REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN
THE
NORTH TARRANT EXPRESS

THROUGH COMPREHENSIVE DEVELOPMENT AGREEMENTS

VOLUME I
INSTRUCTIONS TO PROPOSERS

A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION
RFP ISSUED MARCH 3, 2008

ADDENDUM #1 ISSUED MAY 5, 2008

ADDENDUM #2 ISSUED JUNE 4, 2008

ADDENDUM #3 ISSUED JULY 11, 2008

ADDENDUM #4 ISSUED AUGUST 1, 2008

ADDENDUM #5 ISSUED SEPTEMBER 12, 2008

ADDENDUM #6 ISSUED OCTOBER 6, 2008

ADDENDUM #7 ISSUED OCTOBER 30, 2008

ADDENDUM #8 ISSUED NOVEMBER 10, 2008

ADDENDUM #9 ISSUED NOVEMBER 14, 2008

ADDENDUM #10 ISSUED NOVEMBER 17, 2008

ADDENDUM #11 ISSUED NOVEMBER 21, 2008

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

KEY DATES

EVENT	**DATE**
Issue Final Request for Proposals	March 3, 2008
Last date for Proposers to submit comments to the Final Request for Proposals (as amended)	12:00 p.m. October 15, 2008
Proposal Due Date	12:00 p.m. December 1, 2008
CDAs Conditionally Awarded (anticipated)	January 29, 2008

TABLE OF CONTENTS

EXHIBITS

FORMS

INSTRUCTIONS TO PROPOSERS

(Request for Proposals: North Tarrant Express Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This document comprises the Instructions to Proposers ("ITP"), Volume I of the Request for Proposals ("RFP") dated March 3, 2008, issued by the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas ("State"). This RFP solicits competitive detailed proposals (individually, a "Proposal" and collectively, "Proposals") for a public-private partnership to be evidenced by two Comprehensive Development Agreements (collectively referred to as the "CDAs") for the North Tarrant Express Segments 1, 2, 3A, 3B, 3C and 4 (the "Project") as further described below. The successful Proposer will be awarded a concession CDA (the "Concession CDA") for those portions of the North Tarrant Express Project that the Proposer includes in its Proposal (the "Concession Facility"). The successful Proposer will also be awarded a CDA (the "CDA for Segments 2-4") for pre-development work relating to the remaining Segments of the Project (or subsegments thereof not included in the Concession CDA). The CDAs define work to be performed by the entity or entities identified in the successful Proposal (referred to as "Developer" herein) to: (1) develop, design, construct, finance, operate and maintain managed lanes, additional general purpose lanes and associated facilities along the Concession Facility; and (2) participate as a strategic partner with TxDOT in advancing the remaining Segments of the Project (the "Segment 2-4 Facilities") as more particularly described in the CDA for Segments 2-4. The forms of the CDAs are included in Volumes II and III of the RFP.

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Exhibit 1 to the Concession CDA and Exhibit A to the CDA for Segments 2-4 for the meaning of capitalized terms and acronyms used but not defined herein or in said Exhibit A.

TxDOT is issuing this RFP to those Proposers shortlisted based on TxDOT's evaluation of Qualification Submittals ("QSs") delivered to TxDOT on March 15, 2007, in response to the Request for Qualifications for the Project issued on December 8, 2006 (the "RFQ").

Proposers must comply with this ITP during the procurement and in their responses to the RFP. Proposers shall also take the Project goals identified in Section 1.2 below into consideration in drafting their Proposals.

This RFP permits a Proposer to identify an entity other than the Proposer to act as Developer for the Concession CDA, and an entity other than the Proposer (and other than Developer for the Concession CDA) to act as Developer for the CDA for Segments 2-4, thus allowing unsuccessful Proposers to avoid unnecessary costs associated with

formation of such entity or entities. However, if any entity identified as a Developer in the successful Proposal is not formed as contemplated herein, or fails to comply with the requirements set forth herein, the entity(ies) that signed the Proposal shall have the obligation either to enter into the applicable CDA itself or to provide a substitute Developer acceptable to TxDOT in its sole discretion.

All forms named in this ITP are found in Exhibit K unless otherwise noted. All times in this ITP are CST or CDT, as applicable.

1.2 TxDOT Goals

TxDOT's goals for the Project are as follows:

(a) Use of public-private partnerships where acceptance of an offer from the private sector is in the public interest;

(b) Obtaining cost-effective financing and leveraging available state funds and toll revenue to maximize funding for this Project;

(c) Harnessing private sector creativity and innovation to achieve maximum mobility improvements on facilities;

(d) Expedited delivery of Project improvements;

(e) High quality design and construction;

(f) Safe construction, operation and maintenance;

(g) High quality operation and maintenance meeting or exceeding TxDOT technical requirements (including interoperability requirements), applying the same standards to the managed lanes, general purpose lanes and any frontage roads developed under the CDAs and allowing handback to TxDOT upon termination of the CDAs;

(h) Maintaining mobility through the Project area during construction and renewal activities;

(i) Participation by DBEs, women-owned business enterprises and minority business enterprises, consistent with the CDA Documents and applicable Laws and regulations;

(j) Cooperation and coordination with Stakeholders; and

(k) Reducing congestion, thereby contributing towards the improvement of air quality in the region.

1.3 General Project Description, Scope of Developer's Obligations and Availability of Public Funds

1.3.1 General Project Description

The Project is being undertaken to provide the needed capacity to accommodate future growth, upgrade the existing facilities to current standards and provide alternative transportation modes by proposing managed/toll lane systems along the corridors. The Project includes proposed improvements for the interchanges along the corridors of IH 820, IH 35W, and SH 183 in Tarrant County, Texas, as well as along the six segments described below.

1.3.1.1 Description of Segments

A description of the ultimate configuration of the six Segments, totaling approximately 36 miles of IH 820, SH 183 and IH 35W in Tarrant County, Texas, as depicted in environmental approval documents, is as follows:

A. Segment 1 consists of IH820 from approximately 3300' west of the interchange with Mark IV Parkway to the IH820 interchange with SH121/SH183 (approximately 6.4 miles) and consists of IH35W from approximately 3800' north of the interchange with IH820 to approximately 5600' south of the interchange with IH820 (approximately 1.8 miles). Along IH820, Developer will be responsible for providing a facility meeting the functional characteristics of the geometric configuration shown in the roadway schematics (refer to Reference Information Documents).

   The work includes the reconstruction of the interchanges along IH820 at Mark IV Parkway, IH35W, North Beach Street, Haltom Road, US377 (Denton Road), Iron Horse Blvd., and Holiday Lane. Developer's final design will determine whether the interchange at Rufe Snow Drive requires reconstruction.

   Developer will also be responsible for the reconstruction of the -railroad grade-separated crossings and railroad work associated with the highway improvements. Crossings within Segment 1 include Dallas Area Rapid Transit ("DART") and the Union Pacific Railroad ("UPRR").

B. Segment 2 consists of SH183 from the interface with Segment 1 in the vicinity of the interchange with IH820 east to the interchange with SH161 (approximately 11.3 miles);

C. Segment 3A consists of IH35W from the interface with Segment 1 south of the IH820 interchange south to the IH30 interchange (approximately 6.5 miles);

D. Segment 3B consists of IH35W from the interface with Segment 1 north of the IH820 interchange north to the interchange with US81/287 (approximately 3.3 miles);

E. Segment 3C consists of IH35W from the interface with Segment 3B at the US81/287 interchange north to the SH170 interchange (approximately 5 miles); and

F. Segment 4 consists of IH820 from the interchange with SH121N/SH183 south to the Randol Mill Road interchange north of the IH820/IH30 interchange (approximately 3.7 miles).

1.3.1.2 Environmental Status

TxDOT is currently pursuing separate environmental approvals for Segments 1, 2, 3A, and 3B-3C. TxDOT currently anticipates obtaining a Finding of No Significant Impact (FONSI) for Segment 1 in October 2008, for Segment 2 in January 2009, and for Segments 3A and 3B-3C in the fall of 2009.

For Segment 4, a FONSI was issued by the Federal Highway Administration on March 18, 2004, which was based upon the previous design concept of a reversible high occupancy vehicle (HOV) facility. TxDOT has not begun assessing or reviewing the environmental impacts as a result of the proposed managed lanes rather than the reversible HOV.

The proposed roadway improvements, including the managed lanes, have been incorporated within the next Metropolitan Transportation Plan developed for the Dallas-Fort Worth region (***"Mobility 2030"***). The Plan received final federal approval in Summer 2007.

1.3.2 Scope of Developer's Obligations

1.3.2.1 Concession CDA

Developer's obligations under the Concession CDA will generally include the design, permitting, and construction and/or reconstruction of general purpose mainlanes, (tolled) managed lanes, frontage roads and crossing streets, utility adjustments, and tolling operations, and the operation and maintenance of the Concession Facility for the term of the Concession CDA.

Developer will be responsible for the design and construction (and all costs associated therewith in accordance with the Concession CDA Documents) of utility and railroad improvements affected by the highway improvements. In addition to construction costs, Developer will be responsible for acquiring right of way and for utility adjustments.

The limit of work for the Concession CDA will be determined based on the scope of work set forth in the Developer's Proposal. The Developer's Proposal shall include both a Base Scope Proposal (described in Section 1.3.2.1.1) and an Ultimate Scope Proposal (described in Section 1.3.2.1.2).

1.3.2.1.1. Base Scope Proposal

The Base Scope Proposal, which is subject to the Maximum Available Funds limitations must include, at a minimum, the Mandatory Proposal Scope described below. Proposers may extend the limits of and/or accelerate the delivery of elements of the Facility in their Base Scope Proposals by including one or more optional scope changes, as more particularly described below as Options 1 through 9, to the extent that the additional and/or accelerated work can be performed within the Maximum Available Funds limitation.

	Limit of Work Description
Mandatory Proposal Scope	Design and construction of the Mandatory Proposal Scope, which is an interim configuration for IH820 in Segment 1 between the interchange with IH35W and the Northeast Interchange with SH183 based on the ultimate configuration as shown in the Environmental Approval for Segment 1, with deferral of the development of the third general purpose lane in each direction until 2030. The interim configuration limit of work for the two managed toll lanes, two general purpose lanes and frontage roads are as defined by the following and as depicted in Exhibit N. The western limit of proposed interim configuration highway improvements along IH820 shall, at a minimum, be: 1. Sta. 364+00 for the westbound frontage road, 2. Sta. 700+32 for the westbound general purpose lanes, 3. Sta. 715+00 for the westbound managed toll lanes, 4. Sta. 382+75 for the eastbound frontage road, 5. Sta. 683+50 for the eastbound general purpose lanes, and 6. Sta. 715+00 for the eastbound managed toll lanes, with an interim transition beyond those limits. The eastern limit of interim configuration improvements shall, at a minimum, be:

	1. the interim configuration's eastern limit for the westbound frontage road to be the Ultimate Configuration as shown on the roadway schematic associated with the Environmental Assessment, 2. the interim configuration's eastern limit for the westbound general purpose lanes to be the Ultimate Configuration as shown on the roadway schematic associated with the Environmental Assessment, 3. Sta. 946+00 for the westbound managed toll lanes with the interim transition access from the general purpose lanes to the managed toll lanes occurring at or west of Sta. 945+00, 4. the interim configuration's eastern limit for the eastbound frontage road to be the Ultimate Configuration as shown on the roadway schematic associated with the Environmental Assessment, 5. the interim configuration's eastern limit for the eastbound general purpose lanes to be the Ultimate Configuration as shown on the roadway schematic associated with the Environmental Assessment, and 6. Sta. 946+00 for the eastbound managed toll lanes, with an interim transition merge from the managed toll lanes to general purpose lanes occurring west of Sta. 945+00. The Mandatory Proposal Scope does not include (1) the interchange with IH35W, or (2) the direct connector ramps at the Northeast Interchange connecting the IH820NB managed toll lanes to SH183EB and connecting SH183WB manages toll lanes to IH820SB. The Mandatory Proposal Scope includes development of the third general purpose lane along IH820 by 2030 (or earlier as provided in Exhibit 16 of the Concession CDA). The interim transitions to connect to existing facilities will depend on whether a Proposer includes Options (as further described below) in its Base Scope Proposal. Refer to Exhibit N-01a and N-01b for a graphic depiction of the limits of work and typical section, which is provided for reference only.

Option 1	**General Purpose Capacity Improvement** Additional Work to develop the third general purpose lane in each direction for opening of the lanes by the Service Commencement Deadline for the Facility. This option requires the development of the third general purpose lane during the initial DB phase for concurrent use with the roadways developed in the Mandatory Proposal Scope. Refer to Exhibit N-02a and N-02b for a graphic depiction of the limits of work and typical section, which is provided for reference only.
Option 2	**IH35W Managed Toll Lane Direct Connectors** Additional Work to develop the direct connectors at the IH35/IH820 interchange connecting the IH35W-NB to IH820EB managed toll lanes and connecting the IH35W-SB to IH820EB managed toll lanes, including associated general purpose and frontage road improvements. The northern limits of the IH35W Interchange work are as follows: 1. Sta. 590+00 for IH35W southbound mainlanes (extending to Sta. 598+00) and 2. Sta. 590+00 for managed toll lane direct connector southbound extending to the connection to the Mandatory Proposal Scope. The southern limits of the IH35W Interchange are as follows: 1. Sta. 334+00 for IH35W frontage road, 2. Sta. 666+00 for IH35W northbound managed toll lanes direct connector extending to the connection to the Mandatory Proposal Scope, and 3. Sta. 653+00 for the IH35W northbound general purpose lanes (extending to ramp Sta. 20+00). Interim transitions are to be as required to tie the proposed alignment improvements to existing facilities. Refer to Exhibit N-03a and N-03b for a graphic depiction of the limits of work and typical section, which is provided for reference only.

Option 3	**Interchange Capacity Improvements** Additional Work west of the Mandatory Proposal Scope, necessary to develop the Ultimate Configuration improvements for IH820, IH35W and the IH35W/IH820 interchange. The north, south, and west limits of work for the Interchange will be as shown on the Environmental Approval for Segment 1. The east limit of work is that required to meet the Mandatory Proposal Scope. The Work will not include the Managed Toll Lane Direct Connectors described in Option 2. Refer to Exhibit N-04a and N-04b for a graphic depiction of the limits of work and typical section, which is provided for reference only.
Option 4	**Subsegment A** Additional Work in Segment 1 and Segment 2 to develop an interim configuration for the IH820 and SH183 highway improvements from the interface with Segment 1 to Sta. 1090+50 at Hurstview Road. Option 4 includes (in the initial construction) three general purpose lanes, two through managed toll lanes and frontage roads in each direction along SH183. Option 4 also includes development of a third managed toll lane in each direction by 2030 (or earlier in accordance with Exhibit 16 of the Concession CDA). The Work will also include the interim transition to merge the two managed toll lanes and the three general purpose lanes into the existing mainlanes, and transition the two frontage road lanes to the existing facilities east of Hurstview Road. The direct connector ramps at the Northeast Interchange connecting IH820NB managed toll lanes to SH183EB and connecting SH183WB managed toll lanes to IH820SB will be required, for which an interim alignment will be required to connect the southern termini of the ramps into the existing roadway alignment until such time Segment 4 is improved. Refer to Exhibit N-05a and N-05b for a graphic depiction of the limits of work and typical section, which is provided for reference only.

Option 5 (Includes Option 4)	**Subsegment B** Additional Work in Segment 1 and Segment 2 to develop an interim configuration for the IH820 and SH183 highway improvements from the interface with Segment 1 to Sta. 1122+16 at Norwood Drive. Option 5 includes (in the initial construction) three general purpose lanes, two through managed toll lanes and frontage roads in each direction along SH183. The Work will also include the interim transition to merge the two managed toll lanes and the three general purpose lanes into the existing mainlanes, and transition the two frontage road lanes to the existing facilities east of Norwood Drive. Option 5 also includes development of a third managed toll lane in each direction by 2030 (or earlier in accordance with Exhibit 16 of the Concession CDA). The direct connector ramps at the Northeast Interchange connecting IH820NB managed toll lanes to SH183EB and connecting SH183WB managed toll lanes to IH820SB will be required, for which an interim alignment will be required to connect the southern termini of the ramps into the existing roadway alignment until such time Segment 4 is improved. Refer to Exhibit N-06a and N-06b for a graphic depiction of the limits of work and typical section, which is provided for reference only.
Option 6 (Includes Option 5)	**Subsegment C** Additional Work in Segment 1 and Segment 2 to develop an interim configuration for the IH820 and SH183 highway improvements from the interface with Segment 1 to the SH183/SH121 split. Option 6 includes (in the initial construction) three general purpose lanes, two through managed toll lanes and frontage roads in each direction along SH183. Option 5 also includes development of a third managed toll lane in each direction by 2030 (or earlier in accordance with Exhibit 16 of the Concession CDA). The east limit of work is noted as follows: 1. Sta. 1296+00 for the eastbound and westbound managed lanes and general purpose lanes, 2. Sta. 6327+50 for the westbound frontage road, and

	3. Sta. 5330+00 for the eastbound frontage road, The Work will also include the interim transition to merge the two managed toll lanes and the three general purpose lanes into the existing mainlanes, and transition the two frontage road lanes to the existing facilities east of Norwood Drive. The direct connector ramps at the Northeast interchange connecting IH820NB managed toll lanes to SH183EB and connecting SH183WB managed toll lanes to IH820SB will be required, for which an interim alignment will be required to connect the southern termini of the ramps into the existing roadway alignment until such time Segment 4 is improved. Refer to Exhibit N-07a and N-07b for a graphic depiction of the limits of work and typical section, which is provided for reference only.
Option 7	**Managed Lane Capacity Improvement - Subsegment A** Additional Work in Segment 1 and Segment 2 to supplement Option 4 to develop the IH820 and SH183 Ultimate Configuration improvements from the interface with Segment 1 to Sta. 1090+50 at Hurstview Road. Option 7 requires development of the third managed toll lane in each direction during the initial DB phase for concurrent use with the roadways developed in Option 4. The Work includes the interim transition to merge the third managed toll lane into the existing mainlanes east of Hurstview Road. Refer to Exhibit N-08a and N-08b for a graphic depiction of the limits of work and typical section, which is provided for reference only.
Option 8 (Includes Option 7)	**Managed Lane Capacity Improvement - Subsegment B** Additional Work in Segment 1 and Segment 2 to supplement Option 5 to develop the IH820 and SH183 Ultimate Configuration improvements from the interface with Segment 1 to Sta. 1122+16 at Norwood Drive. Option 8 requires development of the third managed toll lane in each direction during the initial DB phase for concurrent use with the roadways developed in Option 5.

