

ESCROW AGREEMENT—Form L
(DFW CONNECTOR PROJECT)

THIS ESCROW AGREEMENT (this "**Agreement**") is made and entered into as of this July 3, 2008, by and between NorthGate Constructors, a Joint Venture, ("**Proposer**"), and Naman, Howell, Smith & Lee, LLP ("**Escrow Agent**"), to and for the benefit of the Texas Department of Transportation ("**TxDOT**"), an agency of the State of Texas, with reference to the following facts:

A. TxDOT has issued a Request for Proposals dated March 28, 2008, as amended (the "**RFP**") for the DFW Connector Project (the "**Project**"). Initially capitalized terms not defined herein shall have the meanings set forth in the RFP.

B. Proposer wishes to submit to TxDOT a proposal (the "**Proposal**") in response to the RFP.

C. In accordance with Section 4.3.2 of the Instructions to Proposers, as amended ("ITP"), Proposer is submitting certain materials (the "Escrowed Materials") to the Escrow Agent to be held in a secure location and available for review by TxDOT as specified herein.

D. Proposer wishes to employ the services of Escrow Agent to act as the escrow holder with regard to the 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.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Proposer hereby irrevocably provides the following escrow instructions to Escrow Agent. These Escrow Instructions, although provided unilaterally, are specifically for the benefit of TxDOT as an intended third party beneficiary and may not be revised, supplemented, waived or withdrawn without the prior written consent of TxDOT's authorized representative.

1. Designation of Authorized Representatives. Proposer hereby Designates Doug Glaser as its authorized representative. TxDOT may designate an authorized representative by written notice to Proposer and Escrow Agent and change its authorized representative at any time by providing written notice to Proposer and Escrow Agent. Proposer may change its authorized representative at any time by providing written notice to TxDOT and Escrow Agent.

2. Deposit. Proposer anticipates depositing with Escrow Agent the Escrowed Materials, consisting of 1 separately sealed box labeled "NorthGate Constructors, a Joint Venture: Escrowed Materials for the TxDOT DFW Connector Project." Upon deposit Escrow Agent shall provide TxDOT and Developer with written acknowledgment of receipt of the Escrowed Materials, and agrees to hold the Escrowed Materials in safekeeping under the terms and conditions of this Agreement.

3. Manner of Holding of Escrowed Materials. Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Holder located at 8310 Capital of Texas Highway North, Suite 490, Austin, Texas 78731, or such other address within a ten-mile radius of 125 East 11th Street, in the City of Austin, Texas as is specified to TxDOT and the Proposer in writing not later than fifteen (15) days prior to the time such Escrowed Materials are to be relocated to such new location. The Escrowed Materials shall be stored in an area that is locked at all times. **[If applicable:** During the term hereof, Escrow Agent shall allow access to the Escrowed Materials only to those individuals identified by TxDOT's authorized representative as having need for access, which may include representatives from the Office of the Attorney General. Such access shall include the ready ability of TxDOT 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. TxDOT shall provide notice to Escrow Agent at least one business day in advance of its planned review of Escrowed Materials during the Escrow Agent's normal business hours of 8:00 a.m. — 5:00 p.m., Austin, Texas time, Monday through Friday, or on a weekday night and at least two business days in advance of its planned review of Escrowed Materials on a weekend. During the term hereof, Escrow Agent shall provide reasonable access for TxDOT reviews beyond Escrow Agent's regular business hours. TxDOT 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 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 Proposer unless TxDOT 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 access, review or verify the Escrowed Materials. In no event shall TxDOT, the Proposer 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.]

4. Release of Escrowed Materials.

(a) Escrow Agent shall release the Escrowed Materials deposited hereunder only upon receipt by Escrow Agent of (i) a certificate signed by TxDOT's authorized representative, certifying that TxDOT has determined not to enter into a contract with Proposer and has executed a Comprehensive Development Agreement ("CDA") and Maintenance Agreement ("Maintenance Agreement") with another party, in which event the Escrowed Materials shall be released as directed by

Proposer; or (ii) a certificate signed by TxDOT's authorized representative, certifying that TxDOT has decided to terminate the procurement, in which event the Escrowed Materials shall be released as directed by Proposer; (iii) joint instructions from the authorized representatives of Proposer and TxDOT directing release of the Escrowed Materials, in which event the Escrowed Materials shall be released as provided therein; or (iv) written instructions from TxDOT's authorized representative, without any further required action or consent by Proposer, directing the release of the Escrowed Materials to the Office of the Attorney General, in which event the Escrowed Materials shall be released to the Attorney General by Escrow Agent as directed by TxDOT.

(b) If TxDOT and the Proposer enter into a CDA and Maintenance Agreement, the Escrowed Materials shall be transferred to the TxDOT project office and maintained in accordance with the terms and conditions set forth in the CDA and the Maintenance Agreement.

5. Rights of Escrow Agent. If conflicting demands are made or notices serviced upon Escrow Agent with respect to this Agreement, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

(a) withhold and stop all further proceedings in, and performance of this Agreement;

(b) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

(c) deliver all Escrowed Materials with seals intact to another location meeting the requirements of Section 3, to be selected by Proposer within 30 days after Escrow Agent delivers notice thereof to TxDOT.

