

AMENDMENT NO. 4 TO COMPREHENSIVE DEVELOPMENT AGREEMENT
(IH 635 Managed Lanes Project)

This AMENDMENT No. 4 TO COMPREHENSIVE DEVELOPMENT AGREEMENT (this "Amendment") is made as of 1 Aug 2011, 2011, by and between LBJ Infrastructure Group LLC ("Developer") and THE TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT").

Developer and TxDOT entered into that certain Comprehensive Development Agreement for a Concession LBJ Managed Lane Project dated September 4, 2009 (as amended, the "CDA").

Developer and TxDOT desire to amend the CDA as provided herein.

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

1. Definitions: Capitalized terms not otherwise defined herein shall have the meaning given such terms in the CDA.
2. Amendment to Section 9.1.1 of the CDA. The following new Section 9.1.1.1 is inserted into the CDA:

Without in any way diminishing Developer's responsibility for the work including quality assurance and quality control for the Project and Work, at Developer's request, TxDOT may participate in Developer's quality assurance and quality control process by performing certain material inspection and testing services pursuant to the terms of and as more particularly described in Exhibit 27. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS CDA, DEVELOPER ACKNOWLEDGES AND AGREES THAT TXDOT WILL NOT BE RESPONSIBLE OR BEAR ANY LIABILITY FOR, AND HEREBY RELEASES TXDOT FROM, ANY DAMAGES, INCREASED COSTS, REVENUE LOSSES, DELAYS, OR OTHER IMPACTS TO DEVELOPER OR TO ANY THIRD PARTY, ARISING AS A RESULT OF THE SERVICES PERFORMED BY TXDOT PURSUANT TO EXHIBIT 27, INCLUDING THOSE ARISING FROM ANY NEGLIGENT ACT OR OMISSION OF TXDOT, OR FAILURE OF OR DEFECT IN ANY MATERIAL OR PRODUCT INSPECTED OR TESTED, REGARDLESS OF WHEN SUCH FAILURE OR DEFECT MAY OCCUR OR BE DISCOVERED.**

3. Amendment to Section 16.5 of the CDA. Section 16.5.2 of the CDA is amended to read as follows:

Subject to Section 16.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands, ~~and Losses/losses, in each case if asserted or incurred by or awarded to any third party,~~ arising out of, relating to or resulting from errors, inconsistencies or other Defects in the design or construction of the Project and/or of Utility Adjustments included in the Design Work and/or Construction Work, including any such claims, causes of action, suits, judgments,

investigations, legal or administrative proceedings, demands, losses arising out of, relating to, or resulting from the performance by TxDOT of material inspection and testing services pursuant to Exhibit 27.

4. New Exhibit 27 to the CDA: A new Exhibit 27 is added to the CDA in the form attached hereto.
5. CDA in Full Force and Effect. As expressly amended by this Amendment the CDA remains in full force and effect. To the extent of any conflict between the CDA and this Amendment, this Amendment shall govern.
6. Counterparts. This Amendment may be executed (i) in multiple counterparts, and each counterpart when fully executed and delivered shall constitute an original instrument, and all such multiple counterparts shall constitute but one and the same instrument and (ii) via facsimile or electronic transmission with the facsimile or electronic transmission signature of any party on this instrument or a counterpart hereof being considered valid, binding and effective for all purposes.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date referenced above.

