

SH 183 MANAGED LANES PROJECT

TOLL CONCESSION PUBLIC-PRIVATE PARTNERSHIP AGREEMENT TERM SHEET

This document provides a summary of key terms and conditions for the toll concession Public Private Partnership Agreement (“P3A”) for the development, design, construction, finance, operations and maintenance of the State Highway (“SH”) 183 managed lanes project (the “Project”) which may be entered into between the Texas Department of Transportation (“TxDOT”) and the developer (the “Developer”) to be selected by TxDOT through this procurement.

This document is intended as a general description of the anticipated P3A terms and is subject to revision by TxDOT; however, TxDOT intends to limit revisions to the major business terms during the procurement. This term sheet will be superseded by the final P3A.

TABLE OF CONTENTS
(continued)

	Page
Scope	1
Project Scope	1
Contract Documents	1
Contract Documents	1
Term and Milestones	1
Agreement Term	1
Completion Milestones/Dates	2
Project Planning, Review and Oversight	2
Project Management Plan	2
Review and Oversight by TxDOT	2
Design and Construction	2
Design and Construction Generally	2
Design and Construction Monitoring	3
Right of Way	3
Utilities	3
Governmental Approvals	4
Hazardous Materials	4
Archeological/ Paleontological/ Historical Resources	5
Differing Site Conditions	5
Traffic Management and Control	5
Operations and Maintenance.....	6
Operating Standards and Requirements	6
O&M Scope	6
Existing Structures and Facilities	6
O&M Monitoring	7
Technology Enhancements	7
Renewal Work	7
Handback Requirements	7
Noncompliance	8
Noncompliance Points and Noncompliance Events	8

TABLE OF CONTENTS
(continued)

	Page
Contracting and Labor Practices	8
Contracting	8
Labor Standards	8
DBE Program	9
Excused Performance/Changes	9
Relief Event Categories	9
Developer Relief for Relief Events	10
Compensation Events	10
Compensation Amount	12
Force Majeure Events	12
Extended Relief Events	13
Changes.....	13
Changes	13
Developer Compensation and Tolling.....	13
Right to Toll Revenues	13
Tolling Responsibilities	13
Tolling System	14
TxDOT Compensation.....	14
Upfront Payment	14
Sharing of Toll Revenues	14
Refinancing Gain	14
Financing	14
Financing	14
Refinancing	14
Taxes	14
Lenders' Rights.....	15
Lenders' Rights	15
Developer Ownership and Control.....	15
Changes in Ownership and Changes in Control	15

TABLE OF CONTENTS
(continued)

	Page
Insurance, Indemnity and Payment/Performance Security.....	16
Insurance	16
Indemnity	16
Payment and Performance Security	16
Default and Remedies	16
Developer Defaults	16
Cure of Developer Defaults	16
TxDOT Remedies for Developer Default	16
TxDOT Defaults	17
Cure of TxDOT Defaults	17
Developer Remedies for TxDOT Default	17
Limitations on Liability	18
Early Termination and Compensation for Early Termination	18
Grounds for Termination	18
Compensation Entitlement	19
Termination for Failure to Close Financing	19
Termination for Developer Default – No Compensation	19
Dispute Resolution	19
Dispute Resolution	19
Governing Law and Federal Requirements	20
Governing Law	20
Federal Requirements	20

SH 183 MANAGED LANES PROJECT

**TOLL CONCESSION PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
TERM SHEET**

This Term Sheet uses certain terms that are capitalized. The draft Agreement will include a full definition for each of these terms.

Term	Provision
Scope	
Project Scope	See RFQ, Part A, Section 2.
Contract Documents	
Contract Documents	<p>The comprehensive development agreement will be a set of integrated documents that include the Project Trust and Security Instruments, Intellectual Property Escrows (if any) and the contract documents (“Contract Documents”) that will include:</p> <ul style="list-style-type: none"> • A public-private partnership agreement (“Agreement” or “P3A”) setting forth legal and business terms for design, construction, financing, operation, maintenance and related matters; • A project lease (“Lease”), to be signed at the commencement of revenue service; and • Technical specifications (“Technical Provisions”), setting forth design, construction, operations and maintenance technical standards, requirements, terms and conditions.
Term and Milestones	
Agreement Term	The term of the Agreement shall commence on the effective date of the Agreement. The term of the Lease will commence upon the commencement of operations and maintenance services. The term of the Agreement and Lease will end on the earlier of (a) 52 years after the effective date of the Agreement, or (b) any earlier termination as provided in the Agreement.

