Texas Department of Transportation
DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

April 9, 2009

Received
APR 17 2009
SH 130 CC

Mr. Jose Labarra
SH 130 Concession Company, LLC
7700 Chevy Chase Drive
Chase Park One, Suite 350
Austin, Texas 78752-1562

RE: Facility Concession Agreement (FCA) Amendment No. 5: Amendment to FCA Article 9, Section 16.5.2, and Addition of Exhibit 26

Dear Mr. Labarra:

This letter is being delivered to you in order to amend the FCA for the SH 130, Segments 5 & 6 dated March 22, 2007, between the Texas Department of Transportation (TxDOT) and SH 130 Concession Company, LLC (Developer). Initially capitalized terms not otherwise defined in this letter have the meanings given those terms in the FCA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TxDOT and the Developer agree as follows:

1. The following new Section 9.1.1.1 is inserted into the FCA:
Without in any way diminishing Developer's responsibility for the work including quality assurance and quality control for the Facility and Work, TxDOT may participate in Developer's quality assurance and quality control process by performing certain material inspection and testing services pursuant to the terms of and as more particularly described in Exhibit 26. Developer acknowledges and agrees that TxDOT will not be responsible or bear any liability for any damages, increased costs, revenue losses, delays, or other impacts to Developer or to any third party, arising as a result of the services performed by TxDOT pursuant to Exhibit 26, including those arising from failure of or defect in any material or product inspected or tested, regardless of when such failure or defect may occur or be discovered.

2. Section 16.5.2 of the FCA is amended to read as follows:
Subject to Section 16.5.3, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and losses (collectively, "Third Party Claims") arising out of, relating to or resulting from errors, inconsistencies or other defects in the design or construction of the Facility and/or of Utility Adjustments included in the Design Work or Construction Work, including any such Third Party Claims arising out of, relating to, or resulting from the performance by TxDOT of material inspection and testing services pursuant to Exhibit 26.

3. A new Exhibit 26 is added to the FCA in the form attached hereto.

4. As hereby amended, the FCA is in full force and effect.

If the foregoing correctly reflects your understanding of our mutual agreement, please so indicate by signing this letter in the place indicated below and returning four signed originals to Frank Holzmann.

This letter may be signed 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.

Sincerely,

Phillip E. Russell, P.E.
Assistant Executive Director
Innovative Project Development

Attachment

cc: Don Toner, SR/WA, Texas Turnpike Authority Division, TxDOT
Brett Jackson, Federal Highway Administration
Frank P. Holzmann, P.E., Area Engineer, San Antonio District, TxDOT

ACCEPTED AND AGREED TO
THIS 28 DAY OF APRIL, 2009

SH 130 CONCESSION COMPANY, LLC

By: _____

Name: Jose Labarra
Title: Chief Executive Officer

EXHIBIT 26

TERMS OF TXDOT MATERIAL INSPECTION AND TESTING SERVICES

TERMS OF TXDOT MATERIAL INSPECTION AND TESTING SERVICES

TxDOT agrees to perform certain material inspection and testing services as requested by Developer, and subject to the terms set forth below. Material inspection and testing to be performed by TxDOT consists of the following:

- Various inspected materials fabricated off-site.
- Selected roadway Monitored Materials from approved/monitored sources (including Quality Monitored Materials and Material Producer List qualified materials).
- Other materials inspection and testing as agreed upon in writing by TxDOT and Developer

Inspections will be performed in substantial compliance with the specifications and instructions supplied by Developer in its Work Request and are subject to the terms and conditions described below. Inspections will be performed only at locations in Texas where TxDOT routinely provides resident inspection services for its own highway materials. TxDOT will only perform tests listed in the TxDOT Inspection & Testing Rates Table in effect when the services are to be performed. Out-of-state inspections for Developer will be performed only when TxDOT has employees scheduled to conduct inspections for TxDOT projects at the requested locations.

As inspection and testing services are performed by TxDOT, written inspection/test reports will be provided to Developer in accordance with TxDOT's existing policies for providing such reports at the time the test is conducted. Reports will include the date, time, locations and nature of services performed. Monitored Materials will not be furnished with inspection/test reports.

Prior to the commencement of the Construction Work, the Developer shall provide TxDOT with a single point of contact for this scope of services. TxDOT will direct all invoices, test reports, questions and other issues to this point of contact. Developer shall provide written notification of a change to the point of contact. All communications from Developer regarding the scope of services covered by this Exhibit 26 shall be directed to the contact point listed in Section 24.12.3, or other person as designated by TxDOT.

