

ADDENDUM #13
Issued January 18, 2009

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

RFP Issued September 18, 2007
Addendum #1 issued January 9, 2008
Addendum #2 issued March 3, 2008
Addendum #3 issued March 19, 2008
Addendum #4 issued April 2, 2008
Addendum #5 issued , May 2, 2008
Addendum #6 issued June 4, 2008
Addendum #7 issued June 27, 2008
Addendum #8 issued July 21, 2008
Addendum #9 issued October 10, 2008
Addendum #10 issued November 21, 2008
Addendum #11 issued December 23, 2008
Addendum #12 issued January 14, 2009

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

This Addendum #13 to the Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the IH 635 Managed Lanes Project through a Comprehensive Development Agreement is issued by the Texas Department of Transportation on January 18, 2009 to set forth certain changes to the Request for Proposals, as amended by Addenda #1 through #12 (the “RFP”). All provisions in the RFP shall remain in full force and effect, except as otherwise expressly set forth herein. All initially capitalized terms and acronyms used but not defined herein shall have the meaning set forth in the RFP.

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

1. Changes to the CDA

1.1 Changes to Section 4.1.4.3:

4.1.4.3 If for any reason Developer fails to achieve Financial Close by the Project Financing Deadline, then TxDOT shall have the liquidated damage and termination remedies set forth in Sections 17.4.4 and 19.3.4, after delivering written notice of such Developer Default to Developer and Developer’s failure to cure the same within the cure period set forth in Section 17.1.2.1; provided, however, that Developer shall not be deemed to be in Developer Default and TxDOT will not be entitled to such liquidated damage remedies (but

nevertheless shall be entitled to terminate this Agreement in accordance with the terms hereof) if such failure is directly attributable to:

~~(a) — Litigation challenging a NEPA Approval that is filed before lapse of the applicable statute of limitations and remains pending on the Project Financing Deadline;~~

~~(b) — A drop in the State's credit rating below A+ from Standard & Poor's and A2 from Moody's;~~

~~(ae)~~ If PABs are part of the initial financing under Developer's Project Plan of Finance, the refusal or unreasonable delay of the PABs Issuer to issue bonds in the amount that Developer's underwriters are prepared to underwrite, provided that such refusal or delay is not due to any fault or less than diligent efforts of Developer, including Developer's failure to satisfy all requirements that it is obligated to satisfy under the PABs Agreement. Delay by the PABs Issuer shall not be considered unreasonable where the financing schedule Developer establishes does not provide the PABs Issuer normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds;

~~(bd)~~ If PABs are part of the initial financing under Developer's Project Plan of Finance, (i) the refusal of the PABs Issuer's counsel to allow 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. Delay by the PABs Issuer's counsel shall not be considered where the financing schedule Developer establishes does not provide the PABs Issuer's counsel normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds;

~~(ce)~~ If PABs are part of the initial financing under Developer's Project Plan of Finance, the failure of the PABs Issuer or TxDOT to comply with the terms of the PABs Agreement, the expiration of the PABs allocation approved by the USDOT Secretary despite commercially reasonable efforts on the part of Developer to obtain an extension of the PABs allocation or the withdrawal, rescission 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 and where such failure is not due to the fault of Developer or the failure on the part of Developer to satisfy any conditions precedent to the use of the PABs allocation;

~~(df)~~ If TIFIA credit assistance is part of the initial financing under Developer's Project Plan of Finance and reflected in the ~~TIFIA Credit Council approval letter and executed TIFIA conditional term sheet between the USDOT/TIFIA Joint Program Office and Developer, the failure of the TIFIA Joint Program Office to close TIFIA financing or provide TIFIA financing on or after October 1, 2009 and prior to the deadline for Financial Close despite commercially reasonable efforts by Developer to do so (which commercially reasonable efforts may include making reasonable financial and commercial concessions as necessary and appropriate under the circumstances);~~ provided, however, that the following shall be deemed not to be a failure by TIFIA to close TIFIA financing by the relevant deadline for purposes of this clause (f): (i) the lack of TIFIA contract and budget authority with respect to the Project for amounts in excess of the amount in Developer's Project Plan of Finance and reflected in the ~~TIFIA Credit Council approval letter and executed TIFIA conditional term sheet between the~~