Term	Provision
Completion Milestones/Dates	<p>The Project may be completed in phases. The Substantial Completion Date for the Project shall occur no later than the Long Stop Date, which is a date beyond the Substantial Completion Deadline to be set forth in the Contract Documents.</p> <p>Developer will be required to achieve Final Acceptance within 120 days after Substantial Completion. Final Acceptance requires completion of punch list items.</p> <p>TxDOT will assess liquidated damages for failure to meet the deadline for Substantial Completion or for Final Acceptance, in amounts to be determined. In addition, failure to achieve Substantial Completion by the Long Stop Date may result in termination of the P3A, in TxDOT's sole discretion.</p>
Project Planning, Review and Oversight	
Project Management Plan	<p>Developer shall prepare a project management plan that will set forth Developer's approach to development, design, construction, operation and maintenance of the Project. Among other things, the plan will include a quality assurance/quality control plan, an operations and maintenance plan and a traffic management and traffic control plan.</p>
Review and Oversight by TxDOT	<p>TxDOT will have the right to review and comment on, or approve, certain submittals, including the Project Management Plan. The Contract Documents shall specify the standards for TxDOT approvals (e.g., sole discretion, reasonable approval, or other as specified), as well as the timing for approvals. TxDOT approvals do not relieve Developer from complying with the Contract Documents.</p>
Design and Construction	
Design and Construction Generally	<p>Developer is responsible for design and construction of the Project, including coordination with other projects located within the SH 183 corridor that are undertaken by other contractors, and for any required capacity improvements in accordance with the Contract Documents.</p>

Term	Provision
Design and Construction Monitoring	<p>TxDOT shall have the right to perform oversight and auditing of the work to determine that it is performed in accordance with the Contract Documents.</p> <p>Developer will provide and implement a quality management plan, which must comply with the standards and specifications set forth in the Technical Provisions.</p> <p>An independent firm (“Independent Engineer”) will be selected to provide oversight and auditing services to TxDOT and Developer. In addition, the Independent Engineer may provide owner’s verification testing services to TxDOT.</p>
Right of Way	<p>TxDOT is obtaining, prior to the execution of the P3A, specified parcels of right of way (“ROW”) and rights of entry for the work. Developer may be responsible for acquiring any ROW necessary for the Project not otherwise acquired by TxDOT as of the date of execution of the P3A, as well as any additional property rights required for construction and/or O&M of the Project, and for payment of all costs and expenses associated with such acquisition activities.</p> <p>All such acquisitions must be in conformity with the P3A, including the Technical Provisions, the TxDOT Right-of-Way Manual, and all applicable law relating to ROW acquisition, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.</p> <p>If eminent domain proceedings are necessary in order to acquire any portion of the ROW, TxDOT, through the Office of the Attorney General, will handle such proceedings in accordance with the procedures and time frame established in the Technical Provisions, the TxDOT ROW Manual, and the approved ROW Acquisition Plan and procedures, and TxDOT will be entitled to reimbursement by Developer for TxDOT’s costs and any costs incurred by the Office of the Attorney General.</p>
Utilities	<p>Developer will be responsible for ensuring that utility facilities impacted by the Project are protected in place or timely removed and/or adjusted, at no expense to TxDOT.</p>

