



Elements of Facility Implementation Plan

As contemplated by the CDA for Segments 2-4, elements of this Submission will be contained in a draft Facility Implementation Plan ("FIP") in accordance with the requirements in Section 7.5 of the CDA. The proposed FIP elements are either described in the table below or identified in such table by reference to the section of this Submission where they appear. Such cross-references are given as a guide to the reader, but the specific proposed FIP element is likely to be a portion of, rather than the entirety of, the referenced section. In accordance with the CDA, some or all of these elements and possibly other items, when mutually agreed by TxDOT and Developer and approved by TxDOT, will be set forth in a FIP.

FIP Elements Table

FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
7.5.2 (a) A proposed detailed scope of work, Facility Schedule (including Facility Milestones) and budget for carrying out all activities and tasks and preparing all agreements and documents necessary to achieve the Close of Finance for the Facility in question, as well as a definition of and procedures for determining excusable delay in the Facility Schedule, based on the Risk Events regarding delay set forth in the Risk Events Matrix;	Facility Project Schedule is provided. Close of Finance budget – TBD Risk Event procedures - TBD
7.5.2 (b) A proposed organizational and contracting structure for management, finance, design, construction, operation and maintenance of the Facility including the general scope and pricing method for the Facility Agreement(s) and an identification of whether Developer or its Affiliates are proposed contracting parties. The description shall include any recommended guarantees to secure the obligations of the Facility Agreement;	Organizational and Contracting Structure – Facility Development Plan, Section 2 Recommended guarantees - TBD



FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
<p>7.5.2 (c) If agreed by the parties, the methodology and terms for determining whether and to what extent Developer or its Affiliate is to be reimbursed unpaid costs if a Risk Event occurs and the remedy for such Risk Event is identified in the Risk Events Matrix (<u>Exhibit L</u>) as being set forth in the Facility Implementation Plan. Except as provided otherwise in <u>Section 20</u> and except upon a termination due to material breach by TxDOT, in no event shall the methodology and terms for such reimbursement require payment beyond reasonable costs and expenses incurred plus reasonable markups for overhead and profit. Reasonableness of costs, expenses, overhead and profit shall be determined in accordance with the provisions of the Federal Acquisition Regulation, including restrictions therein on eligibility and allowability, unless otherwise agreed by the parties;</p>	<p>TBD</p>
<p>7.5.2 (d) Developer’s and Affiliates’ roles and responsibilities regarding engineering, technical and support services for the NEPA process for the proposed Facility, if not yet completed, and in such circumstances, a plan for compliance with the NEPA process, which may include identification of Work that may be performed prior to completion of the NEPA process and Work that must be deferred until after NEPA approval for the Facility is obtained;</p>	<p>Roles - See Facility Development Plan, Section 3.10.1 Compliance Plan - TBD</p>
<p>7.5.2 (e) Identification of third party contractors, consultants and Subcontractors, including but not limited to surveyors, appraisers, engineers, architects, geotechnical consultants, financial advisors, investment bankers, underwriters, bond counsel, traffic and revenue consultants and others, to be retained to perform the tasks and activities enumerated in the Facility Implementation Plan, showing the area of expertise needed, and the qualifications of the identified firms;</p>	<p>TBD</p>



FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
7.5.2 (f) Those specific tasks and activities that Developer, its Affiliate or TxDOT believes are appropriate to be performed by TxDOT rather than by or through Developer or its Affiliate, together with an explanation and budget therefor;	TBD
7.5.2 (g) Description of proposed preliminary engineering and design work to be performed prior to Close of Finance, which shall be limited to that which is considered reasonably necessary to achieve Close of Finance and obtain a firm fixed price for design and construction of the Facility;	TBD
7.5.2 (h) Description of a right-of-way acquisition plan, if needed, including preliminary identification of right-of-way, acquisition procedures and acquisition schedule, together with a description of preliminary right-of-way acquisition work, if any, proposed to be performed prior to the Close of Finance and the proposed sources and amount of funds therefor;	Preliminary ROW Identification - Segment 3A & 3B Schematics Acquisition Procedures - Facility Development Plan, Section 3.8 Acquisition Schedule – High level in Project Schedule. Acquisition schedule for parcels – TBD Preliminary ROW Acquisition Work – See Facility Development Plan, Section 3.8
7.5.2 (i) Identification of all environmental and other major Governmental Approvals to be obtained prior to and after Close of Finance, and environmental mitigation to be required pursuant thereto, to the extent then known or reasonably anticipated;	See Facility Development Plan, Section 3.10.2, Identification of Governmental Approvals - TBD
(j) Identification of all necessary or desirable agreements anticipated with third parties, whether public or private entities, and an enumeration of those agreements proposed to be negotiated and obtained prior to Close of Finance;	Identification of Agreements – See Facility Development Plan, Section 2.1 Enumeration of agreements - TBD



FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
7.5.2 (k) Identification, through a detailed risk matrix for the Facility in accordance with the requirements set forth in <u>Exhibit D</u> , Item Q, of Facility-specific risks as well as strategies for managing and mitigating those Facility risks over the term of any Facility Agreement;	See Facility Development Plan, Section 3.7
7.5.2 (l) Description of cost estimation work to be performed;	See Facility Development Plan, Section 4.1
7.5.2 (m) Description of investment grade traffic and revenue (or ridership and revenue) studies to be performed;	See Traffic and Revenue report
7.5.2 (n) Description of insurance, risk management and surety bond programs and requirements recommended for the design, construction, operation and maintenance of the Facility and any security required from Developer to secure performance of its obligations in connection with the Close of Finance;	TBD
7.5.2 (o) Description of recommended due diligence activities (such as utility investigations, geotechnical testing and baseline reporting, land surveys, archeological and historic site surveys, and Hazardous Materials surveys);	TBD
7.5.2 (p) Description of the recommended roles and responsibilities of Developer and Affiliates regarding any public information program for the Facility to be carried out up to the Close of Finance;	TBD
7.5.2 (q) Description of the proposed Facility Financial Plan, building upon the elements of the Master Financial Plan applicable to the Facility and setting forth general estimates of capital costs, sources, amounts and uses of revenues over time, sources, amounts and uses of funds, costs of funds, operating and	Facility Financial Plan provided in Volume 3



FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
<p>maintenance costs, replacement and renewal costs, and major assumptions. Major assumptions shall include, as applicable, toll rate and construction cost escalation methodology, toll rates and Facility expansion. Such assumptions shall also include an assumed schedule of funding from TxDOT in accordance with a maximum schedule of payments from TxDOT for the Facility, which maximum schedule TxDOT shall provide to Developer or its Affiliate during preparation of the Facility Implementation Plan. If the Facility Financial Plan calls for public funds or for use of a finance authority or other Governmental Entity to issue debt and loan proceeds for the Project, such structure shall be described in detail. The Facility Financial Plan shall include an assumed schedule of funding from all sources;</p>	
<p>7.5.2 (r) Description of the process to be followed in establishing pricing and other financial terms, including identification of deliverables to be provided, including any affidavits, and other requirements to be met by Developer in connection with pricing and financial terms and identification of a tentative schedule for implementation of the process;</p>	TBD
<p>7.5.2 (s) Description of technical reports, if any, recommended in order to achieve Close of Finance for the Facility;</p>	TBD
<p>7.5.2 (t) Description of any changes in law recommended to be obtained or litigation to be pursued or defended to facilitate or enable Facility development;</p>	TBD
<p>7.5.2 (u) Description of any conditions in and mitigation measures required by Governmental Approvals and a commitment to comply with such conditions and implement the required mitigation measures (as well as a commitment to fulfill any conditions or mitigation requirements that may be required by</p>	<p>See Facility Development Plan, Section 3.10.3 More detailed information - TBD</p>



FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
Governmental Approvals not yet received);	
7.5.2 (v) Description of Developer’s Small Business Mentoring Program and job training program;	See Facility Development Plan, Section 3.11
7.5.2 (w) Description of the subcontracting plan to be prepared for the Facility, to the extent required under <u>Section 13.4.2</u> ;	See Facility Development Plan, Section 3.1
7.5.2 (x) Terms and provisions for collocation (if any) of Developer’s, Affiliates’ and TxDOT’s personnel who will be involved in the Facility Development Work;	TBD
7.5.2 (y) Any other activities, studies, reports, documents and other matters necessary or advisable to achieve Close of Finance for the Facility;	TBD
7.5.2 (z) The remedies available to TxDOT and Developer or Affiliate, as applicable, in the event that, during the Facility Development Work: (i) the NEPA process is delayed or results in a substantially different Facility from that contemplated; (ii) the parties are unable to obtain or are substantially delayed in obtaining necessary third party approvals; (iii) conditions are imposed by such third party approvals that substantially affect the viability of the Facility; (iv) the parties are unable to achieve or are delayed in achieving Close of Finance; (v) a lawsuit is filed and pending, or judgment is entered in a lawsuit, challenging the Project, this Agreement or the subject Facility; (vi) a Change in Law occurs that frustrates the purpose of this Agreement or the Facility Implementation Plan, delays Close of Finance or otherwise substantially affects the Facility or the Facility Implementation Plan; and (vii) an event occurs, such as a major catastrophe, causing other excusable delay; and	TBD



Submittal Relating to the Development of the
TxDOT North Tarrant Express Project, Segments 3A and 3B
through a Facility Implementation Plan and Facility Agreement

FIP elements as described by subparts of Section 7.5.2 of the CDA	Location in Submission
7.5.2 (aa) Any other items and matters called for or contemplated by this Agreement.	TBD

Developer proposes that the Project Management Plan and Quality Management Plan approved by TxDOT on November 6, 2009 be further approved by TxDOT in satisfaction of the prerequisite to approval of the FIP stated in Section 5.5 of the CDA.