EXHIBIT 12

FORM OF LENDER'S DIRECT AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between the State of Texas acting by and through the Texas Department of Transportation, ("TxDOT") and _____, ("Lender") for the purpose of facilitating the Lender's financing or Refinancing of the IH 635 Managed Lanes Project.

RECITALS

WHEREAS, TxDOT and LBJ Infrastructure Group LLC, a limited liability company ("Developer") have entered into a Comprehensive Development Agreement ("CDA") for the IH 635 Managed Lanes Project (the "Project"), which CDA contemplates Developer obtaining financing or Refinancing from third parties; and

WHEREAS, TxDOT desires to facilitate the Lender's provision of financing or Refinancing to Developer; and

WHEREAS, in order to induce the Lender to provide the financing or Refinancing necessary for the Project, the Lender requires certain assurances from TxDOT regarding the Lender's rights in the event of a default by Developer; and

WHEREAS, TxDOT and Developer have previously set forth such assurances in the CDA for the benefit of the Lender as an express third party beneficiary; and

WHEREAS, TxDOT and the Lender have agreed to separately contract for such assurances, provided that such contract shall be consistent in all respects with, and not provide the Lender with any rights beyond those set forth in, Article 20 of the CDA; and

WHEREAS, the Lender acknowledges that any rights under this Agreement and the CDA are solely derivative of the rights of Developer; and

WHEREAS, the Lender is ***[use applicable language]*** [making a direct, secured loan to Developer to finance or refinance the Project without participating lenders] [acting as the Collateral Agent for and on behalf of participating lenders providing a secured loan to Developer to finance or refinance the Project (in which case "Collateral Agent" as used in this Agreement refers to the Lender)]; and

NOW, THEREFORE, TxDOT and the Lender, in consideration of the mutual covenants and agreements herein contained, including within these recitals, do hereby mutually agree as follows.

AGREEMENT

I. ARTICLE 1. DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

1.1 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit 1 to the CDA.

1.2 Recitals Incorporated

The Recitals in this Agreement are part of the terms of this Agreement.

1.3 Contract Documents and Order of Precedence

The following documents comprise the contract documents for this Agreement. In the event of any conflict, ambiguity or inconsistency among the contract documents, the order of precedence shall be as follows:

1.3.1 Supplemental agreements, change orders, and addenda to this Agreement;

1.3.2 This Agreement, including Recitals; and

1.3.3 Those provisions of the CDA that are explicitly referenced in this Agreement.

1.4 No Duplication; No Effect on CDA

1.4.1 The sole purpose of this Agreement is to provide the Lender privity of contract with TxDOT regarding the matters set forth in Article 20 of the CDA. The rights of Lender under Article 2 of this Agreement and Article 20 of the CDA are one and the same. Nothing in Article 2 of this Agreement confers on the Lender any rights beyond or in duplication of the rights the Lender has under Article 20 of the CDA.

1.4.2 Nothing in this Agreement amends or modifies any of Developer's obligations to TxDOT under the CDA.

ARTICLE 2. TERMS

2.1 Conditions and Limitations Respecting Lenders' Rights

2.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement and Article 20 of the CDA, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 4.3 of the CDA.

2.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings under clause (b), (c) or (d) of the definition of Exempt Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement and Article 20 of the CDA, unless the Refinancing is in compliance with Section 4.4 of the CDA.

2.1.3 No Funding Agreement or Security Document shall be binding upon TxDOT in the enforcement of its rights and remedies as provided herein and by Law, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until (a) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been deposited into an Intellectual Property Escrow and (b) TxDOT has received written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, TxDOT shall not be charged with notice of such assignment, and no assignee shall be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until TxDOT has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, has been deposited into an Intellectual Property Escrow and TxDOT has received written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, TxDOT shall not be charged with notice of such change, and no substitute Collateral Agent shall be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until TxDOT has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

2.1.4 The Lender shall not be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents. For avoidance of doubt, if the Lender holds Project Debt secured by a Subordinated Security Document it shall not have any rights, benefits or protections under this Agreement or Article 20 of the CDA.

