IH 635 MANAGED LANES PROJECT
DRAFT QUESTIONS AND ANSWERS MATRIX – COMPREHENSIVE DEVELOPMENT AGREEMENT

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
1.	CDA 1.2 1.2.1	Section 1.2 of the IESA states that it will take precedence over the CDA; however, the IESA should not take precedence over the CDA, and section 1.2 of the CDA and the IESA should be amended to reflect this concept.	Under the last two paragraphs of Section 1.2 of the IESA, the CDA documents will control over the IESA as they relate to involvement of the IE, and the parties agree to amend the IESA accordingly.	10/19/07
2.	CDA 1.2.1	The order of precedence in clause 7 should state clearly whether amendments take precedence over the Technical Provisions, rather than permitting TxDOT in its sole discretion to determine the order of precedence in that regard. See also Section 7.2.6.	This provision contemplates that manuals will be added and revised over the term of the concession. Because the entire manual may not be relevant to the project, it is necessary to allow TxDOT to identify the relevant portions of any new or revised manuals.	10/19/07
3.	CDA 1.2.1, clause 7	The order of precedence in clause 7 should state clearly whether amendments take precedence over the Technical Provisions, rather than permitting TxDOT in its sole discretion to determine the order of precedence in that regard. See also Section 7.2.6.	See Question 2.	1/25/08
4.	CDA 1.4.1	The standard for Developer's ability to consent to change orders without TxDOT consent ("*routine non-material change orders, deviations and waivers in the ordinary course of business*") is vague. We suggest incorporating a threshold value for permitted change orders (on an individual and aggregate basis) as the standard.	Addendum #1 is expected to delete Section 1.4.1 and to clarify any approvals required for specified documents.	10/19/07
5.	CDA 1.4.1	Please add the word ", amendments" immediately after the word "deviations" in the sixth line.	See Question 4.	10/19/07
6.	CDA 1.4.2	Please add the word "material" immediately after the words "(c) agree to" in the fourth line.	No change. TxDOT requires approval of any changes to the Project Trust Agreement.	10/19/07
7.	CDA 1.4.2	Please add the word "material" immediately after the words "(c) agree to" in the fourth line.	See Question 6.	1/25/08
8.	CDA 1.5	In respect of the Reference Information Documents, the Developer, at a minimum, should be permitted to rely on (and TxDOT should take full responsibility for) any geotechnical reports provided by TxDOT. Please carve out clause (k) of the definition of Compensation Event. See also Section 6.1.2. In addition, please include in each clause of Section 1.5 the text "Except as otherwise contemplated in Article XIII and the definition of Relief Event".	TxDOT believes the risk allocation for geotechnical reports as reflected in clause (j) of the definition of Compensation Event is appropriate. TxDOT has no better knowledge of this risk and Developer is better able to manage this risk through the design-build process. Do you mean clause (j)? See Question 10.	10/19/07
9.	CDA 1.5 6.2 Addendum 1	Suggested that this section reflect the statements made on Page 17, Section 6.2 Governmental Approvals and Third Party Agreements. If TxDOT has obtained approvals based on the TxDOT schematic, then the validity of the EA documents and subsequent reevaluations should be represented and warranted by TxDOT. Additional approvals should only be warranted under the circumstances stated in 6.2.3 of this section.	No change. If the EA is challenged, Developer shall have the remedies provided in the CDA.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Please clarify if TxDOT supports the validity of the environmental document approvals and permits in the RIDs. Based on the language in this section, it appears that environmental approvals, mitigation commitments and permitting for the proposed project are not supported by TxDOT. Shouldn't the EAs, environmental approvals from FHWA, and the USACE Section 404 Permit provided in the RIDs be warranted by TxDOT, since the Proposer are instructed to comply with these environmental approvals unless there are other circumstances as stated in Section 6.2.3 on the same page? Archeological, paleontological, cultural resources and T&E species are all environmental resources that are investigated from ROW line to ROW line in the EAs. If no impacts were determined to exist for these resources and the documents have been approved by TxDOT/FWHA and resource agencies, wouldn't this environmental clearance remain valid unless other circumstances occur as stated in Section 6.2.3? Proposer is concerned that TxDOT is not representing the studies and conclusion of the RIDs as stated on Page 4 of this CDA. Wouldn't environmental clearance warrant the support of the findings and investigations included in the EAs and subsequent reevaluations?		
