - means with respect to any payment date, the portion of interest and principal unconditionally required to be paid on the TIFIA Loan on such payment date.

Material Adverse Effect - a material adverse change in: (a) the Project, (b) the business, operations, properties, financial condition (financial or otherwise) or prospects of the Borrower or its affiliates, (c) the ability of the Borrower to perform or comply with any of its material obligations under the documents to which it is a party, (d) the legality, validity or enforceability of any material provision of the Senior Loan Agreement, the TIFIA Loan Agreement, the Finance Documents, or any Material Project Document, (e) the ability of the Borrower, its affiliates, or any Material Project Party to perform or comply with any of its material obligations under the Senior Loan Agreement, the TIFIA Loan Agreement, any Finance Document, or any Material Project Document to which it is a party, (f) the validity, perfection or priority of the liens provided under the security documents on the collateral in favor of the secured parties or (g) the TIFIA Lender's rights or remedies available under the TIFIA Loan Agreement (or related documents).

Material Project Documents – shall include inter alia, the Concession Agreement, the Design-Build Contract, the Operations and Maintenance Contract, the Tolling Contract if applicable, the Interface Agreement, and any performance support or parent guaranties related to the aforementioned documents.

Material Project Party - any person (other than the Borrower) party to a Material Project Document and any surety or guarantor of such a person with respect to such person's obligations under such Material Project Document, for so long as such Material Project Document remains in effect.

Note - the promissory note to be delivered by the Borrower to the TIFIA Lender, evidencing its payment obligations under the TIFIA Loan Agreement.

Operations and Maintenance Expenses - means all actual cash maintenance and operation costs (excluding costs of capital expenditures) incurred and paid or forecast to be incurred and paid in connection with the operation and maintenance of the Project including: renewal work costs, other amounts incurred pursuant to the Concession Agreement, taxes, insurance, consumables, advertising, marketing, payments under real property agreements, management costs, fees paid to any governmental authority, environmental mitigation costs, general and administrative expenses, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

Permitted Hedging Termination Obligations – obligations resulting from the early termination, in whole or in part, of a qualified hedging agreement resulting from an illegality or a tax event.

Project Accounts – the accounts subject to the Collateral Agency Agreement.

Scheduled Debt Service - means with respect to any payment date, the portion of interest and principal scheduled to be paid on the TIFIA Loan on such payment date and required to be paid upon satisfaction of certain condition specified in the TIFIA Loan Agreement.

Secured Obligations – all present and future indebtedness and other obligations of the Borrower incurred pursuant to the Financing Documents.

Senior Debt Service –with respect to any payment date, the principal of and interest on the Senior Obligations due and payable on such payment date.

Senior Debt Service Coverage Ratio - for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the Senior Debt Service for such Calculation Period.

Senior Lender(s) – collectively, the financial institution or institutions or governmental authority (or any agent or trustee acting on behalf of any of the foregoing) providing the Senior Obligations or any other obligations under a Senior Loan Agreement.

Senior Loan Agreement - loan agreement or similar document entered into by the Borrower in connection with the incurrence of Senior Obligations.

Senior Loan Documents - the Senior Loan Agreement, the security documents, any agreements and documents entered into by the Borrower in connection with hedging arrangements entered into pursuant to, or in connection with, the Senior Loan Agreement, and all other agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing.

Senior Obligations - obligations of the Borrower that rank ahead of the TIFIA Loan in priority of payment as defined in the Intercreditor Agreement.

TIFIA Debt Service – with respect to any payment date, the sum of (a) the Mandatory Debt Service and (b) the Scheduled Debt Service, in each case due and payable on such payment date.

TIFIA Debt Service Reserve Account – means the secured debt service reserve account in respect of the TIFIA Loan established and created pursuant to the Collateral Agency Agreement and funded to a minimum balance of [●] (the “**TIFIA Debt Service Reserve Required Balance**”).

TIFIA Revenue Sharing – typically for a toll-backed loan actual toll revenues in excess of toll revenues projected in the traffic and revenue study for a given period, a portion of which shall be used to make partial prepayments of the TIFIA Loan.

Total Debt Service Coverage Ratio –for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the sum of (a) the Senior Debt Service, and (b) the TIFIA Debt Service, in each case for such Calculation Period.

ATTACHMENT B

YIELD CURVES

[see attached]

TIFIA YIELD CURVE - State and Local Government Series (SLGS) Rates	
<i>Source: https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm</i>	
Note: Year 0 Represents Financial Close	
Year	SLGS Rate
1	0.10%
2	0.20%
3	0.34%
4	0.53%
5	0.75%
6	0.97%
7	1.20%
8	1.42%
9	1.63%
10	1.81%
11	1.94%
12	2.05%
13	2.14%
14	2.22%
15	2.31%
16	2.39%
17	2.46%
18	2.52%
19	2.56%
20	2.60%
21	2.65%
22	2.69%
23	2.73%
24	2.77%
25	2.81%
26	2.85%
27	2.88%
28	2.92%
29	2.96%
30-40	2.98%

Note(s): Proposers should calculate the semi-annual rate for the purposes of their Financial Proposal as follows: $[(1 + \text{annual rate})^{(1/2)}] - 1$

PABs YIELD CURVE - Municipal Market Data (MMD) Rates	
<i>Source: THE MUNICIPAL MARKET MONITOR (TM3)</i>	
Note: Year 0 Represents Financial Close	
Year	General Obligation - "AAA" Rate
1	0.18%
2	0.31%
3	0.55%
4	0.83%
5	1.11%
6	1.38%
7	1.60%
8	1.88%
9	2.09%
10	2.23%
11	2.37%
12	2.51%
13	2.64%
14	2.76%
15	2.87%
16	2.97%
17	3.05%
18	3.11%
19	3.17%
20	3.22%
21	3.27%
22	3.32%
23	3.36%
24	3.39%
25	3.42%
26	3.44%
27	3.46%
28	3.48%
29	3.49%
30-40	3.50%

Note(s): Proposers should calculate the semi-annual rate for the purposes of their Financial Proposal as follows: $[(1 + \text{annual rate})^{(1/2)}] - 1$

TAXABLE BOND YIELD CURVE - Treasury Yield Curve Rates	
<i>Source: http://www.treasury.gov/</i>	
Note: Year 0 Represents Financial Close	
Year	US Treasury Rates
1	0.13%
2	0.29%
3	0.49%
4	0.77%
5	1.04%
6	1.29%
7	1.53%
8	1.73%
9	1.94%
10	2.14%
11	2.22%
12	2.30%
13	2.38%
14	2.46%
15	2.55%
16	2.63%
17	2.71%
18	2.79%
19	2.87%
20	2.95%
21	2.98%
22	3.02%
23	3.05%
24	3.08%
25	3.12%
26	3.15%
27	3.18%
28	3.21%
29	3.25%
30-40	3.28%

Note(s):

1. Rates for the years not provided on www.treasury.gov have been calculated through interpolation.
2. Proposers should calculate the semi-annual rate for the purposes of their Financial Proposal as follows: $[(1 + \text{annual rate})^{(1/2)}] - 1$

BANK DEBT YIELD CURVE - US Dollar Swaps Curve	
<i>Source: Bloomberg (Name:USD Bloomberg Curve)</i>	
Note: Year 0 Represents Financial Close	
Year	US Dollar Swaps (Act/360,Ann)
1	0.31%
2	0.43%
3	0.64%
4	0.92%
5	1.21%
7	1.73%
9	2.13%
10	2.29%
12	2.55%
15	2.80%
20	3.02%
30-40	3.18%

Note(s): Proposers should calculate the semi-annual rate for the purposes of their Financial Proposal as follows: $[(1 + \text{annual rate})^{(1/2)}] - 1$

EXHIBIT D

REQUIRED FORMS

[see attached]

FORM A
PROPOSAL LETTERS

[see attached]

FORM A-1

TECHNICAL PROPOSAL LETTER

PROPOSER: _____

Technical Proposal Date: _____, 2014

Mr. Rodger Rochelle
North Carolina Department of Transportation
Director of Transportation Program Management
Century Center, Building B, Door B2
1020 Birch Ridge Drive
Raleigh, NC 27610

The undersigned ("**Proposer**") submits this technical proposal (this "Technical **Proposal**") in response to that certain Request for Proposals (as amended, the "**RFP**") issued by the North Carolina Department of Transportation ("**NCDOT**"), an agency of the State of North Carolina, dated August 8, 2013, as amended, to develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project (the "**Project**"), as more specifically described herein and in the documents provided with the RFP (the "**RFP Documents**"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for NCDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Technical Proposal, the undersigned undertake[s] [jointly and severally] *[if Proposer team's equity members have not formed the Proposer entity, then leave in words "jointly and severally..." and delete the brackets. Otherwise delete "jointly and severally" if the Proposer entity has been formed. The Proposer team's Equity Members will be jointly and severally liable under this procurement until a Proposer entity is formed, whereupon the Proposer entity will be liable under the procurement. If, however, the Proposer team or entity causes a Developer entity to enter into the Comprehensive Agreement, then such Developer entity (or members of the Developer joint venture or partnership) will be liable under the procurement, moving forward]:*

a) subject to Section 4.6 of the ITP, to keep this Technical Proposal open for acceptance initially for 210 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member of Proposer or partner (if Proposer is a partnership or a joint venture) withdrawing, or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Technical Proposal is submitted, without first obtaining the prior written consent of NCDOT, given in NCDOT's sole discretion;

b) if the Proposer is selected as the Apparent Best Value Proposer, to provide security (including bonds, insurance and letters of credit) for the due

performance of the Comprehensive Agreement (“CA”) as stipulated in the CA and the RFP; and

c) if NCDOT properly draws on Proposer’s Proposal Security in accordance with the terms, and subject to the conditions of the RFP, and the surety or other financial institution providing the Proposal Security refuses to honor NCDOT’s proper draw thereon, to be liable to NCDOT for the entire stated amount (in the case of a letter of credit) or penal sum (in the case of a bond) of the Proposal Security.

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

The following individual(s) is/are authorized to enter into discussions with NCDOT for, or on behalf of, Proposer and Developer in connection with this RFP, the Project and the CA:

[insert names]

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

Addendum 1 issued _____
Addendum 2 issued _____
[list other addenda] _____

Responses issued _____, _____,
_____, _____, _____,

Proposer certifies that its Technical 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 NCDOT’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 Technical Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Technical Proposal; and that it has notified NCDOT in writing of any mistakes, errors or ambiguities from any RFP Documents or other documents provided by NCDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the SOQ previously delivered to NCDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Technical Proposal and Technical Proposal forms.

Proposer understands that NCDOT is not bound to award the CA to the Proposal offering the highest payment to NCDOT, requesting the least public funds or any Proposal NCDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Technical Proposal and participating in the RFP process are to be borne solely by the Proposer, except any stipend that NCDOT may pay Proposer pursuant to the RFP Documents.

Proposer acknowledges and agrees that its Technical Proposal is subject to disclosure under North Carolina General Statute § 132-1 et seq. Further, Proposer acknowledges and agrees to the disclosure terms of the ITP and that observers and individuals may conduct reviews on behalf of TIFIA and PABs. Proposer expressly waives any right to contest such disclosures.

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

Proposer acknowledges the procurement protest procedures set forth in Section 7.0 of the ITP and agrees that if it files a protest of this procurement or award of a CA hereunder and that protest is denied or is otherwise unsuccessful, Proposer shall be liable to NCDOT for NCDOT's costs incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by NCDOT as a consequence of the protest.

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

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 consortium, partnership or any other form of 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

[Attach documented power of attorney document, executed by Proposer entity or by each equity member/partner of Proposer]

ADDITIONAL INFORMATION TO BE PROVIDED WITH TECHNICAL PROPOSAL LETTER:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. Describe in detail the legal structure of the Proposer/Developer and Equity Members.
1. If the Proposer/Developer/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Proposer/Developer/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state, indicate that these documents will be provided prior to Commercial Close as required by the ITP.
 2. If the Proposer/Developer/Equity Member 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 Member (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, indicate that these documents will be provided prior to Commercial Close as required by the ITP.
 3. If the Proposer/Developer/Equity Member is a consortium or joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Member (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 Commercial Close as required by the ITP.
 4. If the Proposer/Developer/Equity Member 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 Member (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. Attach evidence to the Technical Proposal Letter, in respect to the Technical Proposal, and to each letter required under the Technical Proposal Letter that the person signing has authority to do so. If any entity is not yet formed, so state and indicate that these documents will be provided prior to Commercial Close as required by the ITP. Proposer may append to the Technical Proposal Letter a letter from each person signing the Technical Proposal that such person has the authority to do so, which shall suffice for the purposes of the requirements set forth in this Section B.4.

5. If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation and organizational documents of the fund manager shall satisfy the requirements for organizational documents under this Section B.

For purposes of this Section B, the term “organizational documentation” in respect of an Equity Member shall mean such entity’s certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture or investment fund internal governing organizational documentation prior to Commercial Close as required by the ITP.

- C. With respect to authorization of execution and delivery of the Technical 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 consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If the Proposer is a consortium, joint venture or a partnership, the Technical Proposal must be executed by all consortium, joint venture members or all general partners, as applicable.

- D. Developer's partnership agreement, limited liability company operating agreement, charter or and joint venture agreement, as applicable, must include an express provision satisfactory to NCDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners, members or shareholders, as applicable, no joint venture member, partner, member or shareholders, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to NCDOT and identify on a cover page where in the agreement the provision can be found. If Developer is not yet formed, provide draft organizational documents and indicate where the provision is found.