DEVELOPER:

LBJ INFRASTRUCTURE GROUP LLC

By: 
Antonio Álvarez-Cedrón, CEO

TxDOT:

**THE TEXAS DEPARTMENT OF
TRANSPORTATION**

By: 
Name: JOHN A. BARTON, P.E.
Title: INTERIM DEPUTY EXECUTIVE DIRECTOR

EXHIBIT 27

TERMS OF TXDOT MATERIAL INSPECTION AND TESTING SERVICES

TxDOT agrees to perform certain material inspection and testing services as requested by Developer, and subject to the terms set forth below. The Parties agree that nothing contained in this amendment obligates the Developer to use TxDOT's material inspection and testing services for the Project. Material inspection and testing to be performed by TxDOT consists of the following:

- Inspection of various materials fabricated off-site (structural steel bridge components, pre-cast concrete stressed/non-stressed products, and miscellaneous fabricated products).
- Selected roadway Monitored Materials (as defined herein) from approved/monitored sources (i.e. Quality Monitored Materials and Material Producer List qualified materials)
- Other materials inspection and testing as agreed upon in writing by TxDOT and Developer

Inspections will be performed in reasonable compliance with the specifications and instructions supplied by Developer in its Work Request, utilizing the form attached as Appendix 2 hereto, and subject to the terms and conditions described below. Inspections will be performed only at locations in Texas where TxDOT routinely provides resident inspection services for its own highway materials. TxDOT will only perform tests listed in the TxDOT Inspection & Testing Rates Table attached as Appendix 3 to this Exhibit 27, as amended from time to time. Out-of-state inspections for Developer will be performed only when TxDOT has employees scheduled to conduct inspections for TxDOT projects at the requested locations.

As inspection and testing services are performed by TxDOT, written inspection/test reports will be provided to Developer in accordance with TxDOT's existing policies for providing such reports. Reports will include the date, time, locations and nature of services performed. Monitored Materials will not be furnished with inspection/test reports.

Prior to the commencement of any work hereunder, the Developer and TxDOT shall provide each other with a respective single point of contact for this scope of services. TxDOT will direct all invoices, test reports, questions and other issues to this point of contact. Developer and TxDOT shall provide the other written notification of any change to the point of contact.

INSPECTED MATERIALS:

TxDOT will only perform inspection services for Developer at structural steel fabrication plants, commercial precast prestressed and non-stressed concrete products plants, and other miscellaneous fabrication plants where TxDOT routinely provides such inspection and testing services for its own highway materials or for others. TxDOT reserves the right to prioritize or reschedule any inspection and testing services according to the following:

- Inspection and testing services may be cancelled or deferred due to unavailability of TxDOT personnel to perform the necessary inspection
- Inspections for Developer will be given lower priority than inspections performed by TxDOT for TxDOT projects.

- Inspections for Developer may be rescheduled to coincide with the inspection of products for TxDOT projects.

Developer and its fabricators will abide by the Nonconformance Report (NCR) process utilized by TxDOT for disposition of products that do not meet the requirements of the Developer's specifications provided in the Work Request. The current TxDOT NCR process for handling various NCR conditions is described in Appendix 1. TxDOT, in its sole and unfettered discretion, may revise the TxDOT NCR process.

A minimum of two (2) weeks prior to TxDOT performing any inspections, Developer will submit a Work Request to TxDOT utilizing the form attached as Appendix 2 hereto. Each Work Request will be for a single Fabricator, and will include the following:

- Project information (i.e. contract number, CSJ, etc.)
- Work description
- Type and estimated quantity of material(s) to be inspected
- Fabricator information (Name, contact person, physical location)
- Desired date of inspection
- Signature/name and telephone number of Developer's authorized representative.
- TxDOT 2004 Specification Item or Special Specification to be used for inspection
- List of Developer's amendments to TxDOT 2004 Specification Item
- Developers Special Specifications
- Complete set of necessary design drawings, material specifications, and shop drawing files in Adobe .pdf format to perform inspection of the material

MONITORED MATERIALS:

TxDOT maintains certain materials for TxDOT's use. Additionally, certain products or Manufacturers/Suppliers are monitored as being TxDOT compliant. These materials are described in the following categories:

- **QM**- Quality Monitoring Program. Materials in Program sent directly to projects. Materials supplied with documentation of program compliance.
- **MPL** - Material maintained on approved list (Material Producer List). No additional testing necessary unless directed by Engineer
- **WA** - Warehouse Agreements to stock Pre-Tested materials
- **PJT** - Approve on the basis of project samples

The Developer will not receive a test report for these above-listed Monitored Materials.