	The Work includes the interim transition to merge the third managed toll lane into the existing mainlanes east of Norwood Drive. Refer to Exhibit N-09a and N-09b for a graphic depiction of the limits of work and typical section, which is provided for reference only.
Option 9 (Includes Option 8)	**Managed Lane Capacity Improvement - Subsegment C** Additional Work in Segment 1 and Segment 2 to supplement Option 6 to develop the IH820 and SH183 Ultimate Configuration improvements from the interface with Segment 1 to the eastern limit of work indicated in Option 6. Option 9 requires development of the third managed toll lane in each direction during the initial DB phase for concurrent use with the roadways developed in Option 6. The Work includes the interim transition to merge the third managed toll lane into the existing mainlanes Refer to Exhibit N-10a and N-10b for a graphic depiction of the limits of work and typical section, which is provided for reference only.

Work under the Concession CDA will proceed as authorized by notices to proceed ("NTP") issued by TxDOT under the Concession CDA. An initial notice to proceed ("NTP1") will authorize Developer to perform certain Work related to the Concession Facility Management Plan, and to engage in certain investigative and other activities. A second notice to proceed ("NTP2") will authorize Developer to proceed with the remaining development Work required during the initial construction for the Facility described in the Base Scope Proposal. NTP GP and NTP ML will authorize the Developer to accelerate delivery of the General Purpose Capacity Improvement and Managed Lane Capacity Improvement, respectively. An additional NTP (NTP IC) will authorize Developer to proceed with development Work for the remaining portions of the Facility. NTP ML will not be included in the Concession CDA if Option 4, 5 or 6 is not included in the Base Scope Proposal.

To the extent Options 1, 7, 8 and/or 9 are not included in the Base Scope Proposal, the Base Scope Financial Proposal shall include development of the third general purpose lane in Segment 1 and/or the third managed lane in Segment 2 as and when Capacity Improvements are triggered under Exhibit 16 of the Concession CDA. Specifically, to the extent they are not included in the Base Scope Proposal, the third general purpose lane in Segment 1 and the third managed lane in Segment 2 will be triggered for development:

- in the case of the general purpose lane in Segment 1, on the earlier of (i) 18 months prior to December 31, 2030 or (ii) the General Purpose Capacity Improvement Early Trigger Date; and

- in the case of the managed lane in Segment 2, and only if Option 4, 5 or 6 is included in the Base Scope Proposal, on the earlier of (i) 18 months prior to December 31, 2030 or (ii) the Managed Lane Capacity Improvement Early Trigger Date.

1.3.2.1.2. Ultimate Scope Proposal

The Developer's Ultimate Scope Proposal will include the Base Scope Proposal and, at a minimum, the improvements identified in the Environmental Approval for Segment 1 not included in the Base Scope Proposal. If Option 4, 5 or 6 is included in the Base Scope Proposal, the Developer's Ultimate Scope Proposal also shall include Option 7, 8 or 9, as applicable. See Section 1.2.1.1 of Book 2 for a general description of the limits of Work.

	Limit of Work Description
West Limit (IH820)	Design and construction shall consist of two managed toll lanes, three general purpose lanes, and frontage roads as shown in the Environmental Approval document for Segment 1 and defined by the following limits of work: 1. Sta. 607+43 for the westbound frontage road, 2. Sta. 603+67.45 for the westbound general purpose lanes, 3. Sta. 651+60 for the westbound managed toll lanes, 4. Sta. 603+67.45 for the eastbound frontage road, 5. Sta. 603+67.45 for the eastbound general purpose lanes, and 6. Sta. 647+31 for the eastbound managed toll lanes. Construction of transition shall occur before those limits shown above shall be included as part of the Ultimate Proposal Scope.
East Limit (SH183)	Design and construction shall consist of three managed toll lanes, three general purpose lanes, and frontage roads as shown in the Environmental Approval document for Segment 2 and defined by the following limits of work:

	<table><tr><th>Roadway</th><th>Subsegment A</th><th>Subsegment B</th><th>SubSegment C</th></tr><tr><td>WBFR:</td><td>1090+50</td><td>1122+16</td><td>6237+50</td></tr><tr><td>WBGP:</td><td>1090+50</td><td>1122+16</td><td>1296+00</td></tr><tr><td>WBML:</td><td>1090+50</td><td>1122+16</td><td>1296+00</td></tr><tr><td>EBFR:</td><td>1090+50</td><td>1122+16</td><td>5330+00</td></tr><tr><td>EBGP:</td><td>1090+50</td><td>1122+16</td><td>1296+00</td></tr><tr><td>EBML:</td><td>1090+50</td><td>1122+16</td><td>1296+00</td></tr></table> Construction of transition beyond those limits shown above shall be included as part of the Ultimate Scope Proposal.
North Limit (IH35W)	Design and construction shall consist of three managed toll lanes, three general purpose lanes, and frontage roads as shown in the Environmental Approval document for Segment 1 and defined by the following limits of work: 1. Sta. 581+00 for the westbound frontage road, 2. Sta. 581+00 for the westbound general purpose lanes, 3. Sta. 581+00 for the westbound managed toll lanes, 4. Sta. 581+00 for the eastbound frontage road, 5. Sta. 581+00 for the eastbound general purpose lanes, and 6. Sta. 581+00 for the eastbound managed toll lanes. Construction of transition shall occur before those limits shown above shall be included as part of the Ultimate Scope Proposal.
South Limit (IH35W)	Design and construction shall consist of three managed toll lanes, three general purpose lanes, and frontage roads as shown in the Environmental Approval document for Segment 1 and defined by the following limits of work:

	1. Sta. 672+50 for the westbound frontage road, 2. Sta. 672+50 for the westbound general purpose lanes, 3. Sta. 672+50 for the westbound managed toll lanes, 4. Sta. 672+50 for the eastbound frontage road, 5. Sta. 672+50 for the eastbound general purpose lanes, and 6. Sta. 672+50 for the eastbound managed toll lanes. Construction of transition shall occur before those limits shown above shall be included as part of the Ultimate Scope Proposal.

1.3.2.2 CDA for Segments 2-4

Developer's Initial Scope of Work under the CDA for Segments 2-4 will generally include preparation of a Project Schedule and Project Management Plan and collaborating with TxDOT to develop an implementation strategy for the Segment 2-4 Facilities, including the development of a Master Development Plan and a Master Financial Plan. Developer will also provide technical support services in connection with the environmental process for Segments 3 and 4 as described further in the CDA for Segments 2-4.

Developer will have a right of first negotiation with respect to the development, design, construction, financing, operation, and/or maintenance of any Segment 2-4 Facilities that will be developed through a concession agreement. However, the award of any such concession agreement(s) for the Segment 2-4 Facilities will be dependent upon a number of factors, including the successful conclusion of negotiations, as more particularly described in the CDA for Segments 2-4. Upon mutual agreement between TxDOT and Developer that a Facility (as defined in the CDA for Segments 2-4) is ready for development, Developer will prepare a Facility Implementation Plan for work to be performed through negotiation of a Facility Agreement and close of finance for the Facility. The scope of work under the future Facility Agreement is expected to be substantially similar to that required for the Concession CDA. Work under the CDA for Segments 2-4 will proceed as authorized by notices to proceed issued by TxDOT thereunder.

1.3.3 Availability of Public Funds

Up to $600 million of public funds (Maximum Available Funds) are available to pay for the Work under the Base Scope Proposal in accordance with the fund availability schedule set forth in Section 5.1 of Exhibit C. Proposers shall not exceed the Maximum

Available Funds in their Public Funds Request for the Base Scope Proposal on either a cumulative basis during the timeframes set forth in Exhibit C or in the aggregate. The Ultimate Scope Proposal is not subject to the Maximum Available Funds limitations.

1.4 Documents in the Request for Proposals

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

Volume I - the Instructions to Proposers (the "ITP") (including exhibits and forms),

Volume II - the Concession CDA Documents (Books 1-3),

Volume III - the CDA for Segments 2-4 Documents (Books 1 and 3), and

Volume IV - Reference Information Documents

Refer to Section 1.2 of each CDA for a list of the respective CDA Documents and their order of precedence for that CDA, and to Volume IV for the Reference Information Documents.

The Reference Information Documents are included in the RFP for the purpose of providing information to Proposers that is in TxDOT's possession. TxDOT has not determined whether the Reference Information Documents are accurate, complete or pertinent, or of any value to the Proposers. The Reference Information Documents will not form a part of the contract between TxDOT and Developer. Except as may be provided otherwise in the CDAs, TxDOT makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the Reference Information Documents, and, in addition, shall not be responsible for any conclusions drawn therefrom.

1.5 Procurement Schedule and Financial Close Deadline

1.5.1 Procurement Schedule

The following represents the current schedule for the procurement.

EVENT	**DATE and TIME**
Issue Final Request for Proposals	March 3, 2008
One-on-one meetings with Proposers (to discuss ATCs and AFCs as described below)	March 24-25, 2008
Last date for Proposer submittal of initial questions regarding the RFP	12:00 p.m. March 28, 2008
Last date for TxDOT responses to questions regarding the RFP	April 25, 2008

EVENT	**DATE and TIME**
One-on-one meetings with Proposers to discuss the Technical Provisions)	May 6-8, 2008
One-on-one meetings with Proposers to discuss financial matters, including TIFIA, PABs, bonds and insurance issues, and business terms	May 6-8, 2008
Deadline for submittal of questions regarding Addendum #1	June 4, 2008
One-on-one meetings with Proposers	June 11-13
Last date for submittal of questions regarding Addendum #2	June 18, 2008
One-on-one meetings with Proposers	July 9-11, 2008
Last date for submittal of questions regarding Addendum #3	12:00 p.m. July 21, 2008
Last date for submittal of questions regarding Addendum #4	4:00 p.m. August 8, 2008
One-on-one meetings	August 14-15, 2008
One-on-one meetings	August 28, 2008
Deadline for submittals of ATCs and AFCs	12:00 p.m. September 5, 2008
Last date for TxDOT responses to ATCs and AFCs	September 18, 2008
Last date for submittal of questions regarding Addendum #5	12:00 p.m. September 18, 2008
One-on-one meetings with Proposers	September 24, 2008
Last date for submittal of: (1) final questions regarding the RFP (2) changes in organization; (3) Key Personnel; (4) draft tolling plan; and (5) name of, and information concerning, Proposer's selected Escrow Agent	12:00 p.m. October 15, 2008
Last date for submittal of name and information for Model Auditor, as described in Section 5.12.3 (optional)	12:00 p.m. October 15, 2008
One-on-one meetings with Proposers	October 21-22, 2008
Last date for submittal of Benchmark Rate(s)' information	October 27, 2008

EVENT	**DATE and TIME**
Last date for TxDOT responses to: (1) final questions regarding the RFP (if necessary); (2) changes in organization; (3) Key Personnel; and (4) draft tolling plan.	October 29, 2008
Last date for TxDOT response to Proposer Model Auditor, as described in Section 5.12.3 (if applicable)	October 29, 2008
Last date for TxDOT response to Benchmark Rate(s) information source	November 3, 2008
First day of the market interest rate protection period	November 24, 2008
Proposal Due Date	12:00 p.m. December 1, 2008
Anticipated Conditional Award by Commission	January 29, 2008
CDAs Executed and Delivered (anticipated)	March 31, 2009
Financial Close (anticipated)	March 31, 2009 (subject to extension under Section 5.12.6)

All times set forth above and elsewhere in the RFP are for local Central time in Austin, Texas. All dates set forth above and elsewhere in this RFP are subject to change, in TxDOT's sole discretion, by written notice to Proposers.

1.5.2 Deadline for CDA Execution

On or before 61 days after the announcement by the Texas Transportation Commission ("Commission") of the best value Proposer and conditional award of the CDAs to such Proposer, such Proposer shall deliver to TxDOT executed copies of the CDAs and the documents required under Section 6.1.1.

For purposes of this ITP, the term "conditional award" shall mean the determination by the Commission to proceed with a conditional award of the CDAs to the apparent best value Proposer, as more particularly described in Section 5.11.

1.5.3 Financial Close Deadline

If conditional award of the CDAs is made, the successful Proposer shall be required to achieve Financial Close on or before 61 days after conditional award, unless the selected Proposer exercises its option to extend Financial Close pursuant to Section 5.12.6.

1.6 General Provisions Regarding Proposals

1.6.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to this RFP, including:

(a) a Technical Proposal, including a Concession Facility Development Plan for the Concession Work ("Concession Facility Development Plan");

(b) a Proposal for the Work under the CDA for Segments 2-4 ("Proposal for the CDA for Segments 2-4");

(c) a Financial Proposal; and

(d) properly completed Proposal forms.

Requirements for the Technical Proposal (including the Concession Facility Development Plan), the Financial Proposal and the Proposal for the CDA for Segments 2-4 are set forth in Exhibits B, B-1, C, and D, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified. The Proposal shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms in the format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions, may result in TxDOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.6.2 Inclusion of Proposal in CDA Documents

Portions of the successful Proposal will become part of the CDA Documents, as applicable and to the extent specified in the CDAs. All other information is for evaluation purposes only and will not become part of the CDA Documents.

1.6.3 Commitments in the Proposal

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Subject to ITP Exhibit C Section 3.2, tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.6.4 Ownership of Proposal and Applicability of Public Information Act

Subject to the exceptions specified herein and in the Texas Transportation Code (the "Code"), all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to

TxDOT during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the State of Texas upon delivery to TxDOT and will not be returned to the submitting parties.

Proposers should familiarize themselves with the provisions of the Public Information Act, Texas Government Code, Chapter 552 (the "Act") requiring disclosure of public information, and exceptions thereto (including the exceptions set forth in Section 223.204 of the Code). In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to this RFP. See also Section 2.6.

1.7 Federal Requirements and Funding

In order to preserve the ability of the parties to use federal funding for the Project, the procurement process and CDAs must comply with applicable federal Laws and regulations. TxDOT reserves the right to modify the RFP to address any concerns, conditions or requirements of the Federal Highway Administration ("FHWA"). Proposers shall be notified by Addendum of any such modifications.

1.7.1 DBE Requirements

TxDOT has determined that Disadvantaged Business Enterprises ("DBE") requirements apply to design and construction of the Concession Facility under the Concession CDA and to the Initial Scope of Work and Update Work for the CDA for Segments 2-4, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of TxDOT as service providers, vendors, contractors, subcontractors, advisors, and consultants. TxDOT has adopted the definition of DBEs set forth in 49 CFR § 26.5. The Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the CDA Documents and TxDOT's DBE Program document.

TxDOT's DBE requirements applicable to the CDAs, the DBE Special Provisions and TxDOT's DBE Program adopted pursuant to Title 49 CFR Part 26, are set forth and provided in the CDAs. The DBE participation goal for the Concession CDA is 12.12% of the professional services and construction portions of the Work performed under the Concession CDA. The DBE participation goal for the Initial Scope of Work and Update Work under the CDA for Segments 2-4 is 12.12% of the Initial Scope of Work.

As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit certifications concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

Following conditional award of the CDAs, the selected Proposer will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Concession CDA, including Proposer's exercise of good faith efforts. Requirements for the DBE Performance Plan

are set forth in the DBE Special Provisions, Exhibit 13 to the Concession CDA. The DBE Performance Plan will be subject to review, comment and approval by TxDOT prior to and as a condition of final award and execution of the Concession CDA.

The selected Proposer will also be required to provide DBE commitments in the form required by TxDOT as DBE subcontractors are identified, in accordance with the DBE Special Provisions, TxDOT's DBE Program, and for the Concession CDA, the approved DBE Performance Plan.

1.7.2 Federal Funding, TIFIA and Private Activity Bonds

TxDOT anticipates using federal funds for the Work to be performed by Developer under both CDAs. Based on the level of interest expressed by Proposers, TxDOT has applied for credit assistance under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program as well as an allocation from the United States Department of Transportation ("USDOT") of a portion of the $15 billion of private activity bonds ("PABs") for the Project as described below. TxDOT will provide reasonable cooperation upon request by the successful Proposer with respect to modification of the TIFIA term sheet and/or PABs allocation, provided that any such modification does not require a change in the terms of the CDA Documents or RFP.

Pursuant to Section 6.3.C(iv) of the Early Development Agreement dated June 9, 2006 between TxDOT and FHWA, as amended, the selected Proposer will be required to reimburse FHWA for certain TIFIA credit processing costs with respect to outside advisor fees in obtaining TIFIA credit assistance, negotiation of final terms and execution of the TIFIA credit agreement, within 30 days of Financial Close.