Term	Provision
	<p>A time extension will be allowed for critical path delays due to unreasonable delays in entering into utility agreements by utility owners unless Developer could have, by diligent action, avoided the delay. (See also Relief Events.)</p> <p>Developer will reimburse TxDOT for any administrative costs TxDOT incurs in providing assistance to Developer in obtaining cooperation or resolving disputes with utilities.</p>
Governmental Approvals	<p>TxDOT has obtained or will obtain key permits and governmental approvals as specified in the Contract Documents. Developer will be responsible for obtaining all other permits and government approvals. Developer will be entitled to relief for delays due to a local governmental entity's failure to timely grant or revocation of governmental approvals (other than due to Developer changes to the schematic design) in the form of a time extension and compensation for cost and revenue impacts. (See Compensation Events and Relief Events.)</p>
Hazardous Materials	<p>Developer shall be responsible for the handling and remediation of all Hazardous Materials.</p> <p>The costs for remediation of Hazardous Materials that are existing in the ROW and the existence of which is unknown to the parties as of the Effective Date ("Unknown Pre-Existing Hazardous Materials") are allocated as follows:</p> <ul style="list-style-type: none"> • Developer is responsible for the first \$XX million in costs. • The second \$YY million in costs are shared 50/50 by TxDOT and Developer. • After the second \$YY million in costs, TxDOT shall pay 70% of the costs. <p>Developer is responsible for the costs for remediation of all Hazardous Materials other than Unknown Pre-Existing Hazardous Materials, including all Hazardous Materials existing in the ROW and known to the parties prior to the Effective Date.</p>

Term	Provision
	<p>Developer is entitled to compensation in the event of a release of Hazardous Materials by TxDOT.</p> <p>TxDOT shall be the “generator” of all Unknown Pre-Existing Hazardous Materials, releases of Hazardous Materials by TxDOT and releases of Hazardous Materials by third parties other than Developer-Related Entities during the Operating Period.</p> <p>Developer shall be the “generator” of all Hazardous Materials other than Unknown Pre-Existing Hazardous Materials, TxDOT releases of Hazardous Materials and third party releases of Hazardous Materials during the Operating Period.</p>
Archeological/ Paleontological/ Historical Resources	Developer will bear all cost risk, but will be entitled to schedule relief, in the event undisclosed or unexpected archeological, paleontological or historical resources are found. (See Relief Events.)
Differing Site Conditions	Developer will bear all cost risk, but will be entitled to schedule relief, in the event of (a) subsurface or latent physical conditions at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents that differ materially from the subsurface conditions indicated in such geotechnical reports at such boring holes, excluding any such conditions known to Developer prior to the Proposal Due Date or (b) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. Developer will acknowledge it has received and analyzed designated site investigations, surveys and reports previously done by or for TxDOT. (See Relief Events.)
Traffic Management and Control	Developer will be responsible for traffic management and control of the Project during the Term.

Term	Provision
Operations and Maintenance	
Operating Standards and Requirements	<p>Developer shall operate and maintain the Project in accordance with Good Industry Practice, the Contract Documents and applicable laws and approvals.</p> <p>Non-discriminatory changes (changes of general application to TxDOT projects) will be implemented at Developer's expense.</p> <p>Discriminatory changes (changes directed at the Project or Developer that are more onerous than those applied to other TxDOT projects) are treated as TxDOT Changes. (See Compensation Events.)</p>
O&M Scope	<p>Developer will be responsible for operation and maintenance of Project facilities, including the operation and maintenance of work designed and constructed by Developer, as well as other work not designed and constructed by Developer.</p>
Existing Structures and Facilities	<p>TxDOT will provide Developer and Independent Engineer with not less than 20 days' prior written notification of the anticipated date of substantial completion of certain elements identified in the RFP.</p> <p>During such 20-day period, Developer, TxDOT and Independent Engineer shall inspect the structures and facilities. TxDOT will cause any punch list items and any patent defects to be remedied at TxDOT's expense as a condition to achieving substantial completion. Alternatively, TxDOT may elect to have Developer perform such work at TxDOT's cost.</p> <p>As of the substantial completion date, Developer shall be deemed to accept such existing structures and facilities in their then-current condition, except for latent defects.</p> <p>Notwithstanding the foregoing, TxDOT will be responsible for latent defects on the following terms and conditions: (a) the latent defect must be discovered and reported to TxDOT not later than 3 years after completion of the inspection, and (b) the latent defect must not be attributable to substandard maintenance and repair by the Developer.</p>

