

IH 35E MANAGED LANES PROJECT PUBLIC PRIVATE PARTNERSHIP AGREEMENT DESIGN-BUILD AGREEMENT TERM SHEET

This document provides background information and summarizes the major terms of the Design Build Agreement (“DB Agreement”) to be included as part of the Public Private Partnership Agreement (P3A) for the design and construction of the IH 35E managed lanes project (Project”), which may be entered into by the Texas Department of Transportation (“TxDOT”), and a firm (the “Developer”) to be selected based on responses to a Request for Proposals (the “RFP”). This document is intended as a general description of certain major DB Agreement terms and is not a restatement or interpretation of the DB Agreement requirements. There are numerous details, exceptions and qualifications associated with the provisions described below which can only be ascertained by reviewing the DB Agreement itself.

DESCRIPTION OF PROJECT

The Project includes the design and construction of tolled managed lanes, general purpose lanes and associated facilities along all or a portion of the 28-mile section of IH 35E from IH 635 in Dallas County to US 380 in Denton County. All work for design and construction described in Exhibit A (the “Work”) will be the responsibility of the Developer. TxDOT currently anticipates that the P3A will address the maintenance of completed Project facilities in several ways, including (i) giving TxDOT the sole right to retain all maintenance responsibility; (ii) giving TxDOT the sole right to exercise one or more options to have the Developer assume capital maintenance responsibility for a specified period; and (iii) requiring that the Developer provide certain Project warranties for specified periods. A general description of the major terms for the capital maintenance options is provided in a separate Capital Maintenance Agreement Term Sheet.

The parties intend for the DB Agreement to be a fixed price, lump sum contract obligating Developer to complete the Work by the deadlines set forth in the DB Agreement and in a manner satisfactory to the TxDOT, for the agreed price (the “Price”), subject only to certain specified limited exceptions.

| CONTRACT OVERVIEW | |
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| Developer & Agreement Date | To be determined. TxDOT anticipates executing a P3A for the Project in late 2012. |
| Scope of Work | <p>The P3A requires the Developer to design, construct (with quality and durability) and, potentially, maintain certain portions of the Project. Developer's Work includes the obligation to furnish a complete design for the Project meeting all P3A requirements, to construct the Project as designed and in accordance with all requirements, and otherwise to comply with all P3A requirements.</p> <p><u>See RFQ Section 2</u> for further details regarding the Scope of Work.</p> |
| Notices to Proceed | <p>TxDOT anticipates issuing NTP1 concurrently with execution of the P3A. Issuance of NTP1 authorizes Developer to perform the portion of the Work necessary to obtain TxDOT's approval of the project management plan and to enter the Project Right of Way TxDOT owns in order to conduct surveys and site investigations, including geotechnical, hazardous materials and utilities investigations.</p> <p>TxDOT anticipates issuing NTP2 within 90 days after issuance of NTP1. NTP2, authorizing performance of the remainder of the Work, is conditioned upon approval by TxDOT of the project management plan.</p> <p>The Proposal price will remain valid without escalation until 180 days after the Proposal Due Date; after that, the price will be subject to escalation based on the ENR Construction Cost Index until issuance of NTP1. If NTP1 is not issued within 365 days from the execution date, Developer may terminate the P3A.</p> |
| Contract Documents | The Contract Documents include: the DB Agreement and exhibits, including federal requirements, Technical Provisions, design documents, specifications, plans, and all amendments to the foregoing and all Change Orders issued. |
| Contract Documents (Proposal) | The Proposal (to the extent that it is consistent with or exceeds the requirements of the other Contract Documents) will also be a Contract Document, such that commitments made by the Developer in the Proposal relating to the Work will be binding. |
| PRICE, SECURITY & PAYMENTS | |
| Price | <p>This is a lump sum contract, to be paid based on progress.</p> <p>The only changes to Price are via change order, value engineering, or, potentially, an incentive payment for early opening of the Project.</p> |

