

AMENDMENT NO. 9 TO
COMPREHENSIVE DEVELOPMENT AGREEMENT
IH 635 MANAGED LANES PROJECT

THIS AMENDMENT NO. 9 TO COMPREHENSIVE DEVELOPMENT AGREEMENT ("**Amendment**") is entered into and effective as of _____, 2013 between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and LBJ Infrastructure Group LLC, a Delaware limited liability company ("**Developer**"), with reference to the following facts:

- A. TxDOT and Developer entered into that certain Comprehensive Development Agreement for IH 635 Managed Lanes Project, dated as of September 4, 2009 (the "**CDA**"), together with related agreements collectively referred to in the CDA as the "CDA Documents".
- B. TxDOT and Developer desire to amend the CDA Documents as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TxDOT and Developer agree as follows:

- 1. Definitions. All capitalized terms used but not defined in this Amendment have the respective meanings set forth in the CDA.
- 2. Amendments of the Exhibit 4, Section A of the CDA: Exhibit 4, Section A of the CDA is amended as follows:

"User Classifications" are defined by (a) occupancy combined with (b) either (i) vehicle dimensions and the presence or absence of one or more trailers as follows: Exempt Vehicles, High Occupancy Vehicles, Motorcycles, Single Occupancy Vehicles, Automobiles with one trailer, Large ~~t~~Trucks, Extra-large Trucks, Large or Extra-large tTrucks with one trailer and Large or Extra-large tTrucks with more than one trailer or (ii) vehicle axle count as follows: Exempt Vehicles, High Occupancy Vehicles, Motorcycles, vehicles with 2 axles, vehicles with 3 axles, vehicles with 4 axles, vehicles with 5 axles and vehicles with 6 axles and (c) the class of Special Vehicles. The size of a trailer, or the combination of vehicle and trailer dimensions, does not affect a User Classification unless the combined dimensions exceed the characteristics of a Special Vehicle. The following definitions shall apply:

- 1. "Single Occupancy Vehicles" means motor vehicles other than Motorcycles (without trailers), that are not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with one person as an occupant.
- 2. "High Occupancy Vehicles" means motor vehicles (without trailers), that are not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with a minimum number of persons as occupants. The minimum number of occupants shall, as of the Effective Date, be two persons, but the minimum number of occupants may be changed at any time by written notice from TxDOT to Developer to either three persons or two persons, in TxDOT's sole discretion.
- 3. "Motorcycles" means motor vehicles with two or three wheels (with or without trailer(s)) not larger than Single Occupancy Vehicles.

34. "Automobiles with one or more trailer(s)" means Single or High Occupancy Vehicles pulling one or more trailer(s), and the combined dimensions of the vehicle and trailer(s) do not ~~exceed~~meet the dimensions of a Special Vehicle.
45. "Large Trucks" means motor vehicles (without trailers) that are larger than Single Occupancy Vehicles but not larger than 46 feet in length, eight and a half feet in width and ~~12~~14 feet in height.
6. "Extra-large Trucks" means motor vehicles (without trailers) that are larger than 46 feet in length and the dimensions of the vehicle do not meet the dimensions of a Special Vehicle.
57. "Large or Extra-large Trucks with one trailer" means Large or Extra-large Trucks pulling one trailer, and the combined dimensions of the vehicle and trailer do not ~~exceed~~meet the dimensions of a Special Vehicle.
68. "Large or Extra-large Trucks with more than one trailer" means Large or Extra-large Trucks pulling more than one trailer, and the combined dimensions of the vehicle and all of its trailers do not ~~exceed~~meet the dimensions of a Special Vehicle.
- ~~7. "Motorcycles" means motor vehicles with two or three wheels not larger than Single Occupancy Vehicles.~~
89. "Special Vehicles" means motor vehicles meeting one or more of the following characteristics: (i) over eight and a half feet in width; (ii) over 14 feet in height; (iii) over 73 and a half feet in length; (iv) over 80,000 pounds in weight; or (v) otherwise required to obtain a permit for travel on Highways under applicable Law.
3. Amendments to Exhibit 4, Section C of the CDA: Exhibit 4, Section C of the CDA is amended as follows:
4. If Developer desires to establish or cancel a temporary discount with respect to any toll, it shall give TxDOT written notice of the establishment or cancellation to a TxDOT designated email address or addresses prior to implementation or withdrawal thereof.
4. Amendments to Exhibit 4, Section D of the CDA: Exhibit 4, Section D of the CDA is amended as follows:

The requirements set forth in this Section D shall apply while in Schedule Mode.

