

EXHIBIT 11

HAZARDOUS MATERIALS RISK ALLOCATION TERMS

Subject to Section 7.9 of the Agreement, all risks associated with the discovery of Hazardous Materials within the Facility Right of Way at any time during the Term will be borne by Developer, except as follows.

1. If there occurs any Release of Hazardous Materials in, on or under a section of the Facility during the course of TxDOT's operation and maintenance thereof pursuant to Section 8.3 of the Agreement or any Release of Hazardous Materials in, on or under the TxDOT Works until TxDOT Substantial Completion, then TxDOT at its own expense shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals.

2. Except as provided in Section 3 below, TxDOT shall compensate Developer for 50% of Developer's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Pre-Existing Hazardous Materials encountered by Developer (the "total chargeable Hazardous Materials costs") that exceed \$3,000,000 (the "Hazardous Materials Allowance") but do not exceed \$6,000,000, and 100% of the total chargeable Hazardous Materials costs that exceed \$6,000,000.

3. None of the costs and expenses related to TxDOT Releases of Hazardous Materials shall be chargeable under Section 2 above. None of the following costs and expenses shall be chargeable under Section 2 above or reimbursable by TxDOT:

(a) Costs and expenses to the extent attributable to Developer Releases of Hazardous Materials;

(b) Delay and disruption costs and expenses;

(c) Costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost;

(d) Developer's administrative and overhead expenses arising out of or relating to Pre-Existing Hazardous Materials; and

(e) The costs of any Phase 1 Hazardous Materials Investigation.

4. Within 90 days following any month in which Developer encounters any Pre-Existing Hazardous Materials, Developer shall deliver to TxDOT a written reconciliation, including all invoices, receipts and supporting documentation reasonably required by TxDOT, setting forth with particularity the total chargeable Hazardous Materials costs. If the total chargeable Hazardous Materials costs exceed the Hazardous Materials Allowance, TxDOT shall pay to Developer the applicable portion of such excess set forth in Section 2 above within 30 days after receipt of such reconciliation and supporting documentation.

5. TxDOT will retain generator and arranger status for Pre-Existing Hazardous Materials and TxDOT Release(s) of Hazardous Material in accordance with Section 7.9.5 of the Agreement.

6. Developer may be entitled to schedule and performance relief to the extent that the discovery of Hazardous Materials, including TxDOT Release(s) of Hazardous Materials, constitutes a Relief Event pursuant to Section 13.1 of the Agreement.

7. Developer may be entitled to termination of the Agreement and Lease and certain termination compensation to the extent that the presence or release of Hazardous Materials becomes an Extended Relief Event pursuant to Section 19.2 of the Agreement.

8. TxDOT Release(s) of Hazardous Materials is a Compensation Event.

9. Developer shall be responsible for all Hazardous Materials Management for Developer Release(s) of Hazardous Materials, even if the required Hazardous Materials Management extends beyond the end of the Term. Developer's responsibility for Hazardous Materials Management for all Hazardous Materials other than Developer Release(s) of Hazardous Material (except for liability for damages for breach of such obligations) shall end at the end of the Term.