

ADDENDUM #5
Issued May 2, 2008

REQUEST FOR PROPOSALS
to Develop, Design, Construct, Finance, Operate and Maintain
the
IH 635 Managed Lanes Project
Through a Comprehensive Development Agreement

RFP Issued September 18, 2007
Addendum #1 issued January 9, 2008
Addendum #2 issued March 3, 2008
Addendum #3 issued March 19, 2008
Addendum #4 issued April 2, 2008

Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701

This Addendum #5 to the Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the IH 635 Managed Lanes Project through a Comprehensive Development Agreement is issued by the Texas Department of Transportation on May 2, 2008 to set forth certain changes to the Request for Proposals, as amended by Addenda #1 through #4 (the “RFP”). All provisions in the RFP shall remain in full force and effect, except as otherwise expressly set forth herein. All initially capitalized terms and acronyms used but not defined herein shall have the meaning set forth in the RFP.

The following changes, shown below as double-underlined to indicate insertions and strike-through to indicate deletions, will be made to the RFP:

1. Changes to the CDA

1.1 Changes to Section 4.1.4:

4.1.4 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents and tendered the Concession Payment under Section 1, Part A of Exhibit 7 on or before the Effective Date, then the following provisions shall apply:

4.1.4.1 Unless Developer or TxDOT elects to terminate this Agreement pursuant to Section 4.1.4.4, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Project Debt (including any sub-debt), in a total amount, which when combined with all unconditional equity commitments acceptable to the Collateral Agent, is not less than the total capital funding set forth in Exhibit 5, by not later than the Project Financing Deadline, without any right to extension on account of any Relief Event (notwithstanding any other provision of this Agreement to the contrary), except that (a) if Developer’s Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation, such deadline may be extended until the date that is 60 days after the date that TxDOT obtains such environmental reevaluation (if later) and (b) such deadline may be extended by the period

of delay in Developer's ability to achieve Financial Close directly caused by TxDOT-Caused Delay, TxDOT Change or Discriminatory Action.

4.1.4.5 TxDOT will bear the risk and have the benefit of changes in market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on ~~June 16~~ July 14, 2008 and ending on the earlier of (a) 10:00 a.m. on the date of Financial Close or (b) 10:00 a.m. on _____, 2008 *[executed version to include date that is 90 days after original financial close deadline set forth in ITP Section 1.6.3]* (the "last date of the market interest rate protection period"). The interest rate adjustment will be based on the movement, if any, in the benchmark bond(s) or SWAP rates underlying the financing contained in Developer's Financing Plan and Financial Model included in the Proposal (the "Benchmark Rate(s)"). Based on a reading taken on the Bloomberg U.S. based screen on the last date of the market interest rate protection period, Developer and TxDOT shall both adjust the Base Case Financial Model to reflect the change in the Benchmark Rate(s) and agree on the exact impact of such an adjustment, highlighting specifically the positive or negative change of the Public Funds Request from TxDOT or Concession Payment to TxDOT.

1.2 Changes to Section 6.2:

6.2 Governmental Approvals and Third Party Agreements

6.2.1 As of the Effective Date, TxDOT has obtained the TxDOT-Provided Approvals based on the schematic contained in the Reference Information Documents. [Subject to Section 6.2.12 and to Developer's right to a Relief Event and Compensation Event for a TxDOT-Caused Delay under clause \(g\) of the definition of TxDOT-Caused Delay.](#) Developer shall obtain all other Governmental Approvals required in connection with the Project, the Project Right of Way or the Work, including any modifications, renewals and extensions of the TxDOT-Provided Approvals, including those required in connection with a Compensation Event. Developer shall deliver to TxDOT true and complete copies of all new or amended Governmental Approvals.

6.2.3 [Subject to Developer's right to a Relief Event and Compensation Event for a TxDOT-Caused Delay under clause \(g\) of the definition of TxDOT-Caused Delay.](#) In the event Developer's design differs from the schematic contained in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, including differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 2, as between TxDOT and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Project location and design, including (a) conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the TxDOT-Provided Approvals, and other existing Governmental Approvals), and (c) bearing all risk and cost of litigation. The foregoing provision shall not apply, however, in the case of a Compensation Event under clause (n) of the definition of Compensation Event and a Relief Event under clause (p) of the definition of Relief Event. TxDOT and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771.