10.	CDA 1.5.3	"Except as expressly set forth herein," Developer shall have no right to additional compensation on time extension based on any incompleteness or inaccuracy in the Reference Information Documents. As currently drafted, Section 1.5.3 conflicts with Section 13.2 which enables Developer to obtain compensation in the case of a Compensation Event contemplated in clause (j) of the definition thereof.	Addendum #1 is expected to make the requested change.	10/19/07
11.	CDA 2.1.3	Please add the word "shall" immediately after the words "TxDOT and Developer" in the first line.	Addendum #1 is expected to clarify this section.	10/19/07
12.	CDA 2.1.4	Please advise whether the Lease Addenda will be signed in advance as well.	No.	4/4/08
13.	CDA 2.1.5	"Developer shall have the exclusive right and obligation~~, as lessee under the Lease,~~ during the Operating Period for each Section, to use, manage, operate, maintain and repair the applicable Section, and to perform Renewal Work and Upgrades, pursuant to the terms of ~~the Lease,~~ this Agreement, the other CDA Documents and the Principal Project Documents." For tax purposes, we request that references to the Lease be removed, as it is the CDA that grants the concession, not the	Addendum #6 is expected to make the requested changes.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Lease.		
14.	CDA 2.1.5	"Developer shall have the exclusive right and obligation~~, as lessee under the Lease,~~ during the Operating Period for each Section, to use, manage, operate, maintain and repair the applicable Section, and to perform Renewal Work and Upgrades, pursuant to the terms of ~~the Lease,~~ this Agreement, the other CDA Documents and the Principal Project Documents." For tax purposes, we request that references to the Lease be removed, as it is the CDA that grants the concession, not the Lease. TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.	See Question 13.	5/9/08
15.	CDA 2.1.6	Please add the words "long as it is the" following the word "as" in the first line. For tax purposes, we need to make clear that the right to toll is not granted under the Lease.	Addendum #3 is expected to delete "as lessee under the Lease."	10/19/07
16.	CDA 2.1.6	Please add the words "long as it is the" following the word "as" in the first line. For tax purposes, we need to make clear that the right to toll is not granted under the Lease.	See Question 15.	1/25/08
17.	CDA 2.1.6	"Developer shall have the exclusive right and obligation~~, as lessee under the Lease,~~ during the Operating Period for each Section, to use, manage, operate, maintain and repair the applicable Section, and to perform Renewal Work and Upgrades, pursuant to the terms of ~~the Lease,~~ this Agreement, the other CDA Documents and the Principal Project Documents." For tax purposes, we request that references to the Lease be removed, as it is the CDA that grants the concession, not the Lease.	Addendum #3 deleted "as lessee under the Lease." See Question 15. Addendum #6 is expected to delete "the Lease."	4/4/08
18.	CDA 2.1.6	"Developer shall have the exclusive right and obligation, for each Toll Segment, commencing on the Service Commencement Date for the Toll Segment and ending at the end of the Term, to toll the Managed Lanes of the Toll Segment pursuant to ~~the terms of the Lease,~~ this Agreement, the other CDA Documents and the Principal Project Documents." For tax purposes, we request that references to the Lease be removed, as it is the CDA that grants the concession, not the Lease. TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.	See Question 17.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
19.	CDA 2.1.7.1	"Receipt of all Governmental Approvals necessary for the Work to be performed and satisfaction of any requirements applicable under the Governmental Approvals (including the NEPA Approval) for the Work to be performed, except where failure to obtain a Governmental Approval will not have a material adverse effect on the Project;" As currently written, this provision implies that all Governmental Approvals must be obtained as a condition to TxDOT's grant of concession. In reality, however, there may be certain Governmental Approvals that will not be obtained until a later date.	We do not agree that this provision implies that all Governmental Approvals must be obtained as a condition to TxDOT's grant of concession. Rather, Section 2.1.7 provides that such approvals must be obtained in accordance with the terms and conditions of the CDA Documents. Developer is obligated to obtain all required Governmental Approvals.	10/19/07