2.1.5 The Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Project, the Lease or Toll Revenues than Developer has at any applicable time under the CDA, other than the provisions in this Agreement and in Article 20 of the CDA for the specific protection of the Lender.

2.1.6 All rights acquired by the Lender under any Funding Agreement or Security Document shall be subject to the provisions of the CDA and the Lease and to the rights of TxDOT hereunder and thereunder.

2.1.7 The following provisions of this Agreement shall apply only to Security Documents, and the Lenders thereunder, that comply with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement and Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA. None of the following provisions of this Agreement shall be construed inconsistently with the provisions of this Section 2.1 or Section 20.1 of the CDA. The provisions of this Agreement that are binding on TxDOT shall inure only to the benefit of the Lender, and create no rights in favor of Developer.

2.2 Effect of Amendments

While any Security Document is in effect, no agreement between TxDOT and Developer for the modification or amendment of the CDA or the Lease shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in this Agreement.

2.3 Notices to Collateral Agent

As long as any Security Document shall remain unsatisfied of record, TxDOT shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential breach of the CDA or the Lease or an actual or potential Developer Default, including any Warning Notice, and any notice it sends to Developer, the Design-Build Contractor or any O&M Contractor of default by the Design-Build Contractor or any O&M Contractor under the Design-Build Contract or O&M Contract.

2.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender and Funding Agreements.

2.4.1 Should any Developer Default occur which would either immediately or, following the applicable grace period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate or suspend its obligations under this Agreement, TxDOT shall not terminate the CDA or the Lease until it first delivers to the Collateral Agent a copy of the Warning Notice given to Developer and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided below, provided that no opportunity to cure beyond that afforded Developer shall be required for failure of Developer to timely deliver or perform any remedial plan required under Section 17.3.6 of the CDA, and neither a Warning Notice nor opportunity to cure shall be required for a Developer Default under Section 17.1.1.14 or 17.1.1.15 of the CDA. Commencing on the date the applicable cure period available to Developer expires, the Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity; and from and after such date TxDOT shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same. TxDOT shall have no obligation to accept any Lender's tender of a cure prior to such date.

2.4.2 If such Developer Default consists of Developer's failure to pay a monetary obligation, the Collateral Agent may cure such Developer Default by paying all amounts due within 60 days after TxDOT delivers a copy of the Warning Notice to the Collateral Agent. If cure is not effected within such 60-day period, TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

2.4.3 If the Developer Default consists of Developer's failure to achieve Service Commencement of all Project Segments by the Service Commencement Deadline, as the same may be extended pursuant to the CDA, then the Collateral Agent shall have until the latter of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 of the CDA and (b) the Long Stop Date, as the same may be extended pursuant to the CDA (including extension pursuant to Section 20.4.9 of the CDA), to achieve or cause Developer to achieve Service Commencement of all Project Segments. If Service Commencement of all Project Segments is not achieved by such date, then it shall constitute a material Developer Default and TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

2.4.4 As to each such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement of all Project Segments by the deadline set forth in Section 20.4.3 to the CDA and (c) Developer Defaults governed by Section

2.4.7 of this Agreement and Section 20.4.7 of the CDA, the Collateral Agent shall have a cure period ending 30 days after the later of (a) the date Developer's cure period expires and (b) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Project (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16 of the CDA) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within 60 days after TxDOT delivers a copy of the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending 180 days after the date Developer's cure period expires, unless extended pursuant to Section 2.4.10 of this Agreement or Section 20.4.10 of the CDA.

2.4.5 The Collateral Agent shall have the right to postpone and extend the time to cure any Developer Default governed by Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA capable of being cured only through possession of the Project if the Collateral Agent shall:

2.4.5.1 Within the cure period available therefor under Section 2.4.2 of this Agreement and Section 20.4.2 of the CDA, cure all Developer Defaults which may be cured by the payment of a sum of money, and within the cure period available therefor under Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA, undertake to cure any other Developer Default governed by Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA then existing or thereafter occurring and capable of being cured without possession;

2.4.5.2 Continue to pay or cause to be paid when due all fees, rent and other amounts due from Developer under the CDA or the Lease;

2.4.5.3 Within the later of (a) five days after expiration of Developer's cure period, if any, and (b) 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project; and

2.4.5.4 Promptly execute all documents reasonably requested by TxDOT affecting the transactions contemplated by this Agreement and the CDA.