~~USDOT/TIFIA Joint Program Office~~ and Developer or (ii) the failure of Developer, prior to the deadline for Financial Close or any earlier deadline specified in the ~~TIFIA Credit Council approval letter or~~ executed TIFIA conditional term sheet between the ~~USDOT/TIFIA Joint Program Office~~ and Developer (as may be supplemented and amended), to satisfy any of the conditions precedent for the TIFIA financing set forth in ~~the TIFIA Credit Council approval letter and~~ such executed TIFIA conditional term sheet (other than a condition precedent requiring environmental reevaluation approval of an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation);

(~~eg~~) Any ~~C~~ircumstances entitling either Party to terminate this Agreement prior to Financial Close pursuant to Section 19.14.

1.2 Changes to Section 4.1.4.4:

4.1.4.4 Developer or TxDOT may terminate this Agreement without fault, Claim or penalty if Financial Close does not occur by the Project Financing Deadline and such failure is directly attributable to any of the contingencies set forth in Section 4.1.4.3, except for any Termination Compensation TxDOT may owe by reason of termination of this Agreement prior to Financial Close pursuant to Section 19.14; provided, however:

~~(a) — If such failure is directly attributable to the contingency set forth in Section 4.1.4.3(a), notice of termination under this Section 4.1.4.4 shall obligate TxDOT and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective;~~

~~(ab)~~ If such failure is directly attributable to the contingency set forth in Section 4.1.4.3(d), Developer's right to terminate under this Section 4.1.4.4 is conditioned on TxDOT having not delivered to Developer written notice exercising one of its options under Section 13.2.6.5(a) or (b) within 30 days after the date TxDOT receives from Developer, on an Open Book Basis, all relevant data, documents and information pertinent to TxDOT's options under Sections 13.2.6.5(a) and (b); and

~~(be)~~ If at the time a right to terminate under Section 19.14 is exercised either Party possesses a concurrently existing right to terminate due to failure of any other contingency set forth in Section 4.1.4.3, then the provision for Termination Compensation under Section 19.14 shall be inapplicable and no Termination Compensation shall be due or owing.

In the event of termination under this Section 4.1.4.4, all the CDA Documents and the Independent Engineer Agreement shall be deemed rescinded (except for the provisions of this Agreement that survive termination), and TxDOT shall promptly return to Developer the original of the Financial Option Security.

1.3 Changes to Section 6.2.12:

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

6.2.12.1 TxDOT, at its election, may request Developer to undertake services Developer shall undertake all efforts as reasonably requested by TxDOT to assist in

obtaining such environmental reevaluation in a timely manner, ~~at Developer's expense~~, including execution and delivery of appropriate applications and other documentation in form approved by TxDOT, and including reasonably requested revisions and modifications to the submittals described in Sections 7.7.2.2(a), (e) and (f) (notwithstanding that the NTP2 Conditions Deadline may occur after Financial Close). Upon such request, Developer shall promptly submit to TxDOT a reasonable budget for such services. Such budget shall be subject to TxDOT's approval in its sole discretion; provided that if the Parties are unable to agree upon a budget, Developer shall not be obligated to provide such services and TxDOT shall have the right to obtain such services from other sources (including its own forces and/or other contractors). Each such budget, once approved, shall be the basis for determining Termination Compensation under Exhibit 23, Section E.4(b); but unless and until the obligation to pay such Termination Compensation arises, Developer shall bear all its costs of performing the requested services.

6.2.12.2 Subject to any agreed scope of work and budget and to any rights of Developer in the case of a Compensation Event, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, TxDOT incurs in providing such environmental reevaluation approval. For avoidance of doubt, TxDOT's Recoverable Costs include its costs of other sources to provide services requested pursuant to Section 6.2.12.1, up to the amount of Developer's proposed budget(s) for such services. Refer to Section 4.2 of the Technical Provisions for additional provisions on applications in TxDOT's name for Environmental Approvals.

6.2.12.32 If TxDOT obtains the environmental reevaluation approval that substantially allows the alternative technical concept prior to 12 months after the date Developer submits to TxDOT a schematic plan therefor that complies in all material respects with the applicable provisions of the CDA Documents (except those for which TxDOT granted written Deviations), TxDOT shall be entitled to receive from Developer 100% of the decrease in design and construction costs determined under this Section 6.2.12.32 and 80% of the increase in Toll Revenues, net of Developer's associated increased operating and maintenance costs, with no compensation for any other impacts.