1.7.2.1 PABs Allocation

TxDOT has requested from USDOT the reservation of an allocation for the issuance of a principal amount of PABs in the amount of $58,091,000 based on a pro forma plan of finance to be developed by TxDOT based on its estimates of Project costs and available revenues. TxDOT, a related nonprofit entity or another qualified entity will serve as the issuer of the PABs ("PABs Issuer"). TxDOT will make this allocation available to the PABs Issuer to be used in connection with the issuance of the PABs to provide a portion of the financing for the Project. The form of the PABS Agreement among TxDOT, the Developer and the PABs Issuer will be provided in a subsequent Addendum. Proposers seeking to use PABs shall be solely responsible for obtaining ratings, bond counsel opinions, credit enhancement and an underwriting commitment or placement of the PABs, as well as satisfying any conditions placed on the use of the allocation by USDOT and complying with all applicable requirements of the PABs Agreement and requirements of State and federal tax laws. Proposers may directly contact USDOT prior to the Proposal Due Date to discuss the specifics of its finance plans, including cost and revenue projections. Such communications shall be subject to the terms set forth in Section 2.2.4.

The foregoing approach has been developed by TxDOT as an accommodation to the Proposers and in order to attempt to facilitate the use of PABs to Proposers. TxDOT

makes no representation as to nor guarantees the amount, if any, of private activity bonds that can be issued for the Project or the use of proceeds to finance the Project as a matter of federal tax law. Proposers should seek the advice of their own tax consultants. Should a Proposer elect to include PABs in its Financial Proposal, it does so at its own risk and cost, and TxDOT shall have no liability with respect thereto.

1.7.2.2 TIFIA Credit Assistance

TxDOT has applied for a conditional commitment for a subordinated loan under the TIFIA program in a principal amount of $58,596,000 based on a pro forma plan of finance developed by TxDOT. The pro forma plan is based on TxDOT's estimates of Project costs and available revenues to provide financing for the Project. TxDOT anticipates receiving the conditional commitment, as well as a form of credit agreement, within 60-90 days from the date of application. TxDOT will assign or otherwise convey to Developer the conditional commitment in order to make the TIFIA credit assistance available to Developer to provide a portion of the financing of the Project. Except as expressly set forth in the draft of the conditional commitment with regard to TxDOT's responsibilities with respect to the TIFIA credit assistance, Developer has the sole responsibility for satisfying any conditions to obtain the funds made available under the conditional commitment.

Upon the receipt by Proposers of the conditional TIFIA commitment (including the indicative term sheet and form of credit agreement), Proposers will be given the opportunity to directly contact FHWA and USDOT prior to the Proposal Due Date to discuss the specifics of their finance plans, including cost and revenue projections. Such communications shall be subject to the terms set forth in Section 2.2.4.

1.8 Toll Collection System

1.8.1 Raytheon Toll System CDA

TxDOT has entered into a comprehensive development agreement (the "Toll System CDA") with Raytheon Company ("Raytheon"). Under the Toll System CDA, Raytheon has responsibility to design, construct, install, and maintain open-road toll collection systems on projects designated by TxDOT pursuant to the terms thereof.

TxDOT has chosen not to negotiate a "Project Segment Supplement" with Raytheon under the Toll System CDA with respect to the Project and, accordingly, the Toll System CDA will not apply to this Project. Proposer may, in its discretion, negotiate with Raytheon and/or any other toll systems subcontractor with respect to providing tolling systems for the Project.

1.8.2 NTTA Tolling Services Agreement

Pursuant to Senate Bill 792, 80th Leg., R.S. (2007), §9.05 (codified in Section 366.038 of the Code), NTTA will act as the exclusive O&M Contractor for customer service and other toll collection and enforcement services for the Project (commencing as of the first Service Commencement Date) and, in accordance with law, will provide such services,

which will be described in detail in an agreement with NTTA set forth as Exhibit G (the "NTTA Tolling Services Agreement"). Delivery to TxDOT of executed copies of the NTTA Tolling Services Agreement is a condition to final award of the Concession CDA.

1.9 The Independent Engineer

As specified in Concession CDA Section 9.3.1, certain quality assurance services for the Concession Facility will be provided by an Independent Engineer under a joint contract among TxDOT, Developer and the Independent Engineer. A draft form of this contract is set forth as Exhibit H-1, subject to further negotiations among the parties following conditional award and prior to execution of the Concession CDA. TxDOT and Developer shall each be responsible for their respective 50% portion of the costs of the Independent Engineer. Proposers are required to include their portion of the cost of the Independent Engineer in their Financial Proposal and no adjustment shall be made thereto for any changes in actual costs arising during finalization of the scope of work and form of contract.

The Independent Engineer shall be a firm that has been pre-qualified by TxDOT for the performance of independent engineer services. Exhibit H-2 lists firms that have been pre-qualified as of the issuance date of the RFP in the current order of assignment. The pre-qualified firm listed first in Exhibit H-2 shall be assigned as the Independent Engineer for the Facility. TxDOT will enter into a three-party agreement with the assigned firm only after TxDOT ascertains that no potential conflicts of interest exist or TxDOT determines, in its sole discretion, that steps taken to mitigate potential conflicts are sufficient to allow the agreement to be awarded. If TxDOT determines there is a potential conflict of interest with the assigned Independent Engineer given the Developer's organization, then the next pre-qualified firm on the list from Exhibit H-2 will be assigned as the Independent Engineer. TxDOT shall bear no responsibility or liability to the Developer for the performance of the Independent Engineer.

A similar arrangement will apply for Segments 2-4 if and when they proceed to a concession.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

This RFP is issued pursuant to Chapter 223 of the Code, Senate Bill 792, 80th Leg., R.S. (2007), Title 43, Texas Administrative Code, Ch. 27, Subchapter A (the "Rules"), and other applicable provisions of Texas and federal Law.

TxDOT will award the CDAs (if at all) to the responsible Proposer offering a Proposal meeting the high standards set by TxDOT and which is determined by TxDOT, through evaluation based upon the criteria set forth in the Code, the Rules and this RFP, to provide the best value to TxDOT and to be in the best interest of the State of Texas.

TxDOT will accept Proposals for the Project only from those Proposers TxDOT has shortlisted for the procurement based on their responses to the RFQ.

TxDOT will not review or consider alternative proposals.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP will be issued to shortlisted Proposers in electronic format on the secure file transfer site for the Project (the "FTP site"). The FTP address will be provided separately to each shortlisted Proposer and each will be required to treat the address as confidential information and to check the site regularly for addenda to this RFP and for other procurement related information.

2.2.1 Authorized Representative

TxDOT has designated the following individual to be its authorized representative for this procurement (the "Authorized Representative"):

Mohammad Al Hweil, P.E.
Texas Department of Transportation
125 East 11th Street, Fifth Floor
Austin, Texas 78701
Phone: (512) 936-0980
Fax: (512) 936-0970
Email: mhweil@dot.state.tx.us

Proposers shall provide a copy of all correspondence with the Authorized Representative to:

Robert B. Stone, P.E.
Texas Department of Transportation
125 East 11th Street, Fifth Floor
Austin, Texas 78701
Phone: (512) 936-0974
Fax: (512) 936-0970
Email: rstone@dot.state.tx.us

From time to time during the procurement process or during the terms of the CDAs, TxDOT may designate another Authorized Representative or representatives to carry out some or all of TxDOT's obligations pertaining to the Project.

2.2.2 Identification of Proposer Representative

The Proposer's designated representative(s) shall initially be the person(s) identified in the QS. If a Proposer changes its designated representative(s) to receive documents, communications or notices in connection with this procurement subsequent to its submission of the QS, the Proposer shall provide TxDOT's Authorized Representative with the name and address of such new designated representative(s). Failure to identify a designated representative in writing may result in the Proposer failing to receive important communications from TxDOT. TxDOT is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ (December 8, 2006) until December 9, 2007, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on December 10, 2007, the date the RFP was issued for Industry Review and ending on the earliest of (i) the execution and delivery of the CDAs, (ii) rejection of all Proposals by TxDOT or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer or any of its team members may communicate with another Proposer or its team members with regard to this RFP or either team's Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any TxDOT sponsored informational meetings.

(b) Each Proposer shall designate one representative responsible for contacts with TxDOT, and shall correspond with TxDOT regarding this RFP only through TxDOT's Authorized Representative (except for communications with TxDOT's

ombudsman as provided in Section 2.3.2 below) and Proposer's designated representative.

(c) No Proposer or representative thereof shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Texas Transportation Commission or with any TxDOT staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative, the Assistant Executive Director for Innovative Project Development or the Director of the Texas Turnpike Authority Division, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or from participation in public meetings of the Commission or any public or Proposer workshop related to this RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of TxDOT.

(d) Except to the extent that NTTA participates in workshops or one-on-one meetings as set forth in Section 2.5.2 or as otherwise approved in writing by TxDOT, Proposers shall not communicate with NTTA regarding the Project. There will be no one-on-one meetings with NTTA between the Proposal Due Date and conditional award. The selected Proposer will have the opportunity to request one-on-one meetings with TxDOT and NTTA to discuss the provision of optional services by the NTTA; however, discussions regarding changes to the mandatory services are prohibited. Proposers shall not contact any of the other Stakeholders regarding the Project, except as specifically approved in advance by TxDOT in writing. Any Proposer that wishes to obtain information from NCTCOG should contact Dan Lamers and shall limit its communication with NCTCOG to the request for information.

(e) Proposers shall not communicate with the Texas Comptroller of Public Accounts.

(f) Any communications determined by TxDOT, in its sole discretion, to be improper may result in disqualification.

(g) Any official information regarding the Project will be in writing, on TxDOT letterhead, and signed by TxDOT's Authorized Representative or designee.

(h) TxDOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

(i) The Proposer shall note that no correspondence or information from TxDOT or anyone representing TxDOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(g).

2.2.4 Communications with FHWA Concerning TIFIA Credit Assistance and FHWA's Review of Financial Proposals

After TxDOT's receipt of the conditional commitment and term sheet regarding TIFIA credit assistance, Proposers may request to meet with and/or conduct telephone calls with FHWA and its outside advisors to discuss the terms of TIFIA credit assistance that Proposers are considering. TxDOT will have an opportunity to observe such discussions. Proposers also may request FHWA review of preliminary Financial Proposals that include TIFIA credit assistance. If FHWA undertakes such a review, FHWA will provide TxDOT with preliminary feedback on the results of the review. TxDOT will use such feedback to assess on a preliminary basis the likelihood that a Proposer will use TIFIA financing in its final Financial Proposal and be successful in obtaining TIFIA financing for the Project if selected.

In connection with any Financial Proposal review and/or meetings and/or calls between Proposer and FHWA, FHWA may request Proposers to submit to FHWA financial models, documents, reports, and other written information necessary to inform FHWA concerning the proposed terms of TIFIA credit assistance and other aspects of the preliminary Financial Proposals, including project cost information, operating expenses, sources and uses of funds, repayment schedules, coverage ratios, traffic and revenue studies, and lender commitments. Should a Proposer fail to submit any or all of the information requested, FHWA may, in its discretion, refuse to consult or limit its consultation with such Proposer or with TxDOT regarding such Proposer.

The confidentiality of any documents, reports, or other written information provided by Proposers to FHWA shall be determined in accordance with 49 C.F.R. Part 7.

Communications between Proposer and FHWA must comply with the following requirements:

(a) A Proposer will provide TxDOT with reasonable advance written notice of any meeting or call with FHWA. TxDOT, at its discretion, may observe any such meeting.

(b) Prior to the submission of any documents, reports, or other written information that a Proposer does not want to be made publicly available, such Proposer may request FHWA to conduct a review of the information.

(c) Following TxDOT's receipt of Proposals, Proposers shall have no further communication with the FHWA until TxDOT's selection of the successful Proposer.

2.2.5 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts ("ATCs"), Alternative Financial Concepts ("AFCs"), Proposal, and CDAs and all other matters pertaining to this Procurement are to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall

provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Response Process, Role of the Ombudsman, and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by TxDOT prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer fails to understand. Failure of the Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by TxDOT. Proposers shall submit, and TxDOT will respond to, requests for written clarification in accordance with this Section 2.3.1. To the extent responses are provided, they will not be considered part of the CDAs nor will they be relevant in interpreting the CDAs except as they may clarify provisions otherwise considered ambiguous.

TxDOT will only consider comments/questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the Authorized Representative or TxDOT's designated ombudsman, by hard copy, facsimile, or other electronic transmission in the prescribed format. Such comments/questions may be submitted at any time prior to the applicable date specified in Section 1.5.1 or such later date as may be specified in any Addendum and shall: (i) be sequentially numbered; (ii) identify the document (i.e., the Concession CDA, Technical Provisions, etc); (iii) identify the relevant section number and page number (i.e., Technical Provisions, Section 3.2.2, page 3-9) or, if it is a general question, indicate so; (iv) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information; and (v) indicate whether the question is a Category 1, 2, 3 or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a proposal. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a proposal. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

Proposers will be limited to 75 comments/questions per RFP version issued, including the draft RFP, final RFP and Addendum, if any. If a question has more than one subpart, each subpart will be considered a separate question. Corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP documents will be excluded from the 75-question limitation.

Except with respect to one-on-one meetings, no telephone or oral requests will be considered, and e-mail requests must be followed up by a facsimile or other hard copy delivery. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the North Tarrant Express Project. No requests for additional information or clarification to any Person other than TxDOT's Authorized Representative or, subject to compliance with Section 2.3.2, TxDOT's ombudsman will be considered. Questions may be submitted only by the Proposer's designated representative(s), and must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents.

Responses to questions will be in writing and will be delivered to all Proposers, except that TxDOT intends to respond individually to those questions identified by a Proposer or deemed by TxDOT as containing confidential or proprietary information relating to its Proposal, ATCs or AFCs. TxDOT reserves the right to disagree with the Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, TxDOT will inform Proposers and may provide the Proposer that submitted the question the opportunity to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if TxDOT determines that it is appropriate to provide a general response TxDOT will modify the question to remove information that TxDOT determines is confidential. TxDOT may rephrase questions as it deems appropriate and may consolidate similar questions. TxDOT contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.5.1. A consolidated, final set of questions and answers will be compiled and distributed prior to the Proposal Due Date.

TxDOT may convene pre-proposal meetings with Proposers as it deems necessary (***see*** Section 2.5), and Proposers must make themselves available to TxDOT for such pre-proposal meetings and to discuss any matters they submit to TxDOT under this Section 2.3.1. If TxDOT determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, TxDOT will prepare and issue an Addendum.

2.3.2 Ombudsman

TxDOT has designated an employee who is not involved in this procurement to act as an ombudsman for the purpose of receiving written communications submitted in accordance with this Section 2.3.2 on a confidential basis. Instead of submitting written communications to the Authorized Representative as provided in Section 2.3.1, a Proposer may submit such confidential communications, and any confidential comments or complaints regarding the procurement, to the ombudsman, where the Proposer believes in good faith that confidentiality is essential. A Proposer must submit such confidential communication in a separate document that does not include any information identifying the Proposer. After receiving such confidential communications, the ombudsman shall forward only the separate document containing the confidential communication to the Authorized Representative as identified in Section 2.3.1. If the ombudsman determines that the submitted material is not of a confidential nature, the

ombudsman may return the submission to Proposer and instruct the Proposer to submit the communication directly to TxDOT's Authorized Representative in accordance with Section 2.3.1. The following individual is the designated ombudsman:

Rebecca Blewett, Esq.
Associate General Counsel
Texas Department of Transportation
125 East 11th Street, Fifth Floor
Austin, Texas 78701
E-mail Address: rblewet@dot.state.tx.us

All other questions and requests for clarification should be submitted to the Authorized Representative in accordance with Section 2.3.1.

2.3.3 Addenda

TxDOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested as provided in Section 5.9, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP site, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts this RFP, as determined in TxDOT's sole discretion, TxDOT may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

The Proposer shall acknowledge in its Proposal Letter (***see*** Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. TxDOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications.

TxDOT does not anticipate issuing any Addenda later than five business days prior to the Proposal Due Date. However, if the need arises, TxDOT reserves the right to issue Addenda after such date. If TxDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as provided in Section 2.11 (regarding changes in a Proposer's organization), Section 5.12.3 (regarding the Financial Model Auditor), Section 5.12.4 (regarding Benchmark Rate(s), Section 4.4.4 (regarding Proposer's selected Escrow Agent), Section 3.5 (regarding the draft tolling plan), and Exhibit B, Section 3.2.5.1 and Section 3.2.5.2 (regarding Key Personnel). In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.2 or an AFC pursuant to Section 3.6 must make a Pre-Proposal Submittal as described therein.

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

TxDOT may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and TxDOT. TxDOT will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

If any informational meeting is held, each Proposer shall attend with appropriate members of its proposed key management personnel, and if required by TxDOT, senior representatives of proposed team members identified by TxDOT.

2.5.2 One-on-One Meetings

TxDOT intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.5.1 herein, and on such other dates designated by TxDOT in writing to the Proposers, to discuss issues and clarifications regarding the RFP and the Proposer's ATCs and/or AFCs. TxDOT reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that TxDOT determines, in its sole discretion, such disclosure would impair the confidentiality of an ATC or AFC, or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory. TxDOT may permit NTTA to participate in one-on-one meetings for the purposes of describing the terms of the NTTA Tolling Services Agreement. FHWA may also participate in all one-on-one meetings.

The one-on-one meetings are subject to the following rules:

- The meetings are intended to provide Proposers with a better understanding of the RFP.
- TxDOT will not discuss with any Proposer any Proposal, ATC or AFC other than its own.
- The Proposers shall not seek to obtain commitments from TxDOT or NTTA in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from the Proposer whether attending in person or by phone.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and TxDOT may provide responses. However, any responses provided by TxDOT during one-on-one meetings may not be relied upon unless questions were submitted in writing and TxDOT provided written responses in accordance with Section 2.3.1. The questions and TxDOT's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by TxDOT to contain confidential or proprietary information relating to a particular Proposer's Proposal, ATCs or AFCs.