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| <p>BONDS:</p> <p>Proposal, Performance, Payment, Retainage & Warranty</p> | <p>Required Bonds:</p> <p>Proposal Bond in the amount of \$50,000,000 will remain in place as security for performance of Developer's obligations. Upon receipt of the performance and payment bonds (and other documents required for NTP1) the Proposal Bond will be released.</p> <p>Payment and Performance Bonds in the amount of \$50,000,000 will be required as security for Developer's obligations as a condition to issuance of NTP1.</p> <p>Performance Bond in the amount of \$500,000,000 will be required (on or before NTP2) and will be released upon Final Acceptance and the receipt of the Warranty Bond.</p> <p>Payment Bond in the amount of \$500,000,000 is required (on or before NTP2) and will be released upon: (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Payment Bond have been fully paid and (ii) unconditional releases of Liens and stop notices, or (b) expiration of the statutory period for Subcontractors to file a claim against the Payment Bond if no claims have been filed.</p> <p>Retainage Bond in the amount of 10% of the Price will be required (on or before NTP2) as a guaranty for the protection of any claimants and TxDOT for overpayments, Liquidated Damages, and other deductions or damages owed by the Developer.</p> <p>Warranty Bond in the amount of 10% of the Price is required (as a condition to Final Acceptance) to guarantee performance of the Work required to be performed during the Warranty period.</p> <p>If the Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond.</p> |
| <p>Parent Guaranty</p> | <p>A guaranty of the Developer's obligations from a Guarantor approved by TxDOT will be required if the Developer is a newly formed or limited liability entity, if the Developer submitted parent company financial statements in response to the RFQ or RFP or if the Developer fails to meet certain net worth requirements.</p> |
| <p>Incentive Payments</p> | <p>Developer may potentially be entitled to an incentive payment for early opening of the Project.</p> |
| <p>Value Engineering</p> | <p>TxDOT and Developer will share in any savings resulting from value engineering proposals by Developer.</p> |
| <p>Mobilization</p> | <p>Developer shall be entitled to payment for mobilization in installments, in an amount equal to the bid item price for mobilization, not to exceed 10% of the Price.</p> |

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| Payment Obligations & Progress Payment Limitations | TxDOT will make payments based on progress as evidenced by a monthly Draw Request submitted by Developer. The Maximum Payment Schedule establishes the cap on cumulative progress payments. If Developer falls behind schedule, no progress payments will be paid until a recovery schedule is approved in writing. |
| COMPLETION DEADLINES, SCHEDULE AND DELAY | |
| Completion Deadlines | <p>The deadline for Substantial Completion of the Project will be set forth in the RFP.</p> <p>The Final Acceptance deadline is 120 days after Substantial Completion.</p> <p>Extensions of completion deadlines are allowed only under limited circumstances. (See Change Order section below.)</p> |
| Schedule | Developer must perform the Work in accordance with an approved comprehensive critical path schedule. The baseline schedule will be the schedule submitted with the Proposal, and any changes must be approved by TxDOT as a condition to NTP2. The schedule will be updated monthly during the Project and used for payment, planning & monitoring progress of the Work. If Developer falls behind schedule, a recovery schedule to regain lost time is required or TxDOT may withhold payments. |
| Delay | Liquidated damages will be assessed for delays in meeting the deadlines for Substantial Completion and Final Acceptance. TxDOT will have the right to terminate the P3A if completion of the Project is delayed for more than a year. (See Liquidated Damages section below.) |
| CONTRACT RIGHTS & RESPONSIBILITIES | |
| Right of Way | <p>TxDOT has acquired or will acquire certain identified parcels prior to execution of the DB Agreement. Developer will be responsible for taking over right of way acquisition activities on the date of the execution of the DB Agreement, including pre-condemnation activities and condemnation support services. TxDOT will pay the purchase price for parcels that are within the right of way lines on the NEPA approvals.</p> <p>Developer may request that additional right of way be acquired. TxDOT pays the acquisition cost if additional parcels are necessary due to a TxDOT-Directed Change or Force Majeure event. Developer is responsible for the acquisition cost for parcels acquired for any other reason.</p> <p>Developer is responsible for the cost of any temporary construction easements or other temporary property interests.</p> |
| Design and Construction | Developer is responsible for design and construction, including maintenance during construction, in accordance with the Contract Documents. |
| Design Liability | Developer assumes full responsibility and liability with respect to design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the Schematic Design affecting constructability other than prescriptive design elements provided by TxDOT for drainage. |