FORM A-2

FINANCIAL PROPOSAL LETTER

PROPOSER: _____

Financial Proposal Date: _____, 2014

Mr. Rodger Rochelle
North Carolina Department of Transportation
Director of Transportation Program Management
Century Center, Building B, Door B2
1020 Birch Ridge Drive
Raleigh, NC 27610

The undersigned (“**Proposer**”) submits this financial proposal (this “**Financial Proposal**”) in response to that certain Request for Proposals (as amended, the “**RFP**”) issued by the North Carolina Department of Transportation (“**NCDOT**”), an agency of the State of North Carolina, dated August 8, 2013, as amended, to develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project (the “**Project**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for NCDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Financial Proposal, the undersigned undertake[s] [jointly and severally] *[if Proposer team’s equity members have not formed the Proposer entity, then leave in words “jointly and severally...” and delete the brackets. Otherwise delete “jointly and severally” if the Proposer entity has been formed. The Proposer team’s Equity Members will be jointly and severally liable under this procurement until a Proposer entity is formed, whereupon the Proposer entity will be liable under the procurement. If, however, the Proposer team or entity causes a Developer entity to enter into the Comprehensive Agreement, then such Developer entity (or members of the Developer joint venture or partnership) will be liable under the procurement, moving forward].*

a) subject to Section 4.6 of the ITP, to keep this Financial Proposal open for acceptance initially for 210 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member of Proposer or partner (if Proposer is a partnership or a joint venture) withdrawing, or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Financial Proposal is submitted, without first obtaining the prior written consent of NCDOT, given in NCDOT’s sole discretion;

b) if the Proposer is selected as the Apparent Best Value Proposer, to provide security (including bonds, insurance and letters of credit) for the due

performance of the Comprehensive Agreement (“CA”) as stipulated in the CA and the RFP; and

c) if NCDOT properly draws on Proposer’s Proposal Security in accordance with the terms, and subject to the conditions of the RFP, and the surety or other financial institution providing the Proposal Security refuses to honor NCDOT’s proper draw thereon, to be liable to NCDOT for the entire stated amount (in the case of a letter of credit) or penal sum (in the case of a bond) of the Proposal Security.

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

The following individual(s) is/are authorized to enter into discussions with NCDOT for, or on behalf of, Proposer and Developer in connection with this RFP, the Project and the CA:

[insert names]

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

- Financial Proposal (Volumes 1, 2 and 3)

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

Addendum 1 issued _____
Addendum 2 issued _____
[list other addenda] _____

Responses issued _____, _____,
_____, _____, _____,

Proposer certifies that its Financial 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 NCDOT’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 Financial Proposal; that it has conducted such other field investigations and additional design development which are prudent and

reasonable in preparing this Financial Proposal; and that it has notified NCDOT in writing of any mistakes, errors or ambiguities from any RFP Documents or other documents provided by NCDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the SOQ previously delivered to NCDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Financial Proposal and Financial Proposal forms.

Proposer understands that NCDOT is not bound to award the CA to the Proposal offering the highest payment to NCDOT, requesting the least public funds or any Proposal NCDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Financial Proposal and participating in the RFP process are to be borne solely by the Proposer, except any stipend that NCDOT may pay Proposer pursuant to the RFP Documents.

Proposer acknowledges and agrees that its Financial Proposal is subject to disclosure under North Carolina General Statute § 132-1 et seq. Further, Proposer acknowledges and agrees to the disclosure terms of the ITP and that observers and individuals may conduct reviews on behalf of TIFIA and PABs. Proposer expressly waives any right to contest such disclosures.

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

Proposer acknowledges the procurement protest procedures set forth in Section 7.0 of the ITP and agrees that if it files a protest of this procurement or award of a CA hereunder and that protest is denied or is otherwise unsuccessful, Proposer shall be liable to NCDOT for NCDOT's costs incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by NCDOT as a consequence of the protest.

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

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 consortium, partnership or any other form of 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

[Attach documented power of attorney document, executed by Proposer entity or by each equity member/partner of Proposer]

ADDITIONAL INFORMATION TO BE PROVIDED WITH FINANCIAL PROPOSAL LETTER:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.

- B. With respect to authorization of execution and delivery of the Financial 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 consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If the Proposer is a consortium, joint venture or a partnership, the Financial Proposal must be executed by all consortium, joint venture members or all general partners, as applicable.

FORM B-1

IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e-mail)	ROLE OF ENTITY IN PROPOSER'S ORGANIZATION	North Carolina Contractor License (if applicable)	Description of Work/Services To Be Performed by Entity (if applicable)

The above information is true, correct and accurate.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Proposer)

FORM B-2

INFORMATION ABOUT PROPOSER ORGANIZATION

1.0 Name of Proposer: _____
 Name of Developer _____

2.0 Type of entity: Proposer: _____
 Developer: _____

3.0 Proposer's address: _____

_____ Telephone _____ Facsimile

4.0 How many years has each of the Proposer, Developer (if formed and if different from Proposer) and each Equity Member (as to each of Proposer and Developer, as applicable) been in its current line of business, and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5.0 Under what other or former names have the Proposer, Developer and all such Equity Members operated?

Proposer: _____
 _____:
 _____:
 _____:
 _____:

_____ : _____

6.0 The Proposer shall review its SOQ previously submitted to NCDOT and list below any Key Personnel and other key staff members and their relevant experience that have been approved by NCDOT since the submission of the SOQ. Except as updated by the following information, the Proposer's SOQ is hereby incorporated as if set forth in full and the Proposer represents and warrants to NCDOT that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

7.0 List all North Carolina licenses held by the Proposer, the Developer and any Equity Member. Attach copies of all North Carolina licenses. Attach a separate sheet if necessary.

8.0 The Financial Proposal shall include the following information regarding the surety and/or banking or financial institutions committing to provide the Payment and Performance Security in accordance with the CA:

- (a) Name and address of surety(ies) meeting the requirements of Section 8.0(a) of Exhibit C to the ITP that will provide the surety bonds required by the Agreement. Surety information must include the name, phone number and address of the Surety's designated agent for purposes of the Project.
- (b) Whether or not the listed surety has defaulted on any obligation within the past ten years, and, if so, a description and details of the circumstances and the outcome of such default.
- (c) If the performance security is to be in the form of a letter of credit, the name of the bank or financial institution issuing the letter of credit must meet the requirements of Section 8.0(c) of Exhibit C to the ITP.

I declare under penalty of perjury under the laws of the State of North Carolina that the foregoing declaration is true, correct and accurate.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Proposer)

If any Major Participant or Contactor identified above is a single purpose entity formed for the Project, complete the following matrix for each such single purpose entity:

Name of major Participant/Contractor	Form of Entity (partnership, joint venture, LLC, corporation, etc.)	Entities with Ownership Interest	Percentage of Ownership Interest
Ex: Contractor AB, JV	Joint venture	Contractor A	60%
		Contractor B	40%

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants resulting in an agreement to enter into any Contracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable CA Documents requirements with respect to Contractors.

I declare under penalty of perjury under the laws of the State of North Carolina that the foregoing declaration is true and correct.

Executed: _____, 2014.

(Signature)

(Name printed)

(Title)

(Proposer)

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: _____

NAME OF ENTITY(IES) ON WHOSE BEHALF THE FORM IS PROVIDED: _____

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. If this form is provided only for Proposer, the term "**affiliate**" shall mean any entity which owns a direct controlling interest in or is under common ownership with Proposer, any Equity Member, or Major Participant or any such entity in which Proposer, any Equity Member or Major Participant directly owns a controlling interest. If this form is provided by individual Equity Members and Major Participants on their own behalf, the term "**affiliate**" shall mean any entity under common ownership with the entity signing the form, or any entity in which the entity signing the form owns a direct controlling interest. Further, the term "affiliate" shall be limited to those entities that within the past five years have engaged in business or investment in North America. As used herein, "**controlling interest**" means the possession, directly or indirectly, of the power to cause the direction of the management of the entity, whether through voting securities, by contract, family relationship or otherwise.

Within the past ten years, has the entity(ies) on whose behalf this form is provided, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No ___

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable North Carolina governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar North Carolina law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the North Carolina Department of Labor (or its equivalent), federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of North Carolina that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

(Proposer)

FORM D

**INDUSTRIAL SAFETY RECORD
FOR MAJOR PARTICIPANTS**

PROPOSER'S NAME: _____

NAME OF TEAM MEMBER: _____

ROLE OF TEAM MEMBER: _____

This form shall be filled out separately and provided for each Major Participant that has undertaken work in the United States and that will perform or supervise installation or construction Work for the Project, and including information for any entity in which such Major Participant holds a direct controlling interest. Information must be provided with regard to all installation and construction work undertaken in the United States (including the State of North Carolina) by the entity, with separate statistics relative to the State of North Carolina. For Major Participants that are joint ventures or partnerships, information shall be provided for each member of such joint venture or partnership as though 100% of the results were for the listed team member. The Proposer may be requested to submit additional information or explanation of data which NCDOT may require for evaluating the safety record. As used herein, "**controlling interest**" means the possession, directly or indirectly, of the power to cause the direction of the management of the entity, whether through voting securities, by contract, family relationship or otherwise.

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
1) Total Hours Worked (in thousands) Nationwide: North Carolina:					
2) Number of fatalities:.* Nationwide: North Carolina:					
3) Number of lost workdays:.* Nationwide: North Carolina:					

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
4) Number of lost workdays* cases: Nationwide: North Carolina:					
5) Number of injury/illness* cases: Nationwide: North Carolina:					
6) Number of days of restricted work activity due to injury/illness*: Nationwide: North Carolina:					
7) Incidence Rate** Lost Workday Cases Nationwide: North Carolina: Days Lost Nationwide: North Carolina:					
8) Worker's Compensation Experience Modifier Nationwide: North Carolina:					

* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000 / Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of North Carolina that the information is true and accurate within the limitation of those records.

Name of Company (Print)

Signature

Title

Address

Phone Number

FORM E

PERSONNEL WORK ASSIGNMENT FORM AND COMMITMENT OF AVAILABILITY

Name of Proposer: _____

Key Personnel Assignment	Name of Individual Assigned and Employer
<i>[Insert Key Personnel Titles listed in ITP Exhibit B, Section 7.4]</i>	

Proposer's Name: _____ (the "Proposer")

Employer's Name: _____ (the "Employer") *[Note, duplicate as necessary to ensure all employers execute this form]*

COMMITMENT OF AVAILABILITY

Understanding NCDOT's concern that the personnel resources specifically represented and listed in this Technical Proposal actually be assigned to the Project and, if required to be full-time positions, not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Technical Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the CA Documents.

Proposer's Name: _____

Signed: _____

Printed Name: _____

Title: _____

Employer's Name: _____

Date: _____

FORM F

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN
CERTIFICATION**

[see attached]

NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

CORPORATION

The person executing this affidavit, on behalf of _____ (“Proposer Team Member”), being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Proposer Team Member has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the Proposer Team Member has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Proposer Team Member intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this affidavit in the proper manner also constitutes the Proposer Team Member’s certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF PROPOSER TEAM MEMBER

_____ Full name of Corporation

_____ Address

Attest _____
Secretary/Assistant Secretary
Select appropriate title

By _____
President/Vice President/Assistant Vice President
Select appropriate title

_____ Print or type Signer's name

_____ Print or type Signer's name

CORPORATE SEAL

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the _____ day of _____, 20_____

NOTARY SEAL

Signature of Notary Public
Of _____ County
State of _____
My Commission Expires _____

NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

PARTNERSHIP

The person executing this affidavit, on behalf of _____ (“Proposer Team Member”), being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Proposer Team Member has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the Proposer Team Member has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Proposer Team Member intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this affidavit in the proper manner also constitutes the Proposer Team Member’s certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF PROPOSER TEAM MEMBER

_____ Full Name of Partnership

_____ Address

_____ By _____
Signature of Witness Signature of Partner

_____ Print or type Signer's name

_____ Print or type Signer's name

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the
day of _____ 20____.

_____ Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

NOTARY SEAL

**EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION
LIMITED LIABILITY COMPANY**

The person executing this affidavit, on behalf of _____ (“Proposer Team Member”), being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Proposer Team Member has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the Proposer Team Member has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Proposer Team Member intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this affidavit in the proper manner also constitutes the Proposer Team Member’s certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF PROPOSER TEAM MEMBER

_____ Full Name of Firm

_____ Address

Signature of Member/Manager/Authorized Agent

_____ Individually

_____ Print or type Signer's Name

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the
_____ day of _____ 20__.

NOTARY SEAL

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION
JOINT VENTURE (2) or (3)**

The person executing this affidavit, on behalf of _____ (“Proposer Team Member”), being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Proposer Team Member has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the Proposer Team Member has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Proposer Team Member intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this affidavit in the proper manner also constitutes the Proposer Team Member’s certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable. *N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF PROPOSER TEAM MEMBER

Instructions: **2 Joint Venturers** Fill in lines (1), (2) and (3) and execute. **3 Joint Venturers** Fill in lines (1), (2), (3) and (4) and execute. On Line (1), fill in the name of the Joint Venture Company. On Line (2), fill in the name of one of the joint venturers and execute below in the appropriate manner. On Line (3), print or type the name of the other joint venturer and execute below in the appropriate manner. On Line (4), fill in the name of the third joint venturer, if applicable and execute below in the appropriate manner.