2.5.4 Statements at Meetings

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.3.

2.6 Confidentiality/Public Information Act Disclosure Requests

2.6.1 Disclosure Waiver

Each Proposer, by submitting a Proposal to TxDOT in response to the RFP, consents to the disclosures described in this ITP, including this Section 2.6, Section 5.16 and all other disclosures required by law, and expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under Section 223.204 of the Code, the Rules, the Act or any other law relating to the confidentiality or disclosure of information. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such materials. Proposer hereby further agrees to assist TxDOT in complying with these disclosure requirements if it is the selected apparent best value Proposer.

2.6.2 Observers During Evaluation

Proposers are advised that observers from federal or other agencies, including representatives of local agencies and municipalities, may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. Outside observers will be required to sign TxDOT's standard confidentiality agreement.

2.6.3 Public Disclosure of Proposal Documents

Proposers are advised that the information contained in Form J (Conflict of Interest Disclosure Statement) and the Executive Summary of each Proposal may be publicly disclosed by TxDOT at any time and at TxDOT's sole discretion.

Proposers are advised that, upon recommendation to the Commission of the selection of an apparent best-value Proposer and in TxDOT's sole discretion, TxDOT may publicly release the selected apparent best-value Proposal's Form V (Financial Information Summary Form), or any information contained therein. If TxDOT is unable to reach agreement on the CDAs with the selected apparent best-value Proposer and TxDOT, in accordance with applicable law, chooses to enter into negotiations with the next highest ranking Proposer, then the Form V submitted by such Proposer, and any information contained therein, may be disclosed as described in the previous sentence for the selected apparent best-value Proposer.

After final award, or in the event that the procurement is cancelled by TxDOT, TxDOT shall have the right to publicly disclose any and all portions of all the Proposals, except the Escrowed Materials. The Escrowed Materials shall be subject to disclosure as described in Section 2.6.4.

2.6.4 Disclosure Process for Requests Under the Act

If a request is made under the Act for disclosure of the Proposals or information contained therein, other than information which may be otherwise disclosed pursuant to the Proposer's express consent given in accordance with Section 2.6.1, TxDOT will submit a request for an opinion from the Office of the Attorney General prior to disclosing any such documents. The Proposer shall then have the opportunity to assert its basis for non-disclosure of such documents and claimed exception under the Act or other applicable Law to the Office of the Attorney General within the time period specified in the notice issued by TxDOT and allowed under the Act. However, it is the responsibility of the Proposer to monitor such proceedings and make timely filings. TxDOT may, but is not obligated to, make filings of its own concerning possible disclosure; however, TxDOT is under no obligation to support the positions of the Proposer. By submitting a Proposal to TxDOT in response to the RFP, each Proposer consents to, and expressly waives any right to contest, the provision by TxDOT to the Office of the Attorney General of all, or representative samples of, the Proposal, including Escrowed Materials, in accordance with the Act and each Proposer consents to the release of all such information to the Attorney General for purposes of the Attorney General making a determination in response to a disclosure request under the Act. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such materials, whether the disclosure is deemed required by Law or by an order of court or the Office of the Attorney General, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

All Proposers should obtain and thoroughly familiarize themselves with the Act, Code and any Rules applicable to the issue of confidentiality and public information. TxDOT will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Code, the Act or other Texas Laws, as to the interpretation of such Laws, or as to the definition of trade secret. The Proposer shall be solely responsible for all determinations made by it under applicable Laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, including Escrowed Materials submitted by the Proposer, the Proposer shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal is the subject thereof.

2.7 TxDOT Studies and Investigations

TxDOT has completed substantial Site investigations and traffic and revenue studies. To the extent TxDOT undertakes any additional investigative activities, the information obtained by TxDOT from such activities may be made available to Proposers in the Reference Information Documents. All information provided by TxDOT will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, TxDOT makes no representation or warranty as to the accuracy, completeness or suitability of the additional information.

2.8 Examination of RFP and Access to Site

2.8.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents and any Addenda, and material posted on the FTP site for the Project, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of each Developer's obligations under the CDAs with TxDOT. Each Proposer also is responsible for monitoring the FTP site for information concerning this RFP and the procurement. The Proposal Letter (Form A) includes an acknowledgment that the Proposer has received and reviewed all materials posted thereon. Failure of the Proposer to so examine and inform itself shall be at its sole risk, and TxDOT will provide no relief for any error or omission.

Each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, permanent and temporary Utility appurtenances, area population, traffic patterns and driver preferences, keeping in mind the provisions of the CDAs regarding assumption of liability by the Proposer. The Proposer's receipt of TxDOT-furnished information does not relieve the Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that the Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the CDA Documents.

2.8.2 Site Access

An expedited process for obtaining rights of entry to access portions of the Project is attached hereto as Exhibit F. Pursuant to the terms set forth in Exhibit F and subject to the Proposer obtaining any required administrative or governmental approvals, each Proposer will be permitted to conduct data mining studies and investigations for purposes of obtaining additional traffic and revenue information that the Proposer deems necessary; provided, however, that the Proposer shall not (a) interrupt or impede traffic flow; (b) stop traffic at cross-streets or intersections or otherwise to solicit information; and/or (c) request any vehicle/owner data or information from TxDOT prohibited by Law. Proposers will be allowed access, through the Proposal Due Date, to those portions of the Project under TxDOT ownership subject to the conditions specified in Exhibit F, for purposes of inspecting in-place assets and determining Site conditions through non-destructive investigations. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations.

After conditional award, the selected Proposer will be allowed access to the Project Right of Way TxDOT owns, in accordance with the process described in this Section 2.8.2, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to engage in the other activities referenced in the Technical Provisions that are allowed prior to NTP2.

2.9 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the procurement process in any of the documents supplied by TxDOT, the Proposer shall have a duty to notify TxDOT of the recommended correction in writing in accordance with Section 2.3.1.

2.10 Improper Conduct

2.10.1 Non-Collusion

Neither the Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form F).

2.10.2 Organizational Conflicts of Interest

The rules at 43 Texas Administrative Code §27.8 regarding organizational conflicts of interest apply to all CDA projects, including this Project. Proposers are advised that the rules may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest (as defined in the rules) is thereafter discovered, the Proposer must make an immediate and full written disclosure to TxDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an

organizational conflict of interest is determined to exist, TxDOT may, at its sole discretion, cancel the procurement, disqualify the Proposer with a conflict or take other action as necessary to mitigate the conflict. If the Proposer was aware of an organizational conflict of interest prior to the award of the CDAs and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the CDAs including termination of the CDAs for default.

2.10.3 Equitable Treatment of Proposers

Proposers are assured that, during the procurement process (including the process for evaluation of ATCs, AFCs and Proposals), TxDOT will not engage in conduct that treats any Proposer inequitably.

2.11 Changes in Proposer's Organization

Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by TxDOT, the Proposer's organization as identified in the QS must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Major Participants identified in its QS, including, without limitation, additions, deletions, reorganizations and/or role changes in or of any of the foregoing, the Proposer shall submit to TxDOT a written request for approval of the change from TxDOT as soon as possible but in no event later than the date and time set forth in Section 1.5.1. Any such request shall be addressed to the Authorized Representative set forth in Section 2.2.1 herein, accompanied by the information specified for such entities or individuals in the RFQ. If a request is made to allow deletion or role change of any Major Participant identified in its QS, the Proposer shall submit such information as may be required by TxDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each request package. TxDOT is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the CDAs, a Proposer may not make any changes in any Major Participants identified in its QS after the deadline set forth in Section 1.5.1 for submission of changes in Proposer's organization. Between the deadline set forth in Section 1.5.1 and execution of the CDAs, TxDOT will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

2.12 Sales Tax

Proposers should assume that the Concession Facility is exempt from sales tax for certain Expendable Materials as more particularly described in Article 24 of the Concession CDA. The selected Proposer will be required to submit a "Texas Sales and Use Tax Exemption Certification" to a seller for exempt items. The referenced form is available online to the public through the Comptroller's website.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPT, ALTERNATIVE FINANCIAL CONCEPT AND DRAFT TOLLING PLAN REVIEWS

3.1 Alternative Technical Concepts

Sections 3.1 through 3.4 set forth a process for early review of ATCs pertaining to the Concession CDA conflicting with the requirements for design, construction, and operation and maintenance of the Concession Facilities, or otherwise requiring a modification of the Technical Provisions. 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 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 Concession CDA Documents 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, 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) a change in the aesthetic or landscaping provisions set forth in Book 2, (b) an increase in the amount of time required for Substantial Completion of the Work under the Concession CDA, or (c) changes in financial terms. ATCs that, if implemented, would require further environmental evaluation of the Concession Facility 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 Concession Facility in accordance with existing approvals without additional cost or extension of time.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by TxDOT, TxDOT recommends that the Proposer submit such concept for review as an ATC.

3.2 Pre-Proposal Submission of ATCs

The Proposer may submit ATCs for review to TxDOT's Authorized Representative specified in Section 2.2.1, until the date and time identified in Section 1.5.1. All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "North Tarrant Express Project – Confidential ATCs." The Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If the Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by TxDOT. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

3.2.1 Pre-Proposal ATC submissions shall include:

(a) a sequential ATC number identifying the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);

(b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate;

(c) the locations where, and an explanation of how, the ATC will be used on the Concession Facility;

(d) any changes in operations requirements associated with the ATC, including ease of operations;

(e) any changes in maintenance requirements associated with the ATC, including ease of maintenance;

(f) any changes in Handback Requirements associated with the ATC;

(g) any changes in the anticipated life of the item(s) comprising the ATC;

(h) any reduction in the time period necessary to design and construct the Concession Facility resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

(i) references to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;

(j) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;

(k) a preliminary analysis of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle Concession Facility and infrastructure costs, including impacts on the cost of repair, maintenance and operation;

(l) a preliminary analysis of potential impacts on Concession Facility revenue;

(m) if and what additional right-of-way will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the acquisition of any such right-of-way, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any additional time or money as a result of Site conditions (i.e., Hazardous Materials, differing site conditions, geotechnical issues, Utilities, etc.) on such additional right-of-way; and (iii) not be entitled to any additional time or money as a result of any delay, inability or cost associated with the acquisition of such right of way);

(n) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements;

(o) a description of added risks to TxDOT or third parties associated with implementing the ATC;

(p) an estimate of any additional TxDOT, Developer and third party costs associated with implementation of the ATC;

(q) an estimate of any savings that would accrue to TxDOT should the ATC be approved and implemented;

(r) a description of how the ATC is equal or better in quality and performance than the requirements of the RFP; and

(s) a preliminary analysis of potential impacts on the Public Funds Request.

3.2.2 The Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify TxDOT in writing of its intent to take such action, including details as to date and participants, and obtain TxDOT's prior written consent, in its sole discretion, to do so.

3.2.3 If implementation of an ATC will require approval by a third party (e.g., a governmental authority), the Proposer will have full responsibility for, and bear the full risk of, obtaining any such approvals after award of the Concession CDA and submission of data; provided, however, that TxDOT shall retain its role as liaison with any governmental authorities as more particularly described in the Concession CDA and Technical Provisions. If any required third-party approval is not subsequently granted with the result that the Proposer must comply with the requirements of the original RFP, the Proposer will not be entitled to any additional time or money.

3.2.4 If TxDOT determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, TxDOT reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

3.3 TxDOT Review of Pre-Proposal Submission of ATCs

TxDOT may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the date set forth in Section 1.5.1, provided that TxDOT has received all requested information regarding such ATC.

TxDOT's responses will be limited to one of the following statements:

(a) the ATC is acceptable for inclusion in the Proposal;

(b) the ATC is not acceptable for inclusion in the Proposal;

(c) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in TxDOT's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made;

(d) the submittal does not qualify as an ATC but may be included in the Proposer's Proposal without an ATC (i.e., the concept complies with the RFP requirements); or

(e) the submittal does not qualify as an ATC and may not be included in the Proposer's Proposal.

TxDOT will make a preliminary determination on whether to accept and approve an ATC for submission. However, the Proposer will be responsible for ensuring that the final submittal complies with the RFP requirements.

Approval of an ATC will constitute a change in the specific requirements of the Concession CDA Documents associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to TxDOT's determinations regarding acceptability of ATCs.

TxDOT's rejection of a pre-Proposal submission of an ATC will not entitle the Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit TxDOT's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

TxDOT anticipates that its comments provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3.1.

3.4 Incorporation of ATCs in the Concession CDA

Following conditional award of the Concession CDA, the ATCs that were pre-approved by TxDOT and incorporated in the Proposal by the successful Proposer shall be included in the Concession CDA Documents. If TxDOT responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Concession CDA Documents. The Concession CDA Documents will be conformed after conditional award, but prior to execution of the CDAs, to reflect the ATCs, including any TxDOT conditions thereto. Notwithstanding anything to the contrary herein, if Developer does not comply with one or more TxDOT conditions of pre-approval for an ATC or Developer fails to obtain a required third party approval for an ATC, Developer will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Concession CDA.

Prior to execution of the CDAs, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer for possible incorporation in the Concession CDA during negotiation of the final terms of the Concession CDA pursuant to Section 5.12.1. In addition, following execution of the CDAs, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer as a TxDOT Change Order in accordance with the Concession CDA.

3.5 Draft Tolling Plan

Proposers shall submit a draft tolling plan in accordance with Exhibit B-1, Section 1.2.3.2 for TxDOT's review. Proposers must submit their draft tolling plan by the applicable last date and time set forth in Section 1.5.1.

TxDOT intends to respond in writing to submittals by the applicable last date set forth in Section 1.5.1. TxDOT's response will indicate whether the draft tolling plan, as presented, is generally responsive to the requirements of the RFP, including the Concession CDA, or whether the submittal is non-responsive. Where the draft tolling plan is found to be non-responsive, TxDOT will attempt to identify the general areas of the submittal that are non-responsive, and at TxDOT's discretion, TxDOT may request that the plan be resubmitted if it is deemed non-compliant by TxDOT.

3.6 Alternative Financial Concepts

This Section 3.6 sets forth a process for pre-Proposal review of Alternative Financial Concepts. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing TxDOT to consider Proposer AFCs in making the selection decision, to avoid delays and potential conflicts in the commercial terms associated with deferring of reviews of AFCs to the post-award period, and, ultimately, to obtain the best value for the public.

AFCs are defined as changes to the terms of the Concession CDA Documents, subject to the exclusions set forth in Section 3.6.1, that allow (a) financing structures ("Financial AFCs") or (b) structures for the Developer entity and/or Project management and operations ("Structure AFCs") that would otherwise be prohibited or impracticable due to the terms of the as-issued Concession CDA Documents.

TxDOT has sole discretion to allow or reject any AFC submitted. Proposers are advised that TxDOT will allow an AFC only if TxDOT determines that the terms and conditions of the Concession CDA Documents, as modified by the AFC, allow TxDOT substantially the same or better value for money, rights and remedies as the unmodified terms and conditions.

3.6.1 Exclusions to AFCs

A concept is not an AFC if, in TxDOT's sole judgment, it reduces TxDOT's value for money, or TxDOT's contractual rights or remedies, including any concepts that include the following:

(a) An increase in the Term;

(b) A change to the tolling provisions, including tolling systems, rates, managed lane pricing and speed requirements, user classifications, exempt vehicles and post-termination tolling provisions;

(c) An increase in TxDOT liability for Project Debt;

(d) Reduction in compensation to TxDOT, including the Revenue Payments and Refinancing Gain payments;

(e) Increase in the Public Funds Amount or an adverse change in the draw requirements from the terms set forth in Exhibit 7 to the Concession CDA;

(f) Increase in compensation to the Developer in the event of termination, including provisions relating to Compensation Amounts and Termination Compensation;

(g) A change in the conditions to, or procedures for certifying, Substantial Completion, Service Commencement and Final Acceptance;

(h) A change regarding allocation of responsibilities between TxDOT and Developer for performance of design, permitting, ROW acquisition, Utility Adjustments, construction, operations, maintenance, Renewal Work, Upgrades, Technology Enhancements, Safety Compliance or Handback Requirements;

(i) A change to the provisions addressing Compensation Events and Relief Events, or any other modifications that would allocate additional risk to TxDOT or reduce risks assumed by Developer;

(j) A change to the provisions on the role or scope of the Independent Engineer;

(k) A change to the provisions relating to Unplanned Revenue Impacting Facilities;

(l) A change to the provisions regarding Developer default, notice, cure periods, remedies and dispute resolution, except to the extent such change would result in more favorable terms to TxDOT;

(m) A change to the Lender rights and protections provided in the Concession CDA Documents, except insofar as an AFC not directed at such provisions incidentally would require amendment of such provisions in order for the AFC to work;

(n) A change to the provisions relating to Noncompliance Points and related remedies, except to the extent such change would result in more favorable terms to TxDOT;

(o) A change to the termination provisions, except to the extent such change would result in neutral or more favorable terms to TxDOT;

(p) A change to the provisions regarding lender direct agreements, except insofar as an AFC not directed at lender direct agreements would require entry into or amendment of a direct lender agreement in order for the AFC to work; or

(q) A change resulting in requirements for insurance, performance security, proposal security or indemnities that would be less favorable to TxDOT.

3.6.2 Pre-Proposal Submission of AFCs

Proposer may submit AFCs for review to the Authorized Representative set forth in Section 2.2.1, until the applicable last date and time identified in Section 1.5.1. All AFCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "North Tarrant Express Project – Confidential AFCs." Proposer shall clearly identify the submittal as a request for review of an AFC under this ITP. If Proposer does not clearly designate its submittal as an AFC, the submission will not be treated as an AFC by TxDOT.