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| QA/QC | Developer is required to establish and implement a comprehensive, TxDOT-approved quality assurance and quality control program. Quality assurance will be provided by Developer. |
| Design and Construction Oversight | TxDOT shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable to: (a) comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements and agreements, and (b) verify Developer's compliance with the Contract Documents (including project and quality management plans). Developer at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with TxDOT and its Authorized Representative to facilitate TxDOT's oversight activities. |
| Standards | Developer must design and construct the Project in general conformity with the Schematic Design, in accordance with all professional engineering principles and construction practices generally accepted in the State as the standard in the industry, in a good and workmanlike manner, free from defects and in accordance with the terms and conditions set forth in the Contract Documents, including the Technical Provisions. The Developer will be required to obtain TxDOT approval to make modifications to the specified components of the Basic Configuration. |
| Warranties | <p>The Warranty Term for the Project will commence upon Final Acceptance by TxDOT. The Warranties will remain in effect until one year after Final Acceptance, except that Warranties for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) will commence as of the date of acceptance thereof by such Persons and will end one year thereafter. Extended Warranties will apply to repaired, replaced or corrected Work, not to exceed two years after Project Final Acceptance.</p> <p>The Warranties apply notwithstanding maintenance work performed by TxDOT or the Maintenance Contractor during the Warranty Term.</p> |
| ENVIRONMENTAL & PERFORMANCE RISKS | |
| Permits & Approvals | TxDOT has obtained or will obtain key specified permits and governmental approvals as specified in the Contract Documents. The Developer will be entitled to a Change Order to compensate the Developer for any increased costs due to changes in the final USACE Section 404 permit from the draft requirements included in the RFP. Developer will be responsible for obtaining all other permits and government approvals. |
| New Environmental Approvals | Developer is responsible for obtaining all new environmental approvals or changes to existing approvals. If a new or revised environmental approval becomes necessary for any reason other than for a TxDOT-Directed Change or Force Majeure Event, Developer bears full responsibility for all costs and delays. |

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| Environmental Compliance | Developer shall be responsible for performance of all environmental mitigation measures and compliance with all other conditions and requirements of the Contract Documents and Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals for the Project. |
| CONTRACT CHANGES & COSTS OUTSIDE THE CONTRACT | |
| Change Orders | A TxDOT signed Change Order or Directive Letter is required for any increase to price or time extension. TxDOT may issue unilateral Change Orders. Developer shall prepare a scope of work, cost estimate, delay analysis and other information for each Request for Change Order. Change Orders requesting a time extension must also provide an alternative Change Order form including an acceleration schedule. Change Orders are subject to strict requirements (including notice & delivery). No Change Order is allowed where Developer is entitled to added funds or time for matters that are also covered by insurance. |
| Differing Site Conditions | Change Orders for additional costs due to Differing Site Conditions will be allowed for: (a) material adverse inaccuracies in the soil borings at the locations specified and (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the DB Agreement. Developer will be responsible for the first xx of additional costs for each occurrence of Differing Site Conditions up to the sum of yy for all such costs. Developer will not be allowed any time extension or delay damages for delays due to Differing Site Conditions. |
| Deviations | Developer may deviate from the Schematic Design as it deems advisable, provided that it obtains prior written approval by TxDOT and/or an approved Change Order with respect to any deviation from the Basic Configuration. Changes in the Work which have no net cost effect on the Price may be approved in writing by TxDOT as a Deviation without requiring a Change Order. |
| Nonconforming Work | TxDOT may, but is not obligated to, accept any nonconforming work without requiring it to be fully corrected, in which case the Price will be decreased. TxDOT may require nonconforming work to be remedied or removed/replaced and may deduct the cost. |
| TxDOT-Directed Changes | <p>Developer will be entitled to a Change Order providing for price adjustment and/or or a time extension for:</p> <ul style="list-style-type: none"> • Change in the scope of the Work directed by TxDOT. • Suspensions of the Work by TxDOT for its convenience for more than 48 hours per suspension or 96 hours total. • Any new environmental approvals necessitated by a TxDOT-Directed Change. |