(1) _____
Name of Joint Venture

(2) _____
Name of Joint Venture Member

_____ Address

_____ Signature of Witness or Attest	By	_____ Signature of Joint Venture Member
_____ Print or type Signer's name		_____ Print or type Signer's name

If Corporation, affix Corporate Seal and

(3) _____
Name of Joint Venture Member

_____ Address

_____ Signature of Witness or Attest	By	_____ Signature of Joint Venture Member
_____ Print or type Signer's name		_____ Print or type Signer's name

If Corporation, affix Corporate Seal and

(4) _____
Name of Joint Venture Member (for 3 Joint Venture only)

_____ Address

_____ Signature of Witness or Attest	By	_____ Signature of Joint Venture Member
_____ Print or type Signer's name		_____ Print or type Signer's name

If Corporation, affix Corporate Seal

NOTARY SEAL
Affidavit must be notarized for Line (2)
Subscribed and sworn to before me this
_____ day of _____ 20____

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

NOTARY SEAL
Affidavit must be notarized for Line (3)
Subscribed and sworn to before me this
_____ day of _____ 20____

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

NOTARY SEAL
Affidavit must be notarized for Line (4)
Subscribed and sworn to before me this
_____ day of _____ 20____

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

DEBARMENT CERTIFICATION

Conditions for certification:

1. The Proposer Team Member shall provide immediate written notice to the Department if at any time the Proposer Team Member learns that his certification was erroneous when he submitted his debarment certification or explanation that is file with the Department, or has become erroneous because of changed circumstances.
2. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. A copy of the Federal Rules requiring this certification and detailing the definitions and coverages may be obtained from the Contract Officer of the Department.
3. The Proposer Team Member agrees by submitting this form, that he will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in NCDOT contracts, unless authorized by the Department.
4. For Federal Aid projects, the Proposer Team Member further agrees that by submitting this form he will include the Federal-Aid Provision titled *Required Contract Provisions Federal-Aid Construction Contract (Form FHWA PR 1273)* provided by the Department, without subsequent modification, in all lower tier covered transactions.
5. The Proposer Team Member may rely upon a certification of a participant in a lower tier covered transaction that he is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless he knows that the certification is erroneous. The Proposer Team Member may decide the method and frequency by which he will determine the eligibility of his subcontractors.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except as authorized in paragraph 6 herein, the Department may terminate any contract if the Proposer Team Member knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available by the Federal Government.

DEBARMENT CERTIFICATION

The Proposer Team Member certifies to the best of his knowledge and belief, that he and his principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and
- d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- e. Will submit a revised Debarment Certification immediately if his status changes and will show in his bid proposal an explanation for the change in status.

If the Proposer Team Member cannot certify that he is not debarred, he shall provide an explanation with this submittal. An explanation will not necessarily result in denial of participation in a contract.

Failure to submit a non-collusion affidavit and debarment certification will result in the Proposal being considered non-responsive.

Check here if an explanation is attached to this certification.

FORM G

DBE COMMITMENT CERTIFICATION

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for the Project.

DBE

12%

DBE Commitment Certification

By signing the Technical Proposal, the Proposer certifies that if awarded the Agreement, (1) the Developer will meet the above DBE goal or provide a good faith effort to substantiate the attempt to meet the DBE goal in accordance with the requirements of the Agreement; and (2) the Developer will submit a final DBE Performance Plan meeting the requirements set forth in Section 10.9.2 of the Agreement and the DBE Special Provisions attached as Attachment 6 to Exhibit 6 to the Agreement.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Security provided by the Proposer will become property of NCDOT and the Proposer will be precluded from participating in any reprocurement of the Agreement for the Project.

[name]

[title]

FORM H

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____, Equity Member ____, Major Participant ____, proposed Contractor ____ certifies on behalf of itself the following: *[Check the appropriate box following the role of the entity providing this certificate]*

1. The undersigned certifies, to the best of its knowledge and belief, that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the

undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: _____

Firm/Entity: _____

Signature: _____

Title: _____

Proposer: _____

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors identified by Proposer as of the Technical Proposal Due Date]

FORM I

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that in accordance with NCDOT's Conflicts of Interest Policy, certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with NCDOT in connection with the Project procurement and document preparation. For purposes of this Form I, the term "RFP preparers" means those entities listed in ITP Section 2.9.2.1.

1. Disclosure Pursuant to Section 636.116(2)(v)

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, the Developer, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. If no disclosure is necessary, indicate "None."

Proposer shall disclose (a) any current contractual relationships with NCDOT, (b) any past, present, or planned contractual or employment relationships with any NCDOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any NCDOT member, officer, or employee if Proposer is awarded the contract. Proposer shall also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer shall also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2014
Date

FORM J

FINANCIAL REQUEST/OFFER

Proposer Name: _____

If the Proposer is requesting public funds during the design and construction phase from NCDOT for the Project, the Proposer shall complete Sections A and B. If the Proposer is offering to make a payment to NCDOT for the Project or is otherwise not requesting public funds, the Proposer shall complete Section C.

Pursuant to Exhibit C, Section 7.0, Proposer is instructed to complete this Form J in compliance with the maximum funding availability schedule set forth in Exhibit C, Section 7.1.1.

A. Request of Public Funds

- Provide the Public Funds Amount in nominal U.S. dollars, rounded to the nearest dollar, for each quarter and summing to the Total, in Box 1, payable pursuant to the terms set forth in Part E of Exhibit 5 to the CA.
- Provide the net present value of the Public Funds Amount, as of the Financial Proposal Due Date using a 5% discount rate, 30-day months and 360-day years, discounted quarterly on an end of period cash flow, rounded to the nearest dollar, in Box 2 (“Net Present Value of Public Funds Amount”). For purposes of the net present value calculation only, Proposer shall assume the following dates:
 - Commercial Close: June 1, 2014
 - NTP1: Commercial Close + 30 days
 - NTP2: Commercial Close + 210 days
- See Exhibit C, Section 7.1 for additional explanation and requirements.

	NTP2 Issuance +									
	3* mos.	6 mos.	9 mos.	12 mos.	15 mos.	18 mos.	21 mos.	24 mos.	27 mos.	30 mos.
Public Funds Amount	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	33 mos.	36 mos.	39 mos.	42 mos.	45 mos.	48 mos.	51 mos.	54 mos.	57 mos.	60 mos.
Public Funds Amount	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Nominal Amount of Public Funds Amount	\$0									
	Box 1									

*Include value of NTP1 Work to be performed prior to NTP2 and payable pursuant to the CA.

Total Net Present Value of Public Funds Amount	\$	Box 2
---	----	-------

B. Maximum Payment Curve

- The Maximum Payment Curve is the cumulative total of the Public Funds Amount for the listed three month period and each preceding three month period, as described in Section A.
- The Maximum Payment Curve will be inserted into the executed Agreement as Attachment 3 to Exhibit 5 to the CA, including the assumed date for NTP2 specified in Section A. The Maximum Payment Curve table shall be calculated from Section A, as described in Section 7.1.3 of Exhibit C.

	NTP2 Issuance +									
	3* mos.	6 mos.	9 mos.	12 mos.	15 mos.	18 mos.	21 mos.	24 mos.	27 mos.	30 mos.
Maximum Payment Curve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	33 mos.	36 mos.	39 mos.	42 mos.	45 mos.	48 mos.	51 mos.	54 mos.	57 mos.	60 mos.
Maximum Payment Curve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

*Include value of NTP1 Work to be performed prior to NTP2 and payable pursuant to the CA.

C. Offer of Payment to NCDOT

- Provide the Concession Payment in nominal U.S. dollars, rounded to the nearest dollar, in Box 3, payable pursuant to the terms set forth in Exhibit 5, Part A to the CA.
- Provide the net present value of the Concession Payment, as of the Financial Proposal Due Date using a 5% discount rate, 30-day months and 360-day years, discounted quarterly on an end of period cash flow, rounded to the nearest dollar, in Box 4 (“Net Present Value of Concession Payment”).
- See Exhibit C, Section 7.2 for additional explanation and requirements.

Total Nominal Amount of	\$	Box 3
--------------------------------	----	-------

Concession Payment	
---------------------------	--

Total Net Present Value of Concession Payment	\$	Box 4
--	----	-------

D. Request for Developer Ratio Adjustment Mechanism

- Provide the DRAM Aggregate Cap Amount in nominal U.S. dollars, rounded to the nearest dollar, payable pursuant to the terms of Section 13.3 of the CA.
- See Exhibit C, Section 7.3 for additional explanation and requirements.

DRAM Aggregate Cap Amount	\$	Box 5
----------------------------------	----	-------

Date: _____, 2014

Proposer: _____

Signature: _____

Title: _____

FORM K

PROPOSAL AND FINANCIAL CLOSE SECURITY

[see attached]

FORM K-1

PROPOSAL BOND

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 _____, duly organized under the laws of the state indicated on the attached page, having its principal place of business at the address, indicated on the attached page, and having an address in the state indicated on the attached page, and authorized as a surety in the State of North Carolina, are hereby jointly and severally held and firmly bound unto the North Carolina Department of Transportation ("NCDOT"), in the sum of **\$10,000,000** (the "Bonded Sum")

WHEREAS, the Principal is herewith submitting its Proposal for furnishing the development, design, construction, financing, operation and maintenance of the I-77 HOT Lanes Project, which Proposal is incorporated herein by this reference and has been submitted pursuant to NCDOT's Request for Proposals dated as of August 8, 2013 (as amended or supplemented, the "RFP"), in accordance with the Instructions to Proposers thereto ("ITP") included in the RFP, to develop, design, construct, finance, operate and maintain the Project through a Comprehensive Agreement (the "CA"). Initially capitalized terms used, but not defined, herein shall have the meanings set forth in the ITP;

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 NCDOT 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 written notice of such forfeiture from NCDOT:

(a) Principal's receipt of written notice from NCDOT that either (i) no CA for the Project will be awarded by NCDOT pursuant to the RFP, or (ii) NCDOT has awarded the CA for the Project to another Proposer, has received the executed CA from such other Proposer and does not intend to award the CA to Principal;

(b) Principal performs its obligations under ITP Section 6.1 and 6.2; or

(c) If NCDOT has not previously delivered notice of forfeiture hereunder, failure of NCDOT to award and execute the CA with Principal within 210 days after the Financial Proposal Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to NCDOT 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) If the Principal withdraws, repudiates or otherwise indicates in writing that it will not meet any commitments made in its Proposal while this Proposal Bond is required to be in effect;

(b) If the Principal fails to release its Lender(s), Lead Underwriter(s) and Toll System Integrator from exclusivity pursuant to ITP Section 2.14; or

(c) If the Principal is selected as the Apparent Best Value Proposer and any of the following occur:

(i) Following notification from NCDOT that it is the Apparent Best Value Proposer, the Principal fails to finalize the CA in good faith as defined in ITP Section 6.1.1, unless such failure is directly attributable to (1) NCDOT's cancellation of the procurement or decision not to close; provided that such cancellation or decision is not caused by the Principal or or (2) NCDOT requiring the Principal to negotiate material changes from the form of CA Documents included in the RFP;

(ii) Following notification from NCDOT that it is the Apparent Best Value Proposer, the Principal fails to provide the documents required under, or satisfy the conditions set forth in ITP Sections 6.2.1 and 6.3, unless such failure is directly attributable to NCDOT's cancellation of the procurement or decision not to reach Commercial Close; provided that such cancellation or decision is not caused by the Principal; or

(iii) Following notification from NCDOT that it is the Apparent Best Value Proposer, Commercial Close does not occur within 120 days from the date of NCDOT's report to the Joint Legislative Transportation and Oversight Committee, as required under applicable Law (or such later period as may be designated by NCDOT pursuant to ITP Section 1.6), unless such failure to reach Commercial Close is directly attributable to:

(1) NCDOT's failure to provide timely responses to Post-Selection Deliverables in accordance with ITP Section 6.2.2;

(2) NCDOT's failure to provide the Execution Documents and other NCDOT deliverables set forth in ITP Section 6.3.2 after the Principal's satisfaction of all conditions thereto and execution and delivery of the Execution Documents by the Principal to NCDOT;

(3) Absence of concurrence in the award by FHWA (as required by ITP Section 6.3), where such absence is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Principal;

(4) NCDOT's cancellation of the procurement or decision not to achieve Commercial Close; provided that such cancellation or decision is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Principal; or

(5) NCDOT's failure to provide any other deliverable NCDOT is required to deliver to Developer as a condition precedent to Commercial Close, where such failure is not significantly or primarily caused by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Principal;

3. Principal agrees and acknowledges that the amount of the Bonded Sum is reasonable in order to compensate NCDOT 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 NCDOT's transportation improvement program, including the CA program, with policy makers and with the general public, delays to or termination of the Project and additional costs of administering the subject procurement 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 NCDOT 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.

4. 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 NCDOT 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 NCDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by NCDOT 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 CA that Principal may grant in accordance with the CA 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:

SIGNED and SEALED this _____ day of _____, 2014

Principal

By: _____

Co-Surety *[Note: If only one Surety provides this Proposal Bond, replace "Co-Surety" with "Surety" in the first signature line and delete the remaining co-surety signature blocks]*

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

FORMED IN

FORM K-2

PROPOSAL LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

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

APPLICANT:

BENEFICIARY: North Carolina Department of Transportation

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: \$10,000,000 **[NOTE: The amount of a single letter of credit may be less, on the condition that Proposer provides more than one letter of credit that total \$10,000,000 in the aggregate]**

STATED EXPIRATION DATE: _____ **[Note: Insert date that is 210 days after the Financial Proposal Due Date and delete this bracketed text.]**

The Issuer hereby issues this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of Beneficiary, for the amount of \$10,000,000, available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this 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 a certificate, executed by an authorized signatory of Beneficiary, stating that:
 - (a) The person signing the certificate is an authorized signatory of Beneficiary, and
 - (b) "This drawing is due to _____'s **[Proposer's Name]** failure to perform certain obligations under the Instructions to Proposers included in that certain Request for Proposals to develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project, issued on August 8, 2013 by the North Carolina Department of Transportation, as amended."

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

This Letter of Credit shall be cancelled on the earlier of (i) the Stated Expiration Date described above; and (ii) the date of receipt by the Issuer of a letter, signed by the Beneficiary, stating that this Letter of Credit may be cancelled and accompanied by the original Letter of Credit and any original amendments(s) (if any).

This Letter of Credit is subject to the rules of the “International Standby Practices” ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by North Carolina law.

Issuer:

By: _____
(Authorized signature of Issuer)

FORM K-3

FINANCIAL CLOSE BOND

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 _____ duly organized under the laws of the state or commonwealth indicated on the attached page, having its principal place of business at the address indicated on the attached page, and having an address in the State, as indicated on the attached page, and authorized as a surety in the State of North Carolina, are hereby jointly and severally held and firmly bound unto the North Carolina Department of Transportation (“NCDOT”), in the sum of **\$15,000,000** (the “Bonded Sum”).

