

EXHIBIT 31

PAYMENT AND PERFORMANCE BOND PROVISIONS FOR THE AGREEMENT

The provisions of this Exhibit 31 shall apply if Developer elects under Section 16.2 of the Agreement to provide payment and performance bonds rather than a P & P LOC.

Developer shall obtain a payment bond and a separate performance bond (the "Payment and Performance Bonds") for the Secured Work, (a) from the Design-Build Contractor each in the amount of \$250,000,000 and (b) from any other prime Contractor performing Secured Work, including Upgrades, new improvements and major reconstruction or rehabilitation, each in an amount equal to the lesser of \$250,000,000 or 100% of the amount of the construction cost. Developer shall provide the Payment and Performance Bonds in a form reasonably satisfactory to TxDOT. The performance bond shall assure performance of all obligations of the Design-Build Contractor or other prime Contractor under its Contract. The Payment and Performance Bonds shall be provided by a Surety rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company. TxDOT shall be named as a dual obligee under such Payment and Performance Bonds. Prior to NTP2 and before Developer commences or permits or suffers commencement of any Design Work or Construction Work respecting the original Secured Work. Developer shall obtain such Payment and Performance Bonds from the Design-Build Contractor and any other Contractor performing original Secured Work and deliver a certified copy thereof, with the dual obligee rider, to TxDOT. Developer shall not commence or permit or suffer commencement of any subsequent Secured Work until Developer obtains such Payment and Performance Bonds from each prime Contractor performing the subsequent Secured Work and delivers a certified copy thereof, with the dual obligee rider, to TxDOT.

In the event Developer obtains a Payment or Performance Bond from any O&M Contractor, Developer shall cause TxDOT to be named at issuance of such Payment or Performance Bond as a dual obligee thereunder, and shall deliver a certified copy thereof, with the dual obligee rider, to TxDOT within ten days after issuance.

TxDOT shall forebear from exercising remedies as a dual obligee under any of the Payment and Performance Bonds so long as (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies thereunder within 30 days after TxDOT delivers written notice to Developer and the Collateral Agent of its intent to make a claim thereunder, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

The Payment and Performance Bonds (including riders) shall provide for the following:

- a) Where the Surety receives a written demand from TxDOT on such Payment or Performance Bond, but fails to receive a written demand from either the primary obligee or the Collateral Agent within five days thereafter, any payment made by the Surety pursuant thereto shall be made solely to TxDOT and shall not be made by joint check;
- b) The Surety may make payment by check issued jointly to TxDOT and Developer, where Developer is the primary obligee, unless the Surety receives a written demand from the Collateral Agent demanding payment to the Collateral Agent, in which case such payment may be made by the Surety only by issuing a joint check to TxDOT and the Collateral Agent; and

- c) The Surety shall not make any payment by a check issued jointly to Developer and the Collateral Agent.
- d) TxDOT's rights as a joint payee under any of the Payment and Performance Bonds are for the purpose of directing the payments to an account established by the other joint payee for the exclusive purposes of funding completion of the Work and satisfaction of all other payment and performance obligations of the obligor under the bonds. TxDOT disclaims all interest in payments under the Payment and Performance Bonds after satisfaction of the payment and performance obligations secured by such Payment and Performance Bonds.
- e) Whenever Developer is performing subsequent Secured Work, Developer shall deliver to TxDOT, within 20 days after the end of each calendar month until final acceptance of the Construction Work related to such subsequent Secured Work, written certificates regarding payment and affidavits of wages paid equivalent to those described in paragraphs 9, 11(a) and 11(c) of the form of certificate in Attachment 2 to Exhibit 7.