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| <p>Hazardous Materials</p> | <p>Developer is not entitled to any increase in the Price or time with respect to: (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) any costs that could have been avoided, (d) Hazardous Materials on any Additional Properties designated by the Developer, or (e) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site.</p> <p>A line item allowance amount will be established in the Price for Developer's direct costs due to Unknown Hazardous Materials (meaning hazardous materials other than those identified in existing environmental reports or that should have been otherwise known to Developer through reasonable investigation) encountered within the Schematic ROW. The first 50% of the allowance amount will be paid by Developer. TxDOT and Developer will share equally the remaining 50% of the allowance amount, and TxDOT will pay any costs in excess of the allowance amount.</p> <p>Developer is entitled to an extension of Completion Deadlines as follows: if Developer encounters Hazardous Materials within the Schematic ROW which, due to no fault of a Developer-Related Entity, results in delays to a Critical Path, then Developer is entitled to a time extension for delays to the Critical Path due to Unknown Contamination (within the Schematic ROW) after a 120-day "deductible" per location has elapsed. TxDOT bears the risk of delays due to Unknown Contamination in excess of 120 days in any location or 360 days in the aggregate per Segment. Developer shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Hazardous Materials, regardless of the total quantities.</p> <p>Developer is not entitled to an increase in price for remediation costs resulting from (a) releases of hazardous materials attributable to the culpable actions, culpable omissions, negligence, intentional misconduct of any member of the Developer-Related Entity, or (b) hazardous materials brought onto the Site by Developer.</p> |
| <p>Utilities</p> | <p>Developer is responsible for performing all necessary Utility Adjustment Work for the Project and is not entitled to a Change Order for performing Adjustment Work that was initially anticipated to be performed by a Utility Owner (or vice versa).</p> <p>Developer is not entitled to any time extensions on account of delays attributable to utilities, except for delays affecting the Critical Path due to (a) New Utilities requiring adjustment and (b) uncooperative utility owners that do not enter into adjustment agreements.</p> <p>Developer is entitled to a Change Order increasing the Price for (a) any Unidentified Utility located within the Schematic ROW to the extent that Developer's costs increase by more than \$50,000 and (b) for any New Utility.</p> <p>TxDOT is entitled to a credit if the Developer's costs are decreased due to an Unidentified Utility by more than \$50,000.</p> |
| <p>Force Majeure</p> | <p>Developer will be entitled to additional time and/or compensation for</p> |

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| Events | <p><u>specified</u> force majeure events (provided they are beyond Developer's control and not due to act or omission by Developer or its contractors, etc.) which materially and adversely affect Developer's obligations and which could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer. The following events will be specified in more detail in the DB Agreement:</p> <p>Any earthquake, tornado, hurricane or other natural disaster causing direct physical damage to the Project;</p> <p>Any epidemic in the Project area,</p> <p>Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;</p> <p>Discovery of any archaeological, paleontological or cultural resources not disclosed or discoverable through reasonable investigation prior to the Proposal Due Date;</p> <p>Discovery of any species listed as threatened or endangered if their existence was not disclosed or discoverable through reasonable investigation prior to the Proposal Due Date;</p> <p>Material change in law;</p> <p>Third party hazmat spill;</p> <p>Issuance of a TRO or other form of injunction by a court that prohibits prosecution of a material portion of the Work;</p> <p>Suspension, termination, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval;</p> <p>The addition of any new condition or requirement in the NEPA Approval or the final USACE Section 404 Permit that are not due to Developer's changes to the Schematic Design and the Schematic ROW</p> |
| Matters Not Eligible for Change Orders | Developer is responsible for all risks not specifically accepted by TxDOT; examples of specific exclusions will be identified in the DB Agreement. |
| BUSINESS RISKS | |
| Insurance | <p>Developer is required to provide insurance coverage specified in the DB Agreement, which must include at a minimum: commercial general liability, workers' compensation and employer's liability; bodily injury/property damage and comprehensive business auto liability, professional liability coverage, builder's risk, pollution liability, and railroad protective liability. Subcontractor insurance requirements are also specified in the DB Agreement.</p> <p>TxDOT and its members, directors, officers, employees, agents and Project consultants must be additional insureds, except on the professional liability policy.</p> |

