



Texas Department of Transportation

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July 27, 2006

Re: CDA Programmatic Term Sheet (Revised)

To Whom It May Concern:

The Texas Department of Transportation (TxDOT) hereby releases its revised CDA Programmatic Term Sheet previously issued by the department on June 29, 2006.

This Programmatic Term Sheet summarizes key terms and conditions for a Comprehensive Development Agreement (CDA) between TxDOT and a Project Developer (Developer) for a roadway concession under TxDOT's CDA program. All terms may be further modified to reflect the specific requirements of the individual CDA project as determined by TxDOT.

The terms in this Programmatic Term Sheet are based upon the assumption of a revenue positive project. Key definitions are contained in the attached glossary. For projects that are not revenue positive, alternative terms and structures are contemplated for financing and compensation, as generally described in the attached supplement.

TxDOT will continue to seek new and innovative ways to maximize the benefits this program can offer to industry, the State of Texas and the traveling public.

Sincerely,

Phillip E. Russell, P.E.
Director, Texas Turnpike Authority Division

COMPREHENSIVE DEVELOPMENT AGREEMENT PROGRAMMATIC TERM SHEET

This Programmatic Term Sheet summarizes key terms and conditions for a Comprehensive Development Agreement ("CDA") between the Texas Department of Transportation ("TxDOT") and a Project developer ("Developer") for a roadway concession under TxDOT's CDA program. The Programmatic Term Sheet has been revised based upon TxDOT's review of industry comments and input. All terms may be further modified to reflect the specific requirements of the individual CDA project as determined by TxDOT.

The terms in this Programmatic Term Sheet are based upon the assumption of a revenue positive project. Key definitions are contained in the attached Glossary. For projects that are not revenue positive, alternative terms and structures are contemplated for financing and compensation, as generally described in the attached Supplement.

The Programmatic Term Sheet, as revised, is posted on the web at www.keeptexasmoving.org.

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1. GENERAL CONCESSION TERMS

1.1 Deadline for Service Commencement

Developer will be required to commence service on the Project not later than the service commencement deadline and liquidated damages will be assessed for failure to commence revenue service by that deadline, as extended due to Relief Events. TxDOT will be entitled to terminate for Developer default if Developer does not commence service by a later deadline identified in the CDA, as extended due to Relief Events.

1.2 Lease Term

The Lease term will be for a specified number of years from the date of service commencement of any portion of the Project or the service commencement deadline, whichever is earlier.

While the Lease term will vary with the project, for projects within the TransTexas Corridor the maximum allowable term is 50 years and for other CDA projects the maximum allowable term is 70 years, provided certain conditions are met.

1.3 Independent Engineer

The Independent Engineer will be primarily responsible for monitoring and auditing quality assurance with respect to initial design and construction work, Capacity Improvements and other upgrades, and operations and maintenance ("O&M") work, including field inspections, testing and document review as appropriate to determine compliance with CDA requirements. The Independent Engineer will not provide certifications of Substantial Completion or Final Acceptance on behalf of TxDOT. (See also Compliance with Federal Design Review Requirements, Construction Oversight, Right to Audit O&M Work, and Capacity Improvements.)

The cost of the Independent Engineer will be shared equally by Developer and TxDOT. The Independent Engineer will be identified by Developer in its Proposal, subject to approval by TxDOT, and will be appointed for a three year term, with automatic renewal unless either Developer or TxDOT elects not to renew. Procedures will be established to appoint a neutral replacement in the event of non-renewal.

1.4 Financial Model

The Financial Model included in the Proposal will be updated as appropriate to reflect contractual amendments and any other events identified in the CDA that require adjustment(s). The Financial Model will form the basis for calculating payment to or from Developer for TxDOT Change, Change Requests and Compensation Events.

1.5 Federal Requirements

Developer will comply with applicable federal-aid requirements for design, construction, fabrication and installation Work, including Davis-Bacon, Buy America, and other federal

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requirements affecting the work, in order to permit Transportation Infrastructure Finance and Innovation Act (TIFIA) financing and retain eligibility for future federal funding of the Project.

1.6 Restrictions on Assignment, Subletting, and Change of Control

Developer will not sell, assign or transfer any of its rights, title or interests in, to or under the CDA or Project without TxDOT's prior written consent in its sole discretion, except for assignment to the Developer's lenders or lender nominees and assignees reasonably approved by TxDOT.

Developer's sponsors will hold effective management control of and maintain at least a majority share of the beneficial interest in Developer until at least five full years after service commencement for all segments of the Project. Thereafter, changes in the control of Developer will be subject to TxDOT's prior, reasonable approval, based on the financial and technical qualifications, experience, and expertise of the party(ies) proposed to assume management control of Developer, and compliance with TxDOT's written organizational conflicts of interest policy.