20.	CDA 2.2.2	"TxDOT and Developer acknowledge and agree to treat the transaction for U.S. federal income tax purposes consistent with the terms and conditions contained herein. ~~their mutual intent that, despite TxDOT's retention of fee title to the Project and the Project Right of Way and despite Developer's leasehold estate and interest therein, Developer be treated, to the maximum extent permitted by Law, as the owner of the Project for federal income tax purposes. TxDOT will not file any documentation with the U.S. government inconsistent with this intention.~~ (This provision is not intended to have any bearing on ownership status under Environmental Laws regarding Hazardous Materials.)" We request the revised language for tax reasons.	The suggested language does not appear to add substance. This provision is intended for the Developer's benefit. Please let us know if you would like TxDOT to consider allowing the Developer to choose whether or not to include this Section.	4/4/08
21.	CDA 2.2.3	Please insert the text ", if applicable," after the text ", NTP 2 and" in the second to last line. Read literally, the current wording suggests that the Developer would not have the right to toll any Toll Segment of the Project if TxDOT does not issue NTP 3, even those Toll Segments which are not affected by IH35E Capacity Improvement Section.	Addendum #6 is expected to make the requested change.	4/10/08
22.	CDA 3.1.1 3.1.2 3.1.5	Section 3.1.1 says that "Developer shall have the exclusive right to (a) impose tolls . . . and (c) enforce and collect tolls . . .", however, under TX law and under the TSA, it is NTTA that will be collecting and enforcing the tolls. The language in the CDA should be modified to make clear that the Developer shall have the right (and so long as TX law mandates, the obligation) to use NTTA (or another entity if TX law changes) to collect and enforce tolls. Section 3.1.2 says that "the amount of any Incidental Charges shall not exceed the amount reasonably necessary for the Developer to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to	Note that Section 17.1.4.1 states that TxDOT agrees that performance by NTTA of the NTTA TSA will satisfy Developer's obligations under Section 3.1.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the items, services and work for which they are levied," but as currently drafted, the TSA allows NTTA to collect incidental charges that do not meet this criteria (i.e. amounts to reflect NTTA's collection risk in respect of Video Transactions, etc.). Please note that our proposed changes to the TSA have attempted to limit the scope of incidental charges that NTTA would be able to charge. Section 3.1.5 states that except in specified circumstances, "Developer shall require payment of tolls for use of the Managed Lanes." This provision can be interpreted as obligating the Developer to enforce all tolls, however, under the TSA, the decision on whether and when to issue notices and pursue collection and enforcement actions shall be within the discretion of NTTA (TSA Section 4(b)).		
23.	CDA 3.1.1	"Except as provided in Section 3.1.3, ~~Developer shall have~~ TxDOT grants Developer a franchise that will provide Developer with the exclusive right to (a) impose tolls upon the Users of the Managed Lanes, (b) establish, modify and adjust the rate of such tolls, and (c) enforce and collect tolls from the Users of the Managed Lanes, all in accordance with and subject to the terms and conditions contained in this Agreement, including those set forth in this Article 3, in Exhibit 4 and in Section 1 of the Technical Provisions." We request the revised language for tax reasons.	No change. The existing language is consistent with the CDA statutory authority.	4/4/08
24.	CDA 3.1.3	Please add the text "(including any amounts incurred to collect and enforce such tolls)" immediately after the text "other than the tolls" in the fourth line.	No change. The amounts referred to in the parenthetical are reflected in the term Incidental Charges.	10/19/07
25.	CDA 3.1.3	Please add the text "(including any amounts incurred to collect and enforce such tolls)" immediately after the text "other than the tolls" in the fourth line.	See Question 24.	1/25/08
26.	CDA 3.4 Book 2A	It is our understanding that the Developer has the right to allow or prohibit the access of large trucks with one or more trailers to each of the segments of the Managed Lanes, provided that these are not permitted in a road Tunnel section as defined by NFPA 502 and provided that the Developer has TxDOT's prior consent as provided in section 3.4. Please confirm if this interpretation is correct or if there is any additional restriction regarding truck admittance on the Managed Lanes.	Large trucks with one or more trailers are not permitted in tunnels as defined by NFPA 502. Developer has the right to allow or prohibit the access of large trucks with one or more trailers in the remaining Toll Segments of the Managed Lanes. See Section 26 of the Technical Provisions.	1/25/08
27.	CDA 3.5.2	The right of Developer to audit TxDOT's books as to Exempt Vehicles should be included. (This provision was accepted in SH121.)	No change. The right to audit TxDOT's books and records as to Exempt Vehicles owned or operated by TxDOT, as provided in SH 121, does not apply to IH 635 because, unlike SH 121, the definition of Exempt Vehicles in IH 635 does not include TxDOT vehicles.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