6.2.4 [Subject to Developer's right to a Relief Event and Compensation Event for a TxDOT-Caused Delay under clause \(g\) of the definition of TxDOT-Caused Delay.](#) In the event Developer is unable to obtain necessary Governmental Approvals for any design that differs

from the schematic contained in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, including differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 2, Developer shall be obligated to design and construct the Project according to the design described in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, and no such circumstance shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

6.2.5 If Developer pursues Additional Properties outside the Project Right of Way, or any other modification of or Deviation from any Governmental Approvals, including TxDOT-Provided Approvals or any environmental reevaluation required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, Developer shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between TxDOT and other Governmental Entities. These agreements include the following:

6.2.12 If an environmental reevaluation is required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, this Section 6.2.12 shall apply.

6.2.12.1 Developer shall undertake all efforts as reasonably requested by TxDOT to assist in obtaining such environmental reevaluation in a timely manner, at Developer's expense, including execution and delivery of appropriate applications and other documentation in form approved by TxDOT. Subject to any agreed scope of work and budget and to any rights of Developer in the case of a Compensation Event, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, TxDOT incurs in providing such environmental reevaluation. Refer to Section 4.2 of the Technical Provisions for additional provisions on applications in TxDOT's name for Environmental Approvals.

6.2.12.2 If TxDOT obtains the environmental reevaluation prior to 12 months after the Effective Date, TxDOT shall be entitled to receive from Developer, effective as of the date TxDOT obtains the environmental reevaluation, 80% of the net benefit to Developer attributable to obtaining the environmental reevaluation prior to 12 months after the Effective Date, including (a) the increase in Toll Revenues, net of Developer's increased operating and maintenance costs and (b) the decrease in design and construction costs. Any Dispute regarding such amount shall be resolved according to the Dispute Resolution Procedures. For the purpose of any discounting, the provisions of Section 13.2.4.3 shall apply. For the purpose of determining the decrease in design and construction costs (if any), the decrease shall be the absolute value of the following formula:

$$\frac{\sum PA_{(r)} \times (ENR CCI_{(a)} - ENR CCI_{(f)})}{ENR CCI_{(f)}}$$

Where:

- $\sum PA_{(r)}$ is the sum of the Payment Activities associated with the portion of the Project subject to the environmental reevaluation.
- $ENR CCI_{(f)}$ is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date that is 12 months after the Effective Date.
- $ENR CCI_{(a)}$ is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date of the environmental reevaluation approval.

Notwithstanding anything to the contrary herein, if ENR CCI_(f) is less than or equal to ENR CCI_(a), there shall be no decrease in design and construction costs.

1.3 Changes to Section 13.2.6:

13.2.6 If the Compensation Event is:

13.2.6.2 ~~[RESERVED]~~Under both clause (d) of the definition of Compensation Event and under clause (g) of the definition of TxDOT-Caused Delay, then the Compensation Amount shall equal 80% of the amount determined under this Section 13.2 not including this Section 13.2.6.2. For the purpose of determining the increase in design and construction costs (if any) associated with the TxDOT-Caused Delay, the increase shall be the greater of zero or the result of the following formula:

$$\frac{\Sigma PA_{(r)} \times (ENR CCI_{(a)} - ENR CCI_{(f)})}{ENR CCI_{(f)}}$$

Where:

- ΣPA_(r) is the sum of the Payment Activities associated with the portion of the Project subject to the environmental reevaluation.
- ENR CCI_(f) is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date that is 12 months after the Effective Date.
- ENR CCI_(a) is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date of the environmental reevaluation approval.

Notwithstanding anything to the contrary herein, if ENR CCI_(f) is greater than or equal to ENR CCI_(a), there shall be no increase in design and construction costs.

1.4 Changes to Section 19:

19.14 Termination for Failure to Obtain Environmental Reevaluation

19.14.1 If TxDOT fails to obtain an environmental reevaluation required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 within 12 months after the Effective Date, TxDOT may, in its sole discretion, at any time prior to obtaining the reevaluation, elect to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to Developer and the Collateral Agent under the Security Documents other than Subordinated Security Documents.

19.14.2 Once such termination becomes effective, TxDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10.

19.14.3 Notwithstanding Section 19.14.2, in the event of such termination, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Exhibit 23 and payment will be due and payable as and when provided in Exhibit 23. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

1.5 Changes to Exhibit 1:

NEPA Finality Date means the date of expiration, without the filing of a legal action, of the federal statute of limitations for commencing legal action to challenge the validity of any NEPA Approval issued on or after the date that is six months after the date of the last TxDOT-Provided Approval _____, 2008 [to be provided]; provided, however, that if any such legal action is filed within the statute of limitations, then NEPA Finality Date means the date of entry, if later, of a final, non-appealable dismissal with prejudice or judgment denying permanent injunctive relief in all legal actions brought challenging the validity of any NEPA Approval issued on or after the date that is six months after the date of the last TxDOT-Provided Approval _____, 2008 [to be provided]; provided, further, that if Developer's Proposal includes any alternative technical concepts approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation and there is a right to a private cause of action challenging the environmental reevaluation, then "the last TxDOT-Provided Approval" is deemed replaced with "the last TxDOT-Provided Approval or such environmental reevaluation."