1.7 Indemnity

Developer will provide an indemnity in favor of TXDOT, the State, the Texas Transportation Commission, the Independent Engineer, and their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees against third party claims related to certain events, acts or omissions to be specified in the CDA, except to the extent such claims are attributable to the negligence, reckless or willful misconduct, bad faith or fraud of such indemnified party, or TxDOT's material breach of any of its obligations under the CDA.

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2. DEVELOPER COMPENSATION

2.1 Rights to Toll Revenues

Commencing on the date of service commencement, Developer will have the exclusive right, title, and interest in and to the toll revenues, subject to the Developer's obligations under the CDA (including revenue sharing with TxDOT) and Developer's funding agreements.

2.2 Toll Revenues Distribution

Developer's use of toll revenues will require payment of debt service, O&M costs, taxes, reserves and amounts due to TxDOT, before any distribution may be made to equity participants or payment of non-competitive fees and charges to affiliates. Payment of current and outstanding O&M costs will take first priority. Payment of any current and outstanding revenue share to TxDOT will be treated as part of O&M costs.

2.3 Competing Facilities

Developer will be compensated for material impacts to net revenues (taking into consideration cost savings) due to competing facilities within a specified area that are (1) owned, operated or funded in whole or in part by TxDOT (or a private or public entity pursuant to a contract with TxDOT), or (2) built by another governmental entity, but only where TxDOT has discretionary authority to prevent the competing facility through funding or otherwise ("Competing Facilities"). It is anticipated that the specified area will vary with the project: for non-rural projects it will likely be a smaller specified area and for rural projects it will likely be a larger specified area.

Facilities identified for inclusion within a defined Trans Texas Corridor or identified in federal, state or local agency long range plans in existence at the time of CDA execution will be excluded, as will facilities involving transportation modes other than roadways, projects necessary for safety reasons, and certain other exceptions as identified in the CDA for a particular project.

Developer will be compensated for the net revenue impact from operation of the Competing Facility, as described in Section 10.3. In calculating any compensation due Developer for a Competing Facility, negative net revenue impact for that facility will be subject to offset in the amount of any positive revenue impacts from other Competing Facilities.

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3. TxDOT COMPENSATION

3.1 Payments to TxDOT

Concurrently with execution of the CDA, Developer may be required to make a lump sum payment to TxDOT. The lump sum payment will vary by project.

TxDOT will also be entitled to a share of gross toll revenues received during the term of the Lease. This obligation will be a first priority payment as part of O&M costs, before any other use of funds.

The revenue share payment to TxDOT will be calculated based on a series of bands with increasing revenue shares to TxDOT (i.e., TxDOT will be entitled to a larger proportion of the toll revenue in any year where higher than base case toll revenues are generated). The specifics of the banding arrangements will be established by the Request for Detailed Proposals ("RFDP") requirements and Developer's Proposal and will vary depending on the economics of the project.

3.2 Reimbursement of TxDOT Costs

TxDOT will, in addition, be entitled to reimbursement for certain costs to compensate for work performed during the course of the Project by TxDOT personnel and/or the Office of Attorney General, as described in Sections 6.4 (Hazardous Materials), 7.4 (Right of Way), 7.5 (Utilities) and 8.7 (Capacity Improvements). Payment will be based on all-inclusive hourly rates.

3.3 Reserved Business Opportunities

TxDOT reserves the right to implement any and all other business opportunities for the Project, subject to Developer's rights to compensation if the implementation of any such business opportunity constitutes a Compensation Event. (See Compensation Events).

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4. TOLL RATES AND TOLLING SYSTEM

4.1 Toll Rate Framework

Developer will have the right to set tolls up to a maximum determined within a toll rate framework to be established by TxDOT. For managed lane projects the framework will provide rates that may vary depending on the time of day and day of the week, or that vary depending on the level of congestion.

4.2 Annual Adjustments to Toll Rates

Developer may levy annual toll rate adjustments which may not exceed annual changes, on a rolling cumulative basis, in the Consumer Price Index, Gross State Product, or other specified index or indices if appropriate depending upon the economics of the Project.

4.3 Tolling System Interoperability Requirements

Toll collection and enforcement systems will meet all applicable TxDOT statewide interoperability and compatibility standards, requirements, and protocols.

4.4 Electronic Toll Collection

The toll collection system will be required to incorporate 100% open road, barrier-free electronic toll collection (ETC), including video tolling, with no elements of conventional tolling.

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5. FINANCING

5.1 Financing

Developer will have sole responsibility for all financing necessary for the Project at its own cost and risk and without recourse. TxDOT will cooperate with Developer to facilitate TIFIA funding and issuance of private activity bonds.

5.2 Refinancing

TxDOT may share in any gains associated with refinancing. Developer will provide TxDOT with copies of all refinancing documents.

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6. SITE CONDITIONS / HAZARDOUS MATERIALS RISK

6.1 Completed Facilities

Except as otherwise determined on an individual project basis, Developer will bear the risk of defects in existing improvements, including improvements previously constructed by third parties, any impacts to initial design and construction and defects affecting O&M or renewal and replacement requirements.