TEST REPORTS AND INVOICES

TxDOT will send a monthly invoice to the Developer for services performed pursuant to this Exhibit 27. The test reports will be sent to the Developer's point of contact.

PAYMENTS:

Developer will pay TxDOT's fees for performance of the materials testing and inspection services as shown in the TxDOT Inspection & Testing Rates Table in effect at the time the service is performed. TxDOT's 2009 Inspection & Testing Rates Table is attached as Appendix

3. Payments must be remitted by Developer, within 30 days after receipt of TxDOT's invoice, to:

Construction Division/ Texas Department of Transportation
Attn: Construction Division/BMS (RA/200-2nd fl.)
125 E. 11th Street 125 E. 11th Street
Austin, TX 78701-2483 Austin, TX 78701-2483

APPENDIX 1

NCR Process

Non-Compliance Report (NCR) Process for Structural Steel Bridge Products

The NCR process for handling various NCR conditions in the Structural Steel Fabrication Branch includes,

NCRs requiring Developer's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the Developer's point of contact. Upon review of the information regarding the non-compliance, the Developer will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Misplaced components beyond specification tolerances.
- Extreme cases of additional, missing, elongated, etc. holes due to poor workmanship.
- Material/design substitutions/changes after shop drawings have been approved.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Sweep, camber, and twist beyond specification limits.
- Welding procedures, processes, and defects.
- Misdrilled holes (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Additional splices in flanges and webs (may need to contact Designer if non-traditional member).
- Base metal defects.
- Assembly of members.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Weld pick-ups.
- Minor heat corrections for sweep/camber.
- Weld defects (up to two times per location – generally).
- Painting issues.

Non-Compliance Report (NCR) Process for Steel Non-Bridge Structures

The NCR process handling various NCR conditions in the Miscellaneous Products Fabrication Branch for steel non-bridge structures includes,

NCRs requiring Developer's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the Developer's point of contact. Upon review of the information regarding the non-compliance, the Developer will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Fabrication discrepancies beyond specification tolerances. (mislocated and/or oversized holes for structural fasteners and/or anchor bolts, etc.)
- Proposed material substitutions for steel components.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Welding procedures, welding repair procedures, procedure qualification records.
- Misdrilled holes, bent surfaces (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Proposed paint system substitutions.
- Base metal defects.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Galvanized weldment tests.
- Minor heat corrections.
- Weld defect repairs permitted by the AWS D1.1 Structural Welding Code.
- Painting and galvanizing issues.

Non-Compliance Report (NCR) Process for Commercially Produced Precast Concrete Products

The NCR process for handling various NCR conditions in the Precast Concrete Fabrication Branch includes,

NCRs requiring Developer's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the Developer's point of contact. Upon review of the information regarding the non-compliance, the Developer will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Major honeycombed and/or spalled concrete exposing prestressing strand.
- Modification to prestressed concrete bridge beams (cutting 6-12 inches off beam ends).
- Thin top slab on prestressed concrete box beams (internal void floating).
- Thick bottom slabs on prestressed concrete U-beams and box beams (excessive dead load).
- Low strength concrete

NCRs handled by CSTM&P, Precast Concrete Fabrication Branch, Austin Headquarters

- Horizontal misalignment – Coordinate with prime contractor and District personnel.
- Minor honeycombed/spalled concrete with exposed reinforcing and prestressing steel.
- Damage over traffic lanes requiring concrete repair material (not allowed).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Minor beam modification – drilling anchor holes, cutting up to 6 inches off beam ends. (Coordinated with prime contractor and District personnel)
- Concrete damage in the bearing area of beams - shifting bearing pad away from beam end to reduce amount of bearing area affected by damage. (Coordinated with prime contractor and District personnel)
- Concrete temperature and/or curing violations.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Honeycombed/spalled concrete not extending beyond the first plane of reinforcing steel and not over traffic lanes.
- Damage to prestressed bridge deck panels.
- Damage to non-prestressed products.