Term	Provision
O&M Monitoring	<p>TxDOT and/or the Independent Engineer will perform oversight and audits relating to Developer's O&M Work in accordance with the Contract Documents. The O&M monitoring will include self-monitoring by Developer, electronic monitoring systems and audit inspections by TxDOT and/or the Independent Engineer.</p> <p>Developer will prepare and implement a quality management plan for the O&M Work, which must comply with the performance standards and output specifications set forth in the Technical Provisions.</p>
Technology Enhancements	<p>Developer will be obligated to make Technology Enhancements at its expense on the systems it provides as and when necessary (a) to correct defects, (b) under the Renewal Work Schedule or (c) to maintain interoperability with other toll facilities in the State, provided that Developer will have no obligation to undertake Technology Enhancements during the last 15 years of the term if Developer demonstrates costs beyond those in the Renewal Work Schedule incurred to implement them cannot reasonably be recovered over the remaining term and TxDOT does not commit to subsidize such cost, increase maximum permissible toll rates, extend the term or any combination thereof to enable Developer to realize a reasonable rate of return on its additional equity invested.</p>
Renewal Work	<p>Developer will perform renewal work (maintenance and rehabilitation work not normally included in annual maintenance budgets) when necessary to maintain compliance with performance standards. Developer will provide a yearly report of renewal work performed and a renewal work schedule for the coming year.</p>
Handback Requirements	<p>TxDOT will inspect the project at the times and according to the terms set forth in the handback requirements. Developer will perform renewal work necessary prior to reversion of the Project to TxDOT. At the conclusion of the Operating Period, Developer will transfer the Project in the condition set forth in the Contract Documents.</p>

Term	Provision
	For a specified period (e.g., five years) before the end of the term, Developer shall establish a handback requirements reserve account to fund the renewal work, compliance work and required handback work in the amount determined pursuant to the Contract Documents. In lieu of a handback requirements reserve account, Developer may provide a letter of credit, upon which TxDOT may draw in the event that Developer fails to comply with the renewal work, compliance work or handback requirements.
Noncompliance	
Noncompliance Points and Noncompliance Events	TxDOT will assess Noncompliance Points for specified breaches or performance failures, in accordance with a detailed schedule set forth in the P3A. TxDOT's remedies associated with accumulation of Noncompliance Points include increased oversight and liquidated damages. In addition, if the accumulated number of Noncompliance Points meets the threshold for a Persistent Developer Default, and Developer either fails to timely submit or comply with an approved remedial plan, TxDOT's remedies include termination of the Agreement.
Contracting and Labor Practices	
Contracting	Developer shall be entitled to contract with others to perform the work, but such contracts shall not relieve Developer of responsibility for the work. Developer shall not terminate or substitute any Key Contractor without TxDOT's approval. In addition, Developer may only change a Key Contractor filling one of the following key roles under the limited circumstances described in Transportation Code Section 223.203: project management, lead design firm, quality control management, quality assurance management and key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utilities and ROW issues. Any cost savings resulting from a non-permitted change in one of the foregoing Key Contractors shall accrue solely to the benefit of TxDOT. The provisions that must be included in Key Contracts shall be set forth in the Agreement.
Labor Standards	Developer will comply with applicable labor standards, including payment of prevailing wages.

Term	Provision
DBE Program	Developer will comply with DBE Program requirements.
Excused Performance/Changes	
Relief Event Categories	<p>The following are Relief Events:</p> <ul style="list-style-type: none"> • Force Majeure Event; • Fire, explosion, flood, earthquake, hurricane, tornado, national strike or act of terrorism; • Discriminatory Change in Law; • Discriminatory Action; • TxDOT breach of its material obligations under the Agreement; • TxDOT Change; • TxDOT-caused delay; • Discovery of Hazardous Materials or archeological, paleontological or cultural resources; • Discovery of (i) subsurface or latent physical conditions at the actual boring holes identified in the geotechnical reports that differ materially from the subsurface conditions indicated in the geotechnical reports at such boring holes; or (ii) unusual surface or subsurface physical conditions within the Project ROW; • Discovery of threatened or endangered species at, near or on the Project ROW; • Third party release of Hazardous Material during Operating Period; • Issuance of a temporary restraining order or other form of injunction by a court that prohibits performance of a material portion of the Project work; • Suspension, termination or interruption of the applicable NEPA approval;