Developer will be permitted to conduct appropriate due diligence activities, including testing and analysis, on existing improvements, and TxDOT will provide Developer with copies of construction and testing documentation for recently constructed improvements. TxDOT may, where appropriate on an individual project basis, transfer existing warranties and contract rights from contractors.

6.2 Third Party Construction

Following award of the CDA, TxDOT will continue to provide oversight over ongoing construction improvements by third parties that have been procured outside the CDA. Developer will have the opportunity to participate in meetings with the contractors and construction inspections through a specified protocol. Except as otherwise determined on an individual project basis, Developer will bear the risks associated with improvements under construction by third parties during the term of the CDA. TxDOT may, where appropriate on an individual project basis and as the sole responsibility of and remedy against TxDOT, provide a blanket warranty against latent defects for a limited period (e.g. one or two years) after completion of the third party construction.

6.3 Site Conditions

Except as specifically modified for a particular project, Developer will bear site conditions risk, including geotechnical, archeological, endangered species and cultural resource conditions, for construction work that it performs or provides under the CDA, subject to relief for Relief Events. TxDOT will provide copies of surveys, data, reports and other information in its possession regarding the existing construction and site conditions, without warranty as to accuracy or completeness.

Where right-of-way is owned or controlled by TxDOT, or TxDOT obtains access rights, appropriate site investigation activities by proposers will be permitted, in accordance with TxDOT standards and practices.

6.4 Hazardous Materials Management and Liability

Developer will be responsible for management and disposal of all hazardous materials encountered during the term of the CDA or used in construction, operation or maintenance of the Project. Except as specifically modified for a particular project, all such work will be at no cost or expense to TxDOT.

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TxDOT will be considered the generator, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and similar state laws, of any hazardous materials located in, under or on the Project site as of the date the CDA is executed and delivered, if such materials are, through no fault of Developer and without exacerbation of existing conditions, required to be removed, and provided that such hazardous materials are properly handled and disposed of by Developer in accordance with the requirements of the CDA and applicable law.

Developer will be considered the generator of any hazardous materials requiring disposal that were not in, under or on the Project site as of the CDA execution date. TxDOT will assist Developer in identifying potentially responsible parties and seeking recourse against such parties, provided that Developer reimburses TxDOT for costs incurred in providing such assistance.

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7. DESIGN AND CONSTRUCTION PHASE

7.1 Design

The initial Improvements will be designed in conformance with the most recent editions of referenced manuals/publications in effect as of the date of award of the CDA. Subsequent improvements will be subject to then-current requirements.

7.2 Compliance with Federal Design Review Requirements

Neither TxDOT nor the Independent Engineer will perform formal design reviews except as required by the Federal Highway Administration (FHWA), the Army Corps of Engineers, or other federal agencies with jurisdiction over the Project. TxDOT and the Independent Engineer will have the right to review and audit all design data.

7.3 Governmental Approvals

TxDOT will be responsible for obtaining specified environmental approvals required to construct the Project, including National Environmental Policy Act (NEPA) approval, and will work collaboratively with Developer to obtain any environmental approvals for expansion of the Project. Developer will be responsible for obtaining all other governmental approvals.

7.4 Right-of-Way

Developer will be responsible for right-of-way acquisition for any property required for construction and/or O&M of the Project, except for property previously acquired by TxDOT, and for payment of all costs and expenses associated with such acquisitions.

All acquisitions must be in conformity with the Technical Provisions, the TxDOT Right-of-Way Manual, and all applicable law relating to right-of-way acquisition, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

If eminent domain proceedings are necessary in order to acquire any portion of the Project right-of-way, TxDOT, through the Office of the Attorney General, will handle such proceedings in accordance with the procedures and time frame established in the Technical Provisions, the TxDOT Right-of-Way Manual, and the approved right-of-way acquisition plan and procedures, and will be entitled to reimbursement by Developer for TxDOT's costs and any costs incurred by the Office of the Attorney General. Eminent domain proceedings that exceed the time period established in the CDA, following submission of a complete, approved acquisition package by the Developer, will be considered a TxDOT-caused delay, for which the Developer may be entitled to additional time or compensation.

7.5 Utilities

Developer will be responsible for ensuring that utility facilities impacted by the Project are protected in place or timely removed and/or adjusted, at no expense to TxDOT.

A time extension will be allowed for critical path delays due to unreasonable delays in performance by utility owners with whom Developer has been unable to enter into utility

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adjustment agreements, unless Developer could have, by diligent action, avoided the delay. (See also Relief Events.)

Developer will reimburse TxDOT for any administrative costs it incurs in providing assistance to Developer in obtaining cooperation or resolving disputes with uncooperative utilities.

7.6 Construction

Construction work (including installation of systems, work during the operational period and any Renewal Work) will be performed in accordance with Good Industry Practice, TxDOT Technical Provisions as set out in the RFDP, applicable manuals/publications, the design documents, the construction documents, the Developer's quality management plan, and all applicable laws.

