

December 1, 2010

Carlos A. Lopez, P.E.
District Engineer
Texas Department of Transportation
Austin District
7901 N. IH 35
P.O. Box 15426
Austin, Texas 78761-5426

Re: Williamson County Pass-Through Finance Agreement
Contract No. PT2010-006-01

Dear Mr. Lopez:

Williamson County has reviewed the above-referenced draft agreement for the I-35 frontage road and ramp pass-through finance project. Summarized below are the County's comments and proposed replacement language.

Comment No.	Page(s)	Section	Comment
1	2	3. Scope of Work	<p>"The Developer shall ensure that Department funding for the proposed Project is included in the Department's Unified Transportation Program and Statewide Transportation Improvement Program."</p> <p>How can Williamson County "ensure funding" when the action required must be initiated by TxDOT and approved by the Texas Transportation Commission? We suggest using the word "confirm" rather than "ensure".</p>
2	7	h.	<p>Modify sentence "The number of vehicle-miles traveled on the Project during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates, which shall be performed in good faith and shall be conclusive and not subject to litigation in any forum." as follows:</p> <p>"The number of vehicle-miles traveled on the Project during a year will be based on actual traffic data, to the extent the data is available, or if such data is not available the Department's traffic estimates, which shall be performed in</p>

			good faith and shall be conclusive and not subject to litigation in any forum.”
3	7	11. Maintenance	Modify to read “The Department shall be responsible for maintenance of the travel lanes upon issuance of a “Letter of Approval for Payment” pursuant to Paragraph 12.b., and for the remainder of the Project after issuance of a “Letter of Acceptance” pursuant to Paragraph 10.e.”
4	9	15. Termination C	Add to the end of the sentence of 15.c “provided that such deadline may be extended by mutual agreement of the parties for any reason, including without limitation delays in securing environmental clearance and a deferred commencement of construction pending expiration of the limitation period provided under 23 U.S.C. 139 (l).”
5	10	18.c	Add to the end after repayment “of the loan or bonds”
6	Attachment B	Scope of Work	<p>The first paragraph states that “any work over the mainlanes of I-35 shall be conducted by or under the oversight of the Department.”</p> <p>We suggest removing “be conducted by” to assure consistency with other sections of the Agreement that clearly state that the Developer (County) has all construction responsibility. In addition, this would be consistent with the County’s current Pass-Through Agreement for the construction of the I-35 turnaround structure at SH 29.</p>
7	Attachment D	Exhibit 2 – General Review Schedule	<p>This table contains asterisks (*) after a number of review items. The asterisk footnote states “Review Time may start over if the review of draft documents results in substantial comments.”</p> <p>We have spoken with other entities negotiating PTF Agreements with TxDOT and their Exhibit 2 does not show this note. Why is it included in the Williamson County draft or is the Department’s intent to include this note in <i>all</i> final PTF agreements?</p>
8	Attachment F	Schedule	The proposed schedule to start construction is totally unacceptable. Williamson County has been working on the I-35 frontage road and

			ramp project since the Fall of 2006. TxDOT assured the County that this project (the County's Number 2 Priority after O'Connor Blvd.) would be expedited. Since mid-2009, your office has been trying to help expedite the review by FHWA and USFWS and we appreciate everything the Austin District has done. However, we cannot sign an agreement that delays construction another 12-24 months without some understanding that the schedule will be modified if environmental approvals are received earlier. We would suggest modifying language to Section 13 – Mutual Cooperation.
9	8-9	13. Mutual Cooperation	Add a new sentence at the end that states "The Department, in conjunction with the Developer, will amend Attachment F – Schedule to reflect an earlier construction start date if environmental approvals are received earlier."

Please let me know how you would like to proceed with addressing these comments and concerns. If a meeting is required, Commissioners Birkman and Covey will represent Williamson County. Again, thank you for your help on this important safety project.

Sincerely,



~~Dan A. Gattis~~

Lisa L. Birkman
Williamson County Judge *Presiding Commissioner*

cc: Commissioner Lisa Birkman, Precinct 1
Commissioner Cynthia Long, Precinct 2
Commissioner Valerie Covey, Precinct 3
Commissioner Ron Morrison, Precinct 4
Hal C. Hawes, Legal Advisor, Office of Williamson County Judge
Robert B. Daigh, P.E., Williamson County Senior Director of Infrastructure
Michael J. Weaver, Prime Strategies, Inc.