Term	Provision
	<ul style="list-style-type: none"> • Unreasonable and unjustified delay by a local governmental entity in issuing a governmental approval; • Unreasonable delay by a utility owner in connection with utility adjustment work, if Developer has been unable to enter into a utility adjustment agreement with such utility owner; • Work in the vicinity of the Project carried out by TxDOT that disrupts Developer’s on-site Work; • Development, use or operation of the Airspace by TxDOT or anyone claiming under or through TxDOT, or development or operation by TxDOT of a Business Opportunity in the Airspace that disrupts Developer’s on-site work; • Change in design concept included in RFP documents due to court or administrative decision in response to a legal action challenging the NEPA approval; • TxDOT lack of title to parcel, or existence of any title exception, that interferes with or adversely affects performance of Work or imposition of tolls.
Developer Relief for Relief Events	<p>When a defined Relief Event occurs during the Construction Period and impacts the critical path, Developer is entitled to an extension of the Completion Deadlines; <i>provided that</i> Developer would have otherwise met such deadlines. If the Relief Event occurs during the Operating Period and such Relief Event materially impacts Developer’s ability to meet the performance standards or provide full service, Developer is entitled to a temporary suspension of Developer’s obligation to meet such performance standards or provide full service, as applicable; <i>provided that</i> Developer would have otherwise met such obligations. See also “Extended Relief Events” below.</p>
Compensation Events	<p>A Compensation Event is an event that results in a material increase in Developer’s costs, a material decrease in its toll revenues or a materially adverse effect on Developer’s ability to perform its obligations under the Agreement, without fault of Developer. Compensation Events consist of:</p>

Term	Provision
	<ul style="list-style-type: none"> • Discriminatory Change in Law (Developer responsible for increased costs resulting from any change in law, other than a Non-discriminatory Change in Law or a change in law imposing new or additional taxes on tolls or gross toll receipts); • Discriminatory Action; • TxDOT breach of its material obligations under the Agreement; • TxDOT-caused delay; • TxDOT Change, including changes to the Technical Provisions or TxDOT standard during the initial design and construction period; • Development, use or operation of the Project Airspace by TxDOT or anyone claiming under or through TxDOT, or development or operation by TxDOT of a Business Opportunity in the Airspace, to the extent set forth in the Agreement; • TxDOT release of Hazardous Material; • Third party release of Hazardous Material during Operating Period; • Issuance of a temporary restraining order or other form of injunction by a court in an action challenging a NEPA approval that prohibits prosecution of any portion of the work or imposition of tolls; • Change in design concept included in RFP documents due to court or administrative decision in response to a legal action challenging the NEPA approval; • Change in law imposing new or additional taxes on tolls or gross toll receipts; • Unreasonable and unjustified delay by a local governmental entity in issuing a governmental approval;

Term	Provision
	<ul style="list-style-type: none"> • TxDOT lack of title to parcel, or existence of any title exception, that interferes with or adversely affects performance of work or imposition of tolls; or • Material adverse change in real property tax exemption under existing law.
Compensation Amount	<p>TxDOT will provide compensation to Developer for increases in Developer’s net costs of performing Developer’s obligations under the Agreement, and loss of net Toll Revenue, directly attributable to Compensation Events, subject to Developer’s compliance with notification and other obligations set forth in the Agreement. Net cost and net Toll Revenue impacts of a Compensation Event will be determined by comparison to what the projected costs, including financing costs, and Toll Revenue would have been absent occurrence of the Compensation Event.</p> <p>Payment of compensation amounts may be made by TxDOT, in its discretion: (a) through periodic payments in accordance with a written payment schedule corresponding to when the cost and Toll Revenue impacts that make up the compensation amount are anticipated to occur, (b) in a lump sum, (c) by adjustment to the annual lease payment or to the revenue sharing formula so as to make up all or any portion of such amount, or (d) any combination of the foregoing. Alternatively, payment of compensation amounts may be made in such other manner as agreed upon by the parties or as determined through the dispute resolution procedures.</p>
Force Majeure Events	<p>“Force Majeure Events” means the occurrence of certain specified events outside the control of Developer that materially and adversely affect performance of Developer’s obligations; <i>provided that</i> such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer or any Developer-Related Entity. Force Majeure Events will be specifically listed in the Agreement.</p> <p>Time extensions will be provided for Force Majeure Events, with a right to terminate the P3A under certain circumstances.</p>