7.7 Construction Oversight

TxDOT, the Independent Engineer, and their authorized representatives will have unrestricted access to the Project at all times, subject to compliance with Developer's safety procedures, for the purposes of general inspection and of attending or conducting any test or investigation being carried out with respect to the Project. The Independent Engineer will have the primary role in conducting such inspections, testing or investigation. (See also Independent Engineer.)

TxDOT, together with the Independent Engineer, will have the right to review and audit all construction data for the Project.

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8. OPERATIONS AND MAINTENANCE PHASE

8.1 Operations and Maintenance

Facilities will be opened to traffic immediately upon Substantial Completion and satisfaction of the conditions in the CDA, including completion of staffing and operations plans and rectification of any Developer default for which a notice of default has been given. Upon Substantial Completion, the Project will be deemed a part of the State highway system.

8.2 O&M Standards and Requirements

Developer will carry out the operation, management, maintenance, renewal, and rehabilitation of the Project (including any additional work during the operational period and any Renewal Work) in accordance with Good Industry Practice, the CDA documents, the Developer's quality management plan, the applicable TxDOT standards in use at the time of the work and all applicable laws.

Non-Discriminatory changes to the TxDOT standards during the operational period will be implemented by Developer at its sole cost and expense. Discriminatory changes to TxDOT standards (including Safety Standards) will be handled as TxDOT Changes.

8.3 Safety Compliance

Developer will be required to implement appropriate safety compliance measures (including repair, reconstruction, rehabilitation, and procedures) to correct a specific project safety condition or risk as expeditiously as possible following issuance of a safety compliance order by TxDOT.

Developer will be required to implement non-discriminatory changes in Safety Standards by the first to occur of (a) any deadline prescribed in the changed or added Safety Standard for commencing compliance work, (b) the date when Developer first performs or (if earlier) is first obligated to perform Renewal Work on any Project element that is affected by the changed or added Safety Standard and (c) the date TxDOT first implements the changed or added Safety Standard on other comparable limited access highways.

8.4 Right to Audit O&M Work

TxDOT, together with the Independent Engineer, will have the right to audit and monitor operations and maintenance.

8.5 Renewal Work Performance

Developer will be obligated to perform Renewal Work according to the terms of the CDA, including the applicable TxDOT standards (as they may be updated from time to time) and/or Handback Requirements. Renewal Work will be performed in accordance with the renewal and replacement schedule prepared and updated by Developer.

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8.6 Handback Requirements Funding

The CDA will require Developer to regularly fund a reserve, or letter of credit in lieu of a renewal reserve, exclusively for funding work pursuant to the Handback Requirements.

The CDA will include provisions for the timing of deposits into the reserve, or delivery of letters of credit, that balance TxDOT's interest in reasonable certainty that funds will be available when needed for Handback Requirements Work with the Developer's interest in not unduly burdening cash flows.

All funds in the Renewal Work Reserve will automatically be and become the sole property of TxDOT at the expiration or any earlier termination of the CDA.

8.7 Capacity Improvements

Developer will maintain a specified level of service and will be required to provide Capacity Improvements to maintain such level of service at no cost to TxDOT (unless provided otherwise for a particular project).

All provisions of the CDA pertaining to permitting, Project right-of-way acquisition, design, construction, insurance, service commencement, operation, and maintenance of the Project will apply to Capacity Improvements or other upgrades.

Any non-mandatory Capacity Improvements included in the ultimate design will be subject to review and comment by the Independent Engineer and TxDOT. (See Independent Engineer.) Any other non-mandatory Capacity Improvements will be subject to TxDOT consent.

Developer will reimburse TxDOT for all costs incurred in connection with the NEPA process for any Capacity Improvements requiring further environmental review.

8.8 Capacity Improvements During Latter Years of Term

If a requirement for Capacity Improvements is triggered with insufficient time remaining in the term for repayment of the investment necessary to construct such Capacity Improvements, the parties will negotiate a mutually satisfactory arrangement to finance the Capacity Improvements. Such arrangement could include changing the toll rate structure, modification of the type or extent of Capacity Improvements, TxDOT contribution to the cost of the Capacity Improvements (including through adjustment of revenue sharing) or an extension of the CDA term, if permitted by applicable law.

8.9 Technology Enhancements

Developer, at its expense, will be obligated to make technology enhancements (a) as and when necessary to correct errors or safety hazards, and (b) to maintain interoperability in accordance with TxDOT standards.

8.10 Policing, Security and Incident Response

Developer, without expense to TxDOT, will permit the Texas Department of Public Safety, or any other police force having jurisdiction, to provide traffic patrol, enforcement and other police

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services in respect of the Project in accordance with applicable laws and agreements with state and local agencies.

Developer may arrange for additional traffic patrol, enforcement or other police services, and will be responsible for payment for any such services.