1. Not later than 135 (one hundred and thirty-five) days before the first Service Commencement Date, Developer shall prepare and submit to TxDOT (i) a range of the toll rates that will be in force during the first four weeks for the peak and off-peak hours, (ii) a range of initial Toll Factors in accordance with Section F-2; and (iii) a range of Video Transaction Toll Premiums in accordance with Section H (if applicable).
2. Not later than 120 (one hundred and twenty) days before the first Service Commencement Date, Developer shall publish a first notice with (i) a range of the toll rates that will be in force during the first four weeks for the peak and off-peak hours, (ii) a range of initial Toll Factors; and (iii) a range of Video Transaction Toll Premiums in accordance with Section H (if applicable); in two English-language newspapers and one Spanish-language newspaper having general circulation in the vicinity of the Project and on an Internet website for general public viewing (i.e., non-passcode).

13. Not later than ~~18045~~ (forty-five) days before the first Service Commencement Date, Developer shall prepare and submit to TxDOT for review and comment (i) a schedule showing the Base Toll for each Toll Segment and direction for each hour of the week during non-Peak Periods and for each half hour of the week during Peak Periods in the format set forth in Table D-1 below (the "Base Toll Schedule") for every single week during this Schedule Mode, (ii) any temporary discounts in accordance with Section C.4, (iii) a schedule of initial Toll Segment Lengths in accordance with Section F.6, (iv) a schedule of initial Toll Factors in accordance with Section F.2, (v) a schedule of Video Transaction Toll Premiums in accordance with Section H (if applicable) and (vi) a schedule of Incidental Charges in accordance with Section I.
24. Not later than ~~12030~~ (thirty) days before the first Service Commencement Date, Developer shall publish a second notice with (i) the initial average and the maximum of the Base Toll Schedule for, the AM peak, the period between AM peak and PM peak, the PM peak and the off-peak hours for the first four weeks, (ii) average temporary discounts per gantry (if any), (iii) schedule of initial Toll Segment Lengths, (iv) schedule of initial Toll Factors, (v) schedule of Video Transaction Toll Premiums in accordance with Section H (if applicable), and (vi) schedule of Incidental Charges, and (vii) an Internet website address for general public viewing (i.e., non passcode) where additional data for the Schedule Mode will be published, as follows:
- a. Developer shall publish such information in two English-language newspapers and one Spanish-language newspaper having general circulation in the vicinity of the Project and on an Internet website for general public viewing (i.e., non-passcode).
 - b. Developer shall publish a second third notice not later than 10 (ten) days before the first Service Commencement Date with the same information as in the second notice and in the same newspapers and website.
35. Subject to Section F.4, during Schedule Mode, if Developer desires to implement any change to the Base Toll Schedule, at least seven one days prior to the effective date of any change Developer shall provide send TxDOT with a written the revised Base Toll Schedule to a TxDOT designated email address or addresses and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b on an Internet website for general public viewing (i.e. non passcode).
5. Amendments to Exhibit 4, Section F of the CDA: Exhibit 4, Section F of the CDA is amended as follows:
2. Toll Factor
 - a. Developer shall determine the toll factor for each User Classification (the "Toll Factor"). Each Toll Factor shall not exceed the applicable Maximum Toll Factor as shown in Table F-1. Any proposed change by Developer to Table F-1 shall constitute a proposed change in User Classification subject to the provisions of Section 3.4 of the Agreement.