Term	Provision
Extended Relief Events	<p>An extension of the Term (subject to statutory limitations) will be permitted for certain long-term Relief Events that (1) occur during the Operating Period, (2) are not also Compensation Events and (3) materially adversely affect collection of tolls or materially increase Developer's uninsurable costs. Any extension of the Term would be limited to the period necessary to offset the material adverse effect of the Relief Event to Developer up to a maximum of 10 years, as permitted by law.</p> <p>Either party is entitled to request termination of the Agreement in the event of an Extended Relief Event. If a request for termination is rejected by TxDOT, TxDOT will compensate Developer. If a request for termination is rejected by Developer, Developer shall be entitled to extension of Completion Deadlines but shall not be entitled to any further compensation.</p>
Changes	
Changes	<p>Changes in the work may be initiated by either TxDOT or Developer. Developer-initiated changes are subject to TxDOT approval. TxDOT bears cost and delay risks due to TxDOT-initiated Changes. Developer bears cost and delay risks due to Developer-initiated changes; however, TxDOT may condition its approval of a Developer change on a sharing of any cost savings.</p>
Developer Compensation and Tolling	
Right to Toll Revenues	<p>After service commencement, Developer has the exclusive right under the Contract Documents to impose, modify and collect tolls, provided that Developer will set toll rates consistent with the RTC's managed lanes tolling policy. The Project will continue to be tolled during the Term of the Agreement at no greater than the maximum base toll rates set forth in the Agreement.</p>
Tolling Responsibilities	<p>NTTA will provide customer service and certain other toll collection and enforcement services, as required by statute. Developer will be responsible for providing all other tolling services for the Project.</p>

Term	Provision
Tolling System	The toll collection system must be 100% open road, barrier-free, transponder-based electronic toll collection (ETC) and video tolling, without cash collection facilities. The toll collection and enforcement systems must meet TxDOT statewide interoperability and compatibility standards, requirements, and protocols.
TxDOT Compensation	
Upfront Payment	Any Upfront Payment set forth in Developer's proposal shall be paid as a condition to and concurrently with financial close for the Project.
Sharing of Toll Revenues	Toll revenues will be shared by Developer with TxDOT at the applicable percentage for a given range of Toll Revenues.
Refinancing Gain	TxDOT will share equally in any Refinancing Gains, other than refinancings that are included in Developer's proposal.
Financing	
Financing	Developer is responsible for all financing for the Project at its own cost and risk and without recourse. Developer shall have the risks and benefits of changes in interest rates and other impacts to the financing plan included in its proposal. TxDOT intends to submit a Letter of Interest for the Project to the TIFIA Joint Program Office. TxDOT will also pursue a PABs allocation with respect to the Project. If PABs are used, TxDOT expects that the Texas Private Activity Bond Surface Transportation Corporation would serve as the conduit issuer.
Refinancing	Developer has the right, with TxDOT's written consent, to refinance funding agreements. TxDOT is to share equally in any refinancing gains (from refinancings that are not identified in Developer's proposal). (See Refinancing Gains.)
Taxes	Developer is responsible for payment of all applicable taxes and assumes the risk of future changes in tax laws of general application, with certain limited exceptions. (See Compensation Events.)