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9. INSURANCE AND BONDING

9.1 Insurance for Design and Construction Phase

Developer will obtain and maintain, and will require certain Developer-Related Parties to obtain and maintain, appropriate insurance coverage during design and construction, which may include wrap up commercial general liability insurance, blanket builders risk insurance, pollution liability insurance, auto liability insurance, worker's compensation insurance, and professional errors and omissions liability insurance.

9.2 Insurance for O&M Phase

Developer will obtain and maintain appropriate insurance coverage during the O&M phase of the Project, including start-up delay insurance, property and casualty insurance for bridges, buildings and special structures, business interruption insurance, commercial general liability insurance, worker's compensation insurance, auto liability insurance and fidelity bond. The commercial general liability insurance will provide, without limitation, coverage for the activities and operations conducted by Developer and any other person on the Project against claims for personal injury, death or property damage or loss arising out of the operations and maintenance.

9.3 Performance Bonds

Developer will be required to obtain payment and performance bonds covering design and construction, or alternative security acceptable to TxDOT, during the initial design and construction phase, as well as during expansions and major rehabilitation during the O&M phase, in an amount sufficient to protect TxDOT's interest and the interests of payment bond beneficiaries. The bonds or alternative security will show the Developer-Related Party with primary responsibility for design and construction as obligor, and Developer and TxDOT as dual obligees.

In the event Developer obtains payment and performance bonds or other forms of security covering non-construction O&M work, the bonds or alternative security will name TxDOT as a dual obligee.

9.4 Performance Security

If Developer or the lenders obtain guarantees from the parent companies of the design-builder and/or O&M contractors or from any other person or entity, securing obligations pertaining to the Project, TxDOT will be an additional named guaranteed party thereunder.

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10. EXCUSED PERFORMANCE / CHANGES

10.1 Relief Events

A time extension for major capital works will be allowed for the following delay events affecting the critical path for completion of the Project, and extension of the CDA term (subject to statutory limitations) will be allowed for certain long-term Relief Events that (1) occur during the O&M phase (2) are not also Compensation Events and (3) materially adversely affect the collection of tolls or materially increase the Developer's uninsurable costs; provided in each case that such events are outside of Developer's control and subject to Developer's compliance with notification and other obligations set forth in the CDA. Any extension of the CDA term would be limited to the period necessary to offset the material adverse effect of the Relief Event to the Developer.

- Force Majeure Event;
- Fire, explosion, flood, earthquake, hurricane, tornado, riot, national strike or act of terrorism;
- Discriminatory Change in Law;
- Discriminatory Action;
- TxDOT breach of its material obligations under the CDA;
- TxDOT Change;
- TxDOT-caused delay;
- Discovery of hazardous materials or archeological, paleontological or cultural resources;
- Discovery of unusual surface or subsurface physical conditions within the Project right-of-way;
- Discovery of threatened or endangered species at, near or on the Project right-of-way;
- Third party spill of hazardous material;
- Issuance of a temporary restraining order or other form of injunction by a court that prohibits performance of a material portion of the Project work;
- Suspension, termination or interruption of the applicable NEPA approval;
- Unreasonable and unjustified delay by a governmental entity in issuing a governmental approval;

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- Unreasonable and unjustified delay by a utility owner in connection with utility adjustment work, if Developer has been unable to enter into a utility adjustment agreement with such utility owner.

Developer will not be excused from compliance with applicable law, applicable TxDOT standards, or Technical Provisions due to the occurrence of a Relief Event.

Developer will be required to mitigate the impacts in the event of a Relief Event.

10.2 Compensation Events

A Compensation Event results in a material increase in Developer's costs, a material decrease in its toll revenues or a materially adverse effect on Developer's ability to perform its obligations under the CDA, without fault by Developer, including:

- Discriminatory Change in Law;
- Discriminatory Action;
- TxDOT breach of its material obligations under the CDA;
- TxDOT-caused delay;
- TxDOT Change, including changes to the Technical Provisions or TxDOT standard during the initial design and construction period;
- Operation of a Competing Facility; or
- Development, use or operation of the Project airspace by TxDOT or anyone claiming under or through TxDOT, or development or operation by TxDOT of a business opportunity in the airspace, to the extent set forth in the CDA.

Developer will be responsible for increased costs resulting from any change in law, other than a Discriminatory Change in Law.

10.3 Compensation Event Payments

TxDOT will provide compensation to Developer for decreases in its net revenue and/or increases in its net costs of performing its obligations under the CDA directly attributable to Compensation Events, subject to Developer's compliance with notification and other obligations set forth in the CDA. Net cost impact and net revenue impact of a Compensation Event will be determined by comparison to what the projected costs and projected toll revenues would have been absent occurrence of the Compensation Event.