Operating Commencement Date means (a) for the IH 635 Section, ~~the IH 35E Section and the IH 635/IH 35E Interchange,~~ the earlier of (i) the date on which Developer first commences construction of ~~any of these IH 635 Sections~~ or (ii) 60 days after NTP2 or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 635 Section, the date that TxDOT obtains the environmental reevaluation (if later), (b) for the IH 35E Section, the earlier of (i) the date on which Developer first commences construction of the IH 35E Section or (ii) 60 days after NTP2 or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 35E Section, the date that TxDOT obtains the environmental reevaluation (if later), (c) for the IH 635/IH 35E Interchange, the earlier of (i) the date on which Developer first commences construction of the IH 635/IH 35E Interchange or (ii) 60 days after NTP2 or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 635/IH 35E Interchange, the date that TxDOT obtains the environmental reevaluation (if later), (d) for the IH 635/US 75 Interchange, the earlier of the date on which Developer commences construction on such Section or the Service Commencement Date for the first Toll Segment that includes any part of such Section and (e) for the IH 35E Capacity Improvement Section, the date on which Developer first commences construction of the IH 35E Capacity Improvement Section. For purposes of this definition, "construction" includes any disturbance to the Project ROW, including stockpiling and storage.

Payment Activity means a Schedule Activity at WBS Level VI that represents all of the Work that is eligible for reimbursement under Federal Law and has been cost-loaded in accordance with Section 2.1.1.1 of the Technical Provisions, as well as mobilization costs (as defined in Section 2.1.1.1 of the Technical Provisions) to be paid as four Payment Activities per Project Section as follows: 25% of the Section mobilization amount upon commencement of the Construction Work in the Section; 25% of the Section mobilization amount when 1% of the total summarized cost of the Preliminary Project Baseline Schedule less the lump sum for mobilization for the Section is earned; 25% of the Section mobilization amount when 5% of the total summarized cost less the lump sum for mobilization for the Section is earned; and 25% of the Section mobilization amount when 10% of the total summarized cost less the lump sum for mobilization for the Section is earned. Developer's indirect costs such as project management, administration, design, contingencies, site cleanup and maintenance, temporary roads and access, off site access roads and security costs related to design-build costs shall be prorated

through all Payment Activities. Projected operations and maintenance costs are non-reimbursable.

Proposal Due Date means March 17 July 21, 2008, the deadline for submission of the Proposal to TxDOT.

TxDOT-Caused Delays means any of the following events, to the extent they result in a material delay or interruption in performance of any obligation under the Agreement, and provided such events are beyond Developer’s control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any of the Developer-Related Entities, and further provided that 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:

(g) If an environmental reevaluation is required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, failure of TxDOT to obtain such environmental reevaluation that substantially allows the alternative technical concept within 12 months after the Effective Date.

1.6 Changes to Exhibit 7:

Part E Payment of Public Funds

1. Public Funds Amount

TxDOT shall pay to Developer the amount of \$ _____ [to be provided in execution version from Proposal Form K, Box 1] (the “Public Funds Amount”) in accordance with this Part E. Subject to potential Compensation Events, the Public Funds Amount is not subject to change for any reason whatsoever. Developer’s achievement of Financial Close shall be a condition precedent to Developer receiving compensation under this Part E, except if TxDOT has not obtained any required environmental reevaluation in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 and such failure is not attributable to the fault of any Developer-Related Entity.

2.4 Subject to Section 4.4 of this Part E, the “Payment Request Amount” will be determined as follows:

$$\left[\begin{array}{l} \$ \text{_____ [to be} \\ \text{provided in executed} \\ \text{version (Proposal} \\ \text{Form K, Box 1)]} \\ \$ \text{_____ [to be} \\ \text{provided in executed} \\ \text{version (Proposal} \\ \text{Form P, Part A, Box A} \\ \text{+ Box B)]} \end{array} \right] \times \begin{array}{l} \text{Sum of Schedule of} \\ \text{Values of} \\ \text{Completed Payment} \\ \text{Activities} \end{array} \left. \vphantom{\begin{array}{l} \$ \text{_____ [to be} \\ \text{provided in executed} \\ \text{version (Proposal} \\ \text{Form K, Box 1)]} \\ \$ \text{_____ [to be} \\ \text{provided in executed} \\ \text{version (Proposal} \\ \text{Form P, Part A, Box A} \\ \text{+ Box B)]} \end{array}} \right] - \begin{array}{l} \text{Total} \\ \text{Amount of} \\ \text{Public} \\ \text{Funds} \\ \text{Amount} \\ \text{Paid} \end{array}$$