Term	Provision
Lenders' Rights	
Lenders' Rights	<p>Lenders will have the right to notice and the opportunity to step in and cure in the event of a Developer default. Lenders will have no greater rights than Developer other than such limited time extension to step in and cure.</p> <p>Lenders are third party beneficiaries of the lenders' rights provisions in the Agreement, and may enter into direct agreements with TxDOT confirming these rights.</p> <p>In the event of termination following an incurable Developer default, such as Developer bankruptcy or the inability of Lenders to obtain possession or control of the Project within the prescribed period despite diligent efforts, Lenders shall have the right to enter into a New Agreement with TxDOT, on the same terms as the Agreement, subject to curing prior Developer defaults and reimbursing TxDOT's costs.</p>
Developer Ownership and Control	
Changes in Ownership and Changes in Control	<p>Developer may not assign or transfer any of its rights in the Agreement or Project without TxDOT's prior written consent (which consent shall be in TxDOT's sole discretion if prior to five years after the Service Commencement Date, and not to be unreasonably withheld thereafter), except for assignment to Lenders or Lender nominees approved by TxDOT, which approval shall not be unreasonably withheld.</p> <p>Developer's equity participants must hold effective management control of and maintain at least a majority share of the beneficial interest in Developer for at least five years after the Service Commencement Date for all segments of the Project. Thereafter, changes in control of Developer will be subject to TxDOT's prior approval not unreasonably withheld, based on financial and technical qualifications, experience, and expertise of the party(ies) proposed to assume management control of Developer, and compliance with TxDOT's organizational conflicts of interest policy.</p>

Term	Provision
Insurance, Indemnity and Payment/Performance Security	
Insurance	Developer shall provide required insurance coverages. Developer will not be excused from satisfying the insurance requirements merely because premiums are higher than anticipated, unless the required insurance is unavailable or unavailable at commercially reasonable rates, in which case TxDOT will grant Developer an interim written variance from such requirements.
Indemnity	Developer shall indemnify, defend, protect and hold harmless TxDOT against any claims or losses resulting or accruing from Developer's responsibilities and liabilities under the Agreement, including Developer's breach of the Agreement, and negligence, willful misconduct or breach of applicable law or contract.
Payment and Performance Security	Developer shall provide or cause its design-build contractor and other prime contractors to provide a payment bond and a performance bond, each in an amount at least equal to the construction costs for Phase 1 and Phase 2 of the Project, or, alternatively, letters of credit in equivalent amounts (or a combination of a bond and a letter of credit in the required amounts).
Default and Remedies	
Developer Defaults	Developer defaults include failure to reach financial close, failure to timely commence or diligently pursue the work, abandonment of the Project, failure to meet completion deadlines, bankruptcy and insolvency events, unpermitted closures, failure to maintain security, failure to make payments when due, debarment of Developer or a Key Contractor, materially inaccurate misrepresentation or warranty, Persistent Developer Default, Developer default under the Lease, and any other material breach of the P3A.
Cure of Developer Defaults	Developer shall be provided the opportunity to cure certain Developer defaults, as described in the Contract Documents.
TxDOT Remedies for Developer Default	TxDOT shall have the right to exercise one or more of the following remedies in the event of an uncured Developer default:

Term	Provision
	<ul style="list-style-type: none"> • Right to enter and take control of the Project to cure the default, restore the permitted uses and reopen and continue operations for the benefit of Developer and the public, all at Developer's expense (entry to rectify wrongful uses or closures of the Project can be immediate, without giving notice or awaiting lapse of any cure period); • Certain rights to ensure implementation of and compliance with Safety Standards; • Right to suspend work for certain Developer defaults; • Right to recover damages for a Developer default and for specified persistent Developer defaults, including liquidated damages for specified Developer defaults; • Right to make demand upon, draw on, and enforce and collect any bonds, letters of credit, guarantees, or other performance security available to TxDOT for a Developer default; • Right to terminate in the event of a material Developer default that, after delivery of a warning notice and failure to cure, becomes a default termination event; and • Other remedies as provided by law.
TxDOT Defaults	TxDOT defaults include failure to make payments when due, materially inaccurate representation or warranty, TxDOT default under the Lease, TxDOT appropriation of the Project or any other material breach of the P3A by TxDOT.
Cure of TxDOT Defaults	TxDOT shall be provided the opportunity to cure TxDOT defaults, as described in the Contract Documents.
Developer Remedies for TxDOT Default	Developer shall have the right to exercise one or more of the following remedies in the event of an uncured TxDOT default:

