

# Master Development Plan for the TxDOT North Tarrant Express Project Segments 2-4

## Chapter 13: Third-Party Agreements and Arrangements



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## Chapter 13: Third-Party Agreements and Arrangements

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## 13. Third-Party Agreements and Arrangements

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Development of NTE Facilities will require a variety of agreements with many potential third-party entities (external to TxDOT and the Concessionaire). The following sections outline some of the basic agreements that may be required.

### 13.1. Railroad Agreements

Where a Facility crosses an existing railroad, it will be necessary for the Concessionaire to enter and utilize an operating railroad's right-of-way to carry out work. In order to perform work such as surveying and core drilling in the railroad ROW, a Right of Entry Agreement will be required. The Concessionaire will be responsible for coordinating directly with the operating railroad to negotiate and prepare such agreements.

Construction within the railroad ROW requires a License Agreement between the operating railroad and TxDOT. These agreements allow for the joint use of the railroad ROW at no cost to either party. The Concessionaire will be responsible for preparing License Agreements and related plans, specifications and other documentation. TxDOT will submit the draft License Agreement to the railroad company for review and comment and then TxDOT, the Concessionaire and the railroad company will work together to finalize each License Agreement.

Since securing a License Agreement from a railroad company normally requires at least 9-12 months for complex highway projects, License Agreements will be prepared as early as possible to prevent delays.

The Project contains the following rail crossings:

Segment 3A:

- E. Long Ave – Fort Worth and Western RR
- E. Long Ave. – DART / FWTA Cotton Belt Line (planned)
- Dooling St. – Burlington Northern-Santa Fe (BNSF RR)
- Wautaga Rd. – Union Pacific (UPRR), Fort Worth Belt RR
- South of Fourth St. – DART / Trinity Railway Express

Segment 4:

- IH 820, just south of the split with Airport Freeway (Missouri-Kansas-Texas [MKT] Railroad).

### 13.2. Agreements with Utility Providers

Two types of agreements with utility providers are envisioned – Utility Agreements and utility service agreements.

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Where an existing utility is in conflict with planned Facility construction, the Concessionaire will prepare, negotiate and enter into a Master Utility Adjustment Agreement (MUAA) with the Utility Owner for the relocation or adjustment of the impacted utility or utilities. This agreement will be prepared on TxDOT's standard forms and will vary depending on whether the utility is within its own ROW or in the public ROW.

MUAAs define the design, material, construction, inspection, and acceptance standards and procedures necessary for Utility Adjustments, and define the Concessionaire's and Utility Owner's responsibilities for Utility Adjustment costs and activities. At times, MUAAs will be amended for specific utility locations through use of a Utility Adjustment Agreement Amendment (UAAA). Utility Agreements will need to be in place prior to constructing the portion of the Facility that would cause the impact.

Utility services to the Facility, for locations where the Facility requires utility service (e.g. telephone, electricity, water and wastewater), shall be the subject of separate agreements between the Concessionaire and Utility Owners. These standard service agreements will need to be in place prior to the construction of the Facility to ensure that service is provided by the time it is needed for construction start-up and for operation of specific elements of the Facility.

### 13.3. Municipal and Regional Authorities

TxDOT has existing agreements with local Governmental Entities along the Facility corridor that set out municipal and TxDOT responsibilities with regard to maintenance and operation of traffic signals, illumination and roadway elements. Throughout the term of the CDA, the Concessionaire will execute TxDOT's responsibilities and duties as defined in these agreements.

The Concessionaire will coordinate the necessary arrangements directly with the appropriate local Governmental Entity for additional maintenance or improvements within the local Governmental Entity's jurisdiction if so required by the Work. To the extent that these agreements require TxDOT to reimburse local governments for their role in operating and/or maintaining signals and other facilities, the Concessionaire will be responsible for reimbursing TxDOT for these costs.

### 13.4. State Entities and Agencies

The Concessionaire will be required to obtain several governmental agreements or licenses at various times throughout the development of a Facility. These requirements include the following:

- Federal Employer Identification Number (EIN)
- Texas Taxpayer ID Number

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- State business licenses
- Incorporation filing
- Doing Business As (DBA) record
- Operation and maintenance agreements with municipalities for:
  - Traffic signals
  - Roadway illumination
  - Roadway Maintenance
- Facility Trust Agreements

### 13.5. Landowners and Developers

Existing business and residential access points (driveways) will be maintained and incorporated into the design of each Facility in accordance with the TxDOT *Access Management Manual*. Any changes to access will be subject to TxDOT review and will require a written agreement with the affected property owner.

Agreements that the Concessionaire will negotiate with property owners related to right-of-way include easements, leaseholds, right of entry agreements and purchases. The Concessionaire will typically be a party to all of the above agreements except purchases, which will be negotiated on behalf of TxDOT.

### 13.6. Schedule and Sequencing of Agreements and Arrangements

Table 13-1 is an illustrative list of the main Third Party agreements anticipated to be signed, along with the time periods during which each agreement should typically be executed.

Table 13-1: Anticipated Third-Party Agreements

Document	Relevant Parties	Time Period for Execution
<b>Finance Documents</b>		
Intercreditor agreement	Banks and TIFIA	At Close of Finance
Credit agreement(s)	The Concessionaire and its lenders	At Close of Finance
TIFIA finance contract	The Concessionaire and TIFIA	At Close of Finance
Close of Finance Security documentation	The Concessionaire and its lenders	At Close of Finance
Account bank agreement	The Concessionaire and account banks	At Close of Finance
<b>Project Documents</b>		
D&B Contract and associated Design and Construction Work Security documentation	Design-Build Joint Venture and the Concessionaire	Prior to Close of Finance
Independent Engineer Agreement	Concessionaire, its lenders, TIFIA, TxDOT, and Independent Engineer	Prior to Close of Finance
O&M agreements with local Municipalities (for traffic signals, illumination, roadway maintenance)	Municipality and Concessionaire	Following Close of Finance, prior to commencement of construction
<b>Shareholders Documents and Incorporation Documents</b>		
Shareholders' agreement and associated guarantees (if any)	Affiliates of Cintra, Meridiam (and, potentially, the Dallas Fire and Police Pension System)	Prior to Close of Finance



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Document	Relevant Parties	Time Period for Execution
Incorporation filing, DBA, taxpayer ID numbers, business licenses	Concessionaire and State of Texas	Prior to Close of Finance
<b>Other</b>		
Tolling Services Agreement	Concessionaire, North Texas Tollway Authority, TxDOT	Prior to Close of Finance
Railroad agreement(s)	All affected railroads	Prior to Close of Finance
MUAAs and other agreements with Utility Providers	Utility Providers, Concessionaire	Following Close of Finance and prior to construction on affected roadway sections
Agreements with Property Owners	Property Owners and either Concessionaire or TxDOT (depending on type of agreement)	Following Close of Finance (negotiations and other activities begin prior to Close of Finance)

The above list (a) neither limits nor expands the list of Facility Agreement Documents and (b) does not preclude the Developer or the Concessionaire from entering into any other Third Party agreements as necessary or desirable to achieve the Close of Finance or carry out Work under a Facility Agreement.