INSPECTED MATERIALS:

TxDOT will only perform inspection services for Developer at structural steel fabrication plants, commercial precast prestressed and non-stressed concrete products plants, and other miscellaneous fabrication plants where TxDOT routinely provides such inspection and testing services for highway materials. TxDOT reserves the right to prioritize or reschedule any inspection and testing services according to the following:

- Inspection and testing services may be cancelled or deferred due to unavailability of TxDOT personnel to perform the requested necessary inspection
- Inspections for Developer will be given lower priority than inspections performed by TxDOT for TxDOT projects. Inspections for Developer may be given lower priority than inspections performed by TxDOT for other projects.

- Inspections for Developer may be rescheduled to coincide with the inspection of products for TxDOT or other projects inspected by TxDOT.

Developer and its fabricators will abide by the Nonconformance Report (NCR) process utilized by TxDOT for disposition of products that do not meet the requirements of the Developer's specifications provided in the Work Request. The current TxDOT NCR process for handling various NCR conditions is described in Appendix 1. TxDOT, in its sole and unfettered discretion, may revise the TxDOT NCR process.

Developer shall submit each Work Request a minimum of two (2) weeks prior to the requested TxDOT inspection date. Each Work Request will be for a single Fabricator, and will include the following:

- Project information (i.e. contract number, CSJ, etc.)
- Work description
- Type and estimated quantity of material(s) to be inspected
- Fabricator information (Name, contact person, physical location)
- Desired date of inspection
- Signature/name and telephone number of Developer's authorized representative.
- TxDOT 2004 Specification Item to be used for inspection
- TxDOT Special Specification to be used for inspection
- Developers Specifications
- Complete set of necessary design drawings, material specifications, and shop drawing files in Adobe .pdf format to perform inspection of the material

MONITORED MATERIALS:

TxDOT maintains certain materials for TxDOT use. Additionally, certain products or Manufacturers/Suppliers are monitored as being TxDOT compliant. These materials are described in one of the following categories:

- **QM**- Quality Monitoring Program. Materials in Program sent directly to projects. Materials supplied with documentation of program compliance.
- **MPL** - Material maintained on approved list (Material Producer List). No additional testing necessary unless directed by Engineer
- **WA** - Warehouse Agreements to stock Pre-Tested materials
- **PJT** - Approve on the basis of project samples

The Developer will not receive a test report for these above listed Monitored Materials.

A minimum of two (2) weeks prior to the incorporation of any TxDOT monitored materials in the Work, Developer will submit a Work Request consistent with the example attached as Appendix 2. Each Work Request will be for a single roadway material from a particular Fabricator/Supplier and will include the following:

- Project information (i.e. contract number, CSJ, etc.)
- Work description
- Type and estimated quantity of material(s) to be purchased (excluding inspected materials)

- Fabricator/Supplier information (Name, contact person, physical location)
- Date of purchase with supporting documentation
- Signature/name and telephone number of Developer's authorized representative.
- TxDOT 2004 Specification Item to be used for inspection
- TxDOT Special Specification to be used for inspection
- Developers Specifications
- Complete set of necessary design drawings, material specifications, and shop drawing files in Adobe .pdf format to perform inspection of the material

The Developer shall supply TxDOT with a monthly update of the actual quantity of Monitored Materials used during construction.

TEST REPORTS AND INVOICES

TxDOT will send a monthly invoice to the Developer for services performed pursuant to this Exhibit 26. The test reports will be sent to the Developer's point of contact.

PAYMENTS:

Developer will pay TxDOT's fees for performance of the materials testing and inspection services as shown in the TxDOT Inspection & Testing Rates Table in effect at the time the service is performed. TxDOT's 2009 Inspection & Testing Rates Table is attached as Appendix 3. Payments must be remitted by Developer, within 30 days after receipt of TxDOT's invoice, to:

Construction Division/ Texas Department of Transportation
Attn: Construction Division/BMS (RA/200-2nd fl.)
125 E. 11th Street 125 E. 11th Street
Austin, TX 78701-2483 Austin, TX 78701-2483

Non-Compliance Report (NCR) Process for Structural Steel Bridge Products

The NCR process for handling various NCR conditions in the Structural Steel Fabrication Branch includes:

NCRs requiring Developer's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the Developer's point of contact. Upon review of the information regarding the non-compliance, the Developer will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Misplaced components beyond specification tolerances.
- Extreme cases of additional, missing, elongated, etc. holes due to poor workmanship.
- Material/design substitutions/changes after shop drawings have been approved.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Sweep, camber, and twist beyond specification limits.
- Welding procedures, processes, and defects.
- Misdrilled holes (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Additional splices in flanges and webs (may need to contact Designer if non-traditional member.
- Base metal defects.
- Assembly of members.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Weld pick-ups.
- Minor heat corrections for sweep/camber.
- Weld defects (up to two times per location – generally).
- Painting issues.

Non-Compliance Report (NCR) Process for Steel Non-Bridge Structures

The NCR process handling various NCR conditions in the Miscellaneous Products Fabrication Branch for steel non-bridge structures includes:

NCRs requiring Developer's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the Developer's point of contact. Upon review of the information regarding the non-compliance, the Developer will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Fabrication discrepancies beyond specification tolerances. (mislocated and/or oversized holes for structural fasteners and/or anchor bolts, etc.)
- Proposed material substitutions for steel components.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Welding procedures, welding repair procedures, procedure qualification records.
- Misdrilled holes, bent surfaces (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Proposed paint system substitutions.
- Base metal defects.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Galvanized weldment tests.
- Minor heat corrections.
- Weld defect repairs permitted by the AWS D1.1 Structural Welding Code.
- Painting and galvanizing issues.

Non-Compliance Report (NCR) Process for Commercially Produced Precast Concrete Products

The NCR process for handling various NCR conditions in the Precast Concrete Fabrication Branch includes:

NCRs requiring Developer's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the Developer's point of contact. Upon review of the information regarding the non-compliance, the Developer will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Major honeycombed and/or spalled concrete exposing prestressing strand.
- Modification to prestressed concrete bridge beams (cutting 6-12 inches off beam ends).
- Thin top slab on prestressed concrete box beams (internal void floating).
- Thick bottom slabs on prestressed concrete U-beams and box beams (excessive dead load).
- Low strength concrete

NCRs handled by CSTM&P, Precast Concrete Fabrication Branch, Austin Headquarters

- Horizontal misalignment – Coordinate with prime contractor and District personnel.
- Minor honeycombed/spalled concrete with exposed reinforcing and prestressing steel.
- Damage over traffic lanes requiring concrete repair material (not allowed).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Minor beam modification – drilling anchor holes, cutting up to 6 inches off beam ends. (Coordinated with prime contractor and District personnel)
- Concrete damage in the bearing area of beams - shifting bearing pad away from beam end to reduce amount of bearing area affected by damage. (Coordinated with prime contractor and District personnel)
- Concrete temperature and/or curing violations.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Honeycombed/spalled concrete not extending beyond the first plane of reinforcing steel and not over traffic lanes.
- Damage to prestressed bridge deck panels.
- Damage to non-prestressed products.

Work Request

Ms. Becky Jares
TxDOT - Construction Division
Materials & Pavements Section
125 East 11th Street
Austin, Texas 78701-2483

Re: SH 130 Segments 5 and 6
Project Limits: from SH 45SE/SH 130 interchange in Travis County to IH 10 in Guadalupe County
CSJ No. 3583-02-003
WORK REQUEST

Dear Ms Jares,

We are requesting fabrication inspection of the following materials:

Developer provided specification number
Railing PR1 (150 LF)

The fabricator:

Company Name
3502 Pinemont
City, Tx 78123
Contact Person: David Schwitzer (off - 713-957-5555)(fax – 713-957-4444)

The date of the inspection:

Developer insert requested inspection date

Additional inspection information or request:

If you have any questions concerning this matter, please feel free to call me at (Developer insert office phone number).