2.4.6 The Collateral Agent shall exercise the right provided in Section 2.4.5 of this Agreement and Section 20.4.5 of the CDA by giving TxDOT written notice of the exercise of the same within the later of (a) five days after expiration of Developer's cure period, if any, and (b) 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession and ownership an assumption in writing of all duties, obligations and liabilities of Developer under the CDA and the Lease, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Developer Default shall be removed, and the CDA and the Lease shall not be terminated, and the Lender or the Substituted Entity shall succeed to the Developer's Interest. In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in the CDA which cannot be cured or performed until the Collateral Agent or its Substituted Entity obtains possession, the Collateral Agent or its

Substituted Entity shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement and Section 20.4.10 of the CDA.

2.4.7 If the Developer Default is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Project, such as a Developer Default under Section 17.1.1.14 or 17.1.1.15 of the CDA, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under Section 17.3.6 of the CDA, then TxDOT may terminate the CDA and the Lease without providing a cure period to any Lender.

2.4.8 If TxDOT terminates the CDA and the Lease under Section 20.4.6 of the CDA for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 20.4.7 of the CDA, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of the CDA written notice of the termination and a statement of any and all sums which would at that time be due under the CDA and the Lease then known to TxDOT. Thereafter the Collateral Agent or its Substituted Entity, to the extent then permitted by Law, shall have the option to obtain a new comprehensive development agreement, new Project lease, other new CDA Documents, new Project trust agreement and, to the extent necessary new ancillary agreements (e.g. lease escrow agreement, Intellectual Property escrow agreements) (together the "New Agreements") in accordance with and upon the following terms and conditions:

2.4.8.1 In order to exercise such option, the Collateral Agent must deliver to TxDOT, within 360 days after TxDOT delivers its written notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent (or its Substituted Entity) will enter into the New Agreements and pay all the amounts described in Section 2.4.8.3 of this Agreement and Section 20.4.8.3 of the CDA, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent (or its Substituted Entity). If any of the foregoing is not delivered within such 360-day period, the option in favor of the Collateral Agent (and all related Lenders) shall automatically expire;

2.4.8.2 Within 30 days after timely receipt of the written notice, written commitment and New Agreements duly executed, TxDOT shall enter into the New Agreements to which TxDOT is a party with the Collateral Agent or its Substituted Entity, subject to any extension of such 30-day period as TxDOT deems necessary to clear any claims of Developer to continued rights and possession;

2.4.8.3 Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or its Substituted Entity shall perform all of the following:

(a) Pay to TxDOT any and all sums which would, at the time of the execution of the New Agreements, be due under the CDA or the Lease but for such termination;

(b) Otherwise fully remedy any existing Developer Defaults under the CDA or the Lease, except any uncured material Developer Default that was known to TxDOT at the time it delivers any estoppel certificate to the Lender but fails to disclose in such estoppel certificate (provided, however, that with respect to any Developer Default which cannot be cured

until the Collateral Agent or its Substituted Entity obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement and Section 20.4.10 of the CDA); and

(c) Without duplication of amounts previously paid by Developer, pay to TxDOT all reasonable costs and expenses, including TxDOT's Recoverable Costs, incurred by TxDOT in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy proceeding, (iii) the recovery of possession of the Project, (iv) all TxDOT activities during its period of possession of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or Substituted Entity, TxDOT will provide a written, documented statement of such costs and expenses.