(a) Within 30 days after TxDOT obtains the environmental reevaluation approval, TxDOT shall submit a written notice to Developer identifying the date of the environmental reevaluation approval and requesting written analysis and calculation of Developer's estimated increase in Toll Revenues as a result of obtaining the environmental reevaluation approval prior to 12 months after the date Developer submits to TxDOT a schematic plan therefor that complies in all material respects with the applicable provisions of the CDA Documents (except those for which TxDOT granted written Deviations). Within 30 days after receiving TxDOT's notice, Developer shall provide to TxDOT all of the requested information. After receiving Developer's written analysis and estimate, TxDOT shall be entitled to obtain from a traffic and revenue consultant hired by Developer and reasonably approved by TxDOT a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impact on Toll Revenues attributable to the early approval. TxDOT shall provide to Developer a true and complete copy of the traffic and revenue study. Within 30 days after TxDOT and Developer receive the traffic and revenue study, TxDOT and Developer shall commence good faith negotiations to determine the amount of the increase in Toll Revenues, if any, to which TxDOT is entitled. Any Dispute regarding such amount shall be resolved according to the Dispute Resolution Procedures. For the purpose of any discounting, the provisions of Section 13.2.4.3 shall apply.

(b) For the purpose of determining the decrease in design and construction costs (if any), the decrease shall be the absolute value of the following formula:

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

Where:

- $\sum PA_{(r)}$ is the sum of the Payment Activities associated with the portion of the Project subject to the environmental reevaluation.
- ENR CCI_(f) is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date that is 12 months after the date Developer submits to TxDOT a schematic plan therefor that complies in all material respects with the applicable provisions of the CDA Documents (except those for which TxDOT granted written Deviations).
- ENR CCI_(a) is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to either the date of the environmental reevaluation approval, or NTP2, whichever is later.

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

(c) Payment under this Section 6.2.12.32 shall be due 30 days following a determination of the increase in Toll Revenues by mutual agreement or the Dispute Resolution Procedures, together with interest thereon, commencing on the date of the environmental reevaluation approval until the date paid, at a floating rate equal to the LIBOR in effect from time to time.

1.4 Changes to Section 13.2.6.5:

13.2.6.5 Under clause (g) of the definition of Compensation Event, then TxDOT may elect in its sole discretion one of the following:

(a) In lieu of paying any Compensation Amount, TxDOT may elect to extend a loan to Developer, closing concurrently with Financial Close, in an original principal amount equal to (i) the original principal amount of TIFIA financing included in Developer's Project Plan of Finance and reflected in the executed TIFIA Credit Council approval letter and executed conditional term sheet between the TIFIA Joint Program Office USDOT and Developer, minus (ii) the original principal amount of TIFIA financing actually made available to Developer (or that would be available to Developer assuming it satisfied all terms and conditions of the TIFIA Credit Council approval letter and executed conditional term sheet between the TIFIA Joint Program Office and Developer (as such terms and conditions may be amended from time to time)). The TxDOT loan shall be on the same terms and conditions as the TIFIA financing, including interest rate, security, priority of security and any payment from Developer required to support more than \$70 million of contract and budget authority (which payment shall be made to TxDOT), as set forth in the executed TIFIA conditional term sheet between the USDOT TIFIA Joint Program Office and Developer (as such terms and conditions may be amended from time to time). If, however, TIFIA financing will actually be made available to Developer, then TxDOT's right to make the foregoing loan shall be subject to the written approval of the TIFIA Joint Program Office if such approval is required under the terms of the TIFIA financing negotiation with the USDOT and the TIFIA Joint Program Office; and. In the event

~~approval of the TIFIA Joint Program Office is required~~, TxDOT shall have the right, without further authorization from Developer, to directly communicate and negotiate with the TIFIA Joint Program Office regarding TxDOT's proposed financing and related intercreditor issues. Developer shall reasonably cooperate with TxDOT in such negotiations.