Sincerely,

Developer Quality Manager

cc: Developer to provide pdf of necessary design files

TxDOT Inspection & Testing Rates Table

Branch: Asphalt

Material	*Units*	*Current Rate*	*QA Process*
Asphalt	Gallon	$ 0.00400	QM
Asphalt	Test	$ 100.00000	QM
Asphalt	Ton	$ 1.00000	QM
Asphalt (PG)	Test	$ 200.00000	QM
Bituminous Adhesive for Pavement Markers	Test	$ 250.00000	MPL
Bituminous Adhesive for Pavement Markers	LB	$ 0.01400	MPL
Class 4, 5, & 7 Low Modulus Silicone/Polyurethane Sealant	Test	$ 625.00000	MPL
Class 4, 5, & 7 Low Modulus Silicone/Polyurethane Sealant	Pound	$ 0.01900	MPL
Class 8 Low Modulus, Self Leveling, Concrete Only	Pound	$ 0.01900	MPL
Class 8 Low Modulus, Self Leveling, Concrete Only	Test	$ 625.00000	MPL

Branch: Chemical Unit

Material	*Units*	*Current Rate*	*QA Process*
Fabric Joint Underseal	Test	$ 125.00000	MPL
Filter Fabric	Test	$ 275.00000	MPL
Lime	Test	$ 125.00000	QM
Lime - Type B	Test	$ 200.00000	QM
Quick Lime	Test	$ 175.00000	QM
Silt Fence	Test	$ 250.00000	MPL
Traffic Marker Adhesive (Type II)	Test	$ 500.00000	QM

Branch: Coatings and Traffic Materials

Material	*Units*	*Current Rate*	*QA Process*
Delineator and Object Markers	Test	$ 100.00000	
Flexible Delineator Posts	Test	$ 100.00000	MPL
Glass Traffic Beads	Test	$ 150.00000	QM, WA
Liquid Membrane Forming Compound for Curing Concrete	Test	$ 250.00000	QM, WA
Pavement Markers	Test	$ 250.00000	QM, WA
Pavement Marking Tape	Roll	$ 0.75000	MPL
Retroreflective Prefabricated Pavement Marking Material	Test	$ 100.00000	MPL
Thermoplastic Pavement Marking Material	Test	$ 250.00000	QM, WA
Traffic Paint	Test	$ 100.00000	QM, WA

Branch: Flexible Pavements

Material	*Units*	*Current Rate*	*QA Process*
Bulk Specific Gravity of Molded Specimen (set of 3)	Test	$ 40.00000	
Coverstone	Ton	$ 0.63000	MPL, PJT

Moisture Content	Test	$ 25.00000	
Molding (set of 3)	Test	$ 41.00000	
Pre-Coated Coverstone	Ton	$ 0.63000	MPL, PJT
Pre-Mix	Ton	$ 0.63000	QM, PJT
Sieve Analysis	Test	$ 19.00000	
Synthetic Aggregates	Cubic Yd.	$ 0.19000	QM
Theoretical Maximum Specific Gravity	Test	$ 45.00000	

Branch: Geotechnical Soils & Aggregates

Material	*Units*	*Current Rate*	*QA Process*
Coarse Aggregate Analysis	Test	$ 56.00000	
Concrete Aggregates	Cubic Yd.	$ 0.05000	QM
Decantation	Test	$ 25.00000	
Deleterious Materials	Test	$ 25.00000	
Fine Aggregate Analysis	Test	$ 50.00000	
Flakiness Index	Test	$ 38.00000	
Freeze-Thaw	Test	$ 94.00000	
Los Angeles Abrasion	Test	$ 44.00000	
Natural Aggregates	Cubic Yd.	$ 0.01900	
Organic Impurities	Test	$ 20.00000	
Pressure Slaking	Test	$ 63.00000	
Resistivity of Soils	Test	$ 69.00000	
Sand Equivalent Value	Test	$ 28.00000	
Screen Analysis	Test	$ 31.00000	
Soil Constants	Test	$ 125.00000	
Soil Permeability	Test	$ 94.00000	
Soil pH	Test	$ 63.00000	
Soundness	Test	$ 75.00000	
Specific Gravity	Test	$ 33.00000	
Triaxial, Consolidated - Undrained	Test	$ 375.00000	
Triaxial, Unconsolidated - Undrained	Test	$ 44.00000	
Unit Weight	Test	$ 25.00000	
Wet Ball Mill	Test	$ 23.00000	

Branch: Rigid Pavements & Concrete

Material	*Units*	*Current Rate*	*QA Process*
Cement, Type I, I-A, II, and III	Barrel	$ 0.06000	MPL
Compression Test	Test	$ 34.00000	
Concrete Admixture	Test	$ 125.00000	
Fly Ash	Test	$ 250.00000	MPL
Low-Relaxation Strand	Test	$ 64.00000	MPL
Multi-Piece Tie Bar	Test	$ 15.00000	MPL