2.4.8.4 Upon execution of the New Agreements and payment of all sums due TxDOT, TxDOT shall (a) assign and deliver to the Collateral Agent or its Substituted Entity, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to TxDOT upon termination of the CDA pursuant to Section 19.5 of the CDA, and (b) if applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or Substituted Entity in accordance with the CDA, all funds TxDOT received from the Handback Requirements Reserve pursuant to Section 8.11.4.1 of the CDA (or from draw on a Handback Requirements Letter of Credit) less so much thereof that TxDOT spent or is entitled to as reimbursement for costs of Renewal Work TxDOT performed prior to the effectiveness of the New Agreements.

2.4.8.5 The New Agreements shall be effective as of the date of termination of the CDA and the Lease and shall run for the remainder of the term of the CDA and the Lease. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the CDA, the Lease and other corresponding CDA Documents and ancillary agreements and documents that were binding on TxDOT and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 15.1 of the CDA (and any equivalent provisions of the Lease) shall be revised to be particular to the Collateral Agent or its Substituted Entity).

2.4.8.6 If the holders of more than one Security Document make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8 or Section 20.4.8 of the CDA, TxDOT shall grant the New Agreements to, as applicable, the holder whose leasehold mortgage has the most senior priority of record. Priority shall be established as follows.

(a) TxDOT shall submit a written request to the Collateral Agent to designate the leasehold mortgage having the most senior priority of record. TxDOT shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by TxDOT and without liability to Lender; and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(b) If TxDOT does not receive the Collateral Agent's written designation within ten days after delivering written request, then TxDOT may conclusively rely, without further inquiry and without liability to Lender, on the seniority indicated by a then-current

title report that TxDOT obtains from one of the four largest title insurance companies doing business in Texas (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(c) In the event the holders of more than one leasehold mortgage share *parri passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8 and Section 20.4.8 of the CDA, TxDOT shall grant the New Agreements to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

2.4.8.7 The provisions of this Section 2.4.8 and Section 20.4.8 of the CDA shall survive the termination of the CDA and shall continue in full force and effect thereafter.

2.4.9 The Collateral Agent shall have the option to extend the Long Stop Date by two additional 90-day periods, provided all the following terms and conditions have been satisfied by not later than 15 days before the Long Stop Date to be extended:

2.4.9.1 The Collateral Agent has delivered to TxDOT (a) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (b) concurrently with such written notice a payment in good funds in the applicable amount set forth in Exhibit A to this Agreement and Exhibit 24 to the CDA. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend;

2.4.9.2 The Collateral Agent or its Substituted Entity has obtained ownership of the Developer's Interest and full possession and control of the Project to the exclusion of Developer; and

2.4.9.3 If any other Warning Notices are then outstanding, the Collateral Agent has demonstrated to TxDOT that it or its Substituted Entity has undertaken and continues and will continue to undertake meaningful steps to prosecute cure to completion with good faith, diligence and continuity.

2.4.10 The Collateral Agent shall have the option to extend the 180-day deadline set forth in Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA or, if applicable, the 180-day deadline after obtaining possession set forth in Section 2.4.6 of this Agreement or Section 20.4.6 of the CDA or the 180-day deadline set forth in Section 2.4.8.3(b) of this Agreement and Section 20.4.8.3(b) of the CDA, by up to but not exceeding an additional 180 days, provided that all the following conditions precedent have been satisfied by not later than 15 days before the deadline to be extended:

2.4.10.1 The Collateral Agent has delivered to TxDOT written notice requesting extension and setting forth a reasonable time period needed to effect cure, in any event not exceeding such 180 days;

2.4.10.2 The Collateral Agent has met all the requirements set forth in (a) Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA, (b) Sections 2.4.5 and 2.4.6 of this Agreement and Sections 20.4.5 and 20.4.6 of the CDA or (c) Section 2.4.8.3 of this Agreement and Section 20.4.8.3 of the CDA, as applicable;

2.4.10.3 The Collateral Agent has delivered evidence to TxDOT demonstrating, and TxDOT is reasonably satisfied, that full and complete cure by the Collateral Agent is highly likely within the period of extension; and

2.4.10.4 The Collateral Agent has prepared and submitted to TxDOT, and TxDOT has approved, a remedial plan for effecting full and complete cure. The remedial plan shall set forth a schedule and specific actions to be taken by the Collateral Agent to fully and completely cure, with the schedule to be consistent with the period of extension. TxDOT may require that such actions include new and improved quality management practices, plans and procedures, revised and restated Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

Time is of the essence in the exercise of such option. If for any reason any of the foregoing conditions is not satisfied by 15 days before the deadline that is eligible to be extended, the option shall automatically expire and cease to have effect with respect to such deadline.