WHEREAS, the Principal has entered into a Comprehensive Agreement with NCDOT dated as of _____, 2014 (the “CA”) **[NOTE: insert date of CA and delete this bracketed text]** to develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project (the “Project”);

NOW, THEREFORE,

1. The condition of this bond is such that this obligation shall be null and void upon (a) Principal (i) achieving Financial Close for the Project by the Project Financing Deadline, as set forth in the CA, and (ii) making the full Concession Payment to NCDOT, if applicable, by the deadline set forth in the CA; or (b) the CA being terminated pursuant to Sections 19.13, 19.14 or 19.15 of the CA; otherwise this bond shall remain in full force and effect, and the Bonded Sum will be forfeited to NCDOT, 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 written notice of such forfeiture from NCDOT:

2. The Principal and the Surety or Co-Sureties hereby agree to pay to NCDOT 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 fails to achieve Financial Close by the Project Financing Deadline set forth in the CA (as may be extended pursuant to the CA), unless such failure is excused in accordance with Section 4.1.3.2 of the CA; or

(b) Principal fails to pay the Concession Payment by the deadline set forth in the CA **[NOTE: if the executed form of CA does not include a Concession**

Payment, this parenthetical (b) shall not be required or included in the executed Form K-3.]

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate NCDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the CA. Such damages include potential harm to the credibility and reputation of NCDOT's transportation improvement program, including the CA program, with policy makers and with the general public, delays to or termination of the Project and additional costs of administering the subject procurement or a new procurement (including engineering, legal, financial advisory, 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 NCDOT would incur as a result of Principal's failure to satisfy the obligation under the CA to achieve financial close, 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 bond:

(a) If suit is brought on this bond by NCDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by NCDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(b) Any extension of time for financial close beyond the extension allowed by the CA that is agreed to by NCDOT and Principal shall be subject to the reasonable approval of Surety or Co-Sureties.

(c) Correspondence or claims relating to this bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of _____, 2014

Principal

By: _____

Co-Surety *[Note: if only one Surety provides this bond, replace "Co-Surety" with "Surety" in the first signature line and delete the remaining co-surety signature blocks]*

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

FORMED IN

FORM K-4

**FINANCIAL CLOSE LETTER OF CREDIT
IRREVOCABLE STANDBY LETTER OF CREDIT**

ISSUER:

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

APPLICANT:

BENEFICIARY: North Carolina Department of Transportation

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: \$15,000,000) *[NOTE: The amount of a single letter of credit may be less, on the condition that Developer (or Proposer for, or on behalf of, Developer) provides more than one letter of credit that total \$15,000,000 in the aggregate]*

STATED EXPIRATION DATE: _____ *[NOTE: Insert date that is 210 days after the Effective Date of the CA, which shall be subject to extension pursuant to the CA]*

Reference is made to that certain Comprehensive Agreement, by and between Beneficiary and _____ (“Developer”), dated as of _____ (the “CA”).

The Issuer hereby issues this Irrevocable Standby Letter of Credit (“Letter of Credit”) in favor of Beneficiary, for the amount of \$15,000,000, available by draft at sight drawn on Issuer. Any draft under this Letter of Credit shall:

1. Identify this 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 a certificate, executed by an authorized signatory of Beneficiary, stating that:

(a) The person signing the certificate is an authorized signatory of Beneficiary,

and one of the following:

(b)(l) “This drawing is due to _____’s *[Developer]* failure to achieve Financial Close by the Project Financing Deadline set forth in the CA, without excuse under Section 4.1.3.2 of the CA”; or

- (b)(ii) "This drawing is due to _____'s **[Developer]** failure to pay the Concession Payment by the deadline set forth in the CA." **[NOTE: if executed form of CA does not include a Concession Payment, this parenthetical (b) shall not be required and not be included in the executed Form K-4.]**

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

This Letter of Credit shall be cancelled on the earlier of (i) the Stated Expiration Date described above; and (ii) the date of receipt by the Issuer of a letter, signed by the Beneficiary, stating that this Letter of Credit may be cancelled and accompanied by the original Letter of Credit and any original amendments(s), (if any).

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by North Carolina law.

Issuer:

By: _____
(Authorized signature of Issuer)

FORM L

OPINION OF COUNSEL

**[INSERT LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL –
SEE SECTION 6.3.1(c) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS.
OPINION LETTERS FROM MULTIPLE LEGAL COUNSEL ARE ACCEPTABLE AS
LONG AS THE LETTERS IN THE AGGREGATE PROVIDE THE OPINIONS
REQUESTED IN THIS FORM L]**

Rodger Rochelle
North Carolina Department of Transportation
Transportation Program Management
Century Center, Building B, Door B2
1020 Birch Ridge Drive
Raleigh, NC 27610

Re: Comprehensive Agreement for I-77 HOT Lanes Project dated as of _____, 2014, by and between North Carolina Department of Transportation, and _____ (the “Developer”)

Gentlemen:

This letter is provided with regard to the Comprehensive Agreement (“CA”) dated as of _____, 20___, by and between the North Carolina Department of Transportation (“NCDOT”) and _____ (“Developer”) for I-77 HOT Lanes Project (“Project”).

[Describe relationship to Developer and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery and execution of the CA.]

This letter is provided to you pursuant to Section 6.3.1(c) of the Instructions to Proposers of that certain Request for Proposals issued by the North Carolina Department of Transportation (“NCDOT”) on August 8, 2013, as amended.

In giving this opinion, we have examined _____. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. *[if certificate used/obtained from Developer or Guarantor, such certificate should also run in favor of NCDOT and should be attached to opinion]*

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of Developer and that Developer has corporate power to own its properties and assets, carry on its business, enter into the CA Documents and to perform its obligations under the CA Documents] *[if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]*

2. [opinion regarding good standing and qualification to do business in State of North Carolina for Developer] *[if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]*

3. [opinion regarding organization/formation and existence of Guarantor and that Guarantor has corporate power to own its properties and assets, to carry on its business, to enter into the Guaranty and to perform its obligations under the Guaranty] *[If Guarantor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners] [if there is no Guaranty, this opinion may be omitted]*

4. [opinion that the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement have been duly authorized by all necessary corporate action on the part of Developer and such documents have been duly executed and delivered by Developer] *[if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second and third "Developer"]*

5. [opinion that Guaranty has been duly authorized by all necessary corporate action on the part of Guarantor and the Guaranty has been duly executed and delivered by Guarantor] *[if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]*

6. [opinion that the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement each constitute a legal, valid and binding obligation of Developer enforceable against Developer in accordance with each of their respective terms] *[if Developer is a partnership/joint venture, add: "and its joint venture members/general partners" after the second "Developer"]*

7. [opinion that the Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms] *[if Guarantor is a partnership/joint venture, add: "and its joint venture members/general partners" after the second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]*

8. [opinion that there is no action, suit, proceeding, investigation or litigation pending and served on Developer or overtly threatened against Developer which

challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement, or which challenges the authority of Developer's representative executing the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement

9. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement; and that none of the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement conflict with any agreements to which Developer is a party] *[if Developer is a partnership/joint venture, add: and "its joint venture members/general partners are a party"]* or with any orders, judgments or decrees by which Developer is bound *[if Developer is a partnership/joint venture, add: "and its joint venture members/general partners are bound"]*

10. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Guaranty; and that the Guaranty does not conflict with any agreements to which Guarantor is a party [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Guarantor is bound] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are bound] [if there is no Guaranty, this opinion may be omitted]

11. [opinion that execution, delivery and performance of all obligations by Developer under the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender's Direct Agreement do not conflict with, and are authorized by, the articles of incorporation and bylaws of Developer *[if Developer is a partnership, replace "articles of incorporation and bylaws" with "partnership agreement and (if applicable) certificate of limited partnership"; if Developer is a joint venture, replace "articles of incorporation and bylaws" with "joint venture agreement"; if Developer is a limited liability company, replace "articles of incorporation and bylaws" with "operating agreement and certificate of formation"]*

12. [opinion that execution, delivery and performance of all obligations by Guarantor under the Guaranty does not conflict with, and is authorized by, the articles of incorporation and bylaws of Guarantor] *[if Guarantor is a partnership, replace "articles of incorporation and bylaws" with "partnership agreement and (if applicable) certificate of limited partnership"; if Guarantor is a joint venture, replace "articles of incorporation and bylaws" with "joint venture agreement"; if Guarantor is a limited liability company, replace*

“articles of incorporation and bylaws” with “operating agreement and certificate of formation”] [if there is no Guaranty, this opinion may be omitted]

13. [opinion that execution and delivery by Developer of the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender’s Direct Agreement do not, and Developer’s performance of its obligations under such documents will not, violate any current statute, rule or regulation applicable to the Developer or to transactions of the type contemplated by the CA Documents, the Design-Build Contract, the contract between Developer and Lead O&M Contractor (if applicable), the Intellectual Property Escrow Agreement(s), the Project Trust Agreement and the Lender’s Direct Agreement]

14. [opinion that execution and delivery by the Guarantor of the Guaranty do not, and the Guarantor’s performance of its obligations under the Guaranty will not, violate any current statute, rule or regulation applicable to the Guarantor or to transactions of the type contemplated by the Guaranty] *[if there is no Guaranty, or if there is no Guaranty that has been executed and delivered on or before the execution date, then this opinion may be omitted]*

FORM M

RFP COMMENT FORM

Proposer: _____
Comment Sheet No. _____ of _____ Sheets

No.	Document and Section Number	Category	Comment(s)	Reserved for NCDOT Response

FORM N

DETAILED COSTING FORM

Form N Instructions for Completion:

Fill out Form N* as follows:

1. For NTP1 Work:
 - Enter the total cost of each item which will be a NTP1 Work deliverable as described in Section 1.5 of the Technical Provisions.
 - If no costs will be incurred as part of a NTP1 Work deliverable as described in Section 1.5 of the Technical Provisions, show "0".
2. For Post-NTP2 Work:
 - Design and construction costs entered in Section II through Section III of this Form N shall be eligible for reimbursement from the Public Funds Amount under Federal Law, including costs for project management, administration, design, contingencies and any allowance for inflation.
 - The amount entered into the total cost field shall be sub-divided in the adjacent fields to represent how much is planned to be spent during the Construction Period on the specific line items in Section II through Section III for each three month period after issuance of NTP2. The amount entered into the total cost field for each specific line item in Section IV shall be sub-divided in the adjacent fields to represent how much is planned to be spent during on the specific line items for each sixth month period after Substantial Completion of each Project Section. Operations and maintenance costs entered in Section III, Part I and Section IV of this Form N are non-reimbursable from the Public Funds Amount and shall include operations and maintenance costs incurred during construction and following Substantial Completion of each Project Section. Costs shall be provided for all applicable years.

*Form N does not replace the NTP1 Work or post-NTP2 Work Schedule of Values or Work Breakdown Structure that Developer must prepare in accordance with the CA Documents.

Item ID	Section I - NTP 1 Work Pursuant to Section 1.5 of the Technical Provisions	Total Cost	NTP1 Work					
			Year 1	Year 2	Year 3	Year 4	Year 5*	
1.	Provision of Developer Management Plan	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					
2.	Submission of Protocols and Procedures for public outreach, stakeholder relations, Emergency management, media and marketing	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					
3.	Preparation of Communication, Public Outreach and Community Education Plan	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					
4.	Appointment and retention of a ROW Appraiser	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					
5.	Submission of Project Baseline Schedule	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					
6.	Submission of complete Schedule of Values	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					
7.	Submission of Progress Report	\$ -	1st Quarter					
			2nd Quarter					
			3rd Quarter					
			4th Quarter					

8.	Maintenance of a full and complete copy of all CA documents	\$ -	1st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
9.	Submission of O&M Plan(s)	\$ -	1st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
10.	Provision of Traffic Management Phasing Concept	\$ -	1st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
11.	Design Activities that are not Design Submittals	\$ -	1st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
12.	Design Submittals	\$ -	1st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
13.	Total NTP 1 Work Costs (Vertical Sum of Costs in Section I, Items 1-12)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -

*Continue years as needed.