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| <p>Developer Defaults</p> | <p>Failure to begin Work within 30 days following issuance of NTP1, or failure to commence and diligently perform the Construction Work;</p> <p>Failure to complete the Work by the applicable Completion Deadline;</p> <p>Failure to perform the Work in accordance with the Contract Documents;</p> <p>Suspending or ceasing the Work or failure to continuously and diligently prosecute the Work;</p> <p>Failure to obtain or maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under the DB Agreement;</p> <p>Voluntary or involuntary assignment or transfer of all or any portion of the DB Agreement;</p> <p>Failure to make payment when due for labor or equipment or failure to make payment to TxDOT when due of any amounts owing to TxDOT;</p> <p>Failure to timely observe or perform any other material obligation, term or condition under the DB Agreement;</p> <p>Material misrepresentation by Developer;</p> <p>Voluntary or involuntary bankruptcy or insolvency;</p> <p>Default under the Capital Maintenance Agreement.</p> |
| <p>Cure of Developer Defaults</p> | <p>Developer shall be provided the opportunity to cure certain Developer Defaults, as described in the Contract Documents.</p> |
| <p>TxDOT Remedies for Developer Default</p> | <p>TxDOT shall have the right to exercise one or more of the following remedies in the event of an uncured Developer Default:</p> <p>Right to terminate;</p> <p>Right to deduct amounts (including interest) payable to TxDOT from amounts owing to Developer;</p> <p>Right to recover damages;</p> <p>Right to take immediate action in the event of emergency or danger;</p> <p>Right to make demand upon, draw on, and enforce and collect any bonds, letters of credit, guaranty, or other performance security available to TxDOT for Developer Default; and</p> <p>Other remedies as provided by law.</p> |

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| Developer's Right to Stop Work | Developer shall have the right to stop Work if TxDOT fails to make an undisputed payment due within 15 Business Days after TxDOT's receipt of written notice of nonpayment from Developer. If such nonpayment continues for more than 180 days, upon written notice from Developer to TxDOT, the nonpayment may be deemed a Termination for Convenience. |
| Suspension | TxDOT may order Developer to suspend all or any part of the Work for the period of time that TxDOT deems appropriate. Such suspension for convenience will be considered a TxDOT-Directed Change, except for brief suspensions (less than 48 hours each up to a total of 96 hours), for which Developer will be entitled to a time extension but not compensation. |
| Termination | <p>Developer may terminate the DB Agreement if NTP1 is not issued by TxDOT on or before 365 days after the execution date. After issuance of NTP1, Developer has no unilateral right to terminate, except in the event of (a) non-payment after a specified period and (b) a suspension of work for more than one year.</p> <p>TxDOT may terminate the DB Agreement for public convenience or for Developer's default.</p> |
| Liquidated Damages | <p>Per day liquidated damages in the amount specified in the DB Agreement will be assessed for delay in obtaining Substantial Completion by the Completion Deadline, for up to 365 days of delay. Per day liquidated damages in the amount specified in the DB Agreement will be assessed for delay in Final Acceptance beyond the Acceptance Deadline.</p> <p>Liquidated damages will be assessed for Unavailability of Key Personnel: Project Manager Deputy Project Managers Others</p> |
| Indemnification | Developer indemnifies TxDOT, State of Texas and their agents/employees for Developer errors, omissions, negligence, or willful misconduct, breach of the DB Agreement, Developer release of hazmat, and failure to comply with applicable laws or Governmental Approvals, among other things. |