2.4.11 Notwithstanding any contrary provisions of the CDA Documents, in the event the Lender or its Substituted Entity obtains ownership of the Developer's Interest and full possession and control of the Project to the exclusion of Developer, all Noncompliance Points accumulated prior to the date the Lender or Substituted Entity obtains ownership and possession shall be reduced to zero. The foregoing shall not, however, excuse the Lender or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the CDA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to TxDOT respecting uncured breaches or failures to perform.

2.4.12 Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the CDA Documents or any Principal Project Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

2.4.13 Nothing in this Section 2.4 or Section 20.4 of the CDA shall preclude or delay TxDOT from exercising any remedies other than termination of the CDA and the Lease due to Developer Default, including, subject to TxDOT's express covenants to forebear, TxDOT's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

2.5 Forbearance

To the extent TxDOT has rights to enforce the Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as the CDA remains in effect TxDOT shall forbear from exercising remedies against the Design-Build Contractor or any O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within 15 days after TxDOT delivers written notice to Developer and the Collateral Agent of default by the Design-Build Contractor or any O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

2.6 Substituted Entities

2.6.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the CDA in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by TxDOT makes such payment or takes such action. TxDOT shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

2.6.2 Notwithstanding the foregoing, any entity that is wholly owned by the Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for TxDOT approval, upon delivery to TxDOT of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of TxDOT certifying, representing and warranting such ownership.

2.6.3 TxDOT shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that (a) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the CDA Documents and Principal Project Documents and (b) the proposed Substituted Entity and its contractors are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest. TxDOT will approve or disapprove a proposed Substituted Entity within 30 days after it receives from the Lender a request for approval together with (i) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as TxDOT may request, and (ii) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, child support statements, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities. If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of TxDOT and the Lender, TxDOT shall be deemed to disapprove.

2.6.4 Lender may request approval of more than one Substituted Entity. The Lender may request approval at any time or times. Any approval by TxDOT of a Substituted Entity shall expire one year after the approval is issued, unless TxDOT approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest. TxDOT may revoke an approval if at any time prior to succeeding to the Developer's Interest (a) the Substituted Entity ceases to be in compliance with TxDOT's rules and regulations regarding organizational conflicts of interest or (b) there occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

2.7 Receivers

2.7.1 The appointment of a receiver at the behest of Developer shall be subject to TxDOT's prior written approval in its sole discretion. The appointment of a receiver at the behest of the Lender if the Lender is not in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement or Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA shall be void and may be challenged by TxDOT in any proceeding. The appointment of a receiver at the behest of the Lender if the Lender is in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement or Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA shall be subject to the following terms and conditions:

2.7.1.1 TxDOT's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

2.7.1.2 Whenever the Lender commences any proceeding for the appointment of a receiver, it shall serve on TxDOT not less than five days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

2.7.1.3 TxDOT may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

2.7.1.4 TxDOT may at any time seek an order for replacement of the receiver by a different receiver.

2.7.2 No receiver appointed at the behest of Developer or the Lender shall have any power or authority to replace the Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by TxDOT.