28.	CDA 3.5.3	Please include a provision that provides that TxDOT will cooperate with the Developer in the identification and tracking of Exempt Vehicles, including providing relevant information and equipping such vehicles with transponders. (This provision was accepted in SH121.)	No change. The obligation to cooperate with Developer in the identification and tracking of Exempt Vehicles owned or operated by TxDOT, as provided in SH 121, does not apply to IH 635 because, unlike SH 121, the definition of Exempt Vehicles in IH 635 does not include TxDOT vehicles.	10/19/07
29.	CDA 3.5.3	Please add the following language: "In order to ensure such identification and tracking, each individual exempt vehicle must pre-register with the Developer, by providing either a transponder number or a plate number. Without this pre-registration before using the managed lanes, exempt vehicles will be subject to the payment of tolls according to their respective classification."	No change. Exempt Vehicles are required to be exempt from tolls in all situations.	1/25/08
30.	CDA 3.6.1	Developer should not bear this entire risk, but rather a mechanism for risk-sharing between Developer and TxDOT should be considered.	TxDOT believes the risk reflected in Section 3.6.1 is appropriate, including given Section 3.6.3.	10/19/07
31.	CDA 3.6.1 3.6.2 3.6.3	Please amend Section 3.6.1 as follows: "In the event TxDOT designates the Project or a portion of the Project (a) for immediate use as an emergency evacuation route or (b) as a route to respond to a disaster proclaimed by the Governor of Texas or its designee, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT's~~shall have no~~ liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order shall be as set forth in Section 3.6.3 below, provided that during any period not in excess of [x] consecutive days for which tolling has been suspended~~,~~ and the following conditions have been met, TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order: . . ." Please amend Section 3.6.2 as follows: "TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling to facilitate emergency evacuation issued pursuant to applicable Law by any federal or other State agency or instrumentality or to respond to a disaster proclaimed by the Governor of Texas or its designee, provided that the conditions set forth in Sections 3.6.1.1, 3.6.1.2 and 3.6.1.3 have been satisfied and such suspension does not exceed [x] consecutive days. Otherwise, TxDOT shall be liable to the extent set forth in Section 3.6.3 below." Please amend Section 3.6.3 as follows:	See Question 30. Addendum #3 is expected to revise clause (a) of Section 3.6.3 to clarify that Developer's compensation is based on the average net Toll Revenues from the six months preceding the suspension. Please note that under Exhibit 4, Section G.4.e, Developer is excused from maintaining average speed performance measures during times TxDOT suspends tolling of the Managed Lanes. In addition, the CDA excuses Developer from performance obligations to the extent it is unable to meet those obligations due to a Relief Event.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"In any time of a declared emergency or natural disaster, as determined by the Executive Director, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect, except that TxDOT shall compensate Developer for the impact on Toll Revenues for the period that such order is in effect based on the average net Toll Revenues received during the comparable days and times over the shorter of (a) the ~~previous~~six months preceding such suspension(s) due to such incident or emergency and ~~or~~ (b) the period commencing on the Service Commencement Date. Such compensation shall exclude Video Transaction Toll Premiums and shall be reduced by all avoided processing and collection fees, charges and costs, including Transaction fees and charges. Developer shall use reasonable efforts during such incidents or emergencies to continue to perform its maintenance responsibilities in respect of the Project in accordance with this Agreement." Section 3.6.1 and Section 3.6.2: Developer should not bear entire risk of lost Toll Revenues or increases in costs and expenses for suspension of tolls ordered by a federal or state agency or the Governor of Texas, but rather, we suggest the proposed mechanism for risk-sharing between Developer and TxDOT. TxDOT shall not be liable to Developer for loss of Toll Revenues or increases in costs/expenses as long as the conditions under 3.6.1.1-3.6.1.3 are satisfied. Section 3.6.3: The suggested change makes clear that the Toll Revenues are based on the average net Toll Revenues from the 6 months preceding the suspension. Moreover, no performance related penalties should be assessed during these days. We understand TxDOT's concern that Developer continue to perform its maintenance obligations under the Agreement, and thus have suggested the language below, however, it should be made clear that performance related penalties will not be assessed during these times.		