TxDOT may choose to pay such compensation through a lump sum payment of the present value of the net revenue impact and net cost impact or through periodic payments consistent with installment payments for senior and first tier subordinate debt of the net revenue impact and net cost impact over the remaining life of the concession. Present value will be

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determined using the same assumptions and methodology as in the prevailing Financial Model in effect immediately prior to the occurrence of the Compensation Event.

TxDOT will have the right to make up all or any portion of the net revenue impact or net cost impact by adjusting its revenue sharing payments.

10.4 Right to Direct Performance

If the parties cannot agree on the amount of the compensation or time adjustment associated with a TxDOT Change, TxDOT may, in its sole discretion, direct Developer to proceed with the change pending resolution of the matter through the dispute resolution process identified in the CDA.

Developer may object to the requirement to carry out a TxDOT Change only on the grounds that such TxDOT Change:

- is not in compliance with applicable laws;
- would contravene an existing governmental approval and such contravention could not be corrected by the issuance of a further or revised governmental approval;
- constitutes a fundamental change in the nature or scope of the Project;
- would cause an insured risk to become uninsurable;
- would materially adversely affect the health or safety of users of the Project;
- is fundamentally incompatible with the Project design; or
- is not technically feasible to construct.

10.5 Developer Change Request Procedure

Developer may ask TxDOT to approve a change in the character, quantity, quality, description, or location of any part of the work or to modify or deviate from the requirements of the CDA documents, including the Technical Provisions.

If any such request is approved, Developer will bear the risk of any increased costs, delays, or other impacts resulting from implementation and will share any net cost savings, or net revenue increase, equally with TxDOT.

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11. DEFAULT / DISPUTES

11.1 Default by Developer

Standard default events will apply to Developer including:

- Failure to begin work promptly and thereafter to prosecute the work diligently.
- Failure to achieve service commencement by the service commencement deadline.
- Failure to make any payment owing to TxDOT when due, or failure to deposit funds to any reserve account when due.
- Any closures not permitted under the CDA documents.
- Failure to comply with any other provisions of the CDA.

11.2 TxDOT Remedies for Developer Default

The CDA will set forth certain remedies of TxDOT for Developer default not cured within the applicable cure period, including:

- Assessment of Noncompliance Points for a specified breach or performance failure, in accordance with a detailed schedule set forth in the CDA. TxDOT's remedies associated with accumulation of Noncompliance Points include increased oversight, liquidated damages and termination.
- Right to enter and take control of the Project to cure the default, restore the permitted uses and reopen and continue operations for the benefit of Developer and the public.
- Certain rights to ensure implementation of and compliance with Safety Standards.
- Right to suspend work for certain Developer defaults.
- Right to recover damages for a Developer default, including liquidated damages for delay, for single Noncompliance Points, and for specified persistent Developer defaults.
- 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.
- Right to declare an anticipatory breach for persistent Developer default and demand assurances of future performance.
- Right to appoint a receiver.
- Right to terminate in the event of a Developer default that, after delivery of a warning notice, becomes a default termination event.

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In no event will Developer be liable for punitive damages or any indirect, incidental, or consequential damages except as set out in the CDA, whether arising out of breach of the CDA or the Lease, tort (including negligence), or any other theory of liability.

11.3 Default by TxDOT

Default events applicable to TxDOT include:

- Failure to make any payment due the Developer under the CDA when due;
- Default by TxDOT under the Lease;
- Bankruptcy or insolvency events.

11.4 Developer Remedies for TxDOT Default

TxDOT will be entitled to notice and opportunity to cure any default, as specified in the CDA.

The measure of compensation available to Developer as set forth in the CDA for a Compensation Event or termination due to TxDOT default will constitute the sole and exclusive monetary relief and damages available to Developer arising out of or relating to any TxDOT default.

In no event will TxDOT be liable for punitive damages or any indirect, incidental, or consequential damages except as set out in the CDA, whether arising out of breach of the CDA or the Lease, tort (including negligence), or any other theory of liability.

11.5 Dispute Resolution

The following dispute resolution process is currently under consideration by TxDOT; implementing rules are subject to approval by the Texas Transportation Commission.

The first stage of dispute resolution consists of a brief period for informal resolution between the Developer's Chief Executive Officer and TxDOT Executive Director, and a voluntary mediation/partnering process.

A neutral, three-member disputes board will be established to review certain disputes arising under CDAs that are not resolved informally. Each of the Developer and TxDOT will appoint one member, with the third member appointed by the other two.

The Executive Director would issue an order as a ministerial act following the disputes board determination, and would have no discretion to overrule the disputes board's determination except for failure of the disputes board to follow procedural requirements or conflicts of interest. The order would be subject to the parties' right to a contested case hearing by the State Office of Administrative Hearings on whether there was such disputes board error. A final order is subject to limited judicial review under the substantial evidence rule, as provided in Transportation Code section 201.112, including review for disputes board failure to follow procedural requirements or conflicts of interest.

The process would provide for the admissibility of the decisions of the disputes board in subsequent proceedings.