(b) ~~If effective to the same extent as TIFIA treats its own sources for funding its contract and budget authority~~, TxDOT may elect to pay, as the Compensation Amount, a subsidy payment to the ~~TIFIA Joint Program Office~~USDOT to cover the cost ~~to the federal government of making a loan (see 23 U.S.C. 603(b)(7) by to obtain an~~ incrementally increasing ~~in~~ the TIFIA contract and budget authority allocated to the Project to the lesser of (i) \$70 million or (ii) that needed to support the amount of TIFIA financing included in Developer's Project Plan of Finance and reflected in the ~~executed~~ TIFIA ~~Credit Council approval letter and executed~~ conditional term sheet between the ~~TIFIA Joint Program Office~~USDOT and Developer. This election shall not be available to TxDOT, however, if (A) the USDOT determines that such a payment from TxDOT cannot lawfully be used to subsidize TIFIA contract and budget authority, or (B) a further payment would be needed from Developer to the USDOT to incrementally increase the TIFIA contract and budget authority allocated to the Project to that needed to support the amount of TIFIA financing included in Developer's Project Plan of Finance and reflected in the executed TIFIA conditional term sheet, and the USDOT determines that such a payment from Developer cannot lawfully be used to subsidize TIFIA contract and budget authority.

1.5 Changes to Section 17.1.1.17:

17.1.1.17 Developer fails to timely satisfy its financing obligation under Section 4.1.4, unless such failure is excused as more specifically set forth in Section 4.1.4.34.

1.6 Changes to Section 17.4.4.1:

17.4.4.1 Developer shall be liable for and pay to TxDOT liquidated damages if (a) Developer for any reason fails to timely satisfy its financing obligations under Section 4.1.4, (b) Developer's failure is not excused in accordance with Sections 4.1.4.3(a) through (ef) and (c) as a result thereof TxDOT terminates this Agreement and the Lease pursuant to Section 19.3.4. TxDOT shall be entitled to draw on the Financial Option Security for the liquidated damages owing to TxDOT. The amount of such liquidated damages shall equal the amount of the Financial Option Security in place at the time of such termination under this Section 17.4.4.1. Such liquidated damages shall constitute TxDOT's sole right to damages on account of such failure.

1.7 Changes to Section 19.3.4:

19.3.4 Special Provision Regarding Financing Default

As an additional Default Termination Event, TxDOT, at its sole election, shall be entitled to terminate this Agreement and the Lease, if there occurs a Developer Default under Section 17.1.1.17 and such Developer Default is not fully and completely cured through completion of Financial Close within the cure period set forth in Section 17.1.2.1, without need for Warning Notice or any other notice and without any additional cure period. Upon such termination, TxDOT shall be entitled to draw on the Financial Option Security or forfeiture of the Financial Option Security, as applicable, for the liquidated damages owing to TxDOT under

Section 17.4.4.1. For termination rights for failure to achieve Financial Close in the absence of a Developer Default under Section 17.1.1.17, refer to Sections 4.1.4.4 and 19.14.

1.8 Changes to Section 19.14:

19.14 Termination for Failure to Obtain Environmental Reevaluation Approval or for Other Specified Events

19.4.3 If, as a result of the provisions of Section 4.1.4.5, the Public Funds Amount would increase by more than the greater of (a) an amount equal to \$700 million minus the original Public Funds Amount set forth in Part E, Section 1 of Exhibit 7 (if any) or (b) \$50,000,000, TxDOT may, in its sole discretion, up to the last date of the market interest rate protection period, elect to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to Developer; provided, however, that notice of termination under this Section 19.14.34 shall obligate TxDOT and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective.

19.14.4 If for any reason Developer fails to achieve Financial Close by the Project Financing Deadline and such failure is directly attributable to litigation that challenges a NEPA Approval that is filed before lapse of the applicable statute of limitations and remains pending on the Project Financing Deadline, then Developer or TxDOT may terminate this Agreement, effective immediately upon delivery of written notice of termination to the other Party; provided, however, that notice of termination under this Section 19.14.4 shall obligate TxDOT and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective.

19.14.5 If for any reason Developer fails to achieve Financial Close by the Project Financing Deadline and such failure is directly attributable to a drop in the State's credit rating below A+ from Standard & Poor's and A2 from Moody's, then Developer or TxDOT may terminate this Agreement, effective immediately upon delivery of written notice of termination to the other Party; provided, however, that notice of termination under this Section 19.14.5 shall obligate TxDOT and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective.