32.	CDA 3.6.1	Please amend Section 3.6.1 as follows: "In the event TxDOT designates the Project or a portion of the Project (a) for immediate use as an emergency evacuation route or (b) as a route to respond to a disaster proclaimed by the Governor of Texas or its designee, TxDOT shall have the right to order	See Question 693.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT's ~~shall have no~~liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order shall be as set forth in Section 3.6.3 below, provided that during any period not in excess of [x] consecutive days for which tolling has been suspended~~,~~ and the following conditions have been met, TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order: . . ." Please amend Section 3.6.2 as follows: "TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling to facilitate emergency evacuation issued pursuant to applicable Law by any federal or other State agency or instrumentality or to respond to a disaster proclaimed by the Governor of Texas or its designee, provided that the conditions set forth in Sections 3.6.1.1, 3.6.1.2 and 3.6.1.3 have been satisfied and such suspension does not exceed [x] consecutive days. Otherwise, TxDOT shall be liable to the extent set forth in Section 3.6.3 below." The suspension of tolls provisions are of particular concern to our potential lenders, as the current CDA does not explicitly state what Developer's compensation would be if tolls are suspended under the authority granted pursuant to Section 3.6.1, but the conditions set forth in Sections 3.6.1.1 through 3.6.1.3 are not satisfied. We propose clarifying that Developer shall be entitled to the compensation set forth in Section 3.6.3 if such a suspension occurs and the conditions in Sections 3.6.1.1 through 3.6.1.3 are not satisfied. Moreover, our potential financiers are concerned that the Developer is bearing the entire risk of lost Toll Revenues or increases in costs and expenses for suspension of tolls ordered by a federal or state agency or the Governor of Texas. We have suggested a mechanism for risk-sharing between Developer and TxDOT.		
33.	CDA 3.6.1 3.6.2 3.6.3	Please amend Section 3.6.1 as follows: "In the event TxDOT designates the Project or a portion of the Project (a) for immediate use as an emergency evacuation route or (b) as a route to respond to a disaster proclaimed by the Governor of Texas or its designee, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any	See Question 693 regarding changes to Section 3.6.1. No change regarding Section 3.6.2.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		portion of the Managed Lanes. Notwithstanding any other provision of this Agreement to the contrary, TxDOT shall ~~have no liability~~ be liable to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order, ~~provided that~~ unless the following conditions have been met: during any period for which tolling has been suspended, TxDOT: . . ." Please amend Section 3.6.2 as follows: "TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling to facilitate emergency evacuation issued pursuant to applicable Law by any federal or other State agency or instrumentality or to respond to a disaster proclaimed by the Governor of Texas or its designee, provided that the conditions set forth in Sections 3.6.1.1, 3.6.1.2 and 3.6.1.3 have been satisfied. Otherwise, TxDOT shall be liable to the extent set forth in Section 3.6.3 below." As we have discussed, suspension of tolls provisions are of particular concern to our potential lenders. It is our understanding that clause (i) of the definition of "Compensation Event" will be amended to specify that compensation with respect to suspensions under Section 3.6.1 where the conditions set forth in Sections 3.6.1.1 through 3.6.1.3 are not satisfied, will be as set forth in Section 3.6.3. Please confirm that this is correct. Additionally, suspensions under Section 3.6.2 should also be compensated as set forth in Section 3.6.3 if the conditions in 3.6.1.1 through 3.6.1.3 are not satisfied.		