2.8 Other Lender Rights

2.8.1 In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under the CDA and the Lease with respect to curing any Developer Default. TxDOT shall permit the Collateral Agent and its Substituted Entity the same access to the Project and Project Right of Way as is permitted to Developer hereunder. TxDOT hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the Project and Project Right of Way and to perform all acts required to be performed herein, in the Lease, and in any Principal Project Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. TxDOT shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

2.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of the CDA, the leasehold estate under the Lease or the Developer's Interest, nor shall the Lender, as such, be deemed to be an assignee or transferee of the CDA, the leasehold estate under the Lease or the Developer's Interest so as to require the Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. Neither the Lender, nor any owner of the leasehold estate under the Lease or the Developer's Interest whose ownership

shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of the CDA or the Lease unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest. Upon any permitted assignment of the CDA, the Lease and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to TxDOT a recordable instrument of assumption as required under Section 21.5 of the CDA.

2.8.3 The Lender or the Collateral Agent may exercise its rights and remedies under its Security Document with respect to all, but not less than all, of the Developer's Interest.

2.8.4 The exercise by the Lender of its rights with respect to the Developer's Interest under its Security Documents, this Agreement, Article 20 of the CDA, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of TxDOT or constitute a breach of any provision of or a default under the CDA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 2.6 of this Agreement and Section 20.6 of the CDA (and the definition of Substituted Entity).

2.8.5 Whenever TxDOT obtains knowledge of any condemnation proceedings by a third party affecting the Project or Project Right of Way, it shall promptly give notice thereof to the Lender. The Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and TxDOT hereby consents that the Lender may be made such a party or an intervener.

2.9 Consents and Estoppel Certificates

2.9.1 At any time and from time to time, within 15 days after written request of the Lender, TxDOT, without charge, shall (a) consent to (i) the exercise by the Lender of its rights under and in accordance with this Agreement and Article 20 of the CDA in the event of a Developer Default and (ii) a pledge or hypothecation by Developer of the Developer's Interest under the CDA to the Lender and (b) certify to its best knowledge by written instrument duly executed and acknowledged, to the Lender as follows:

2.9.1.1 As to whether the CDA has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

2.9.1.2 As to the validity and force and effect of the CDA, in accordance with its terms;

2.9.1.3 As to the existence of any Developer Default;

2.9.1.4 As to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default;

2.9.1.5 As to the then accumulated amount of Noncompliance Points;

2.9.1.6 As to the existence of any claims by TxDOT regarding the CDA;

2.9.1.7 As to the Effective Date and the commencement and expiration dates of the Term;

2.9.1.8 As to whether a specified acceptance, approval or consent of TxDOT called for under the CDA has been granted;

2.9.1.9 Whether the Lender and its Funding Agreements and Security Documents meet the conditions and limitations set forth in Sections 4.3 and 20.1 of the CDA and Section 2.1 of this Agreement; and

2.9.1.10 As to any other matters of fact within TxDOT's knowledge about the CDA Documents, the Principal Project Documents, Developer, the Project or the Work as may be reasonably requested.

2.9.2 TxDOT shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to TxDOT either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

2.9.3 Any such certificate may be relied upon by, and only by, the Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on TxDOT.

2.10 No Surrender

No mutual agreement to cancel or surrender the CDA or the Lease shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain.

ARTICLE 3. CONTRACT PERIOD

This Agreement shall become effective when executed by all parties. The Agreement shall terminate upon the occurrence of any of the following:

(a) If the CDA is terminated and the Lender does not have a right to a New Agreement, upon termination of the CDA;

(b) If the CDA is terminated and the Lender does have a right to a New Agreement, upon lapse without proper exercise of the right to obtain a New Agreement;

(c) Upon the Lender or a Substituted Entity that is affiliated with the Lender (or any other participating Lenders) succeeding to the Developer's Interest;

(d) Upon release and reconveyance by the Lender of all or any portion of its security interest in the Developer's Interest;

(e) Upon any change in circumstances rendering the Lender ineligible under the terms of this Agreement (i.e., those corresponding to Section 2.1 of this Agreement and Section 20.1 of the CDA) for the rights and protections set forth in this Agreement; or

(f) Upon the natural expiration of the Term of the CDA.

ARTICLE 4. SIGNATORY WARRANTY

4.1 The undersigned signatory for the Lender hereby represents and warrants that he or she is an officer of the Lender organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the Lender organization. These representations and warranties are made for the purpose of inducing TxDOT to enter into this Agreement.