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Disputes relating to termination of a CDA would be outside of the dispute board's jurisdiction and would proceed in accordance with the process specified in Section 223.208, Texas Transportation Code (which allows developers to enforce by mandamus an obligation of TxDOT to make or secure payment of the termination amount).

11.6 Lenders' Rights

Developer's lenders will be entitled to receive notice of Developer's default(s) and opportunity within a specified time period to cure the defaults. Developer's lenders will have the right to step-in for Developer and assume Developer's rights and obligations under the CDA.

Lenders will have no greater rights than Developer, other than limited extension of certain time periods to cure Developer defaults.

In the case of termination of the CDA following rejection of the CDA by Developer in bankruptcy, Developer's lenders will have the right to obtain a new CDA, on the same terms, subject to curing prior Developer defaults and reimbursing TxDOT's costs.

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12. TERMINATION

12.1 Handback

The Project will be transferred to TxDOT upon termination of the Lease, at no charge to TxDOT. Developer and TxDOT will conduct a series of thorough inspections during the final five years of the Lease term. The inspections will result in curative work to meet Handback Requirements and/or adjustment in the Renewal Work Reserve, at TxDOT's discretion.

12.2 Termination for Convenience

TxDOT will have the right to terminate the CDA and Lease, in whole or in part, at any time upon notice to Developer which will specify the effective termination date.

In the event of such termination, Developer will be entitled to compensation equal to the greater of the fair market value of the concession or outstanding third party debt, including breakage costs.

12.3 Termination for Developer Default

Following the required notice to Developer and the lenders and expiration of the applicable cure period without cure of Developer's default:

- During the construction period, TxDOT will be entitled to terminate the CDA for material default, without compensation to Developer.
- During the operations and maintenance period, TxDOT will be entitled to terminate the CDA for material default, and Developer will be entitled to compensation equal to the lesser of (a) the fair market value of the concession minus damages owing to TxDOT or (b) a percentage of the outstanding principal amount of original senior debt minus damages owing to TxDOT. However, no compensation will be owing if termination follows rejection of the CDA by Developer in bankruptcy.

12.4 Termination for TxDOT Default

Developer will have the right to terminate the CDA in the event of a material failure of TxDOT to pay money due to Developer under the CDA that is not cured within the applicable cure period after notice.

In the event of termination for TxDOT Default, Developer will be entitled to compensation determined in the same manner as for Termination for Convenience.

12.5 Termination for Force Majeure

If a Force Majeure Event prevents work on the Project or renders it inoperable for more than 365 consecutive days, either party may give notice of its election to terminate the CDA and Lease.

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If TxDOT notifies the Developer of its election to terminate the CDA, the Developer may either accept termination, or notify TxDOT that it chooses to continue the CDA and Lease in effect. If the Developer elects to continue the CDA and Lease, TxDOT will have no obligation to compensate the Developer for any repairs, loss of toll revenues, or any other loss or expense arising out of the Force Majeure event.

If the Developer notifies TxDOT of its election to terminate the CDA, TxDOT may either accept termination or continue the CDA and Lease in effect. If TxDOT elects to continue the CDA and Lease, it must pay or reimburse the Developer for the restoration costs and certain other costs resulting from the Force Majeure event, including loss of toll revenues calculated in the same manner as for a Compensation Event, after deducting the amount covered by insurance.

If either party accepts the other's election to terminate the CDA, the CDA will terminate thereafter, and the Developer will be entitled to compensation in the amount of the senior debt plus breakage costs (excluding increases due to refinancing).

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GLOSSARY

Unless otherwise specified, wherever the following terms are used in the Programmatic CDA Term Sheet, they have the meanings set forth below:

Capacity Improvement means any Project expansion, improvement, measure or procedure that both (i) maintains or increases the throughput capacity of the Project or any portion thereof and (ii) improves the level of service of the Project. Capacity Improvements could include building of additional lanes, adding or expanding interchanges, constructing bridges or other structures, new or improved intelligent transportation systems and applications, and making other improvements that achieve the foregoing conditions. Capacity Improvements exclude Project extensions.

Change Request means a written request from Developer seeking to change the character, quantity, quality, description or location of any part of the work, or to modify or deviate from the CDA Documents.

Competing Facilities has the meaning set forth in Section 2.3.

Compensation Event has the meaning set forth in Section 10.2.

Developer-Related Parties means (i) Developer, (ii) shareholders, partners, joint venturers and/or members of, in or with Developer, (iii) contractors (including suppliers), (iv) any other persons performing any of the work, (v) any other persons for whom Developer may be legally or contractually responsible, and (vi) the employees, agents, officers, directors, shareholders, representatives, consultants, successors and assigns of any of the foregoing.