$$\left\{ \left(\sum CPA_1 \right) + \left[\frac{(PFA - \$ \text{_____})}{(\sum PC - \$ \text{_____})} \times (\sum CPA_2) \right] \right\} - \text{Previously Paid}$$

Where:

ΣCPA = Sum of Completed Payment Activities

When $\Sigma CPA \leq \$$, $\Sigma CPA_1 = \Sigma CPA$ and $\Sigma CPA_2 = 0$

When $\Sigma CPA > \$$, $\Sigma CPA_1 = \$$ and $\Sigma CPA_2 = \Sigma CPA - \$$

PFA = Form K, Box 1

ΣPC = Form P/Part A (Box A + Box B)

Partially completed Payment Activities are not eligible for payment.

1.7 Changes to Exhibit 9:

EXHIBIT 9

MILESTONE SCHEDULE

| Milestone | Deadline |
|--|---|
| Commencement of Construction Work of any of the IH 635 Section, IH 35E Section or IH 635/IH 35E Interchange | 60 days after the date TxDOT issues NTP2 <u>or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 635 Section, the date that TxDOT obtains the environmental reevaluation (if later)</u> |
| <u>Commencement of Construction Work of the IH 35E Section</u> | <u>60 days after the date TxDOT issues NTP2 or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 35E Section, the date that TxDOT obtains the environmental reevaluation (if later)</u> |
| <u>Commencement of Construction Work of the IH 635/IH 35E Interchange</u> | <u>60 days after the date TxDOT issues NTP2 or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 635/IH 35E Interchange, the date that TxDOT obtains the environmental reevaluation (if later)</u> |
| Service Commencement Deadline | <u>5 years after the date TxDOT issues NTP2 or, if Developer's Proposal includes any alternative technical concepts approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation of a Section that materially affects the critical path shown on the Project Baseline Schedule, 5 years after the date that TxDOT obtains all</u> |

| | |
|--|--|
| | <u>such environmental reevaluations (if later)</u> |
|--|--|

1.8 Changes to Exhibit 23:

E. Compensation Upon Termination by Court Ruling, Due to Certain Delayed Notices to Proceed ~~or~~ Due to Lack of NEPA Finality or Due to Failure to Obtain Environmental Reevaluation

1. Subject to Sections E.4 and E.5 below, in the event of Termination by Court Ruling ~~or~~ termination due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement or TxDOT's election to terminate for failure to obtain an environmental reevaluation required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 under Section 19.14 of the Agreement, the Termination Compensation shall be an amount equal to the following:

G. Timing of Payment

5. For Termination by Court Ruling, Certain Delayed Notices to Proceed ~~or~~ Lack of NEPA Finality or Failure to Obtain Environmental Reevaluation

(a) In the event of Termination by Court Ruling, termination shall be valid and effective on the entry of final judgment. If the Agreement and Lease are terminated due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement and the measure of the Termination Compensation is under Section E above, ~~or~~ due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement or due to TxDOT's election after its failure to obtain an environmental reevaluation as provided in Section 19.14 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. TxDOT shall deliver to Developer, within 60 days after the later of (i) the Early Termination Date or (ii) the date TxDOT receives from the Collateral Agent a written statement of the Initial Senior Debt Termination Amount, increases in the Initial Senior Debt Termination Amount due to each Refinancing described in Section E.1(a) above, and the Senior Debt Termination Amount and from Developer written documentation and other evidence of the amounts of the Subordinate Debt, Contributed Unreturned Equity, and all Borrowed Cash and Credit Balances, together with Developer's written certification that the amounts shown are true, correct and complete, immediately available funds equal to the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement. TxDOT shall deposit such holdback amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.5(b) below. If TxDOT does not pay such amount of Termination Compensation by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

- 2. Changes to the ITP
- 2.1 Changes to Section 1.6.1:

1.6.1 Procurement Schedule

The following represents the current schedule for the procurement.