Any AFC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an AFC by TxDOT, TxDOT recommends that Proposer submit such concept for review as an AFC.

Pre-Proposal AFC submissions shall include five copies of the following:

(a) a sequential AFC number identifying Proposer and the AFC number (multi-part or multi-option AFCs shall be submitted as separate individual AFCs with unique sequential numbers);

(b) a detailed narrative description of the AFC, including a designation of the AFC as either a Financial AFC or a Structure AFC;

(c) an explanation of the value of the AFC to TxDOT;

(d) an explanation and detailed description of each proposed change to the as-issued Concession CDA Documents, including a detailed mark-up of each provision in the as-issued Concession CDA Documents that will be changed as a result of the AFC;

(e) the analysis justifying use of the AFC, which may include an explanation of how the proposed changes to the Concession CDA Documents will provide TxDOT substantially the same (or better) rights and remedies as the unmodified terms and conditions; and

(f) an estimate of any savings that would accrue to TxDOT should the AFC be approved and implemented.

3.6.3 Modifications to the RFP

If TxDOT determines, as the result of review of a proposed AFC or otherwise, that the RFP contains an error, ambiguity or mistake, TxDOT reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed AFC. Furthermore, TxDOT may modify the RFP Documents to incorporate modifications proposed by an AFC, provided that TxDOT (a) will not advise the other Proposers that the modification is associated with an AFC, and (b) will not make any modification if TxDOT determines that such modification would compromise a Proposer's intellectual property.

3.6.4 TxDOT Review of Pre-Proposal Submission of AFCs

TxDOT may request additional information regarding proposed AFCs at any time and will, in each case, return responses to each Proposer regarding its AFC on or before the applicable last date set forth in Section 1.5.1, provided that TxDOT has received all requested information regarding such AFC.

TxDOT's responses will be limited to one of the following statements:

(a) the AFC, as submitted, is acceptable for inclusion in the Proposal;

(b) the submittal is not acceptable for inclusion in the Proposal;

(c) the AFC is not acceptable in its present form, but will be acceptable upon satisfaction, in TxDOT's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or

(d) the concept in the submittal is permitted under the RFP Documents.

Approval of an AFC will constitute a change in the specific requirements of the Concession CDA Documents associated with the approved AFC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit AFCs was offered to all Proposers, and waives any right to object to TxDOT's determinations regarding acceptability of AFCs.

TxDOT anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its AFCs. However, if a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

3.6.5 Incorporation of AFCs in the Concession CDA

Following conditional award of the Concession CDA, the AFCs that were pre-approved by TxDOT and incorporated in the Proposal by the successful Proposer shall be included in the Concession CDA Documents in the form pre-approved by TxDOT. If TxDOT responded to any AFC by stating that it would be acceptable if certain conditions, clarifications or modifications were met, those identified conditions, clarifications or modifications will become part of the Concession CDA Documents. The

Concession CDA Documents will be conformed after award, but prior to execution of the Concession CDA, to reflect the AFCs.

Following conditional award of the Concession CDA, AFCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer as a TxDOT Change Order in accordance with the Concession CDA.

3.7 Confidentiality of ATCs, AFCs and Draft Tolling Plans

Subject to the provisions of the Act and Section 223.204 of the Code, ATCs, AFCs, draft tolling plans and all communications regarding ATCs, AFCs and draft tolling plans will remain confidential until final award of the Concession CDA or cancellation of the procurement, provided that, upon conditional award, ATCs and AFCs will be subject to disclosure to the successful Proposer as set forth in Section 6.3.3. Upon final award or cancellation, such confidentiality rights shall be of no further force and effect except as otherwise allowed under the Act, applicable Law, and Section 2.6. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY TXDOT

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal, a Financial Proposal and a Proposal for the CDA for Segments 2-4 meeting the requirements set forth in Exhibits B, B-1, C and D. The Proposal shall be submitted in sealed containers, in the format and manner set forth in Sections 4.3 and 4.4 no later than the Proposal Due Date and time specified in Section 1.5.1, except for the Cost and Pricing Data, which may be delivered after the Proposal Due Date pursuant to Section 4.4.4.

4.1.1 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by all Equity Participants, and shall be accompanied by evidence of signatory authorization as specified in Form A.

4.1.2 Certified Copies

Where certified copies of the Proposal are required, the Proposer shall mark the document or cover with the words “Certified True Copy” and have the mark oversigned in blue ink by the Proposer’s designated representative(s).

4.1.3 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if TxDOT determines that the Proposer did not follow the foregoing instructions. It is the Proposer’s sole responsibility to see that its Proposal is received as required. Proposals received after the time due will be rejected without consideration or evaluation.

4.2 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs or AFCs (including conditionally pre-approved ATCs or AFCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be considered non-responsive or non-compliant. Any Proposal that contains a material alteration, as determined by TxDOT in its sole discretion, to the ITP forms, will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by TxDOT will not be considered material.

If a Proposal is deemed non-responsive or non-compliant, TxDOT may disqualify the Proposal from further consideration, in its sole discretion. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

Each Proposal must be submitted in the format which is specified by TxDOT in this RFP. The Proposer shall sign the original copy of the Proposal submitted to TxDOT. Multiple or alternate proposals may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

(a) If the Proposal is submitted in a paper form or on a disk other than that specified by TxDOT; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;

(b) If TxDOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;

(c) If multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a CDA following award;

(d) If the Proposer attempts to limit or modify the Proposal Security, if the Proposal Security (see Exhibit B, Section 3.3) is not provided, and/or if requested information deemed material by TxDOT is not provided; and

(e) Any other reason TxDOT determines the Proposal to be non-compliant.

4.3 Format

The Proposal shall contain concise written material and drawings enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal, the Proposal for the CDA for Segments 2-4 and the Financial Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2.0. The Proposal for the CDA for Segments 2-4 shall not exceed the page limitation set forth in Exhibit D, Section 1.1. No page limit applies to appendices and exhibits; however, TxDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8½ by 11-inch format is required for typed submissions and an 11 by 17-inch format is required for drawings, except that any support letters provided from parties outside the U.S.A may be submitted in ISO A4 format and design drawings may be submitted

on scroll mats not to exceed 34 inches in width (and such design drawings shall be submitted on CD or DVD in Adobe (.pdf) format and in Bentley Microstation format).

Submittals must be bound with all pages in a binder and sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than twelve-point. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17–inch foldout will be considered one page.

4.4 Additional Requirements for Proposal Delivery

The completed Proposal shall be delivered to TxDOT at the following address, except for the Escrowed Materials, which shall be delivered to the Escrow Agent as specified in Section 4.4.4:

Mark Tomlinson, P.E.
Texas Department of Transportation
Texas Turnpike Authority
125 East 11th Street
Austin, Texas 78701-2483

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical and Financial Proposals shall be clearly identified as "original"; copies of the Proposals shall be sequentially numbered, labeled and bound.

4.4.1 Technical Proposal and Proposal for the CDA for Segments 2-4

4.4.1.1 All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more CDs and the envelopes described in Section 4.4.2, shall be packaged in a single non-metal container, clearly addressed to TxDOT as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the TxDOT North Tarrant Express Project." The Proposer shall provide 20 certified copies of the Technical Proposal (except for the Proposal Security and Escrow Agreement). The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the TxDOT North Tarrant Express Project."

4.4.1.2 All of the binders comprising the original Proposal for the CDA for Segments 2-4, together with an electronic copy on one or more CDs, as well as six electronic copies in Excel format on CDs and one printed copy of the financial models supporting the Conceptual Financial Plan, and the envelopes described in Section 4.4.2, shall be packaged in a single non-metal container, clearly addressed to TxDOT as provided herein, and labeled "[Proposer Name]: Original Proposal for the CDA for Segments 2-4 for the TxDOT North Tarrant Express Project." The Proposer shall provide 20 certified copies of the Proposal for the CDA for Segments 2-4. The containers that include the required hard copies of the Proposal for the CDA for Segments 2-4 shall be labeled "Copies of Proposal for the CDA for Segments 2-4 for the TxDOT North Tarrant Express Project."

4.4.1.3 The Proposer shall deliver to the Escrow Agent one complete, bound copy of each of the Technical Proposal and the Proposal for the CDA for Segments 2-4.

4.4.1.4 The electronic copies of the Technical Proposal and the Proposal for the CDA for Segments 2-4 shall be in Adobe (pdf) format on CD(s); provided, however, that (a) Proposal forms may be submitted in either Adobe or Word format, and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.4.2 Proposal Security and Escrow Agreement

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal, and shall be in a separate envelope labeled "[Proposer Name]: Proposal Security for the TxDOT North Tarrant Express Project." A copy of the executed Escrow Agreement shall be provided with the Technical Proposal, in a separate envelope labeled "[Proposer Name]: Escrow Agreement for the TxDOT North Tarrant Express Project."

4.4.3 Portions of Financial Proposal Submitted Directly to TxDOT

One original and six certified copies of the Financial Proposal (excluding the Escrowed Materials identified in Section 4.4.4) shall be delivered to TxDOT, together with one electronic copy of the Financing Plan in either Adobe or Word format (see Exhibit C, Sections 1.0 - 4.0, and 7.0). The documents shall be included in a sealed non-metal container labeled "[Proposer Name]: Financial Proposal for the TxDOT North Tarrant Express Project."

4.4.4 Portions of Financial Proposal Submitted to Escrow

One original, one certified copy and six electronic copies in the format set forth in Exhibit C, Section 6.2.1 of the Base Scope Financial Model, Ultimate Scope Financial Model, Form K, Form U, and any non-public financial statements (collectively referred to herein as the "Escrowed Materials") shall be delivered into escrow in one or more sealed containers labeled: "[Proposer Name]: Escrowed Financial Proposal for the TxDOT North Tarrant Express Project—Financial Model and Forms," (see Exhibit C, Sections 5.0, 6.0 and 8.0). The Cost and Pricing Data shall be delivered into escrow not later than seven days after the Proposal Due Date.

Proposers are advised that certain line-item information contained in Form K is included in Form V (the Financial Information Summary Form), which is subject to public disclosure pursuant to Section 2.6. Proposers are also advised that prior to final award, portions of the Developer's Form U will be incorporated into the executed Concession CDA and will no longer be held as Escrowed Materials.

The Proposer shall provide TxDOT with the name, address and contact information of the Proposer's selected Escrow Agent no later than the date set forth in Section 1.5.1. The Proposer shall deliver to the Escrow Agent chosen by the Proposer the Escrowed Materials, along with three completed original Escrow Agreements executed by the Proposer in substantially the form attached as Form M. The documents shall be delivered to the Escrow Agent at the address identified in the Escrow Agreement, which shall be located within a 10 mile radius of 125 East 11th Street, Austin, Texas. The Escrow Agent chosen by the Proposer must be unaffiliated with the Proposer and otherwise must be free of any conflict of interest. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.4.2.

4.5 Currency

All required pricing, revenue and cost information shall be provided in US$ currency only.

4.6 Modifications, Withdrawals and Late Submittals

4.6.1 Modifications to a Proposal

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so TxDOT can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B-1, C, and D. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.6.2 Withdrawal and Validity of Proposals

The Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer or its properly authorized representative. Such written request shall be delivered to TxDOT's Authorized Representative specified in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the Proposal Due Date. Except as expressly set forth herein, no Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by TxDOT upon the Proposal Security. Proposals shall be valid for a period of 180 days after the Proposal Due Date. No Proposer shall withdraw its Proposal within the 180-day period, unless notified by TxDOT that (i) no CDA for the Project will be awarded by TxDOT pursuant to the RFP (ii) TxDOT has awarded the CDAs to another Proposer and has received the executed CDAs and other required documents, (iii) TxDOT does not intend to award the contract to the Proposer; or (iv) such Proposer is not the apparent best value or next highest ranking Proposer.

Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.6.3 Late Proposals

TxDOT will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to the Proposer without consideration or evaluation.

4.7 Forfeiture of Proposal Security; Relief From Obligation to Close by Specified Deadline

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the following:

4.7.1 Failure to Meet Commitments

The Proposal Security is subject to forfeiture if (a) the Proposer is selected as the apparent best value Proposer and fails to increase the Proposal Security as required under Exhibit B, Section 3.3, or (b) the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet any commitments made in its Proposal except as specifically permitted hereunder.

4.7.2 Failure to Execute and Deliver Documents

The selected Proposer's Proposal Security is subject to forfeiture if it fails to deliver to TxDOT executed copies of the CDAs and the documents required under Section 6.1 by the deadline set forth in Section 1.5.2, unless such failure is directly attributable to:

(a) TxDOT's failure to provide timely responses to Post-Selection Deliverables in accordance with Section 5.13.3;

(b) Proposer's failure to reach agreement with TxDOT and the Independent Engineer on the terms of the Independent Engineer Agreement, provided the Proposer has engaged in good faith negotiations with TxDOT and the Independent Engineer as set forth in Section 5.15;

(c) TxDOT's or the Independent Engineer's failure to attend and participate in reasonably scheduled negotiation meetings concerning the Independent Engineer Agreement in accordance with Section 5.15;

(d) TxDOT's failure to timely deliver any of the TxDOT Post-Selection Deliverables described in Section 5.16;

(e) TxDOT's election not to enter into one or both of the CDAs in the form included with the RFP, following (a) TxDOT's election to commence negotiations regarding the CDAs, (b) the Proposer's engaging in good faith negotiations as set forth in Section 5.12.1; and (c) failure of the parties to agree upon changes to the terms of the CDAs;

(f) NTTA's failure to enter into the NTTA Tolling Services Agreement; or

(g) The unreasonable refusal by the Texas Attorney General to issue a legal opinion after having received all requested information from the apparent best value Proposer.

(h) The failure to obtain a resolution in accordance with Senate Bill 792 from the Tarrant County Commissioner's Court supporting the North Tarrant Express Comprehensive Development Agreement.

4.7.3 Failure to Achieve Financial Close

The selected Proposer's Proposal Security is subject to forfeiture if it fails to achieve Financial Close by the deadline set forth in Section 1.5.3, unless such failure is directly attributable to:

(a) Delay in delivery of CDAs and other documents extending beyond such deadline attributable to any of the circumstances identified in Section 4.7.2;

(b) TxDOT's failure to obtain NEPA Approval for Segment 1 and, if applicable, Segment 2 prior to the deadline for Financial Close, or litigation challenging the NEPA Approval that is filed before lapse of the applicable statute of limitations and remains pending on the deadline for Financial Close;

(c) the State's credit rating drops below A+ from Standard & Poor's and A2 from Moody's;

(d) If PABs are part of the initial financing under Proposer's Financial Proposal, any delay in identifying the PABs Issuer or any delay by or refusal of the PABs Issuer to issue bonds in the amount that the Proposer's underwriters are prepared to underwrite, unless such delay or refusal is attributable to any fault or less than diligent efforts of the Proposer or any Proposer team member, including failure of the Proposer to satisfy all applicable requirements under the PABs Agreement. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds, failure of the PABs Issuer to meet that schedule shall not be considered a delay;

(e) If PABs are part of the initial financing under Proposer's Financial Proposal, (i) the refusal of the PABs Issuer's counsel to authorize closing of the PABs where the bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion or (ii) the delay of the PABs Issuer's counsel in authorizing closing of the PABs. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds, failure of the PABs Issuer's counsel to meet that schedule shall not be considered a delay;

(f) If PABs are part of the initial financing under Proposer's Financial Proposal, the failure of the PABs Issuer or TxDOT to comply with the terms of the PABs Agreement or the withdrawal, recission or revocation of the PABs allocation by the USDOT Secretary in the amount approved by the USDOT Secretary where such failure directly causes inability to achieve Financial Close by the deadline therefor;

(g) If TIFIA credit assistance is part of the initial financing under Proposer's Financial Proposal, the lack of TIFIA contract and budget authority in an amount up to $70 million, which has been reserved for the Concession Facility as described in the letter provided to TxDOT by the Director, TIFIA Credit Program, and subject to any conditions or limitations (including the limitation on the availability of budget authority to six months beyond the scheduled date of Financial Close, but not later than September 30, 2009), where the lack of such TIFIA credit and budget authority causes inability to achieve Financial Close by the deadline therefor. TxDOT shall have the right, but not the obligation, to pay such amount as may be necessary, up to $70 million, to make up for the lack of or any shortfall in $70 million of budget authority, and in the event TxDOT exercises this right, this provision shall not apply. Any such payment shall be used and applied only for the purpose of achieving closing of the TIFIA financing, and will be payable concurrently with such closing; or

(h) TxDOT's failure to timely execute and deliver the CDAs in accordance with Section 6.1, unless such delay is attributable to any fault or less than diligent efforts of the Proposer or any Proposer team member.

4.8 Acceptance of Delivery by TxDOT

TxDOT will provide a receipt for Proposals that are timely delivered to TxDOT as specified herein. The Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

A TxDOT representative will visit the Escrow Agent's office on or shortly after the Proposal Due Date to examine the Escrowed Materials and obtain a fully executed copy of the Escrow Agreement.

4.9 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the CDAs, including costs incurred for any interviews, payments owing to the Proposer's Escrow Agent, costs associated with Post-Selection Deliverables and costs relating to the finance process, shall be borne by the Proposer, except for any costs paid in accordance with Section 6.3.

SECTION 5.0 EVALUATION AND POST-SELECTION PROCESS

TxDOT's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, followed by an evaluation of the Concession Facility Development Plan, the Proposal for the CDA for Segments 2-4, and the Financial Proposal, and a best value determination. The process may, at TxDOT's sole discretion, include a request for revised Proposals (Proposal Revisions), and may include a negotiations phase with the selected Proposer(s). The steps in the process and evaluation criteria are set forth in Sections 5.3 through 5.13.3. The evaluation and selection process is subject to modification by TxDOT, in its sole discretion.