Discriminatory or **Discriminatory Action** means (a) materially more onerous application to Developer or the Project of changes or additions to TxDOT standards than the application thereof to other limited access State highways, or (b) selective application of changes or additions to TxDOT standards to Developer or the Project and not to other limited access State highways. Notwithstanding the foregoing, the following actions are not Discriminatory or Discriminatory Actions: (i) any such application in response to any act or omission by or on behalf of Developer in violation of law or the CDA; (ii) certain safety compliance orders; (iii) planning, design, construction, operation and maintenance of Competing Facilities; and (iv) any other actions addressing a specific condition or risk of the Project.

Discriminatory Change in Law means any change in applicable federal, State, regional or local Law which is principally directed at and the effect of which is principally borne by the Developer or private toll road operators in the State, except where such change is in response to any act or omission on the part of the Developer.

Financial Model means the financial formulas and assumptions that Developer and TxDOT have agreed upon as of the CDA date for the Project, as updated to reflect contractual amendments and any other events identified in the CDA that require adjustment(s).

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Force Majeure Event means the occurrence of any of the following events, which materially and adversely affects Developer's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer: (a) war, including civil war and revolution, invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State of Texas; (b) nuclear explosion; (c) any act of terrorism or sabotage that causes direct physical damage and long term disruption to the Project.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or operator seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking under similar circumstances and conditions.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the Project to TxDOT upon expiration or earlier termination of the CDA and Lease.

Handback Work Reserve means a reserve account established and funded by the Developer for the Handback Work.

Independent Engineer means the person retained from time to time by TxDOT and Developer under an agreement for independent oversight, inspection and auditing services.

Lease means the Project lease to be entered into between TxDOT and Developer pursuant to the CDA.

Noncompliance Points means the points that may be assessed for certain breaches or failures to perform by Developer, as set forth in the CDA.

Project means the highway concession project that is the subject of the CDA.

Proposal means the proposal submitted by the Developer in response to the RFDP for the Project.

Relief Event means any of the events listed in Section 10.1, to the extent they result in a material delay or interruption in performance of any obligation under the CDA, and provided such events are beyond the control of the Developer-Related Parties and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or law of any of the Developer-Related Parties, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer.

Renewal Work means maintenance, repair, renewal, reconstruction, rehabilitation or replacement of any portion or component of the Project of a type which is not normally included as an annually recurring cost in highway maintenance and repair budgets.

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Safety Standards means those TxDOT standards that TxDOT, FHWA or AASHTO considers to be important measures to protect public safety or worker safety. As a matter of clarification, TxDOT standards primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Substantial Completion means completion of construction of the Project in accordance with the Project documents, such that the Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with normal tolling operation, subject only to punch list items and other items of work that do not affect the ability to safely open the Project for such normal use by the traveling public and for normal tolling operation, as and when confirmed by TxDOT's issuance of a certificate in accordance with the procedures and within the time frame established by the CDA.

Technical Provisions means the CDA document describing the scope of the work and related requirements, standards and criteria for the Project.

TxDOT Change means any material change in the scope of the work or terms and conditions of the CDA Documents which TxDOT has directed Developer to perform as described in the CDA.

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Supplement to Programmatic CDA Term Sheet

For projects where revenues are projected to be insufficient to meet the costs of building, financing, maintaining and operating the proposed facility, TxDOT will consider the following alternative and/or supplemental payment and compensation structures and terms, individually or in combination, in order to make such projects financially feasible from the perspective of private sector developers. In addition, depending upon the alternative payment structure selected and the circumstances of the individual project, there may also be modifications in the risk allocation terms.

1. Shadow tolling

- Shadow tolls (per vehicle amounts) may be paid to a Developer by TxDOT.
- Shadow toll amounts paid to the Developer would be based upon the vehicle class and the distance travelled.
- Shadow toll payments could substitute for or supplement real tolls paid by the users of the facility.
- The Developer would retain traffic risk under this alternative structure.

2. Availability payments

- TxDOT may make availability payments to the Developer in consideration for the service TxDOT receives from the Developer.
- This payment would likely be based upon the number of available lanes in the facility.
- The availability payment would be subject to a performance specification determined by TxDOT.
- Where the service provided by the Developer does not meet the performance criteria, TxDOT would be entitled to deduct a proportion of the availability payment with respect to that sub-standard performance.
 - Deductions for allowing the facility to be unavailable during peak hours would typically be higher than similar deductions for unavailability during off-peak hours.
- TxDOT would retain the risk as to level of traffic using the facility under this alternative structure.

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3. Predetermined capital payments (upfront or over time)

- Assuming an agreed base case that quantifies the extent to which the project is revenue negative, TxDOT would provide a “plug” amount that, using the base case, provides the Developer with an acceptable level of return.
- The payment may be made either as a one-time upfront payment or as a series of payments over the entire term of the project.
- The amount of the payments are agreed prior to financial close and would not change without the agreement of both TxDOT and the Developer.
- The Developer would retain traffic risk.
- A revenue sharing mechanism may be included so that if revenues are higher than forecasted in the base case, TxDOT may share in the upside.