Item ID	Section II(A) – Design	Total Cost	Post-NTP 2 Work					
				Year 1	Year 2	Year 3	Year 4	Year 5*
1.	Survey	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
2.	Engineering Design	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
3.	Landscape Design	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
4.	Specialist Design Services (please specify below)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
5.	Total Design Costs (Vertical Sum of Costs in Section II(A), Items 1-4)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
Item ID	Section II(B) – Right of Way	Total Cost	Post-NTP 2 Work					
				Year 1	Year 2	Year 3	Year 4	Year 5*
A. Right of Way Acquisition								
1.	ROW Acquisition Costs	\$ 5,400,000	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					

2.	Total Right of Way Acquisition Costs (Costs in Section II(B), Item 1)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
B. Right of Way Services								
3.	Relocation Assistance	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
4.	Title and Escrow	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
5.	Appraisals	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
6.	Total Right of Way Services Costs (Vertical Sum of Costs in Section II(B), Items 3-5)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
7.	Total Right of Way Costs (Vertical Sum of Costs in Section II(A), Item 2 and Section II(B), Items 3-6)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
Item ID	Section III – Construction	Total Cost	Post-NTP 2 Work					
				Year 1	Year 2	Year 3	Year 4	Year 5*
A. Mobilization								
1.	Mobilization	\$ -	1 st Quarter					
			2 nd Quarter					

			3 rd Quarter					
			4 th Quarter					
2.	Total Mobilization Construction Costs (Costs in Section III, Item 1)			\$ -	\$ -	\$ -	\$ -	\$ -
B. Environmental								
3.	Water Quality	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
4.	Hazardous material removal and disposal	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
5.	Stream Restoration / Relocation	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
6.	Total Environmental Construction Costs (Vertical Sum of Costs in Section III, Items 3-5)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
C. Roadway								
7.	Erosion and Sedimentation Control	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
8.	Clearing and Grubbing	\$ -	1 st Quarter					
			2 nd Quarter					

			3 rd Quarter					
			4 th Quarter					
9.	Earthworks (bulk excavation / bulk fill / backfill)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
10.	Pavement Mainline – Portland Cement Concrete pavement (including base)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
11.	Pavement Mainline – Asphalt Cement pavement (including base)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
12.	Pavement Ramps (including base)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
13.	Pavement Cross Streets (including base)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
14.	Drainage	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
15.	Signs, Delineation and Pavement Markings	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
16.	Traffic Control	\$ -	1 st Quarter					
			2 nd Quarter					

24.	ITS Concept of Operations	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
25.	Vehicle Detection System	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
26.	CCTV System	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
27.	DMS, Arterial DMS, and Toll Rate Signs	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
28.	Communications System	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
29.	ITS Integration and Testing	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
30.	Total ITS Integration and Testing Construction Costs (Vertical Sum of Costs in Section III, Items 24-29)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
E. Structures								
31.	Modify or Widen Structures	\$ -	1 st Quarter					
			2 nd Quarter					

			3 rd Quarter					
			4 th Quarter					
32.	Remove Structures	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
33.	New Structures	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
34.	Concrete Box Culverts	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
35.	Retaining Walls	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
36.	Noise Walls	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
37.	Aesthetics and Landscaping and Allowance Scope	\$ 2,000,000	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
38.	Voluntary Aesthetic Elements	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
39.	Bicycle and Pedestrian Accommodations	\$ -	1 st Quarter					
			2 nd Quarter					

			3 rd Quarter					
			4 th Quarter					
40.	Total Structures Construction Costs (Vertical Sum of Costs in Section III, Items 31-39)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
F. Tolling								
41.	Building and Infrastructure	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
42.	Toll Equipment	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
43.	Toll Software	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
44.	Toll System Integration and Testing	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
45.	Total Tolling Construction Costs (Vertical Sum of Costs in Section III, Items 41-44)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
G. Other								
46.	Railroad Track	\$ -	1 st Quarter					
			2 nd Quarter					

			3 rd Quarter					
			4 th Quarter					
47.	Site Facilities for NCDOT Staff	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
48.	Operations and Maintenance Facility	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
49.	Traffic Management Center (TMC)	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
50.	Total Other Construction Costs (Vertical Sum of Costs in Items Section III, 46-49)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
H. Utilities								
51.	Utility Coordination	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
52.	Utility Design	\$ -	1 st Quarter					
			2 nd Quarter					
			3 rd Quarter					
			4 th Quarter					
53.	Total Utilities Coordination and Design Costs (Vertical Sum of Costs in Section III, Items 51-52)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
54.	Utility Construction (non-reimbursable in	\$ -	1 st Quarter					

	accordance with the CA)						2 nd Quarter	3 rd Quarter	4 th Quarter	
55.	Total Utilities Construction Costs (Vertical Sum of Costs in Section III, Item 54)	\$ -					\$ -	\$ -	\$ -	
I. O&M During Construction										
56.	Pavement & Base	\$ -								
57.	Drainage	\$ -								
58.	Structures	\$ -								
59.	Landscaping and Vegetation Management	\$ -								
60.	Signs, Pavement Markings, Delineation, Lighting and other Roadside Elements	\$ -								
61.	Fleet Equipment and Facilities	\$ -								

			4 th Quarter					
62.	Total Operation and Maintenance During Construction Costs (Vertical Sum of Costs in Section III, Items 56-61)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
63.	Total Construction Costs (Vertical Sum of Costs in Section III, Item 2, 6, 23, 30, 40, 45, 50, 53, 55, and 62)							
Item ID	Section IV – O&M After Construction	Total Cost	Post-NTP 2 Work					
				Year 1	Year 2	Year 3	Year 4	Year 5*
A. Highway (Civil Components) O&M								
1.	Annual O&M Payment Scope	\$ 1,000,000	1 st Six Months					
			2 nd Six Months					
2.	Pavement & Base	\$ -	1 st Six Months					
			2 nd Six Months					
3.	Drainage	\$ -	1 st Six Months					
			2 nd Six Months					
4.	Structures	\$ -	1 st Six Months					
			2 nd Six Months					
5.	Landscaping and Vegetation Management	\$ -	1 st Six Months					
			2 nd Six Months					
6.	Signs, Pavement Markings, Delineation, Lighting and other Roadside Elements	\$ -	1 st Six Months					

			Months					
			2 nd Six Months					
15.	Traffic Management Center	\$ -	1 st Six Months					
			2 nd Six Months					
16.	Total ITS and Communication Systems O&M Costs (Vertical Sum of Costs in Items 13-15)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
17.	Total Operations & Maintenance Costs (Vertical Sum of Costs in Section IV, Item IDs 8, 12, and 16)	\$ _____ -		\$ _____ -	\$ _____ -	\$ _____ -	\$ _____ -	\$ _____ -
	TOTAL COSTS (Vertical Sum of Costs in NTP I Work, Section I, Item ID 13; Section II(A), Item ID 5; Section II(B), Item ID 7; Section III, Item ID 63 and Section IV, Item ID 17)	\$ _____ -		\$ _____ -	\$ _____ -	\$ _____ -	\$ _____ -	\$ _____ -

*Continue years as needed.

FORM O

INTELLECTUAL PROPERTY ESCROW AGREEMENT

(NCDOT I-77 HOT LANES PROJECT)

THIS INTELLECTUAL PROPERTY ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of this _____, 2014 (the “**Effective Date**”), by and between _____, a _____ (“**Developer**”), and _____ (“**Escrow Agent**”), to and for the benefit of the North Carolina Department of Transportation (“**NCDOT**”), an agency of the State of North Carolina, with reference to the following facts:

A. NCDOT and the Developer have entered into a Comprehensive Agreement (“**CA**”) for development, design, construction, finance, operation and maintenance of the I-77 HOT Lanes Project (the “**Project**”). Pursuant to the CA, Developer and/or other Depositors (as defined below) have granted to NCDOT a license or licenses to use the Escrowed Materials (as defined below.) Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the CA.

B. Developer wishes to employ the services of Escrow Agent to act as the escrow holder with regard to certain materials that are or may be proprietary to Developer or its Contractors (the “**Escrowed Materials**”), and (potential) future deposit of additional Escrowed Materials, for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder, under the terms and conditions provided in this Agreement. Escrowed Materials may include Cost and Pricing Data, and certain Intellectual Property and Source Code information, as set forth in Section 22.5 of the CA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Developer hereby irrevocably provides the following escrow instructions to Escrow Agent and the parties hereby agree as follows. These Escrow Instructions, although provided unilaterally, are specifically for the benefit of NCDOT as an intended third party beneficiary and may not be revised, supplemented, waived or withdrawn without the prior written consent of NCDOT’s authorized representative.

1. Designation of Authorized Representatives. Developer hereby designates _____ as its authorized representative. NCDOT may designate an authorized representative by written notice to Developer and Escrow Agent and change its authorized representative at any time by providing written notice to Developer and Escrow Agent. Developer may change its authorized representative at any time by providing written notice to NCDOT and Escrow Agent.

2. Deposits.

(a) “**Depositor**” means each person or entity, including the Developer and its Contractors, that deposits with Escrow Agent any Escrowed Materials to be held by Escrow Agent pursuant to this Agreement. Where Developer makes a deposit of Escrowed Materials on behalf of any Contractor, the Contractor is deemed

the “Depositor”.

(b) Developer hereby deposits with Escrow Agent the Escrowed Materials listed as Exhibit A.

(c) In accordance with Section 22.5 of the CA, Developer may from time to time deliver additional materials to be held hereunder together with an acknowledgment signed by the Depositor in the form included in Exhibit A attached hereto that such materials are subject to the terms and provisions of this Agreement and that such Depositor grants to NCDOT the rights in such additional materials provided pursuant to this Agreement, in which event a list identifying the Depositor, date of deposit, and all materials added shall be appended to this Agreement and incorporated herein.

(d) Escrow Agent shall notify NCDOT immediately upon its receipt of any such additional materials and shall verify that NCDOT has received a copy of the list of items delivered.

(e) Developer, as “Depositor” on this Effective Date hereby deposits with Escrow Agent the Escrowed Materials set forth at Exhibit A, consisting of [] ([]) separately sealed boxes, each labeled pursuant to Section 6.3.1(f) of the ITP, numbered serially “1 of [],” etc. (the “**Initial Escrowed Materials**”). Escrow Agent hereby acknowledges receipt of the Initial Escrowed Materials, agrees to accept supplemental materials as and when specified herein, agrees to acknowledge receipt when so received and agrees to hold the Escrowed Materials in safekeeping under the terms and conditions of this Agreement. If requested by Depositor or NCDOT, Escrow Agent shall provide a signed delivery receipt of such supplemental Escrowed Materials promptly following deposit and receipt.

(f) Additional information, documents or other materials may be added to the Escrowed Materials pursuant to the requirements identified in the ITP or CA Documents. In connection with deposit of such additional information, documents or other materials, Escrow Agent and Depositor shall prepare an amended Exhibit A, describing such information, documents or materials (to include indicia of quantity, substantially in the form of Section 2(e)), as additional lines to Exhibit A. Depositor shall sign each proposed amendment Exhibit A, and such signature shall constitute Depositor’s representation and warranty that such proposed-amended Exhibit A is true, accurate and complete. All such additional information, documents or other materials, if deposited by Depositor pursuant to the CA Documents, shall conform to the requirements thereunder as to content and manner of submission. Upon NCDOT’s written approval, which shall not be unreasonably withheld, conditioned or delayed, such amended Exhibit A shall become part of this Agreement, and upon the deposit, such additional information, documents or other materials shall be, and deemed to be, “Escrowed Materials” for purposes of this Agreement.

(g) All Escrowed Materials shall be delivered by Depositor to Escrow Agent free and clear of any lien or encumbrance, except as permitted by the CA, and Depositor agrees that it will not pledge, hypothecate or otherwise encumber any of the Escrowed Materials or grant any option or create any other right with respect thereto.

3. Manner of Holding of Escrowed Materials. During the Term:

(a) Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Agent located at _____, North Carolina, or such other address in _____, North Carolina, as is specified to NCDOT and the Developer in writing not later than fifteen days prior to the time such Escrowed Materials are to be relocated to such new location or to such other address in the State of North Carolina as is agreed to in writing by NCDOT and the Developer. The Escrowed Materials shall be stored in a secure area that is locked at all times. The Escrowed Materials shall either be held in a fire safe area on the premises or shall be kept in firesafe boxes or cabinets supplied by the Developer. Escrow Agent shall maintain the Escrowed Materials in the strictest confidence.

(b) During the term hereof, Escrow Agent shall allow access to the Escrowed Materials only to those individuals identified by NCDOT's authorized representative as having need for access. Such access shall include the ready ability of NCDOT to temporarily install and run computerized programs, applications, data and electronic files that are included in the Escrowed Materials on a stand-alone secure personal computer. NCDOT shall provide notice to Escrow Agent at least one business day in advance of its planned review. All reviews shall be conducted during Escrow Agent's business hours. In the event that NCDOT needs to conduct a review of Escrowed Materials at a time other than the Escrow Agent's normal business hours of 8:00 a.m. – 5:00 p.m., Raleigh, North Carolina time, Monday through Friday, NCDOT agrees that access to the Escrowed Materials shall be subject to compliance with the procedures of the Escrow Agent described herein, which are designed to ensure proper preparation through advance notice, and to maintain proper control over access to the Escrow Agent's office and any confidential or proprietary information of the Escrow Agent or its customers. In particular, the Escrow Agent will require that two employees of the Escrow Agent (one of which will be an officer) shall be present at all times that Escrowed Materials are being reviewed on its premises. In addition, reviewers will be required to sign-in and sign-out when reviewing Escrowed Materials. Finally, the reviewers will be required to agree to maintain the confidentiality of any proprietary or confidential information of the Escrow Agent or its customers upon signing in to review the Escrowed Materials. No access shall be given to any representative of Developer unless NCDOT agrees to such access in writing. No third party, including the employees of Escrow Agent, shall be allowed access to the Escrowed Materials, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes. The Escrow Agent shall have no duty to supply any computers, printers or other devices necessary to review or verify the Escrowed Materials. In no event shall NCDOT, the Developer, a Depositor or any person or entity selected or appointed by them have the right to access, connect to or otherwise use any computer or other network of the Escrow Agent, other than to have access to electricity.

(c) Escrow Agent shall have the obligation to reasonably protect the safety and security of the Escrowed Materials. Each submitting party is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

(d) In the event of any proceeding or litigation concerning the disclosure of any Escrowed Materials, Escrow Agent shall immediately notify Developer and NCDOT. In such event, the Escrow Agent will be a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto. The Developer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available or use the

Escrowed Materials. Subject to the provisions of this Section 3(d), Escrow Agent shall not disclose the content of this Agreement to any third party other than Depositors. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Escrowed Materials, Escrow Agent shall immediately notify Developer and NCDOT unless prohibited by law. It shall be the responsibility of Developer to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal.

4. Deposits of Source Code as Escrowed Materials.

(a) Prior to each delivery of Source Code to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Source Code are written or stored. Additionally, for purposes of Depositor's and Escrow Agent's respective obligations under Section 2(d), Depositor shall list each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Source Code (whether Depositor or a software supplier). Depositor shall sign each amended Exhibit A and deliver it to Escrow Agent with the Source Code. Such signature shall constitute Depositor's representation and warranty that Exhibit A is true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Agreement, except the obligation to notify Developer and NCDOT regarding the status of the account as required in Section 4(c) below.

(b) Within three business days after Escrow Agent receives Source Code in the Escrowed Materials, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on the amended Exhibit A. In addition to the deposit inspection, NCDOT may elect to cause a verification of the Source Code in accordance with Section 6 below.