**Table F-1
Size/Occupancy-Based Classification**

User Classification	Maximum Toll Factor
Exempt Vehicles	0.0
HOV and Motorcycles for valid transponder account holders that self-declare (or are otherwise identified) as HOVs or Motorcycles during Peak Periods during the HOV Discount Period	Discount Factor
SOV (and HOV and Motorcycles other than above)	1.0
Automobiles with one <u>or more trailers</u>	2.0
Large t Trucks	3.0
<u>Extra-large Trucks</u>	<u>4.0</u>
Large <u>or Extra-large</u> t Trucks with one trailer	4.0
Large <u>or Extra-large</u> t Trucks with more than one trailer	5.0

- b. Subject to Section F.2.a, if Developer desires to change the Toll Factors, at least 15 days prior to the effective date of any change Developer shall providesend TxDOT with a writtenthe revised schedule of Toll Factors to a TxDOT designated email address or addresses and shall publish such schedule in the same manner (without reference to the time periods) as set forth in Sections D.2.a and D.2.b in two English-language newspapers and one Spanish-language newspaper having general circulation in the vicinity of the Project and on an Internet website for general public viewing (i.e., non-passcode) not later than 10 days prior to the effective date of any change.

6. Toll Segment Length

- b. Subject to Section F.6.a, if Developer desires to change its methodology of calculating the Toll Segment Length or upon a change in any Toll Segment Length under Section B.1, at least 15 days prior to the effective date of any change Developer shall providesend TxDOT with a writtenthe revised schedule of Toll Segment Lengths to a TxDOT desgnatedd email address or addresses and shall publish such schedule in the same manner (without reference to the time periods) as set forth in Sections D.2.a and D.2.b in two English-language newspapers and one Spanish-language newspaper having general circulation in the vicinity of the Project and on an Internet website for general public viewing (i.e., non-passcode) not later than 10 days prior to the effective date of any change.

6. Amendments to Exhibit 4, Section J of the CDA: Exhibit 4, Section J of the CDA is amended as follows:

Schedule Mode – A pricing methodology commencing on the first Service Commencement Date whereby the Base Toll Rate may change no more frequently than (i) twice a week for the first four weeks and (ii) once every monthweek for the remainder of the Schedule Mode period and that follows all the other requirements pertaining to Schedule Mode set forth in this Exhibit 4.

7. Amendment to Exhibit 27 of the CDA. Exhibit 27 of the CDA is amended by adding the following after paragraph two (2) on Page one (1):

Out-of-state material fabrication inspections for Developer may be performed by TxDOT as requested by Developer. Developer will reimburse TxDOT for all direct costs associated with travel for out-of-state inspections, to include actual costs for travel expenses incurred, including airfare, per diem, vehicle rentals, equipment utilization costs, and other directly related travel costs. Developer will reimburse TxDOT for inspection and testing services based on rates in effect at the time inspection and testing services are performed.

TxDOT may perform additional technical materials acceptance services for Developer to be agreed upon by both parties. These services are defined as additional inspection, testing, or technical materials acceptance services beyond what is performed during the routine in-plant inspection process. Developer will compensate TxDOT for all direct costs or expenses associated with the performance of these additional services, based upon actual costs of salaries and travel expenses incurred.

8. Effectiveness of CDA Documents. Except as specifically amended hereby, the provisions of the CDA Documents (including all prior written amendments thereto) are hereby confirmed and remain in full force and effect without change.
9. Binding Effect of Amendment. This Amendment is entered into pursuant to Section 24.3 of the CDA, and shall be valid, effective and enforceable notwithstanding Section 24.13 of the CDA or any similar provision in any other CDA Document declaring that the CDA Document constitutes the sole, integrated agreement of the Parties.
10. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed as of the day and year first above written.

Developer

TxDOT

LBJ INFRASTRUCTURE GROUP LLC

TEXAS DEPARTMENT OF TRANSPORTATION

By: 
Name: Mr. Antonio Álvarez-Cedrón
Title: CEO/Program Manager

By: 
Name: Phil Wilson
Title: Executive Director