APPENDIX 2

Work Request

Ms. Becky Jares
TxDOT - Construction Division
Materials & Pavements Section
125 East 11th Street
Austin, Texas 78701-2483

Re: SH XX
Project Limits: from SH X interchange in Some County to IH Y in Another County
CSJ No. 3333-03-003
WORK REQUEST

Dear Ms Jares,

We are requesting fabrication inspection of the following materials:

Developer provided specification number
Railing PR1 (150 LF)
Bid Item XXX

The fabricator:

Company Name
3502 Pinemont
City, Tx 78123
Contact Person: David Davod (off - 555-555-5555)(fax -)

The date of the inspection:

Developer insert requested inspection date

Additional inspection information or request:

If you have any questions concerning this matter, please feel free to call me at (Developer insert office phone number).

Sincerely,

Developer Quality Manager

cc: Developer to provide pdf of necessary design files

APPENDIX 3

TxDOT Inspection & Testing Rates Table

TxDOT Inspection and Testing Rate Table (6-10)		
Material	Unit	Unit Cost
Anchor Bolts-Bearings, OSSB, Poles, Etc.	Each	\$2.49650
Anchor Bolts-Railing	Each	\$1.24825
Bridge Mounted Sign Post	Pound	\$0.54923
Bridge Rail Post	Each	\$1.64769
Bridge Rail Tube	Linear Ft.	\$1.99720
Disc/Pot Bearing	Each	\$99.86000
Elastomeric Bearings (Laminated) *	Each	\$2.49650
Elastomeric Bearings (Plain) *	Each	\$0.99860
Elastomeric Bearings (Sliding Assembly) *	Each	\$31.90527
Elastomeric Bearing Steel Assembly	Each	\$49.93000
High Mast Illumination Assembly Ring	Each	\$71.39990
High Mast Illumination Poles	Each	\$178.64954
Large Roadside Sign Supports	Pound	\$0.54923
Misc. Structural Steel	Pound	\$0.03595
Overhead Sign Support Bridges	Linear Ft.	\$2.09706
Precast Concrete Arch Span Unit	Linear Ft.	\$10.18572
Precast Concrete Box Culverts	Linear Ft.	\$0.87378
Precast Concrete Columns for Sound Walls	Linear Ft.	\$0.34452
Precast Concrete Coping	Linear Ft.	\$0.34452
Precast Concrete Headwalls	Each	\$51.02846
Precast Concrete Wall Panels	Sq. Ft.	\$0.06491
Precast Concrete Wall Panel (Non Standard)	Sq. Ft.	\$0.99860
Prestressed Concrete Box Beams	Linear Ft.	\$1.14839
Prestressed Concrete Deck Panels	Sq. Ft.	\$0.04993
Prestressed Concrete Piling	Linear Ft.	\$0.34452
Prestressed Concrete Sheet Piling	Sq. Ft.	\$0.12483
Prestressed Concrete Tee, Slab, & I-Beams	Linear Ft.	\$0.74895
Prestressed Concrete U-Beams	Linear Ft.	\$1.24825
Railing (Panels for Bridge, Pedestrian, etc.)	Linear Ft.	\$0.39944
Roadway Illumination Poles	Each	\$24.21605
SEJ's / Armor Joints	Linear Ft.	\$0.16477
Signs	Sq. Ft.	\$0.39944
Steel Post (MBGF)	Each	\$0.63910
Structural Steel Bridge Girders	Pound	\$0.01897

Terminal Anchor Posts (MBGF)	Each	\$1.49790
Traffic Signal Pole Mast Arms	Each	\$14.03033
Transformer Bases for Roadway Illuminated Poles	Each	\$6.38105

*** - Requires additional testing of Project Sample by Central Lab (additional charge)