(c) Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on the amended Exhibit A, Escrow Agent shall date and sign a copy of the amended Exhibit A and mail a copy thereof to Depositor and NCDOT. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on the amended Exhibit A, Escrow Agent shall (a) note the discrepancies in writing on the amended Exhibit A; (b) date and sign the amended Exhibit A with the exceptions noted; and (c) mail a copy of the amended Exhibit A to Depositor and NCDOT. Escrow Agent's acceptance of the deposit occurs upon the signing of the amended Exhibit A by Escrow Agent. Delivery of the signed amended Exhibit A to NCDOT is NCDOT's notice that the Source Code have been received and accepted by Escrow Agent.

5. Developer or other Depositor Representations. Developer [and any other Depositor] by depositing any materials pursuant to this Agreement represents and warrants to and for the benefit of NCDOT as follows:

(a) Developer or other Depositor has all necessary power and authority to execute, deliver and perform its obligations under this Agreement;

(b) Developer or the other Depositors lawfully possess all of the Escrowed Materials deposited with Escrow Agent;

(c) With respect to all of the Escrowed Materials, Developer has the right and authority to grant to Escrow Agent and NCDOT the rights as provided in this Agreement and Developer [and each other Depositor] hereby grants such rights to NCDOT;

(d) The Escrowed Materials are not subject to any lien or other encumbrance that entitles the holder of the lien or encumbrance to terminate this Agreement, withdraw the Escrowed Materials, or prevent or hinder NCDOT's access to the Escrowed Materials or receipt thereof following a Release Condition;

(e) The Escrowed Materials are Proprietary Intellectual Property and constitute Intellectual Property for purposes of 11 U.S.C. § 365(n) and NCDOT's rights pursuant to this Agreement constitute the rights of a licensee pursuant to 11 U.S.C. § 365(n); and

(f) The Escrowed Materials are readable and useable in their current form or, if any portion of the Escrowed Material is encrypted, the decryption tools and decryption keys have also been deposited.

6. Verification. NCDOT shall have the right, without cost to Developer or the Escrow Agent, to cause a verification of any Escrowed Materials. NCDOT shall notify Developer and Escrow Agent of NCDOT's request for verification. Developer shall be solely responsible for notifying the Depositor of the subject Escrowed Materials of NCDOT's request for verification. Developer shall have the right to be present at the verification, and may delegate in writing such right to the Depositor. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Escrowed Materials. If a verification is elected after the Escrowed Materials have been delivered to Escrow Agent, then only NCDOT, or at NCDOT's election an independent person or company selected and supervised by NCDOT and approved by Developer, may perform the verification. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Escrowed Materials and whether the Escrowed Materials are all the Escrowed Materials. Any verification shall take place either at Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If NCDOT elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the CA.

7. Removal of Escrowed Material. The Escrowed Material may be removed and/or exchanged only on written instructions signed by Developer, the relevant Depositor and NCDOT, or as otherwise provided in Section 8 of this Agreement.

8. Release of Escrowed Materials. Release of Escrowed Materials is subject to the terms and conditions of this Section 8.

(a) Release Conditions - Developer. As used in this Agreement, "Release Condition" shall mean with respect to Developer and the deposits it makes under this Agreement on its own behalf (but not on behalf of other Depositors) any of the following:

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against Developer (and, if instituted against Developer, are allowed against Developer or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution);

(ii) A custodian, trustee or receiver is appointed for Developer or any substantial part of its assets;

(iii) Developer makes or attempts to make an assignment for the benefit of creditors;

(iv) Developer generally fails to pay its debts when they are due or admits of its inability to pay its debts;

(v) Developer fails to provide necessary and commercially feasible updates and maintenance releases for any software or other Escrowed Materials owned or developed by Developer (but not software or other Escrowed Materials owned or developed by any other Depositor);

(vi) The CA is terminated because of a Developer Default and/or Termination Compensation is due to Developer by NCDOT;

(vii) Developer is dissolved, liquidated or otherwise ceases to do business in the ordinary course;

(viii) Developer or its successor or representative including any trustee in a bankruptcy proceeding relating to Developer rejects or elects to terminate the CA including but not limited to a rejection of the CA pursuant to 11 U.S.C. § 365, or under any state receivership, insolvency or other similar proceeding; or

(ix) Developer (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the CA on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

(b) Release Conditions – Other Depositors. As used in this Agreement, "Release Condition" shall mean with respect to any Depositor other than Developer and the deposits made by or on behalf of such Depositor under this Agreement (but not items deposited by or on behalf of other Depositors) any of the following:

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Depositor (and, if

instituted against the Depositor, are allowed against the Depositor or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution);

(ii) The Depositor is dissolved, liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing or supplying the software, product, part or other item that constitutes or contains the Proprietary Intellectual Property; or

(iii) The Depositor, without lawful excuse of performance, abandons performance or otherwise fails or refuses to fully and successfully perform its obligations within the time provided in its Contract; or

(iv) The Depositor or its successor or representative including any trustee in a bankruptcy proceeding relating to Depositor rejects or elects to terminate the agreement pursuant to which the Depositor has licensed the Escrowed Materials to the Developer and/or NCDOT, including but not limited to a rejection of such agreement pursuant to 11 U.S.C. § 365, or under any state receivership, insolvency or other similar proceeding; or

(v) The Depositor (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the agreement pursuant to which the Depositor has licensed the Escrowed Materials to Developer and/or NCDOT on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

(c) Filing For Release. If NCDOT believes in good faith that a Release Condition has occurred with respect to any Depositor, NCDOT may provide to Escrow Agent written notice of the occurrence of the Release Condition and a request for the release of the Escrowed Material to which the Release Condition pertains. NCDOT's notice shall indicate the Depositor to which the Release Condition pertains. Immediately upon receipt of such notice, Escrow Agent shall provide a copy of the notice to Developer and to the Depositor by commercial express mail. NCDOT shall have the express right to request a release of the Escrowed Materials for the purpose of determining the amount due to Developer with respect to any Termination Compensation, pursuant to the payment terms for Termination Compensation under the CA.

(d) Contrary Instructions. Each of Developer and the Depositor shall have 14 days from the date it receives Escrow Agent's notice requesting release of the Escrowed Materials to deliver to Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean and be limited to the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Developer or the Depositor, as applicable, that (i) the person signing for Developer or the Depositor is an authorized officer or authorized delegate of Developer or the Depositor and (ii) a Release Condition respecting the Depositor has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such 14-day period, Escrow Agent shall send a copy to NCDOT and Developer (if Developer has not itself delivered the Contrary Instruction) by

commercial express mail. Additionally, Escrow Agent shall notify Developer, the Depositor and NCDOT that there is a dispute to be resolved. Escrow Agent shall continue to store the Escrowed Materials without release pending (A) joint instructions from the party(ies) that delivered the Contrary Instruction and NCDOT; (B) dispute resolution (pursuant to Section 17.8 of the CA if it is a dispute between NCDOT and Developer); or (C) order of a court. Contrary Instructions received after such 14-day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

(e) Release of Deposit.

(i) If Escrow Agent does not receive Contrary Instructions within such 14-day period, Escrow Agent is authorized to, and shall, immediately release to NCDOT the Escrowed Materials to which the Release Condition pertains, as well as any Escrowed Materials that lacks identification of ownership on Exhibit A. Any copying expense will be chargeable to Developer. This Agreement shall terminate upon the release of all the Escrowed Materials held by Escrow Agent.

(ii) Escrow Agent shall promptly release to NCDOT all or any part of Escrowed Materials deposited by or on behalf of a Depositor at any time and from time to time upon receipt of written instructions signed by such Depositor authorizing the release.

(iii) Escrow Agent shall also release Escrowed Materials to NCDOT at any time as directed or ordered by the final decision in any dispute resolution proceeding pursuant to Section 17.8 of the CA. If NCDOT provides to Escrow Agent a written opinion of counsel for NCDOT to the effect that such decision is final and not appealable, Escrow Agent shall proceed with release in accordance with the final decision and may rely on such legal opinion.

9. Rights of Escrow Agent.

(a) If (i) conflicting demands are made or notices served upon Escrow Agent with respect to this Agreement or (ii) if a dispute should arise between NCDOT and Depositor as to whether any of the Escrowed Materials should be released or whether a Person should have access to the Escrowed Materials, then Escrow Agent shall refuse to deliver (or to provide such access to) the Escrowed Materials, except upon written directions from both NCDOT and Depositor, and Escrow Agent shall have the absolute right at its election to do any of the following, if directions resulting from resolution of such conflicting demands or dispute is not forthcoming within sixty (60) days of Escrow Agent's original receipt of such conflicting demands or knowledge of such dispute:

(i) withhold and stop all further proceedings in, and performance of this Agreement (excepting its obligations to hold the Escrowed Materials in confidence and safekeeping in accordance with this Agreement);

(ii) file a suit in interpleader in order to obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

(iii) deliver all Escrowed Materials with seals intact to another location meeting the requirements of Section 3 above, to be selected by Developer subject to NCDOT approval within 30 days after Escrow Agent delivers notice thereof to NCDOT.

(b) Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 8(d) of this Agreement, Escrow Agent may assume that any employee of a party to this Agreement who gives any written notice, request or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

(c) Developer and each other Depositor agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by Escrow Agent relating in any way to this escrow arrangement except to the extent such Liabilities are finally determined to have been primarily caused by the gross negligence or willful misconduct of Escrow Agent or its breach of this Agreement. The obligations of the parties set forth in this Section 9(c) shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

10. Term of Agreement.

(a) The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Section 10. This Agreement shall be terminated in the event (i) Developer and NCDOT jointly instruct Escrow Agent in writing that the Agreement is terminated; or (ii) Escrow Agent instructs Developer and NCDOT in writing that the Agreement is terminated for nonpayment in accordance with Section 10(b) or by resignation in accordance with Section 10(c).

(b) In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide written notice of delinquency to Developer and NCDOT. Developer or NCDOT shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such notice, then Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to Developer and NCDOT. Escrow Agent shall have no obligation to take any action under this Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the Escrowed Materials and transfer or dispose of the Escrowed Materials following termination as provided in this Section 10.

(c) Escrow Agent reserves the right to terminate this Agreement, for any reason, by providing Developer and NCDOT with 90-days' written notice of its intent to terminate this Agreement. Within the 90-day period, the Developer shall use diligent efforts to enter into a substantially similar agreement with another entity acceptable to NCDOT and willing and able to perform the functions of Escrow Agent hereunder and thereupon shall provide Escrow Agent with joint written instructions authorizing Escrow Agent to forward the Escrowed Materials to another

escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the Escrowed Materials in accordance with any such joint written instruction. If Escrow Agent does not receive said joint written instructions within 90 days of the date of Escrow Agent's written termination notice, then Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Escrowed Materials and transfer or dispose of Escrowed Materials following termination as provided in this Section 10.

(d) Upon termination of this Agreement, Escrow Agent shall destroy, return, or otherwise deliver the Escrowed Materials in accordance with Developer's and NCDOT's joint written instructions. If there are no such joint written instructions, Escrow Agent may, at its sole discretion, commence legal action interpleading Developer and NCDOT, deposit the Escrowed Materials with the court in such action and otherwise handle and dispose of the Escrowed Materials in accordance with court order. In no event shall Escrow Agent have the right to destroy the Escrowed Materials or return them to Developer absent joint written instructions to such effect or final order of a court of competent jurisdiction.

11. Disclaimer. Escrow Agent hereby disclaims and relinquishes any title to or ownership of Escrowed Materials deposited with Escrow Agent under this Agreement.

12. Fees. Developer shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth in Exhibit B attached hereto.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Developer:

Attention: _____
Telephone: () _____
Facsimile: () _____
Email: _____

If to NCDOT:

Rodger Rochelle
North Carolina Department of Transportation
Transportation Program Management
Century Center, Building B, Door B2
1020 Birch Ridge Drive
Raleigh, NC 27610
Telephone: (919) 707-6601
Facsimile: (919) 212-5711

Email: rdrochelle@ncdot.gov

If to the Escrow Agent:

Attention: _____
Telephone: () _____
Facsimile: () _____
Email: _____

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

It shall be the responsibility of each Depositor to notify in writing NCDOT, Developer and the Escrow Agent of its address for notice, including telephone, facsimile and email information, and of any change in the Depositor's address. The parties and NCDOT shall have the right to rely on the last known address of the other parties, of NCDOT and of each Depositor.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Escrow Agent Representations, Warranties and Covenants. Escrow Agent represents, warrants and covenants to Developer and each Depositor, and for the benefit of NCDOT, that

(a) it has no financial or other interest or relation with Developer, its principals or officers, except that it may be the depository for accounts maintained by such entities, or a lender or other provider of financial services in the normal course of business to such entities;

(b) the employees of Escrow Agent who have access to the Escrowed Materials also have no such interest or relation with Developer, its principals or officers; and

(c) Escrow Agent is not a "holder" of any of the Escrowed Materials as that term is used under the Uniform Commercial Code of the State of North Carolina, and, as such, Escrow Agent acknowledges and agrees that the Escrowed Materials may not be subject to any existing or hereafter filed and perfected security interests in any of the property of Escrow Agent held by any now or hereafter existing creditors of Escrow Agent.15. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto and NCDOT. However, Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Developer and NCDOT; and Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Developer, any other Depositor or NCDOT unless Escrow Agent receives and acknowledges written notice of such assignment.

16 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

17. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

18. Governing Law. The laws of the State of North Carolina shall govern this Agreement.

19. Right of Use Following Release. NCDOT has the right under this Agreement to use the Escrowed Materials for the sole purpose of continuing the benefits afforded to NCDOT by the CA following a release thereof to NCDOT in accordance with this Agreement.

20. Liability of Escrow Agent.

(a) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement or any other person. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document, including without limitation any Proposal or any CA (except with respect to incorporations thereof herein). This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(b) Escrow Agent shall place the Escrowed Materials in a vault or such other secure location so as to satisfy the requirements of Section 3 above. The Escrow Agent, however, does not insure that the Escrowed Materials will not be damaged or destroyed due to temperature, humidity, fire, smoke, electrical interference or other environmental factors, and the Escrow Agent is only required to take the same precautions to control the environment in which the Escrowed Materials will be stored as it would normally take in the storage of paper documentation.