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

19.14.75 Notwithstanding Section 19.14.4, and subject to Section 4.1.4.4(be), in the event of such termination, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section E of Exhibit 23 and payment will be due and payable as and when provided in Section G.5 of Exhibit 23. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

1.9 Changes to Section 24.2.2:

24.2.2 With respect to Expendable Materials any Developer-Related Entity (other than NTTA) purchases, Developer shall submit or cause the Developer-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event any Developer-Related Entity is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse Developer for such sales tax.

Reimbursement shall be due within 60 days after TxDOT receives from Developer written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. Developer agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable Materials. If materials purchased for the Work are not wholly used or expended on the Project, such that they do not qualify as Expendable Materials, Developer will be responsible for applicable sales taxes.

1.10 Changes to Exhibit 1 to CDA,, List of Abbreviations:

USDOT United States Department of Transportation

1.11 Changes to Exhibit 1 to CDA, definition of "Compensation Event":

- (g) If TIFIA credit assistance is part of the initial financing under Developer's Project Plan of Finance and reflected in a TIFIA Credit Council approval letter and an executed conditional term sheet between the TIFIA Joint Program Office and Developer, the failure of the TIFIA Joint Program Office to close such TIFIA financing on or after October 1, 2009 and prior to the deadline for Financial Close despite commercially reasonable efforts by Developer to do so ~~(which commercially reasonable efforts may include making reasonable financial and commercial concessions as necessary and appropriate under the circumstances)~~; provided, however, that the following shall be deemed not to be a failure by TIFIA to close such TIFIA financing by the relevant deadline for purposes of this clause (g): (i) the lack of TIFIA contract and budget authority with respect to the Project for amounts in excess of the amount in Developer's Project Plan of Finance and reflected in the TIFIA Credit Council approval letter and executed conditional term sheet between the TIFIA Joint Program Office and Developer or (ii) the failure of Developer, prior to the deadline for Financial Close or any earlier deadline specified in the TIFIA Credit Council approval letter or executed term sheet between the TIFIA Joint Program Office and Developer (as may be supplemented and amended), to satisfy any of the conditions precedent for the TIFIA financing set forth in the TIFIA Credit Council approval letter and such executed conditional term sheet;

1.12 Changes to Exhibit 23 to CDA, Section E.4:

E. Compensation Upon Termination by Court Ruling, Due to Certain Delayed Notices to Proceed, Due to Lack of NEPA Finality or Due to ~~Section 19.14 Events~~Failure to Obtain Environmental Reevaluation Approval

4. In the event of any termination pursuant to Section 19.14 of the Agreement for which notice of termination is delivered prior to Financial Close, the Termination Compensation shall be an amount equal to the ~~lesser of \$10 million or the~~ sum of the following:

(a) Nonrefundable ~~loan commitment~~Lender fees and premiums previously paid by Developer to secure the loan commitment for first priority Initial Project Debt described in Exhibit 2 to the Agreement, in any event not exceeding \$22.5 million and provided that TxDOT has first approved such fees and premiums in writing, which approval shall not to be unreasonably withheld and shall be subject to the time period provided in Section 6.3.2 of the

Agreement, provided that a disapproval that Developer demonstrates would jeopardize its available opportunities to timely carry out its Project Plan of Finance shall be deemed unreasonable the amount of commitment fees therefor set forth in Exhibit 2; plus

(b) Reasonable costs Developer has incurred after the Effective Date and on or prior to the Early Termination Date that are within a scope of services and budget requested and approved in writing by TxDOT in its sole discretion pursuant to Section 6.2.12.1 of the Agreement, to assist in obtaining environmental reevaluation approval for an alternative technical concept approved by TxDOT and described in Exhibit 2, except costs incurred to cause Developer's schematic plan for such alternative technical concept to comply with the applicable provisions of the CDA Documents to perform the activities required for issuance of NTP2 as set forth in Section 7.7.2.2 of the Agreement and any other activities required by the CDA Documents to be performed prior to Financial Close, excluding any costs incurred relating to seeking, negotiating, arranging or closing equity commitments, the Initial Project Debt or any other financing; plus

(c) Any reimbursements of TxDOT's Recoverable Costs paid to TxDOT pursuant to Section 6.2.12.2 of the Agreement.