| <u>EVENT</u> | <u>DATE and TIME</u> |
|--|--|
| <u>Last date for Proposer submittal of questions regarding Addendum 5, as described in Section 2.3.1</u> | <u>May 9, 2008</u> |
| Last date for TxDOT responses to questions regarding the RFP (if necessary), as described in <u>Section 2.3.1</u> | April 14 <u>May 30</u> , 2008 |
| Last date for submittal of ATCs and AFCs, as described in <u>Section 3.2</u> and <u>Section 3.6</u> | 12:00 p.m. April 14 <u>May 23</u> , 2008 |
| Last date for TxDOT responses to ATCs and AFCs, as described in <u>Section 3.2</u> and <u>Section 3.6</u> | April 28 <u>June 3</u> , 2008 |
| Last date for submittal of name and information for Model Auditor, as described in <u>Section 5.11.3</u> (Optional) | 12:00 p.m. May 23 <u>June 20</u> , 2008 |
| Last date for TxDOT response to Proposer Model Auditor, as described in <u>Section 5.11.3</u> (if applicable) | May <u>June</u> 30, 2008 |
| Last date for submittal of draft tolling plan, as described in <u>Section 3.5</u> | 12:00 p.m. May 30 <u>June 23</u> , 2008 |
| Last date for submittal of Benchmark Rate(s) and proposed information source, changes in organization and submittal of Key Personnel, as described in <u>Section 5.11.4</u> , <u>Section 2.11 Exhibit B</u> , and <u>Section 3.2.5.1</u> | 12:00 p.m. June 27 , 2008 |
| Last date for TxDOT responses to draft tolling plan, organizational changes and changes to Key Personnel, as described in <u>Section 3.5</u> , <u>Section 2.11</u> , and <u>Exhibit B, Section 3.2.5.1</u> (respectively) | June 9 <u>July 3</u> , 2008 |
| Last date for submittal of name and information for Escrow Agent, as described in <u>Section 4.4.4</u> | 12:00 p.m. June 9 <u>July 7</u> , 2008 |
| Last date for TxDOT to independently verify and approve Benchmark Rate(s), as described in <u>Section 5.11.4</u> | June 9 <u>July 7</u> , 2008 |
| Proposal Due Date | 12:00 p.m. June 23 <u>July 21</u> , 2008 |
| Conditional award (anticipated) | July 31 <u>August 28</u> , 2008 |
| CDA executed and delivered (anticipated) | September 30 <u>October 31</u> , 2008 |

| <u>EVENT</u> | <u>DATE and TIME</u> |
|-------------------------------|---|
| Financial close (anticipated) | September 30 <u>October 31</u> , 2008 (subject to extension under <u>Section 5.11.6</u>) |

2.2 Changes to Section 3.1:

3.1 Alternative Technical Concepts

Sections 3.1 through 3.4 set forth a process for pre-Proposal review of ATCs conflicting with the requirements for design, construction, operation and maintenance of the facilities, or otherwise requiring a modification of the Technical Provisions. ATCs also include those concepts that do not require a modification of the Technical Provisions, but that, if implemented, would require further environmental evaluation of the Project or a material portion of the Project. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing TxDOT to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued CDA Documents, or those concepts requiring further environmental evaluation, that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation or concept, as determined by TxDOT in its sole discretion. A concept is not an ATC if, in TxDOT's sole judgment, it merely results in reduced quantities, performance or reliability. A concept is not eligible for consideration as an ATC if it is premised upon or would require (a) the addition of a separate TxDOT project to the CDA (such as expansion of the scope of the Project to include additional roadways), (b) a change in the aesthetic or landscaping provisions set forth in Book 2, or (c) an increase in the amount of time required for Service Commencement. ~~ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed, provided that Developer will bear the schedule and cost risk associated with such additional environmental evaluation. If Developer is not able to obtain the approvals necessary to implement the ATC, Developer will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time.~~

2.3 Changes to Section 5.11.4

5.11.4 Market Interest Rate Adjustment

TxDOT will bear the risk and have the benefit of changes in market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on ~~June 16~~July 14, 2008 and ending on the date of financial close, except as otherwise set forth in the CDA.

The interest rate adjustment will be based on the movement, if any, in the benchmark bond(s) or SWAP rates underlying the financing contained in Developer's Financing Plan and Financial Model (the "Benchmark Rate(s)"). The Benchmark Rate(s) must be independently verifiable by TxDOT using Bloomberg U.S. based screens. The Benchmark Rate(s)' relative weightings and information source must be submitted to TxDOT for approval by June ~~230~~230, 2008 and must be approved by TxDOT not later than 10:00 a.m. on ~~June 9~~July 7, 2008.