OTHER CONTRACT PROVISIONS

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| <p>Dispute Resolution</p> | <p>Partnering meetings conducted by a mutually agreed upon facilitator are to include key personnel & executives of both parties. Costs of partnering are to be shared equally by the parties.</p> <p>Informal and voluntary dispute resolution alternatives are encouraged and preferred in lieu of the following, more formal process.</p> <p>A neutral three-person Disputes Board will be appointed by the parties to review certain disputes that are not resolved informally. Decisions of the Disputes Board may be appealed to the State Office of Administrative Hearings (SOAH), whose review and proposal for decision is limited to determining whether the Disputes Board acted beyond the limits on its authority, failed to follow procedural requirements or had a conflict of interest.</p> <p>The SOAH proposal for decision is subject to review by the Executive Director within 28 days. The Executive Director has authority to overrule the Disputes Board's determination only on the same grounds of appeal as applied to SOAH review. If grounds for appeal are determined, the Executive Director shall vacate the Disputes Board decision and dismiss the matter, without remand and without prejudice to the claim.</p> <p>The process provides for the admissibility of the decisions of the Disputes Board in subsequent proceedings.</p> <p>Dispute review provisions do not extend to torts, non-actionable claims, indemnity claims, claims for injunctive relief, insurance claims, & utility adjustment claims</p> |
| <p>Records and Documentation</p> | <p>Developer must maintain all records and documents in accordance with the Texas State Records Retention Schedule.</p> |
| <p>Escrowed Proposal Documents</p> | <p>Developer must deliver detailed pricing information used to prepare its proposal ("EPDs"). EPDs will be kept at TxDOT's office in a locked cabinet with Developer controlling the keys. EPDs are available for joint review by Developer, TxDOT and any dispute resolver(s). Change Order documentation will be added to EPDs. The EPDs will be maintained until: (a) 180 days have elapsed from the later of Final Acceptance or termination of this Agreement, as applicable; (b) all Claims or Disputes regarding the Work have been settled; and (c) Final Payment has been made and accepted.</p> |

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| <p>DBE Provisions; Subcontractors</p> | <p>TxDOT's DBE Program for comprehensive development agreements is based on TxDOT's Standard DBE Program with certain modifications to accommodate comprehensive development agreements.</p> <p>Subcontractors named in the Proposal may not be substituted without TxDOT's prior written approval. In accordance with Code Section 223.203, all teaming agreements and subconsultant agreements must be executed and provided to TxDOT before execution of the P3A. After execution of the P3A, Developer must select subcontractors based on competitive bidding procedures approved by TxDOT. Developer must include flow down required terms into subcontracts. Subcontracts will be fully assignable to TxDOT. Dispute procedures involving Subcontractors contain additional requirements.</p> <p>In addition, Developer may only change a Key Contractor filling one of the following key roles under the limited circumstances described in Code Section 223.203: project management, lead design firm, quality control management, quality assurance management and key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utilities and right of way issues. Any cost savings resulting from a non-permitted change in one of the foregoing Key Contractors shall accrue to the benefit of Department.</p> |
| <p>Key Personnel</p> | <p>Certain job categories of Key Personnel for the Project are identified. Key Personnel may not be substituted without TxDOT's prior written consent. Liquidated damages may be assessed for unavailability of certain Key Personnel.</p> |
| <p>Assignment</p> | <p>Developer may not assign its interests in the P3A without obtaining TxDOT's prior written consent. TxDOT may assign its interests in the P3A: (a) to any to any other Person that succeeds to the governmental powers and authority of TxDOT; and (b) to others with prior written consent of Developer.</p> |