The evaluation process will involve the following steps:

1. TxDOT evaluation committees will:

(a) evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal, considering the specific evaluation criteria set forth herein and

(b) provide a recommendation to TxDOT senior management regarding the apparent best value.

2. TxDOT senior management will review and consider the recommendations from the TxDOT evaluation committee, and will provide a recommendation for conditional award to the Commission. The Commission will issue notice of conditional award after considering the recommendations received.

The details of the evaluation and selection process are set forth more fully in this Section 5.

5.1 Organization of the TxDOT Evaluation Committees

Evaluation of Proposals will be conducted by TxDOT's Evaluation and Selection Recommendation Committee ("ESRC") with assistance from subcommittees consisting of TxDOT personnel.

The ESRC and the various subcommittees will be comprised of representatives from TxDOT and will be chaired by individuals designated by the Texas Turnpike Authority Division Director. In addition to TxDOT voting members, the ESRC and subcommittees may also be assisted by advisors, including TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the ESRC and subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from federal or other agencies, including representatives of local agencies and municipalities, with

specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to TxDOT conflict of interest control requirements.

5.2 Best Value Determination

The determination of apparent best value shall be based on an 80-10-10 point scale and will be computed using the following formula:

Total Proposal Score = Concession Financial Score (max. 80 points)
+ Concession Technical Score (max. 10 points)
+ CDA for Segments 2-4 Score (max. 10 points)

(a) The Concession Financial Score, calculated solely for evaluation purposes pursuant to Section 5.6, will be comprised of the sum of the Base Scope Proposal Financial Score and the Ultimate Scope Proposal Financial Score. The Concession Financial Score shall be calculated based on the following formula:

Concession Financial Score (max. 80 points) =

Base Scope Proposal Financial Score (max. 70 points)
+ Ultimate Scope Proposal Financial Score (max. 10 points)

(b) The Concession Technical Score will be calculated based on the Evaluation Score for the Concession Facility Development Plan (maximum 100 points) as described in Section 5.4.2. The Concession Technical Score will be calculated using the following formula:

Concession Technical Score (max. 10 points) = Evaluation Score x 0.10

(c) The CDA for Segments 2-4 Score will be calculated based on the Evaluation Score for the Proposal for Segments 2-4 (maximum 100 points) as described in Section 5.5.5. The CDA for Segments 2-4 Score will be calculated using the following formula:

CDA for Segments 2-4 Score (max. 10 points) = Evaluation Score x 0.10

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals, the Proposals for the CDA for Segments 2-4 and the Financial Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittees. They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. All reviews of the Escrowed Materials will take place at the Escrow Agent's offices.

5.3.1 Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail and responsiveness criteria:

(a) The business form of the Proposer, the proposed Developer, and any entities that will have joint and several liability under the Concession CDA or that will provide a performance security (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws, association agreements or equivalent documents) is consistent with the requirements of the Project and Concession CDA Documents.

(b) The Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9.

(c) The information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.

(d) The Proposer has delivered Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit B, Section 3.3.1 or letter of credit that complies with the requirements of Exhibit B, Section 3.3.2.

(e) The Proposal commitment date for Service Commencement on the Concession Facility set forth on Form O is no later than the milestone date specified in Exhibit 9 of the form of the Concession CDA included in this RFP.

(f) The Technical Proposal as outlined in Exhibit B, including the Concession Facility Development Plan outlined in Exhibit B-1, meets all applicable RFP requirements.

5.3.2 Proposals for the CDA for Segments 2-4

Proposals for the CDA for Segments 2-4 will be evaluated based on the following pass/fail and responsiveness criteria:

(a) The business form of the Proposer, the proposed Developer, and any entities that will have joint and several liability under the CDA for Segments 2-4 or that will provide a performance security (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws, association agreements or equivalent documents) is consistent with the requirements of the Project and CDA for Segments 2-4 Documents.

(b) The Proposal for the CDA for Segments 2-4 outlined in Exhibit D, meets all applicable RFP requirements.

5.3.3 Financial Proposals

Financial Proposals for the Concession CDA will be evaluated based on the following pass/fail and responsiveness criteria:

(a) The Public Funds Request does not exceed the Maximum Available Funds.

(b) The Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the QS, such that the Proposer continues to have the financial capacity to complete, operate, and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating the Proposer's financial capacity include the following:

(i) Profitability;

(ii) Ability to manage existing debt;

(iii) Ability to invest equity; and

(iv) Other commitments and contingencies.

If TxDOT determines that a Proposer does not appear to have the financial capability to fulfill its obligations under the Concession CDA, it may offer the Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to TxDOT.

(c) The Proposer's Financing Plan demonstrates the following:

(i) that it identifies sufficient financing for the Concession CDA, including all design and construction, operation, maintenance and rehabilitation funding;

(ii) that it is adequate, feasible, and capable of being executed if the Proposer is awarded the Concession CDA; and

(iii) that it is sufficiently developed, and, subject to ITP Exhibit C, Section 3.2, has attracted sufficient support and commitment from Lenders and investors, to satisfy TxDOT that there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:

A. Execution and delivery of the Concession CDA;

B. Making payments owing to TxDOT;

C. Completion of design and construction of the Concession Facility by the Service Commencement Deadline set forth in

the Concession CDA and in accordance with Concession CDA requirements;

D. Operation and maintenance of the Concession Facility throughout the Lease term in accordance with the requirements of the Concession CDA and Lease; and

E. Achievement of Financial Close for the Facility by the deadline identified in Section 1.5.3.

(d) In evaluating the adequacy of the Proposer's Financing Plan under Section (c)(ii) above, the following factors will be considered:

(i) the robustness of the results under the Proposer's traffic scenario or specified range of traffic scenarios;

(ii) reasonableness of revenues and costs;

(iii) subject to ITP Exhibit C, Section 3.2, the terms and conditions of the financing (including debt, quasi equity and equity), including compliance with the conditions set forth in Section 4 of the Concession CDA, and the conditions attached to financing, if any, appear reasonable;

(iv) guarantees and other security required to realize financing;

(v) the level of commitment of Equity Participants in the Proposer;

(vi) subject to ITP Exhibit C Section 3.2, assurance from senior lenders that they are prepared to accept the terms of any proposed TIFIA financing substantially as set forth in the indicative term sheet, or provision of an alternative approach assuring that Financial Close will be achieved by the deadline identified in Section 1.5.3.

(e) The Proposer has provided the required lenders' support letters evidencing the proposed lenders' willingness to provide funding under the Concession CDA pursuant to Section 3.2.1 of Exhibit C or has provided the required lenders' indicative letters of support indicating their view that the financial plan is reasonable pursuant to section 3.2.2 of Exhibit C.

(f) The Proposer has provided assurance that private equity will be in place for the Concession CDA, including the required letters from the Proposer's Equity Participant evidencing their commitment to provide equity funding pursuant to Section 3.3 of Exhibit C.

(g) the Proposal is in compliance with the Toll Regulation attached to the Concession CDA as Exhibit 4.

Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

5.3.4 TxDOT Right to Exclude Proposals from Consideration or to Waive Mistakes

Those Proposals not responsive to this RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and the Proposer will be so advised. TxDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. TxDOT reserves the right to waive minor informalities, irregularities and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

5.4 Evaluation of Concession Facility Development Plan

After completion of the pass/fail and initial responsiveness review, the Concession Facility Development Plan will be evaluated based on the factors set forth below to determine whether it improves upon the Concession CDA requirements and brings additional benefits and/or value to TxDOT and the public.

5.4.1 Concession Facility Development Plan Evaluation Factors

The evaluation factors for the Concession Facility Development Plan are as follows:

(a) General Concession Facility Management;

(b) Operations and Maintenance Management and Technical Solutions; and

(c) Design-Build Management and Technical Solutions.

The Concession Facility Development Plan Evaluation Factors identified in clauses (a) through (c) above are listed in descending order of importance. Subfactors and their relative weightings are listed in Section 5.4.1.1 through 5.4.1.3. Consecutive factors or subfactors are set forth in descending order of importance, provided however, except as otherwise noted, consecutive factors or subfactors may be of equal value to each other.

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2, with special attention given to the objectives presented in Sections 5.4.1.1 through 5.4.1.3, which describe the expectations of TxDOT with regard to the Work to be performed and the related information to be submitted in the Concession Facility Development Plan. Along with the goals identified in Section 1.2, these objectives will guide TxDOT's assessment of the evaluation factors and subfactors.

5.4.1.1 General Concession Facility Management

Objectives: An organization that is designed with clear lines of responsibility, appropriate personnel and well defined roles that respond to the Concession Facility obligations; a well defined approach to Concession Facility schedule methodology, and schedule and cost information in detail sufficient for assessing Concession Facility

schedule/cost balance; and a well defined approach to environmental management and public involvement.

The General Concession Facility Management evaluation subfactors include:

(a) Management structure, personnel, and internal organizational systems;

(b) Schedule, cost control, safety, and risk management;

(c) Environmental management;

(d) Public information and communications management; and

(e) Mentoring and job training.

Subfactors (a) through (c) are each weighted more than each of subfactors (d) and (e).

See Exhibit B-1 for additional detail regarding the specific information concerning this factor to be submitted as part of the Concession Facility Development Plan.

5.4.1.2 Operations and Maintenance Management and Technical Solutions

Objective: An operations and maintenance management organization with clear lines of responsibility, and which presents a well-defined and executable approach for operations and maintenance, providing a well operated and maintained facility responding to the needs of the Concession Facility, the adjacent communities and the traveling public.

The Operations and Maintenance Management and Technical Solutions evaluation subfactors are as follows:

(a) Operations and maintenance management approach;

(b) Operations and maintenance quality management; and

(c) Operations and maintenance technical solutions.

See Exhibit B-1 for details regarding the specific information concerning this factor to be submitted as part of the Concession Facility Development Plan.

5.4.1.3 Design-Build Management and Technical Solutions

Objective: A Design-Build management organization with clear lines of responsibility, and which presents a well-defined and executable approach for design, construction, ROW acquisition and utility adjustment, and incorporating technical solutions with innovative features that achieve the obligations of the Concession Facility.

The Design-Build Management and Technical Solutions evaluation subfactors include:

(a) Design-Build management approach;

(b) ROW acquisition and utility adjustment management and approach;

(c) Design-Build technical solutions; and

(d) Design-Build quality management.

See Exhibit B for additional detail regarding the specific information concerning this factor to be submitted as part of the Concession Facility Development Plan.

5.4.2 Evaluation Guidelines for Concession Facility Development Plan

The evaluation subcommittee will review the Concession Facility Development Plan with reference to the evaluation factors specified in Section 5.4.1 above, in accordance with the guidelines provided in this Section 5.4.2. The major categories of the Concession Facility Development Plan will be qualitatively evaluated and assigned a rating as follows:

ADJECTIVE RATING	DESCRIPTION
Excellent	The Proposal greatly exceeds the stated requirements/objectives, offering material benefits and/or added value, and providing assurance that a consistently outstanding level of quality will be achieved. There is very little or no risk that this Proposer would fail to satisfy the requirements of the Concession CDA Documents. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.
Very Good	The Proposal significantly exceeds the stated requirements/objectives, offering advantages, benefits and/or added value, and providing assurance that a level of quality will be achieved that is materially better than acceptable. There is little risk that the Proposer would fail to satisfy the requirements of the Concession CDA Documents. Weaknesses, if any, are very minor and can be readily corrected. Some unique and/or innovative characteristics are present.
Good	The Proposal materially exceeds the stated requirements/objectives and provides assurance that the level of quality will meet or exceed minimum requirements. There may be a slight probability of risk that the Proposer may fail to satisfy the requirements of the Concession CDA Documents. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.

Fair	The Proposal marginally exceeds stated requirements/objectives and provides satisfactory assurance that the level of quality will meet or marginally exceed minimum requirements. There may be questions about the likelihood of success and there is risk that the Proposer may fail to satisfy the requirements of the Concession CDA Documents. Weaknesses are correctable or acceptable per minimum standards.
Meets Minimum	The Proposal meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that the Proposer may fail to satisfy the requirements of the Concession CDA Documents. Weaknesses are correctable or acceptable per minimum standards

In assigning ratings TxDOT may assign "+" or "-" (such as, "Excellent -", "Good +", and "Fair +") to the ratings to better differentiate within a rating in order to more clearly differentiate between the technical evaluation factors and the overall Concession Facility Development Plan. However, TxDOT will not assign ratings of "Meets Minimum –" or "Excellent +."

The term "weakness," as used herein, means any flaw in the Proposal that increases the risk of unsuccessful contract performance.

During the evaluation, each subfactor as described above will be assigned a consensus rating, which will be converted to points. The points for each subfactor will be added to determine the Proposal's score for each of the technical evaluation factors. The ratings of all the technical evaluation factors will then be added to arrive at the overall Evaluation Score for the Concession Facility Development Plan, with 100 maximum possible points.

5.5 Evaluation of Proposal for the CDA for Segments 2-4

Proposals for the CDA for Segments 2-4 will be evaluated as specified below. The component identified in Section 5.5.1 is equal to or of greater importance than the component identified in Section 5.5.2, which is equal to or of greater importance than the component identified in Section 5.5.3.

5.5.1 Evaluation of Conceptual Development Plan & Conceptual Financial Plan

The Conceptual Development Plan and Conceptual Financial Plan will be evaluated based on the expected subsidy for Segments 2-4, and the achievability of the plans. More specifically:

- The present value of the expected subsidy for the delivery of Segments 2-4 subject to the time of delivery assumptions described in Exhibit D.

- The achievability of the Conceptual Development Plan and the Conceptual Financial Plan, as demonstrated by each Proposer through:

    - Conceptual Development Plan

        - Project understanding, approach, process, and concepts;
        - accelerated delivery of facilities pursuant to realistic milestones;
        - reasonableness of capital, operations and maintenance cost estimates;
        - level of risk assumed by Proposer;
        - reasonableness of traffic and revenue forecasts and assumptions;
        - environmental process understanding; and
        - plan update process.

    - Conceptual Financial Plan

        - efficiency in the use and deliverability of equity and debt financing for the development of the Segment 2-4 Facilities;
        - use of innovative financial methods and financing tools in the enhancement of the feasibility and delivery of the Segment 2-4 Facilities;
        - allocation of financial risks to the party best able to manage the risks and reasonableness of the risk mitigation strategy;
        - internal consistency, and verifiability of data sources and assumptions in the Conceptual Financial Plan; and
        - consistency between the Conceptual Development Plan and the Conceptual Financial Plan.

See Exhibit D for additional detail regarding the specific information concerning this factor to be submitted as part of the Conceptual Development Plan and Conceptual Financial Plan.

5.5.2 Evaluation of Project Management Plan

The overall ability and experience of Proposer's management personnel will be evaluated on the basis of previous experience with similar projects, from the perspective of the key individuals functioning in ongoing "hands-on" positions and the following:

- demonstrated approach to staffing and administering the work;
- demonstrated approach of how the Proposer will interface with TxDOT and other public and private entities, and its consultants in the performance of the Master Development Plan;

- a description of the Proposer's approach towards implementation of project controls; and
- Proposer's quality management program for design reviews and Plan reviews, including reporting procedures, responsibilities, documentation and correcting deficiencies.

See Exhibit D for additional detail regarding the specific information concerning this factor to be submitted as part of the Project Management Plan.

5.5.3 Evaluation of Price for Initial Scope of Work

The Price for Initial Scope of Work will be evaluated based on the following formula:

{1 - [(Proposer's Price for Initial Scope of Work)/(max price for Initial Scope of Work)]} x (max points assigned to Price for Initial Scope of Work)

5.5.4 Reference Summary

The Proposers shall include in their Proposals for the CDA for Segments 2-4 a reference summary, by page and section number, stating where each of the following evaluation criteria (with reference to the factors and subfactors identified above) is addressed in the Proposal for the CDA for Segments 2-4.

5.5.5 Evaluation Guidelines for the Proposal for the CDA for Segments 2-4

The evaluation subcommittee will review the Proposal for the CDA for Segments 2-4 with reference to the evaluation factors specified in Section 5.5.1 - 5.5.2 above, in accordance with the guidelines provided in this Section 5.5.5. The major categories of the Proposal for the CDA for Segments 2-4 will be qualitatively evaluated and assigned a rating as follows:

ADJECTIVE RATING	DESCRIPTION
Excellent	The Proposal greatly exceeds the stated requirements/objectives, offering material benefits and/or added value, and providing assurance that a consistently outstanding level of quality will be achieved. There is very little or no risk that this Proposer would fail to satisfy the requirements of the CDA for Segments 2-4 Documents. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.
Very Good	The Proposal significantly exceeds the stated requirements/objectives, offering advantages, benefits and/or added value, and providing assurance that a level of quality will be achieved that is materially better than acceptable. There is little risk that the Proposer would fail to satisfy the requirements of the CDA for Segments 2-4 Documents. Weaknesses, if any, are very minor and can be readily corrected. Some unique and/or innovative characteristics are present.
Good	The Proposal materially exceeds the stated requirements/objectives and provides assurance that the level of quality will meet or exceed minimum requirements. There may be a slight probability of risk that the Proposer may fail to satisfy the requirements of the CDA for Segments 2-4 Documents. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposal marginally exceeds stated requirements/objectives and provides satisfactory assurance that the level of quality will meet or marginally exceed minimum requirements. There may be questions about the likelihood of success and there is risk that the Proposer may fail to satisfy the requirements of the CDA for Segments 2-4 Documents. Weaknesses are correctable or acceptable per minimum standards.
Meets Minimum	The Proposal meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that the Proposer may fail to satisfy the requirements of the CDA for Segments 2-4 Documents. Weaknesses are correctable or acceptable per minimum standards

In assigning ratings TxDOT may assign "+" or "-" (such as, "Excellent -", "Good +", and "Fair +") to the ratings to better differentiate within a rating in order to more clearly differentiate between the evaluation factors and the overall Proposals for the CDA for Segments 2-4. However, TxDOT will not assign ratings of "Meets Minimum –" or "Excellent +."