Term	Provision
	<ul style="list-style-type: none"> • Right to terminate the Agreement and Lease for a material failure to pay, suspension by TxDOT of work on all or a material portion of Project for 365 days or more, or if TxDOT does not issue NTP1 or NTP2 within 365 days after the respective anticipated issuance date; or • Right to seek damages or other remedies as provided by law. The measure of compensation available to Developer as set forth in the Agreement for a Compensation Event or termination due to TxDOT default will constitute the sole and exclusive monetary relief and damages available to Developer arising out of or relating to any TxDOT default.
<p>Limitations on Liability</p>	<p>Subject to limitations for certain losses, TxDOT and Developer waive punitive damages or any indirect or incidental consequential damages except as set out in the Agreement, whether arising out of breach of the Agreement or the Lease, tort (including negligence), or any other theory of liability.</p> <p>All TxDOT monetary obligations under the Contract Documents are subject to appropriation by the Texas Legislature; however, in the absence of such appropriation, such monetary obligations shall be payable solely from other unencumbered lawfully available funds of TxDOT (whether available at such time or in the future) that are not funds that are required to be appropriated by the Texas Legislature.</p>
<p>Early Termination and Compensation for Early Termination</p>	
<p>Grounds for Termination</p>	<p>The Agreement may be terminated for: Developer’s failure to close its financing by the Financial Close Deadline; continuing Force Majeure Events and Extended Relief Events; certain defaults by either party; convenience of TxDOT; court order voiding the Agreement or making performance of a fundamental obligation or exercise of a fundamental right under the Contract Documents impossible; and lack of NEPA Finality.</p>

Term	Provision
Compensation Entitlement	In the event of a termination prior to the end of the Term, Developer may be entitled to compensation based on the nature of the termination.
Termination for Failure to Close Financing	If Developer fails to timely close financing and Developer's failure to timely close financing is not excused, Developer will owe liquidated damages to TxDOT in a stated amount. As a condition to signing the Agreement, Developer will be obligated to deliver to TxDOT liquid security (forfeiture bond or letter of credit) to assure TxDOT a ready source for collecting such liquidated damages.
Termination for Developer Default – No Compensation	Developer will not be entitled to any compensation where Developer terminates beyond its express termination rights, or is terminated for bankruptcy/insolvency, failure to achieve Financial Close which is not excused or the inability of Collateral Agent to obtain possession of the Project within a prescribed period where it has entered into New Agreements.
Dispute Resolution	
Dispute Resolution	<p>Dispute resolution will commence with informal partnering and voluntary mediation. A neutral three-person Disputes Board will be appointed by the parties to review certain disputes that are not resolved informally. Decisions of the Disputes Board may be appealed to the State Office of Administrative Hearings (“SOAH”), which review and proposal for decision is limited to determining whether the Disputes Board acted beyond the limits on its authority, failed to follow procedural requirements or had a conflict of interest.</p> <p>A SOAH proposal for decision is subject to review by the Executive Director within 28 days. The Executive Director has authority to overrule the Disputes Board's determination only on the same grounds of appeal as applied to SOAH review. If grounds for appeal are determined, the Executive Director shall vacate the Disputes Board decision and dismiss the matter, without remand and without prejudice to the claim.</p> <p>The process provides for the admissibility of the decisions of the Disputes Board in subsequent proceedings.</p>

Term	Provision
	Disputes relating to termination of the Agreement would be outside of the Dispute Board’s jurisdiction and would proceed in accordance with the process specified in Section 223.208, Texas Transportation Code (which allows Developer to enforce by mandamus an obligation of TxDOT to make or secure payment of the termination amount).
Governing Law and Federal Requirements	
Governing Law	State of Texas
Federal Requirements	Developer will be required to comply with all requirements applicable to federally funded design-build and public-private partnership projects.