Branch: Soils & Aggregates

Material	*Units*	*Current Rate*	*QA Process*

Triaxial, Tex-117-E	Test		

Branch: Structural

Material	*Units*	*Current Rate*	*QA Process*
Anchor Bolts-Bearings, Sign, Illuminated, Etc.	Each	$ 1.20000	STR
Anchor Bolts-Railing	Each	$ 0.50000	STR
Bridge Protective Angle	Each	$ 19.00000	STR
Bridge Protective Assembly	Each	$ 19.00000	STR
Bridge Protective Bracket	Each	$ 13.00000	STR
Concrete Box Culverts	Linear Ft.	$ 0.56000	STR
Disc/Pot Bearing	Each	$ 100.00000	STR
Double Wal Panel	Sq. Ft.	$ 0.38000	STR
Double Wal Parapet	Sq. Ft.	$ 0.19000	STR
Elastomeric Bearings (Laminated)	Each	$ 2.50000	STR
Elastomeric Bearings (Plain)	Each	$ 1.88000	STR
Elastomeric Bearings (Sliding)	Each	$ 25.00000	STR
Elastomeric Laminated Bearing Assembly	Each	$ 10.00000	STR
Galvanized Pipe Sign Post	Linear Ft.	$ 0.31000	STR
High Mast Illumination Assembly Ring	Each	$ 56.00000	STR
High Mast Illumination Poles	Each	$ 188.00000	STR
Mast Arms	Each	$ 1.38000	STR
MBGF Steel Line Post	Each	$ 1.13000	STR
Misc. Structural Steel	Pound	$ 0.02500	STR
Post-Aluminum	Each	$ 1.56000	STR
Post-Steel	Each	$ 1.13000	STR
Precast Concrete Arch Unit	Linear Ft.	$ 5.00000	STR
Precast Concrete Coping	Linear Ft.	$ 1.75000	STR
Precast Concrete Traffic Barrier	Linear Ft.	$ 0.10000	MPL
Precast Headwalls	Each	$ 25.00000	STR
Precast Wall Panels	Sq. Ft.	$ 0.31000	STR
Precast Manholes and Inlets	Each	$ 0.50000	MPL
Prestressed Concrete Box Beams	Linear Ft.	$ 3.13000	STR
Prestressed Concrete Panels	Sq. Ft.	$ 0.13000	STR
Prestressed Concrete Piling	Linear Ft.	$ 0.88000	STR
Prestressed Concrete Sheet Piling	Sq. Ft.	$ 0.50000	STR
Prestressed Concrete Tee, Slab, & I-Beams	Linear Ft.	$ 1.31000	STR
Prestressed Concrete Trap. Beams	Linear Ft.	$ 4.50000	STR
Prestressed Concrete U-Beams	Linear Ft.	$ 4.50000	STR
Railing	Linear Ft.	$ 0.21000	STR
Reinforced Concrete Pipe	Linear Ft.	$ 0.20000	STR
Reinforcing Steel (Plain or Epoxy Coated)	Pound	$ 0.00110	MPL
Roadway Illumination Poles	Each	$ 19.00000	STR
Segmental Prestressed Units	Linear Ft.	$ 88.00000	STR
Sign Support Bridges	Linear Ft.	$ 2.50000	STR
Sign Walkway	Linear Ft.	$ 0.69000	STR
Signs	Sq. Ft.	$ 0.31000	STR
Structural Steel Bridge Girders	Pound	$ 0.02000	STR

T-6 Rail Steel Line Post	Each	$	1.13000	STR
T-6 Rail Tube	Linear Ft.	$	0.38000	STR
Terminal Anchor Posts	Each	$	1.25000	STR
Transformer Bases for Roadway Illuminated Poles	Each	$	5.00000	STR
Treated Block Outs (Guard Rail)	Each	$	0.21000	MPL
Treated Lumber	1000 Board Ft.	$	21.50000	MPL
Treated Piling	Linear Ft.	$	0.11500	MPL
Treated Posts (Guard Rail)	Each	$	0.75000	MPL

QA Process

QM- Quality Monitoring Program. Materials in Program send directly to projects. Materials supplied with documentation of program compliance.
MPL - Material maintained on approved list (Material Producer List) no additional testing necessary unless directed by Engineer.
WA - Warehouse Agreements to stock Pre-Tested materials
PJT - Approve on the basis of project samples
STR - Structural Group Inspected and Test Reported