The term "weakness," as used herein, means any flaw in the Proposal that increases the risk of unsuccessful contract performance.

During the evaluation process, each factor will be assigned a consensus rating, which will be converted to points. The points for each factor will be added to determine the Proposal's score for each of the components of the Proposal.

The score for each of the components of the Proposal will then be added to arrive at the overall evaluation score for the Proposal for the CDA for Segments 2-4, with 100 maximum possible points.

5.6 Financial Proposal Evaluations

The Proposal's Concession Financial Score will be determined in accordance with the formula set forth in Section 5.2 based on the sum of the Proposer's Base Scope Proposal Financial Score and Ultimate Scope Proposal Financial Score.

5.6.1 Base Scope Proposal Financial Score

Each Proposer's Base Scope Proposal Financial Score will be calculated as follows:

Base Scope Proposal Financial Score = $$FS_{BP} = \left(\frac{PFV_{BP}}{HFV_{BP}}\right) \times (70\, points)$$

where:

PFV_{BP}	=	Adjusted Financial Value for the Base Scope Proposal (BP), calculated as: $PFV_{BP} = CR_{BP} + PFNU_{BP}$
CR_{BP}	=	Total credits for options proposed, as defined in Form K-2, Box 1, assigned to each option which the Proposer includes in its Base Scope Proposal
$PFNU_{BP}$	=	Public Funds Not Used in the Proposer's Base Scope Proposal, calculated as: $PFNU_{BP} = (MAF_{BP} – FR_{BP})/CC_{BP} =$ $= (MAF_{BP} – FR_{BP})/(\$30 \text{ million})$
MAF_{BP}	=	The present value of the quarterly incremental Maximum Available Funds for the Base Scope Proposal as described in Form K-1, Section D.
FR_{BP}	=	The present value of the Public Funds Request (for the Proposer's Base Scope Proposal) from Proposer's Form K-1, Box 2, determined in accordance with the instructions in Form K-1

CC_{BP}	=	The amount of $30 million (used solely for evaluation purposes for converting the Public Funds Not Used into credits.)
HFV_{BP}	=	Maximum Adjusted Financial Value of all Base Scope Proposals

The subcommittee evaluating the Financial Proposal shall review the calculations related to the present value of the Public Funds Request and Public Funds Not Used, as well as any adjustments for evaluation purposes.

If there is any inconsistency between the amounts set forth in Form K-1 and Form K-2 and the calculations based on the instructions set forth in the forms, the latter will control.

The credits for the Mandatory Proposal Scope and any other options proposed to be included in the Base Scope Proposal will equal the "total credits" for the Base Scope Proposal based on the pre-assigned credits by TxDOT for such portions of the Project as set forth in Form K-2.

No consideration will be given to revenue payments in the evaluation of a financial proposal.

All reviews of the Escrowed Materials will take place at the Escrow Agent's offices.

5.6.2 Ultimate Scope Proposal Financial Score

Each Proposer's Ultimate Scope Proposal Financial Score will be calculated as follows:

Ultimate Scope Proposal Financial Score = $$FS_{UP} = \frac{PFV_{UP}}{HFV_{UP}} \times (10\ points)$$

where:

PFV_{UP}	=	Adjusted Financial Value for the Ultimate Scope Proposal, calculated as: $PFV_{UP} = CR_{UP} – [(FR_{UP} – FR_{BP}) / CC_{UP}] =$ $= CR_{UP} – [(FR_{UP} – FR_{BP}) / (\$200 \text{ million})] =$
FR_{UP}	=	The present value of the Ultimate Scope Proposal Funds Request from Proposer's Form K-1, Box 4, determined in accordance with the instructions in Form K-1
FR_{BP}	=	The present value of the Public Funds Request (for the

		Proposer's Base Scope Proposal) from Proposer's Form K-1, Box 2, determined in accordance with the instructions in Form K-1.
CR_{UP}	=	Total credits as defined in Form K-2, Box 2, assigned to each option which the Proposer includes in its Ultimate Scope Proposal.
CC_{UP}	=	The amount of $200 million (used solely for evaluation purposes for converting the present value of the NTP Capacity Improvements Funds Request into credits.)
HFV_{UP}	=	Highest Adjusted Financial Value of all Proposers' Ultimate Scope Proposals

The subcommittee evaluating the Financial Proposal shall review the calculations related to the present value of the Public Funds Request for the Ultimate Scope Work, as well as any adjustments for evaluation purposes. If there is any inconsistency between the amounts set forth in Form K-1 and Form K-2 and the calculations based on the instructions set forth in the forms, the latter will control.

The credits for the Mandatory Proposal Scope and any other options proposed to be included in the Ultimate Scope Proposal will equal the "total credits" for the Ultimate Scope Proposal based on the pre-assigned credits by TxDOT for such portions of the Project set forth in Form K-2.

No consideration will be given to revenue payments in the evaluation of a Financial Proposal.

All reviews of the Escrowed Materials will take place at the Escrow Agent's offices.

5.7 ESRC Evaluation of the Technical Proposal, the Proposal for the CDA for Segments 2-4 and the Financial Proposal

Before reviewing the Financial Proposal and the recommendations from the subcommittee reviewing the Financial Proposal, the ESRC will review the Concession Facility Development Plan and the Proposal for the CDA for Segments 2-4 and the ratings and points recommendations provided by the subcomittees with respect to each respective Proposal. The ESRC may accept the recommendations provided by each subcommittee, may request the subcommittee to reconsider its recommendations, or may develop its own recommendations. The ESRC will determine each Proposal's Concession Technical Score and CDA for Segments 2-4 Score based on the formula set forth in Section 5.2 and the guidelines set forth in Sections 5.4.2 and 5.5.5.

Next, the ESRC will review the Financial Proposal and Financial Proposal evaluation recommendations from the subcommittee reviewing the Financial Proposal and determine each Proposal's Concession Financial Score. If the ESRC determines that a

Concession Financial Score has not been correctly calculated by the subcommittee, then the ESRC may revise the recommended Concession Financial Score based on its calculation or may request that the subcommittee reconsider its recommendation.

Finally, the ESRC will determine the Total Proposal Score for each Proposal by adding the Proposal's Concession Technical Score, the CDA for Segments 2-4 Score and the Concession Financial Score.

5.8 Requests for Clarification

TxDOT may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Any requests for clarification shall be in writing to the Proposer's designated contact as provided in Section 2.2.2. Proposers shall respond to any such requests within two business days (or such other time as is specified by TxDOT) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, TxDOT.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.9 Request for Proposal Revisions

TxDOT may, at any time after receipt of Proposals and prior to final award, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). If Proposal Revisions are requested, TxDOT will follow the procedures for revised proposals described in 23 CFR Part 636. TxDOT may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revisions.

Upon receipt of Proposal Revisions, the ESRC, with assistance from the appropriate subcommittee(s), will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.10 Identification of Apparent Best Value Proposal

Once the ESRC has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the ESRC will present its recommended rankings to a Steering Committee comprised of the Texas Turnpike Authority Director, the Director of TxDOT's Finance Division and the Fort Worth District Engineer.

5.11 Recommendation to Commission

The Steering Committee will review the Proposals and the recommendations and supporting information provided by the ESRC, and may accept the recommendation, reject the recommendation and cancel the procurement, or request the ESRC to reconsider the recommendation. If the Steering Committee accepts the ESRC's recommendation, the Steering Committee will provide the recommendation to the TxDOT Executive Director or his designee regarding which Proposal provides the apparent best value.

Upon receipt of recommendations from the Steering Committee, the TxDOT Executive Director or his designee will review the recommendations and may accept the recommendation, reject the recommendation and cancel the procurement, or request the Steering Committee to reconsider the recommendation. If the Executive Director or his designee accepts the Steering Committee's recommendation, the Executive Director or his designee will make a recommendation to the Commission regarding the rankings of the Proposers and designation of the apparent best value. The Commission will consider the recommendations and will determine whether to proceed with conditional award of the CDAs to the apparent best value Proposer or take any other action. The Commission's decision of conditional award of the CDAs to the apparent best value Proposer will be made in a public hearing and will be considered a public announcement of intent to award the CDAs by the Commission.

The Commission's decision regarding award of the CDAs shall be final.

5.12 Finalization of the CDAs; Post-Selection Process

5.12.1 Negotiation of CDAs

If authorized by the Commission, TxDOT will proceed with the apparent best value Proposer to finalize the CDAs. TxDOT may agree to negotiate various aspects of the CDAs with the apparent best value Proposer, including Form P (Detailed Costing Form) and incorporation of the unsuccessful Proposers' work product; however, any decision to commence or continue negotiations regarding the terms of the CDAs is at TxDOT's sole discretion. In addition, pursuant to Texas Transportation Code Section 223.203 and this Section 5.12.1, at the request of the apparent best value Proposer, such Proposer can reasonably expect that TxDOT will enter into good faith negotiations with such Proposer to make changes to the Concession CDA (including applicable Exhibits) to clarify and support the intended U.S. federal income tax treatment of such Proposer, including treatment of the Public Funds Amount, provided that such negotiations will be limited to terms that would not (1) adversely impact TxDOT's rights and commercial position under the Concession CDA or (2) otherwise have a material adverse affect on TxDOT, the region or the State. By submitting its Proposal, each Proposer commits to enter into the forms of CDAs included in the RFP, without negotiation or variation, except negotiation as provided in the immediately preceding sentence and to fill in blanks and include information that the forms of the CDAs indicate is required from the Proposal.

If CDAs satisfactory to TxDOT cannot be negotiated with the apparent best value Proposer, TxDOT will formally end negotiations with that Proposer and take action consistent with the direction provided by the Commission. Such action may include (a) requiring the best value Proposer to enter into the CDAs in the forms included in the RFP, without variation except to fill in blanks and include information that the forms of the CDAs indicate is required from the Proposal, (b) rejection of all Proposals, (c) issuance of a request for Proposal Revisions to the Proposers; or (d) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate the CDAs with that Proposer in accordance with this Section 5.12. If option (d) is selected, the Proposer that submitted the next most highly ranked Proposal will be considered the apparent best value Proposer.

In the event TxDOT elects to commence negotiations with a Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with TxDOT and shall forfeit its Proposal Security as set forth in Section 4.7 if the following circumstances occur: (a) the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with TxDOT, or (b) the Proposer insists upon terms or conditions for any documents to be negotiated or provided by Developer hereunder, that are inconsistent with the CDA Documents and, with respect to the Independent Engineer Agreement, that are inconsistent with the Independent Engineer scope of work or which would compromise the independence of the Independent Engineer.

The final form of the Concession CDA will be conformed to include certain material items from the successful Proposal, including the Public Funds Amount, Form U and any pre-approved ATCs or AFCs and, if applicable, the Payment and Performance Letter of Credit provisions, as well as any other items provided in the successful Proposal and approved or required by TxDOT for inclusion in the Concession CDA.

5.12.2 Cash Flow Analysis

As a condition precedent to final award of the CDAs, TxDOT must be assured and satisfy itself that the amount of the Public Funds Request is consistent with the anticipated Preliminary Baseline Schedule, Maximum Payment Curve, and costs as set forth on Form P for the Concession CDA. As a further condition precedent to final award of the CDAs, Developer shall have provided such information as TxDOT reasonably requests to verify and determine the reasonableness of such schedule and costs.

5.12.3 Financial Model Audit

The Proposer shall cause an independent audit of the Proposer's Financial Models ("Financial Model Audit") to be conducted by a firm engaged by the Proposer and approved by TxDOT (the "Model Auditor"). Such independent audit shall be at the Proposer's sole cost and expense. Copies of the audit report(s) and opinion(s) shall be co-addressed to TxDOT, and TxDOT shall be expressly identified therein as an entity entitled to rely upon such audit. Proposer shall cause the Financial Model Audit report(s) and opinion(s) to be delivered to TxDOT with its Financial Proposal in accordance with Exhibit C, Section 6.6.

As part of the Financial Model Audit, Proposers shall also provide TxDOT with an opinion from the Model Auditor stating that the Financial Model is suitable for use in connection with the Compensation Event procedures set out in the Concession CDA. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with U.S. GAAP. This opinion, on which TxDOT shall be a co-addressee and expressly entitled to rely, may also result from the independent review of the Financial Model required by the Proposer's lenders.

Prior to engaging the Model Auditor, the Proposer will provide TxDOT with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion) and the level of professional liability coverage (which must cover claims by TxDOT arising from any errors or omissions by the Model Auditor in connection with the Model Audit). The engagement terms with the Model Auditor may limit the Model Auditor's liability to TxDOT for the audit opinion's failure to identify any error(s) in the Financial Model to an amount of no less than four times the fees of the Model Auditor as contained in its contract at the date of Proposal submittal or as subsequently amended, whichever is higher. The Model Auditor chosen by the Proposer must be unaffiliated with the Proposer and otherwise be free of any conflict of interest. Proposer shall submit all requested information concerning the proposed Model Auditor to TxDOT for TxDOT's approval by the applicable last date specified in Section 1.5.1. TxDOT will provide a decision on the requested Model Auditor pre-approval not later than the last date specified in Section 1.5.1.

Neither party will be entitled to any adjustment to the Public Funds Request or the revenue payment provisions, based on the results of the Financial Model Audit.

Pursuant to Section 5.2.4 of the Concession CDA, Developer is required to provide an update to the Financial Model Audit within two Business Days after the Effective Date and within two Business Days after the date of Financial Close.

5.12.4 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 the date that is seven days prior to the Proposal Due Date and ending at 10:00 a.m. (or such other time as is mutually agreed to by the parties) on the date of Financial Close, except as otherwise set forth in the Concession 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)' information source must be submitted to TxDOT for approval by the date set forth in Section 1.5.1 and must be approved by TxDOT not later than 10:00 a.m. on the date set forth in Section 1.5.1.

Benchmark Rate(s) will be recorded by TxDOT, or its designee, at 10:00 a.m. on the first day of the market interest rate protection period and at 10:00 a.m. (or such other time as is mutually agreed to by the parties) on the last day of the market interest rate protection period. The reading will be taken on the Bloomberg U.S.-based screen. Readings will be sent to the selected Proposer immediately and the Proposer will have up to one hour to dispute each reading. If no objection is made within the hour, the reading as taken by TxDOT from the Bloomberg U.S.-based screen shall be used for the purpose of determining the market interest rate adjustment. In the event of a dispute, TxDOT may elect to reexamine the reading provided there is sufficient evidence to support the claim.

Each facility assumed in the Financial Proposal and Financial Model must correspond to a single Benchmark Rate. On the date of Financial Close the selected Proposer and TxDOT shall both adjust the Financial Model to reflect the change in the Benchmark Rate(s) and agree to the exact impact of such an adjustment, highlighting specifically the positive or negative change of the Public Funds Request from TxDOT. On the date of execution of the Concession CDA the two parties shall update the Financial Model to reflect the change in the Benchmark Rate(s) in preparation for the final market interest rate adjustment on the last date of the market interest rate protection period.

5.12.5 Office of Attorney General Determination

As a condition precedent to final award of the CDAs, the Office of the Attorney General shall provide a determination that the proposed CDAs are legally sufficient.

5.12.6 Extension of Financial Close

The deadline for Financial Close shall be as set forth in Section 1.5.3, subject to Proposer's right to extend Financial Close in accordance with this Section 5.12.6 and the Concession CDA. If the Proposal includes only approved financing commitments in accordance with ITP Exhibit C Section 3.2.1, Proposer shall have the option to extend such deadline for an additional 180 days. If the Proposal includes any unapproved financing commitments in accordance with ITP Exhibit C Section 3.2.2, the Proposer has the option to extend the Financial Close deadline set forth in Section 1.5.3 for an additional 360 days.

The extension option may be exercised only by delivery of written notification of the extension to TxDOT, delivered not less than 10 days prior to the initial Financial Close deadline set forth in Section 1.5.3. The notification shall identify the extended Financial Close deadline (180 days or 360 days, as applicable, after the deadline set forth in Section 1.5.3). If the Proposer does not timely exercise this option, it will expire, and Proposer will have the obligation to achieve Financial Close by the original deadline set forth in Section 1.5.3.

If Proposer exercises its option to extend Financial Close in accordance with this Section 5.12.6, then as a condition to final award, Proposer shall obtain Financial Close security either in the form of (i) a Financial Close bond in the form of Form L-3 from a Surety rated in the top two categories by two nationally recognized rating agencies or at

least A minus (A-) or better and Class VIII or better by A.M. Best and Company, or (ii) a letter of credit in the form of Form L-4 issued by a financial institution with a credit rating of "A" or better according to Standard & Poor's and with an office in Austin, Dallas, Houston or San Antonio at which the letter of credit can be presented for payment. If the Proposal includes approved financing commitments in accordance with ITP Exhibit C Section 3.2.1, either form of Financial Close security shall be in the amount of $50 million and valid for a period of 180 days after the original deadline of Financial Close set forth in Section 1.5.3. If the Proposal includes unapproved financing commitments in accordance with ITP Exhibit C Section 3.2.2, either form of Financial Close Security shall be in the amount of $75 million and valid for a period of 360 days after the original deadline of Financial Close set forth in Section 1.5.3.

The Financial Model shall be adjusted at Financial Close to reflect the actual date of financial closing.