21. Court Orders. If any Escrowed Materials are attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrowed Materials deposited under this Agreement, then Escrow Agent shall provide NCDOT and Developer with written notice within 10 days after the occurrence of such event. The Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or

complies with any such writ order or decree it shall not be liable to any of the parties hereto or to any other person, firm of corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

22. Advice of Counsel. The Escrow Agent shall have the right, but not the obligation, to consult with counsel of choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent. The Escrow Agent shall have the right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.

23. Third Party Rights. Except as set forth in the next sentence: (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person or entity that is not a party, (b) no person or entity that is not a party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the parties, and such parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. NCDOT is a third-party beneficiary of Developer's (and all Depositor's) rights, but not obligations, hereunder. This Agreement may be modified or amended only by an instrument in writing signed and duly executed by authorized officers of the Parties.

24. Waiver. No delay or omission by the Parties in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion. All waivers shall be in writing, designated a waiver, and signed by the waiving Party, and shall recite the rights waived. Any such waiver shall be deemed to extend only to the particular breach waived and shall not limit or otherwise affect any rights that a party may have with respect to any other or future breach. No waiver shall be permitted or effective without the written approval of NCDOT, in its sole discretion.

25. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future applicable Law, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision, as may be possible and be legal, valid and enforceable.

26. Duties and Remedies. Except as provided herein where an exclusive remedy is expressly provided, the duties and obligations imposed by this Agreement and the rights and remedies available hereunder will be in addition to and

not in limitation of any duties, obligations, rights and remedies otherwise imposed or available at law or in equity to the Parties.

27. Counterparts. This Agreement may be executed by Depositor and Escrow Agent (and acknowledged by NCDOT) in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

[remainder of page intentionally blank; signatures on following page]

IN WITNESS WHEREOF, each of Depositor and Escrow Agent, each intending to be legally bound by this writing, and NCDOT, acknowledging its rights as third-party beneficiary hereof with certain approval and other rights set forth herein, have caused this Agreement to be executed the date first above written.

DEVELOPER _____

By: _____
Name; _____
Title: _____

ESCROW AGENT: _____

By: _____
Name; _____
Title: _____

NCDOT: NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____
Name; _____
Title: _____

EXHIBIT A

LIST OF ESCROWED MATERIALS

<u>Title of Escrowed Document</u>	<u>Depositor</u>	<u>Date</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

ANNEX 1 TO EXHIBIT A

LIST OF SUPPLEMENTAL ESCROWED MATERIALS AND ACKNOWLEDGEMENT

The undersigned hereby acknowledges delivery of the below-described materials to Escrow Agent pursuant to that certain Intellectual Property Escrow Agreement between [Developer] and [Escrow Agent] to and for the benefit of the North Carolina Department of Transportation, an agency of the State of North Carolina (NCDOT”), dated as of _____, 201[] (the “Agreement”), as provided for in that certain Comprehensive Agreement between Developer and NCDOT dated as of _____, 201[] (“CA”), and acknowledges and confirms that the same are subject to the terms and provisions of the Agreement and the CA and that such Depositor grants to NCDOT the rights in such additional materials provided pursuant to the Agreement.

<u>Title of Escrowed Document</u>	<u>Depositor</u>	<u>Date</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

The foregoing list shall be appended to and supplement Exhibit A to the Agreement and is incorporated by reference therein.

DEPOSITOR

By: _____
Its: _____
Date: _____

EXHIBIT B TO ESCROW AGREEMENT

LIST OF FEES TO BE PAID BY DEPOSITOR

[to be provided]

FORM P

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of _____, that:
(Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Participants and proposed Contractors who have participated in a previous contract or contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM Q

REVENUE PAYMENT TABLES

TABLE 1:

Band	Band Floor	Band Ceiling*	Revenue Payment
1	0	Cumulative Toll Revenues (15.0%)	0%
2	Band 1 Ceiling + \$0.01 Cumulative Toll	Cumulative Toll Revenues (17.0%)	12.5%
3	Band 2 Ceiling + \$0.01 Cumulative Toll	Cumulative Toll Revenues (19.0%)	25.0%
4	Band 3 Ceiling + \$0.01 Cumulative Toll	Cumulative Toll Revenues (21.0%)	50.0%
5	Band 4 Ceiling + \$0.01 Cumulative Toll	N/A	75.0%

*“Cumulative Toll Revenues (X%)” means the level of gross toll revenues received to date for the Project which is representative of a blended, nominal, after-tax internal rate of return over the full Term (excluding potential extensions of the Term) of “(X)%” for equity, as calculated in the Base Case Financial Model. Table 2 will be updated for inclusion in the executed CA, as may be subsequently revised by NCDOT and Developer and subject to the Financial Model Audit.

The middle two columns of Table 1 are only intended to guide Proposers in how to complete the table on the following pages; they will be removed from the table that will be inserted into the CA.

Proposers shall factor in the amount of the revenue payment to NCDOT in defining the thresholds in Table 2.

To the extent the different return percentages driving the ceiling revenues per the above definition are not equal to the Proposer’s blended, nominal, after-tax equity internal rate of return, the Proposer shall multiply its base case revenues by a constant coefficient, and hold all other variables constant except for dividends, to target the relevant return level per the above table.

NCDOT will, as part of its evaluation, check that the toll revenue amounts Proposers provide in the following table generate the appropriate return levels as per the above table.

TABLE 2:

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
1	\$0								
2	\$0								
3	\$0								
4	\$0								
5	\$0								
6	\$0								
7	\$0								
8	\$0								
9	\$0								
10	\$0								
11	\$0								
12	\$0								
13	\$0								
14	\$0								
15	\$0								
16	\$0								
17	\$0								

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
18	\$0								
19	\$0								
20	\$0								
21	\$0								
22	\$0								
23	\$0								
24	\$0								
25	\$0								
26	\$0								
27	\$0								
28	\$0								
29	\$0								
30	\$0								
31	\$0								
32	\$0								
33	\$0								
34	\$0								
35	\$0								
36	\$0								
37	\$0								
38	\$0								
39	\$0								
40	\$0								

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
41	\$0								
42	\$0								
43	\$0								
44	\$0								
45	\$0								
46	\$0								
47	\$0								
48	\$0								
49	\$0								
50	\$0								

FORM R

FINANCIAL PLAN SUMMARY

1. Sources and Uses of Funds

Sources of Funds	Total	Percent of total	Model reference
Bank Debt / Bond (Non-PABs)		0%	
Private Activity Bonds (PABs)		0%	
TIFIA		0%	
Equity		0%	
Revenue during construction		0%	
NCDOT Public Subsidy		0%	
Interest Earned on accounts		0%	
Total Sources of Funds		100%	

Uses of Funds	Total	Percent of total	Model reference
Project Development Costs		0%	
Development and Capital Costs		0%	
Contingencies		0%	
Financing Costs		0%	
Working Capital		0%	
Reserves (Describe)		0%	
Reserve 1 (As Needed)		0%	
Reserve 2 (As Needed)		0%	
Reserve 3 (As Needed)		0%	
Reserve 4 (As Needed)		0%	
Tax paid / (refunded)		0%	
[Other]		0%	
[Other]		0%	
Total Uses of Funds		100%	

2. Equity Investment Analysis and Description

Firm / consortium member	Equity investment		Amount (D)	Model reference
	Amount (E)	% over total equity		
		0%		
		0%		
		0%		
		0%		
		0%		
		0%		
TOTAL	-	0%	-	

3. Financing Data

3.1. KEY FINANCING DATA			
Key financing data	Value	Model reference	
NPV of project cash flows at 5%			
Nominal post-SPV-tax project IRR			
Real post-SPV-tax project IRR			
Nominal pre-SPV-tax project IRR			
Real pre-SPV-tax project IRR			
Nominal post-SPV-tax equity IRR			
Real post-SPV-tax equity IRR			
Nominal pre-SPV-tax equity IRR			
Real pre-SPV-tax equity IRR			
Nominal debt IRR			
Real debt IRR			
Minimum DSCR			
Average DSCR			
Minimum PLCR			
Average PLCR			
Minimum LLCR			
Average LLCR			

Debt type *	Amount	% over total debt	Base rate **	Model Reference
		0%		
		0%		
		0%		
		0%		
		0%		
		0%		
Total Debt		100%		
* Senior and subordinate debt, bonds, mezzanine debt, etc.				

4. Sensitivities

Model Sensitivity Analysis										
Changes in market interest rate from pre-proposal submittal*										
	Upward Movement				Downward Movement				Market Interest Rates	
Year	50bps	100bps	150bps	200bps	50bps	100bps	150bps	200bps	As at 10 Days Prior to Financial Proposal Due Date	Model Ref
	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]	[Insert PFA at Financial Proposal Due Date]

↓										

5. Proposal Development Costs

Item	Cost	Model reference
Proposer's Financial Advisor		
Proposer's Development Fee		
Proposer's Legal Advisor		
Proposer's Project Company set-up costs		
Proposer's Tax & Accounting Advisor		
Proposer's Insurance Advisor		
Proposer's Model Audit Costs		
Finance - Legal Costs		
Finance - Technical Advisor		
Finance - Insurance Advisor		
Finance - Credit Rating Costs		
TOTAL		

6. Benchmark Credit Spreads*

Facility	Benchmark Credit Spread identification / description	Credit Spread (credit margin%)	Indicative Credit Ratings	Amount of Financing Instruments	Tenor of Financing Instruments	Approximate Average Life of the Financing Instruments
[#name, facility #1]						
[#name, facility #2]						
etc.						

*Additional information required by ITP Section 6.1.4 shall be provided as an attachment to this Table 6.

7. Benchmark Interest Rate(s)

Facility	Benchmark Interest Rate identification / description	Benchmark Interest Rate (based on Attachment B of Exhibit C)	Approximate Average Life of the Financing Instrument
[#name, facility #1]			
[#name, facility #2]			
etc.			

FORM S

WAIVER AND RELEASE OF CLAIMS REGARDING STIPEND

[To be executed by the Proposer]

The undersigned certifies and agrees on behalf of _____ and its Major Participants that:

[check ALL of the following boxes]

- It has reviewed the provisions set forth in this Waiver and Release of Claims Regarding Stipend and expressly recognizes and agrees to be bound by the provisions set forth herein.

- It (a) has received an offer from NCDOT for the payment of a stipend pursuant to Section 6.5 of the ITP, (b) is eligible to receive a stipend from NCDOT for work product submitted to NCDOT pursuant to Section 6.5 of the ITP, and (c) agrees to accept the stipend offered for such work product in accordance with the ITP.

- It has reviewed the provisions set forth in this Waiver and Release of Claims Regarding Stipend and hereby, upon receipt of the stipend: (a) transfers all rights to its work product to NCDOT; (b) waives all rights to protest the procurement of the Project; and (c) fully, unconditionally and irrevocably releases and waives all claims against NCDOT arising out of or relating to the procurement, the RFP, Proposal evaluation and use of the work product.

Upon Proposer's receipt of the stipend, and in consideration thereof, NCDOT shall have the right to and be entitled to use all work product submitted by Proposer to NCDOT during the procurement (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) and any work product contained in its Proposal, without any further compensation or consideration to Proposer. Upon Proposer's receipt of the stipend, this right shall extend to allow NCDOT to use such work product in the performance of its functions. Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

Date: _____

Signature: _____

Title: _____

FORM T

STIPEND AGREEMENT

**STIPEND AGREEMENT
(NCDOT I-77 HOT LANES PROJECT)**

THIS STIPEND AGREEMENT (“Agreement”) is made and entered into as of this _____ day of 2013, by and between the North Carolina Department of Transportation, a public agency of the State of North Carolina (“NCDOT”) and _____, a _____ (“Proposer”), with reference to the following facts:

A. Proposer is one of the proposers shortlisted to submit Proposals to develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project (the “Project”), and wishes to submit a Proposal in response to the Request for Proposals for the Project issued by NCDOT on August 8, 2013 (as amended, the “RFP”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

B. The RFP provides for the execution and delivery of a stipend agreement between NCDOT and each Proposer.

NOW, THEREFORE, the Proposer hereby agrees as follows:

1. SERVICES AND PERFORMANCE

(a) By executing this Agreement, Proposer has irrevocably elected to accept payment of a stipend subject to the terms hereof.

(b) NCDOT hereby retains Proposer to actively participate in good faith in the procurement process. Responsiveness and compliance shall be determined pursuant to the ITP.

(c) Subject to the provisions of the RFP Documents regarding ownership of the Proposal and Proposer work product and subject to the terms of this Agreement, all work product submitted by Proposer to NCDOT during the procurement and in connection with the Proposal (including all ATCs and other Pre-Proposal Submittals, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer for the purpose of developing its Proposal during this procurement process) shall be considered work for hire, and the products of such work shall become the property of NCDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement. The foregoing rights of NCDOT shall not apply to work product that is expressly required to be returned to the Proposer under the RFP.

2. TERM

Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until the earlier to occur of (a) 12 months from the date of the execution of this Agreement or (b) the date payment is delivered hereunder; provided that if payment has not been made under this Agreement prior to the date referred to in clause (a) above, this Agreement shall continue in full force and effect until the date on which such payment has been made by NCDOT and received by the Proposer. The work product is due and must be delivered to NCDOT no later than the earlier of (i) 15 days after delivery to Proposer of notice by NCDOT of the cancellation by NCDOT of this procurement or (ii) the Financial Proposal Due Date.

3. COMPENSATION AND PAYMENT

(a) Except as set forth in Section 6.5 of the ITP, NCDOT will pay a stipend for work product as follows:

(i) If NCDOT cancels the procurement between issuance of the final RFP and the Technical Proposal Due Date, NCDOT will pay a stipend in the amount of \$250,000 to each Proposer that NCDOT determines (i) is actively participating in the procurement (e.g., attending all required meetings, submitting questions on documents, etc.), (ii) has not withdrawn from the procurement and (iii) has not been disqualified at the time of cancellation. Such stipend shall be paid within 90 days after the cancellation of the procurement.