4.2 The undersigned signatory for TxDOT hereby represents and warrants that he or she is an officer of TxDOT and has full and complete authority to enter into this Agreement on behalf of TxDOT. These representations and warranties are made for the purpose of inducing the Lender to enter into this Agreement.

ARTICLE 5. GENERAL PROVISIONS

5.1 Public Information and Confidentiality

TxDOT will comply with Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information related to this Agreement.

5.2 Amendments and Waivers

5.2.1 No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

5.2.2 The exercise by a Party of any right or remedy provided under this Agreement or applicable law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by either party of any right or remedy under this Agreement or applicable law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or applicable law. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

5.3 Noncollusion

5.3.1 The Lender warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Lender, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

5.3.2 For breach or violation of this warranty, TxDOT shall have the right to terminate this Agreement without liability. No such termination shall affect the Lender's rights under Article 20 of the CDA.

5.4 Gratuities

5.4.1 Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

5.4.2 Any person doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offer of benefits, gifts or favors to department employees, except as stated above. Failure on the part of the Lender to adhere to this policy may result in the termination of this Agreement. No such termination shall affect the Lender's rights under Article 20 of the CDA.

5.5 Disputes

5.5.1 In the event of any dispute between TxDOT and the Lender under this Agreement, the parties shall resolve the dispute according to the Dispute Resolution Procedures, with the Lender having the same rights and obligations of Developer under the Disputes Resolution Procedures and having the obligation to enter into an identical Disputes Board Agreement (other than substitution of the Lender for Developer). If, however, any such dispute arises out of the same set of facts and circumstances that gives rise to a Dispute or Claim by Developer, then TxDOT shall have the right, without consent from members of any Disputes Board, to consolidate the disputes, claims and proceedings into one proceeding under the Disputes Board Agreement between Developer and TxDOT.

5.5.2 Nothing in Section 5.5.1 of this Agreement affects Lender rights and remedies against Developer and the Developer's Interest under the Lender's Funding Agreements and Security Documents or the procedures available to the Lender under applicable Law to exercise its security interests thereunder. Nothing in Section 5.5.1 of this Agreement changes or affects the Lender's rights of joinder of TxDOT as a necessary party to the extent provided in Section 4.3.10 of the CDA.

5.6 Successors and Assigns

This Agreement shall bind and inure to the benefit of TxDOT and the Lender and their respective successors and assigns. The Lender shall not assign, subcontract or transfer its interest in this Agreement separately from its interests in the Lender's Funding Agreements and Security Documents relating to the loan it has made available to Developer for the Project; and any attempt at such assignment, subcontracting or transfer shall be null and void.

5.7 Severability

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be

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

5.8 Prior Contracts Superseded

Except for the Lender's third party beneficiary rights under the CDA, this Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

5.9 Notices and Communications

5.9.1 All notices, correspondence, and other communications under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

5.9.2 All notices, correspondence and other communications to Lender shall be delivered to the following address:

[Lender address]

Telephone: _____
Facsimile: _____
E-mail: _____

5.9.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the IH 635 Managed Lanes Project and shall be delivered to the following address:

Texas Department of Transportation
4777 E. Highway 80
Mesquite, Texas 75150-6643
Attn: Gary L. Moonshower, P.E.
Telephone: (214) 320-4489
Facsimile: (214) 320-6117
E-mail: gmoonsh@dot.state.tx.us

In addition, copies of all notices regarding disputes shall be delivered to the following person:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: jingram@dot.state.tx.us

5.9.4 Notices, correspondence, and communications shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

5.10 Governing Law

This Agreement shall be governed by the laws of the State of Texas.

5.11 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

Lender

By: _____
Name: _____
Title: _____

TxDOT
TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Name: Amadeo Saenz, P.E.
Title: Executive Director

EXHIBIT A

Option Consideration for Extension of Long Stop Date

The consideration for each of the Collateral Agent's options to extend the Long Stop Date as set forth in Section 2.4.9.1 of this Agreement shall equal $4,500,000.