5.13 Post-Selection Deliverables

5.13.1 Concession Facility Management Plan

During the period between conditional award and final award of the CDAs, the selected Proposer may, but is not required to, submit all or portions of the Concession Facility Management Plan for the Concession Facility review, comment and possible pre-approval. TxDOT encourages such early submittal(s) and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the CDAs, but cannot guaranty that it will in fact undertake such review or provide comments or approval.

5.13.2 Documents To Be Submitted Following Conditional Award

As a condition precedent to final award of the CDAs, the successful Proposer shall deliver the following to TxDOT within ten days after notification of conditional award:

(a) Evidence of authority to transact business in the State of Texas for each Developer and all other members of the Proposer's team that will transact business in the State, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Texas along with a Certificate of Good Standing from the state of organization of each Developer or other member; (ii) a Certificate of Good Standing from the Texas Comptroller; or (iii) other evidence acceptable to TxDOT.

(b) If not previously submitted, a copy of the final organizational documents for each Developer and, if a Developer is a limited liability company, partnership or joint venture, for each member or partner of that Developer. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

(c) Increased Proposal Security in the amount of $50 million or $75 million, as applicable, in accordance with Exhibit B, Section 3.3.

(d) If security for Developer's obligations under the Concession CDA is required by TxDOT pursuant to Exhibit C, Section 2.0, the form of the proposed guarantees, which shall be in form and substance acceptable to TxDOT, in its sole discretion.

(e) The form of the proposed security for Developer's obligations under the CDA for Segments 2-4 as required by Exhibit B, Section 3.6, which shall be subject to approval by TxDOT in its sole discretion and consistent with the commitment made in Form B-2.

During the negotiation period, prior to final award, the Proposer shall deliver drafts of the deliverables identified in Section 6.1.1, for pre-approval by TxDOT; provided, however, that Proposer shall not be required to deliver drafts of the Initial Funding Agreements, Initial Security Documents and the Lender's Direct Agreement prior to execution of the CDAs if Proposer timely exercises its option to extend Financial Close under Section 5.12.6.

5.13.3 TxDOT Comments On Post-Selection Deliverables

TxDOT shall provide comments on any Post-Selection Deliverable required to be delivered to TxDOT for review and approval hereunder (including documents required to be approved under Section 5.13.2), within ten days of the date of TxDOT's receipt of such deliverable. TxDOT shall have three Business Days to review and respond to subsequent submittals of the deliverable.

5.14 NEPA Impacts to Post-Selection Process

In the event the Proposer is unable to achieve Financial Close by the deadline set forth in Section 1.5.3 as a result of pending litigation challenging a NEPA Approval for Segment 1 and, if applicable, Segment 2, filed before lapse of the applicable statute of limitations, the selected Proposer will be excused from reaching Financial Close by the deadline and shall not forfeit its Proposal Security. In such event, TxDOT may elect to terminate the procurement and/or the selected Proposer may elect to withdraw its Proposal. Neither TxDOT nor any of the Proposers shall be entitled to any compensation whatsoever on account of such termination prior to Financial Close other than the payment for work product, which will be payable to eligible Proposers in accordance with Section 6.3.

5.15 Negotiation of the Independent Engineer Agreement

Promptly following conditional award, TxDOT and the selected Proposer shall agree on a schedule to negotiate and finalize the Independent Engineer Agreement consistent with the scheduled deadline for commercial close. Both the selected Proposer and TxDOT shall thereafter adhere to the terms of such schedule and shall attend and actively participate in reasonably scheduled negotiation meetings ("the Independent Engineer negotiations"). If the selected Proposer fails to negotiate in good faith (including any action of the type that would be deemed a failure to engage in good faith

negotiations under the standards set forth in Section 5.12.1), it will forfeit its Proposal Security as set forth in Section 4.7.

If inability of the selected Proposer to achieve commercial close by the applicable deadline is directly attributable to TxDOT's or the Independent Engineer's failure to negotiate in good faith (including any action of the type that would be deemed a failure to engage in good faith negotiations under the standards set forth in Section 5.12.1), the Proposer shall be excused from reaching commercial close by the applicable deadline and shall not forfeit its Proposal Security. In such event, TxDOT may elect to terminate the procurement and/or the selected Proposer may elect to withdraw its Proposal. Neither TxDOT nor any of the Proposers shall be entitled to any compensation whatsoever on account of such termination prior to Financial Close other than the payment for work product which will be payable to eligible Proposers in accordance with Section 6.3.

5.16 TxDOT Post-Selection Deliverables and Notification to Legislative Budget Board

TxDOT will provide the following documents to the selected Proposer within the specified timeframes, provided all conditions precedent to final award have been satisfied:

(a) An executed FHWA Express Lane Demonstration Program Agreement, to be delivered on or before the scheduled date of final award.

(b) An opinion from the Office of General Counsel in substantially the form included in the RIDs. A draft will be delivered on or before 30 days prior to the scheduled date of final award, and the final opinion will be delivered on the date of final award. An updated opinion will be provided on the date of Financial Close, if different from final award.

(c) The fully executed CDAs, Lease, Memorandum of Lease, Lease Escrow Agreement, Facility Trust and Security Instruments, and PABs Agreement, conformed for execution (subject to the interest rate adjustment referenced in Section 5.12.4), to be delivered no later than seven days before the scheduled date of final award.

(d) The NTTA Tolling Services Agreement executed by the NTTA and in a form that does not materially differ from the form included in Exhibit G.

(e) A resolution from the Tarrant County Commissioner's Court supporting the North Tarrant Express Comprehensive Development Agreement, in accordance with Senate Bill 792.

At least 30 days prior to final award, TxDOT is required to provide the Legislative Budget Board and the State Auditor with the following, as compliance with Sections 371.052 and 371.151 of the Code: (i) a copy of the CDAs; (ii) a copy of the selected apparent best value Proposal, or, if applicable, the next best value Proposal; (iii) a financial forecast prepared by TxDOT for the Project; and (iv) a copy of TxDOT's traffic

and revenue report for the Project. TxDOT is also required, pursuant to Sections 371.052 and 371.151 of the Code, to publish certain financial information of the selected best value Proposer.

SECTION 6.0 FINAL CONTRACT AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of CDAs

The following are conditions precedent to final award of the CDAs: (a) successful completion of negotiations (if held), (b) concurrence in award by FHWA, (c) receipt by TxDOT of all of the documents required to be provided prior to execution of the CDAs under this Section 6.1, and (d) any other conditions required by the Commission. Final award will be evidenced by execution of the CDAs by the Executive Director of TxDOT or his designee.

Upon satisfaction of the foregoing conditions, TxDOT will deliver four sets of execution copies of the CDAs to the selected Proposer along with the number of sets of execution copies reasonably requested by the Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to TxDOT within seven Business Days of receipt, together with the required documents described in Section 6.1.1 below. If the Developer is a joint venture or a partnership, the CDAs must be executed by all joint venture members or general partners, as applicable. Within 15 Business Days of TxDOT's receipt of all such documents and satisfaction of all conditions precedent, TxDOT will execute the agreements, retain four sets and deliver the other executed sets to the Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to the Proposer.

6.1.1 Documents to Be Delivered By Proposer With Executed CDAs

The Proposer shall deliver the documents listed below to TxDOT concurrently with the executed CDAs, as a condition to execution of the CDAs by TxDOT. On or before the date that TxDOT delivers the execution sets of the CDAs to the Proposer, TxDOT shall notify the Proposer regarding the number of originals and copies required to be delivered.

(a) Evidence of approval of the final form of each CDA, and of due authorization, execution, delivery and performance of each CDA by Developer thereunder and (if Developer is a joint venture) by its joint venture members. Such evidence shall be in form and substance satisfactory to TxDOT. If Developer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Developer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Developer is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (3) if there is no managing member, a resolution from each member certified by an appropriate officer of such member. If the Developer is a joint venture,

such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member.

(b) A written opinion from counsel for Developer, which counsel shall be approved by TxDOT (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in Texas and the enforceability opinion shall be provided by an attorney licensed in the State of Texas), in substantially the form attached hereto as Form N (with such changes as agreed to by TxDOT in its sole discretion), provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware;

(c) Evidence of insurance required to be provided by Developer under the CDAs;

(d) Evidence that each Developer and Major Participants hold all licenses required for performance of the Work;

(e) Executed Lease and Lease Escrow Agreement (in a form approved by TxDOT for (i) consistency with the Concession CDA, (ii) inclusion of a provision naming TxDOT as a third party beneficiary, and (iii) inclusion of provisions prohibiting the release of escrowed documents to any party without TxDOT's approval);

(f) Executed copies of the Intellectual Property Escrow Agreement(s) in substantially the form attached hereto as Form Q (with such changes as agreed to by TxDOT in its sole discretion);

(g) Executed Facility Trust Agreement (in the form of Exhibit J) and the Facility Trust and Security Instruments;

(h) Copy of executed NTTA Tolling Services Agreement (in the form of Exhibit G);

(i) Copy of Independent Engineer Agreement (substantially in the form of Exhibit H-1 with such changes as agreed to by Proposer, TxDOT and the Independent Engineer) executed by Proposer and the Independent Engineer;

(j) TxDOT approved DBE Performance Plan in accordance with the requirements of Section 1.7.1;

(k) Commitments for payment and performance security as follows:

i. A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified

power of attorney, committing to provide Payment and Performance Bonds, each in the amount of $250 million and in form acceptable to TxDOT, as described in Section 16.2 of the Concession CDA. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Concession CDA, execution and delivery of the Design Build Contract, and issuance of NTP2; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Concession CDA, the Technical Provisions or the Design Build Contract following the date of the letter. The Surety letter must commit to issuance of a bond on behalf of the Proposer's Design Build Contractor, naming TxDOT as a dual obligee; or

ii. A letter from a financial institution licensed to do business in the State of Texas with a credit rating of "A" or better according to Standard & Poors and with an office in the United States at which the Payment and Performance Letter of Credit can be presented for payment by facsimile or by electronic means, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide the Payment and Performance Letter of Credit in a form acceptable to TxDOT, in the amount of $250 million. The commitment letter may include no conditions, qualifications, or reservations or otherwise, other than a statement that the commitment is subject to final award, issuance of NTP2 and execution and delivery of the Design-Build Contract. The letter must commit to issuance of the Payment and Performance Letter of Credit on behalf of the Proposer's Design-Build Contractor, naming TxDOT either as the beneficiary thereof or as a transferee beneficiary thereof;

(l) If security for the Proposer's obligations under the Concession CDA is required by TxDOT pursuant to Exhibit C, Section 2.0, guarantees from Guarantor(s) in the form previously approved by TxDOT;

(m) The security for the CDA for Segments 2-4 in the form previously approved by TxDOT;

(n) Certification Regarding NTTA Communications in the form of Form R, except that the reference to the "Proposal Due Date" in such form shall be revised to refer to the "date of Financial Close;"

(o) Unless Proposer has timely exercised its option to extend Financial Close in accordance with the terms of Section 5.12.6, executed Lender's Direct Agreement (in

the form of Exhibit 25 to the Concession CDA) and copies of executed Initial Funding Agreements and Initial Security Documents.

(p) If applicable, a valid and binding form of Financial Close security pursuant to Section 5.12.6.

(q) Any other requirements identified by TxDOT as a condition to award or execution or determined during pre-award negotiations.

As a condition to TxDOT's execution and delivery of the Concession CDA, TxDOT shall have received the CDA for Segments 2-4 executed by the Proposer.

6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the CDAs. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and the award of the CDAs.

Debriefings shall:

(a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the ESRC, but may include a summary of the rationale for the selection decision and the award of the CDAs.

6.3 Payment to Unsuccessful Proposers

6.3.1 Payment for Work Product

Each Proposer that submits a responsive, but unsuccessful, Proposal shall be entitled to receive payment from TxDOT for work product that is not returned to the Proposer, on the terms and conditions described herein and in the Minute Order issued by the Texas Transportation Commission, a copy of which is attached hereto as Exhibit I. No Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in this Section 6.3.

6.3.2 Amount of Payment; Invoice

The amount of the payment may not exceed the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions, up to the maximum stipulated amount per Proposer. The maximum stipulated payment for work product per Proposer for this procurement is $1,000,000. In order to request payment, each Proposer must submit an invoice to TxDOT. The invoice may be submitted no earlier than 45 days after notice of final award (including execution of the CDAs) is posted on the FTP site, or, if final award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the selected apparent best value Proposer and TxDOT), as applicable.

All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment. Payments will be made within 30 days of receipt of an invoice therefor, provided that if the CDAs have been awarded and close of finance has not occurred prior to such date, TxDOT shall have no obligation to make payment until two business days following close of finance.

6.3.3 Right to Use Work Product

In accordance with § 223.203(m) of the Code, each Proposer agrees that TxDOT shall be entitled to use all work product that is not returned to the Proposer (including ATCs, AFCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) contained in its Proposal or generated by or on behalf of the Proposer for the purpose of developing its Proposal, in consideration for TxDOT's agreement to make payment as provided herein, without any further compensation or consideration to the Proposer.

Each Proposer acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after conditional award of the CDAs, and that the CDAs may incorporate the above-described work product or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to otherwise use such work product in the performance of its functions. As provided in Section 223.203(m) of the Code, the use of any of the work product by TxDOT at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer. Each Proposer acknowledges and agrees that it does not have the right to refuse the payment hereunder and keep the contents of its Proposal from being used by TxDOT, as described herein; provided, however, that an unsuccessful Proposer may reject the payment and retain the work product if the procurement is canceled. Failure to deliver the invoice within the time period specified herein shall be deemed a rejection.

6.3.4 Payment to Proposer Selected for Award

For purposes of this Section 6.3, a Proposer that withdraws its Proposal as a result of any of the circumstances set forth in Section 4.7.2 (a), (d), (e) shall be deemed to have

submitted an unsuccessful Proposal for purposes hereof, provided that (i) the delay for which TxDOT is responsible continues beyond the 270-day proposal validity period; and (ii) there was no concurrent Proposer delay. In no other event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive a payment for work product under this Section 6.3.

6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process

Concurrently with delivery of the executed CDAs, Developer will execute and deliver the Intellectual Property Escrow Agreement(s) (Form Q, with such changes as agreed to by TxDOT in its sole discretion) to the Escrow Agent, allowing the Escrowed Materials to be transferred to the Intellectual Property Escrow and to be available for review by the parties as described in the CDAs.

In accordance with the procedures set forth in the Escrow Agreement (Form M), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the CDAs have been executed and delivered, after TxDOT rejects all of the Proposals or after TxDOT terminates this procurement.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 and Section 27.6 of Title 43 of the Texas Administrative Code set forth the exclusive protest remedies available with respect to this RFP and prescribe exclusive procedures for protests regarding:

(a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed TxDOT's authority;

(b) a determination as to whether a Proposal is responsive to the requirements of the Request for Proposals, as applicable; and

(c) award of the CDAs.

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after the Proposer has informally discussed the nature and basis of the protest with TxDOT, following the procedures for those discussions prescribed in the RFP.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five business days after the Addendum is issued.

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five business days after receipt of the notification of non-responsiveness.

7.3.3 Protests concerning the issues described in Section 7.1(c) must be filed no later than ten business days after the earliest of the Commission's conditional award, and the public announcement of the apparent best value Proposer.

7.4 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the Authorized Representative specified in Section 2.2.1 above, with a copy to the Office of General Counsel, Texas Department of Transportation, 125 E. 11th Street, Suite 702,

Austin, TX 78701-2483, as soon as the basis for protest is known to the Proposer. The Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the FTP site.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. TxDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 Burden of Proof

The protestant shall have the burden of proving its protest. TxDOT may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 Decision on Protest

The Assistant Executive Director for Engineering Operations or his designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, TxDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 Protestant's Payment of Costs

If a protest is denied, the Proposer filing the protest shall be liable for TxDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by TxDOT as a consequence of the protest.

7.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 7.0, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section, it shall indemnify and hold TxDOT and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8.0 TXDOT RIGHTS AND DISCLAIMERS

8.1 TxDOT Rights

TxDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform Developer's obligations under the CDAs. TxDOT reserves the right, in its sole discretion, to:

(a) Develop the Project and any facility in any manner that it, in its sole discretion, deems necessary;

(b) Reject any or all of the Proposals;

(c) Modify any dates set or projected in this RFP and extend any deadlines;

(d) Cancel, modify or withdraw the RFP in whole or in part;

(e) Terminate this procurement and commence a new procurement for part or all of the Project;

(f) Terminate evaluations of Proposals received at any time, in its sole discretion;

(g) Suspend, discontinue or terminate negotiations of the CDAs at any time, elect not to commence negotiations of the CDAs with any responding Proposer and engage in negotiations with other than the highest ranked Proposer;

(h) Modify the procurement process (with appropriate notice to Proposers);

(i) Waive or permit corrections to data submitted with any response to this RFP until such time as TxDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;

(j) Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by TxDOT until such time as TxDOT declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed;

(k) Appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;

(l) Disclose information contained in a Proposal to the public as described herein;

(m) Approve or disapprove changes in the Key Personnel identified in the QS;

(n) Approve or disapprove changes in the Proposer's organization;

(o) Accept a Proposal other than that which requests the least Public Funds from or offers the highest total payment to TxDOT;

(p) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

(q) Not issue a notice to proceed after execution of the CDAs;

(r) Request or obtain additional information about any Proposal from any source; and

(s) Exercise any other right reserved or afforded to TxDOT under this RFP and applicable Law.

8.2 TxDOT Disclaimers

This RFP does not commit TxDOT to enter into a contract. Except as expressly set forth in Section 6.3, TxDOT and the State of Texas assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall TxDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the CDAs, in form and substance satisfactory to TxDOT, have been authorized and executed by TxDOT and, then, only to the extent set forth therein. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.