(ii) NCDOT will pay a stipend in the amount of \$750,000 to each unsuccessful Proposer who submits a compliant and responsive Proposal. Such stipend shall be paid within 90 days of the award and execution of the CA or the cancellation of the procurement by NCDOT.

(iii) If NCDOT cancels the procurement between notification of Apparent Best Value Proposer and award and execution of the CA, NCDOT will pay the Apparent Best Value Proposer a stipend in the amount of \$1,000,000 if the Apparent Best Value Proposer is in compliance with the post-selection requirements of the RFP and the cancellation has not been caused in whole or in part by the acts or omissions of the Apparent Best Value Proposer. Such stipend shall be paid within 90 days after the cancellation of the procurement.

(d) Invoice, waiver and release submittal requirements concerning payment of the stipend and the timing of payment of the stipend owing hereunder are addressed in Section 6.5 of the ITP. The form of invoice submitted by the Proposer shall be as set forth in Exhibit 1 hereto.

4. INDEMNITIES

(a) Proposer agrees that it will indemnify, defend, and hold harmless NCDOT and all of NCDOT's board members, officers, agents, representatives, employees, successors and assigns from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) asserted, incurred, suffered or awarded as a result of or that relate to any third party claims, suits, actions, allegations or proceedings arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law or breach of contract by Proposer, its Equity Members, Major Participants, other team members or their respective agents, employees, or representatives arising out of or relating to the work product provided by Proposer hereunder or in connection with or contained in the Proposal, except that Proposer shall not be liable under this section for any claims, suits, actions, losses, costs, judgments, fees, charges or expenses arising out of or resulting from the sole negligence, willful misconduct or bad faith of NCDOT or any of its board members, officers, agents, representatives or employees. The foregoing indemnity shall survive the expiration or termination of this Agreement and shall expressly apply to and include all third party claims, suits, actions or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights and unauthorized use relating to the matters contemplated herein. Notwithstanding the foregoing, except for such matters covered by the preceding sentence, the indemnity shall not cover use by NCDOT of such work product after award of the CA.

(b) Proposer's obligation under Section 4(a) to indemnify, defend, and pay for the defense or at NCDOT's option, to participate and associate with NCDOT in defense of any claim and any related settlement negotiations, shall be triggered by NCDOT's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding sole negligence, willful misconduct or bad faith of NCDOT or any of its board members, officers, agents, representatives or employees shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by NCDOT (other than as expressly set forth herein). NCDOT's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.

(c) For purposes of this Section 4, "third party" means any Person (as defined in the CA) other than an Indemnified Party (as defined in the CA) and Proposer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (i) against an Indemnified Party, (ii) within the scope of the indemnities set forth in Section 4(a) and (iii) not covered by the Indemnified Party's worker's compensation program.

5. COMPLIANCE WITH LAWS

(a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted by Proposer to NCDOT during this procurement process, are, upon their receipt by NCDOT, the property of NCDOT and are subject to the Public Records Law and other applicable Law.

(b) Proposer shall comply with all federal, state, and local laws; ordinances; rules; and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.

(c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable Laws as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

6. ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Agreement without NCDOT's prior written consent, in its sole discretion; provided that this Agreement may be assigned to the special purpose vehicle formed by the Proposer for purposes of the Project without the prior written consent of NCDOT but upon written notice to NCDOT. Any assignment of this Agreement without the required consent of NCDOT shall be null and void and may, in NCDOT's sole discretion, disqualify Proposer from further consideration for the procurement process and the Project.

NCDOT may assign, transfer, pledge, sell, or otherwise convey this Agreement (a) without the Proposer's consent, to any Person that succeeds to the governmental powers and authority of NCDOT, and (b) to others with the prior written consent of Proposer. Where consent is required but not given, any assignment of this Agreement shall be null and void.

7. MISCELLANEOUS

(a) Proposer and NCDOT agree that Proposer, its Equity Members, Major Participants and other team members and their respective employees are not agents or representatives of NCDOT as a result of this Agreement.

(b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(c) This Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this

Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.

(d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of North Carolina, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provisions to be invalid.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. All litigation between the parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the General Court of Justice in Wake County, North Carolina, which shall have sole and exclusive jurisdiction and venue; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina. Each party shall bear its own attorney's fees and costs in any dispute or litigation arising out of or pertaining to this Agreement, and no party shall seek or accept an award of attorney's fees or costs.

(f) This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

[Signature Page Immediately Follows]

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

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 1
FORM OF INVOICE
[see attached]

INVOICE FOR STIPEND AMOUNT

Reference is made to that Request for Proposals to develop, design, construct, finance, operate and maintain the I-77 HOT Lanes Project (the "Project") issued on August 8, 2013 (as amended, the "RFP") by the North Carolina Department of Transportation.

Reference is also made to that certain Stipend Agreement (the "Stipend Agreement") dated as of _____, 2013, by and between and [_____]
("Proposer").

Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

Pursuant to Section 6.5 of the ITP and the Stipend Agreement, Proposer hereby requests payment of the following:

[CHECK APPROPRIATE BOX]

- \$250,000 because Proposer is eligible to receive such payment in accordance with Section 6.5(a) of the ITP.

- \$750,000 because Proposer is eligible to receive such payment in accordance with Section 6.5(b) of the ITP.

- \$1,000,000 because Proposer is eligible to receive such payment in accordance with Section 6.5(c) of the ITP.

Attached to this invoice is an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against NCDOT, in the form of Form S to the ITP.

Proposer acknowledges that submission of this invoice, and payment by NCDOT of any amount in response to this invoice, is in all respect subject to the terms and conditions of the ITP, Stipend Agreement and the other RFP Documents.

CERTIFICATION

The undersigned Proposer hereby certifies that (a) the Proposer is entitled to payment of the stipend pursuant to the terms of the ITP and the Stipend Agreement; (b) the irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against NCDOT, in the form of Form S to the ITP, has been executed and delivered to NCDOT and is in full force and effect and (c) that this entire invoice and all other supporting documentation are each, and collectively, true, correct and complete.

PROPOSER: _____

By: _____

Name: _____

Title: _____

FORM U

TOLL SEGMENTS

Toll Segment	Description	Initial Point (Station)	Ending Point (Station)	Length (mile)	Direction (NB / SB)

EXHIBIT E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

[see attached]

Technical Proposal

Proposers shall follow the order of the Technical Checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference	Technical Proposal Page Reference
VOLUME 1 (EXCLUDE PRICE INFORMATION)			
A. Executive Summary			
Executive Summary	No forms are provided	<u>Exhibit B, Section 3.1.1</u>	
B. Narrative			
General Project Management	<u>No forms provided</u>	<u>Exhibit B, Section 3.1.2 and 4.0</u>	
Design-Build Technical Solutions	No forms provided	<u>Exhibit B, Section 3.1.2 and 5.0</u>	
Operations and Maintenance Technical Solutions	No forms provided	<u>Exhibit B, Section 3.1.2 and 6.0</u>	
C. Volume 1 Appendices			
Schedules; <u>Form D</u> ; Key Personnel Resumes and References	No forms are provided	<u>Exhibit B, Section 7.4</u>	
VOLUME 2 (EXCLUDE PRICE INFORMATION)			
A. Preliminary Plans			

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference	Technical Proposal Page Reference
Design-Build Technical Solutions	No forms are provided	<u>Exhibit B, Section 5.0</u>	
Operations and Maintenance Technical Solutions	<u>Form U for Exhibit B, Section 6.4(e)</u>	<u>Exhibit B, Section 6.0</u>	
B. Volume 2 Appendices			
Supporting items, such as ATC approval letter and graphs	No forms are provided	<u>Exhibit B, Sections 5.0 and 6.0</u>	
VOLUME 3 (EXCLUDE PRICING INFORMATION)			
A. Administrative Materials and Forms			
Technical Proposal Letter	Form A-1	<u>Exhibit B, Section 7.1</u>	
Authorization Documents	No forms are provided	<u>Exhibit B, Section 7.1</u>	
Identification of Proposer and Equity Members	Form B-1	<u>Exhibit B, Section 7.2</u>	
Information About Proposer Organization	Form B-2	<u>Exhibit B, Section 7.2</u>	
Information About Major Participants and Identified Contractors	Form B-3	<u>Exhibit B, Section 7.2</u>	
Letter accepting joint and several liability (if applicable)	No forms are provided	<u>Exhibit B, Section 7.2</u>	
Responsible Proposer and Major Participant Questionnaire	Form C	<u>Exhibit B, Section 7.3</u>	

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference	Technical Proposal Page Reference
Personnel Work Assignment Form and Commitment of Availability	Form E	<u>Exhibit B, Section 7.4</u>	
Key Personnel statement of availability	No forms are provided	<u>Exhibit B, Section 7.4</u>	
Letters Approving Pre-Proposal Submittals	No forms are provided	<u>Exhibit B, Section 7.5</u>	
Non-Collusion and Gift Ban Affidavit	Form F	<u>Exhibit B, Section 7.6</u>	
DBE Commitment Certification	Form G	<u>Exhibit B, Section 7.7</u>	
Use of Contract Funds for Lobbying Certification	Form H	<u>Exhibit B, Section 7.8</u>	
Conflict of Interest Disclosure Statement	Form I	<u>Exhibit B, Section 7.9</u>	
Equal Opportunity Employment Certification	Form P	<u>Exhibit B, Section 7.10</u>	
Insurance	No forms are provided	<u>Exhibit B, Section 7.11</u>	
Confidential Contents Index	No forms are provided	<u>Exhibit B, Section 7.12</u>	
B. Volume 3 Appendices			
Organizational Documents	No forms are provided	<u>Exhibit B, Sections 7.1 and 7.2</u>	
Proposer Teaming Agreements or Key Terms (if applicable)	No forms are provided	<u>Exhibit B, Section 7.2</u>	

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference	Technical Proposal Page Reference
Execution Versions of Contracts/Signed Term Sheets	No forms are provided	<u>Exhibit B</u> , <u>Section 7.2</u>	

Financial Proposal

Proposers shall follow the order of the Financial Checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
A	Financial Proposal Letter (<u>Form A-2</u>) (<u>Exhibit C, Section 1.0</u>)		
B.	Updated financial information Proposer must provide the corporate and financial information identified in <u>Section 4.0</u> of <u>Exhibit C</u> , for Proposer and Equity Members		
B1	Audited financial statements for all periods subsequent to SOQ and unaudited interim financial statements (<u>Exhibit C, Section 4.0</u>)		
B2	Financially Responsible Party letters of support (as required) (<u>Exhibit C, Section 4.0</u>)		
B3	For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the SOQs (<u>Exhibit C, Section 4.0</u>)		
A4	Credit Ratings (<u>Exhibit C, Section 4.0</u>)		

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
B5	Letter regarding material change in financial condition since submission of the SOQ and for next reporting period (<u>Exhibit C, Section 4.0</u>)		
B6	Letter disclosing all material off balance sheet liabilities (<u>Exhibit C, Section 4.0</u>)		
B	Financial Plan (<u>Exhibit C, Section 5.0</u>)		
B1	Financial Plan Executive Summary (<u>Exhibit C, Section 5.1</u>)		
B2	Identity of Financial Institution (<u>Exhibit C, Section 5.2</u>)		
B3	Range of Financing Sources (<u>Exhibit C, Section 5.3</u>)		
B4	Details for Lender(s) Commitment Letters and Lead Underwriter(s) Support Letters (<u>Exhibit C, Section 5.4</u>)		
B5	Details of Equity Source and letters from Equity Members (<u>Exhibit C, Section 5.5</u>)		
B6	Letter from Financial Advisor (<u>Exhibit C,</u>		

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
	<u>Section 5.6.1</u>)		
B7	Certification from Performance Security and Payment Bond Issuing Entities (<u>Exhibit C</u> , Section 5.6.2)		
B8	Schedule for Commercial and Financial Close (<u>Exhibit C</u> , <u>Section 5.7</u>)		
B9	Financial Plan Summary (<u>Form R</u>) (<u>Exhibit C</u> , <u>Section 5.8</u>)		
C	Financial Model (<u>Exhibit C</u> , <u>Section 6.1</u>)		
C1	Financial Model outputs (<u>Exhibit C</u> , <u>Section 6.3.3</u>)		
C2	Financial Model Assumptions Book (<u>Exhibit C</u> , <u>Section 6.4</u>)		
C3	Financial Model Instructions Guide (<u>Exhibit C</u> , <u>Section 6.5</u>)		
C4	Detailed Costing Form (<u>Form N</u>) (<u>Exhibit C</u> , <u>Section 6.6</u>)		
D	Financial Request/Offer Form (<u>Form J</u>) (<u>Exhibit C</u> , <u>Sections 7.0</u>)		

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
E	Revenue Payment Table (<u>Form Q</u>)		
F	Surety/Financial Institution Information (<u>Exhibit C</u> , <u>Section 8.0</u>)		
G	Proposal Security (<u>Form K-1</u> or <u>Form K-2</u>) (<u>Exhibit C</u> , <u>Section 9.0</u>)		
H	Confidential Contents Index (<u>Exhibit C</u> , <u>Section 10.0</u>)		

EXHIBIT F

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Description

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

Definitions

Contract Goal Requirement - The advertised contract goal.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

Disadvantaged Business Enterprise (DBE) - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

DBE Goal

The following DBE goal for participation by Disadvantaged Business Enterprises is

established for this contract:

Disadvantaged Business Enterprises **12%**

The Contractor shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.

This goal is to be met through utilization of DBE certified firms performing DBE Eligible Work.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the Department and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link.
<https://partner.ncdot.gov/VendorDirectory/default.html>

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Additional DBE Information and Requirements

Additional DBE information and requirements are contained in the CA Documents