6. Fees. Proposer shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth on Exhibit A attached hereto.

7. 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 Proposer:

NorthGate Constructors, a Joint Venture
13119 Old Denton Road
Fort Worth, Texas 76166
Attention: Doug Glaser
Telephone:(817) 337-7000
Facsimile: (817) 337-7001

If to TxDOT:

Texas Department of Transportation
Texas Turnpike Authority Division
125 E. 11th Street
Austin, TX 78701
Attention: Mark Tomlinson
Telephone: (512) 936-0912
Facsimile: (512) 936-0970

With copies to:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: General Counsel
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to the Escrow Agent:

Naman, Howell, Smith & Lee, LLP
8310 Capital of Texas Highway North, Suite 490
Austin, Texas 78731
Attention: Cliff Blount
Telephone: (512) 479-0300
Facsimile: (512) 474-1901

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.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 7 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

8. Representations. Proposer represents and warrants that neither the Proposer nor any member of its team has a financial or other interest in, or relation with, the Escrow Agent or its principals or officers, except that Escrow Agent may be the depository for accounts or escrowed documents maintained by such entities. Escrow Agent represents and warrants that it does not have a financial or other interest in, or relationship with, the Proposer, the Proposer's team members identified to Escrow

Agent, or their principals or officers, except as a depository for accounts or escrowed documents, and further represents, warrants and covenants that the employees of Escrow Agent who have access to the Escrowed Materials also have no such interest or relationship with such entities.

9. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

10. 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.

11. Governing Law. The laws of the State of Texas shall govern this Agreement.

12. 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, CDA or Maintenance Agreement. 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) The Escrow Agent shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any notices, requests, securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder. The Escrow Agent shall be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind.

(c) The 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.

13. Indemnification of Escrow Agent. The Escrow Agent shall be, and hereby is, indemnified and saved harmless by the Proposer from and against any and all losses, liabilities, damages, costs and expenses, including without limitation attorney fees and expenses, which may be incurred by it as a result of its acceptance of the Escrowed Materials or arising from the performance of its duties hereunder, unless such losses, liabilities, damages, costs and expenses shall have been finally adjudicated to have primarily resulted from the bad faith or gross negligence of the Escrow Agent, and such indemnification shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

14. Assignment. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be delivered to and acknowledged by the Escrow Agent.

15. 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.

16. Resignation of Escrow Agent. The Escrow Agent may resign as such following the giving of ninety (90) calendar days prior written notice to the Proposer and TxDOT. In such event, the duties of the Escrow Agent shall terminate ninety (90) days after receipt of such notice (or as of such earlier date as may be mutually agreeable); and the Escrow Agent shall then deliver the balance of the Escrowed Materials then in its possession to a successor escrow agent as shall be appointed by the Proposer and acceptable to TxDOT as evidenced by a written notice filed with the Escrow Agent. If the Proposer has failed to appoint a successor prior to the expiration of ninety (90) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

17. Successor Escrow Agent Entity. Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be sold or otherwise transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

18. Court Orders. In the event that any Escrowed Materials is attached, garnished or levied upon by any court order, or the delivery thereof is 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, the Escrow Agent shall provide TxDOT and Proposer 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 or corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

PROPOSER:

NorthGate Constructors, a Joint Venture
By: Kiewit Texas Construction L. P.
Managing Partner,
NorthGate Constructors, a Joint Venture

By:



Name: Keith Sasich

Title: President, Kiewit Texas Construction L.P.

The escrow provided for in this Agreement is hereby accepted by Escrow Agent.

Naman, Howell, Smith & Lee, LLP

By:



Name: Cliff Blount

Title: Partner

Exhibit A to Escrow Agreement
List of Fees to be Paid by Proposer
[to be provided]



ORIGINAL

NAMAN HOWELL
SMITH & LEE

A REGISTERED LIMITED LIABILITY PARTNERSHIP

July 3, 2008

8310 N. Capital of Texas
Highway, Suite 490
Austin, Texas 78731
(512) 479-0300
Fax (512) 474-1901

Offices in:
Austin
Fort Worth
Temple
Waco

www.namanhowell.com

Ryan Sanders
Kiewit Texas Construction, L.P.

Re: TxDOT Short-term IP escrow

Dear Ryan:

This letter will confirm our discussions concerning the escrow services and fees. I confirm that the \$2500 charge would include holding the materials for the full 270 days, if necessary. This will also confirm that I understand the materials may not arrive in a manner to be placed in a file cabinet but in a small number of "Rubbermaid" containers. Based on our discussions, we can accommodate those materials.

This is also to confirm that the revised, reduced fee schedule we provided is relying on your representation that TxDOT will not conduct reviews of the escrowed materials. We will re-address the fee issue if that changes for any reason.

We look forward to working with you on this matter.

Naman Howell Smith & Lee, LLP

BY: 

William C. Blount, Partner

Agreed:

NorthGate Constructors, a Joint Venture

By: Kiewit Texas Construction L. P., Managing Partner,
NorthGate Constructors, a Joint Venture

By: 

Name: Keith Sasich

Title: President, Kiewit Texas Construction L.P.