1.13 Changes to Exhibit 23 to CDA, Section G.5:

5. For Termination by Court Ruling, Certain Delayed Notices to Proceed, Lack of NEPA Finality or Section 19.14 Events Failure to Obtain Environmental Reevaluation Approval

(a) In the event of Termination by Court Ruling, termination shall be valid and effective on the entry of final judgment. If the Agreement and Lease are terminated due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement and the measure of the Termination Compensation is under Section E above, due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement or due to either Party's election as provided in Section 19.14 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. In the event either Party elects to terminate as provided in Section 19.14, termination shall be valid and effective on the date notice of termination is delivered and the negotiating period under Section 19.14.2 expires without mutual agreement in writing to rescind the termination notice. TxDOT shall deliver to Developer, within 60 days after the later of (i) the Early Termination Date or (ii) the date TxDOT receives from the Collateral Agent a written statement of the Initial Senior Debt Termination Amount, increases in the Initial Senior Debt Termination Amount due to each Refinancing described in Section E.1(a) above, and the Senior Debt Termination Amount and from Developer written documentation and other evidence of the amounts of the Subordinate Debt, Contributed Unreturned Equity, and all Borrowed Cash and Credit Balances (or, in the case of termination governed by Section E.4 above, written documentation and other evidence of the amounts described therein), together with Developer's written certification that the amounts shown are true, correct and complete, immediately available funds equal to the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement. TxDOT shall deposit such holdback amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.5(b) below. If TxDOT does not pay such amount of Termination Compensation by the later of such dates, such amount shall bear interest at a

floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

2. Changes to the ITP

2.1 Changes to Section 1.6.1:

Last date for submittal of name and information for Escrow Agent, as described in <u>Section 4.4.4</u> , changes in organization and submittal of Key Personnel, as described in <u>Section 2.11</u> , and <u>Exhibit B, Section 3.2.5.1</u>	12:00 p.m. January 9 <u>19</u> , 2009
Last date for TxDOT responses to organizational changes and changes to Key Personnel, as described in <u>Section 2.11</u> and <u>Exhibit B, Section 3.2.5.1</u>	January 16 <u>20</u> , 2009

2.2 Changes to Section 4.7.2(h)

(h) if TIFIA credit assistance is part of the initial financing under Proposer’s Financial Proposal, and reflected in the ~~TIFIA Credit Council approval letter and~~ executed TIFIA conditional term sheet between the USDOT TIFIA Joint Program Office and the selected Proposer, the failure of the TIFIA Joint Program Office to close TIFIA financing or provide TIFIA financing on or after October 1, 2009 and prior to the deadline for financial close despite commercially reasonable efforts by the selected Proposer to do so ~~(which commercially reasonable efforts may include making reasonable financial and commercial concessions as necessary and appropriate under the circumstances)~~; provided, however, that the following shall be deemed not to be a failure by TIFIA to close TIFIA financing by the relevant deadline for purposes of this clause (h): (i) the lack of TIFIA contract and budget authority with respect to the Project for amounts in excess of the amount in the selected Proposer’s Financial Proposal and reflected in the ~~TIFIA Credit Council approval letter and~~ executed TIFIA conditional term sheet between the USDOT TIFIA Joint Program Office and the selected Proposer or (ii) the failure of the selected Proposer, prior to the deadline for financial close or any earlier deadline specified in the ~~TIFIA Credit Council approval letter or~~ executed TIFIA conditional term sheet between the USDOT TIFIA Joint Program Office and the selected Proposer (as may be supplemented and amended), to satisfy any of the conditions precedent for the TIFIA financing set forth in ~~the TIFIA Credit Council approval letter and~~ such executed TIFIA conditional term sheet (other than a condition precedent requiring environmental reevaluation approval of an alternative technical concept approved by TxDOT and described in CDA Exhibit 2 that requires an environmental reevaluation);

2.3 The following language is added to the end of Section 5.3.2:

In the event TxDOT issues an Addendum less than six days prior to the Proposal Due Date, the lender support letter(s) included in the Proposal may reference the prior Addendum; provided, however, that any such lender support letter shall be updated to reference the last Addendum to this RFP and delivered to TxDOT within one week from the Proposal Due Date.

2.4 Proposers are instructed to hand-write in "Addendum 13 issued January 18, 2009" on page 2 of Form A immediately following the list ending with Addendum 12.