34.	CDA 3.6.1.3	Please add at the end of this Section a provision to the effect that the order will be lifted in any event no later than such order is lifted for all other designated toll facilities. (This provision was accepted in SH121)	No change. It is appropriate for the order to be lifted when the need to use the Project for emergency evacuation or disaster response ceases.	10/19/07
35.	CDA 3.6.1.3	"Lifts such order concurrently with the lifting of such order for all other designated tolled facilities, or, if there are no such other facilities, as soon as the need to use the Project for emergency evacuation or disaster response ceases." If a suspension order has been lifted for other tolled facilities, TxDOT should also lift the suspension order for the Project. The burden should be on TxDOT to show why a suspension order should be lifted on one tolled facility but not another. This language was accepted in SH121.	See Question 34.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
36.	CDA 3.6.2	Please add the text ", in each case in accordance with the terms of this Section 3.6" and delete the text "or its designee" at the end of such subsection.	Addendum #3 is expected to clarify that Section 3.6.2 is an independent provision as follows: "TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling by any federal or State agency or instrumentality other than TxDOT to facilitate emergency evacuation issued pursuant to applicable Law ~~by any federal or other State agency or instrumentality~~ or to respond to a disaster proclaimed by the Governor of Texas or its designee." Because it is customary for the Governor of Texas to act through a designee, the designee language must remain.	10/19/07
37.	CDA 3.6.2	Please add the text ", in each case in accordance with the terms of this Section 3.6" and delete the text "or its designee" at the end of such subsection.	See Question 36.	1/25/08
38.	CDA 3.6.3	"In the event TxDOT designates the Project or a portion of the Project for immediate use as an alternate route for diversion of traffic from any interstate or Highway temporarily closed to all lanes in one or both directions due to incident or emergency, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect, except that TxDOT shall compensate Developer for the impact on Toll Revenues and for the increase in costs for the period that such order is in effect based on the average net Toll Revenues received during the comparable days and times over the shorter of (a) the previous six months or (b) the period commencing on the Service Commencement Date. Such compensation shall exclude Video Transaction Toll Premiums and shall be reduced by all avoided processing and collection fees, charges and costs, including Transaction fees and charges. Moreover, TxDOT shall compensate the Developer for the increased costs derived from excess traffic when it designates the Project or a portion of the Project for immediate use as an alternate route for diversion of traffic from any interstate or Highway temporarily closed to all lanes in one or both directions due to incident or emergency for periods longer than 24 hours." Compensation should also include any other costs related to the excess traffic using the Project. These costs could be high if the period is long, for instance costs related to pavement maintenance, to emergency response, or energy consumption in the tunnels.	TxDOT has determined that it is not appropriate to compensate for the increased costs during this period. It is appropriate that the performance requirements still apply. Note that any liquidated damages for speeds in the Managed Lanes below 50 mph are a proportion of tolls collected in a period (which have been suspended). See Exhibit 21, Section 3.5. See Question 39.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Moreover, no performance related penalties should be assessed during these days.		
39.	CDA 3.6.3	At the end of the first sentence thereof, please add the language "in the direction of the diversion". (This provision was accepted in SH121.)	Addendum #1 is expected to revise this section and the definition of Exempt Vehicle to conform to Minute Order 110911. Addendum #3 is expected to add ", as TxDOT deems appropriate" at the end of the first sentence.	10/19/07
40.	CDA 3.6.3	At the end of the first sentence thereof, please add the language "in the direction of the diversion". (This provision was accepted in SH121.)	See Question 36.	1/25/08
41.	CDA 3.7.2	Please add the text "(to the extent required to be made pursuant to such Funding Agreement or Security Document)" immediately after the text "Funding Agreement or Security Agreement" in item (c).	No change. The word "due" in the subject clause renders the requested language unnecessary.	10/19/07
42.	CDA 3.7.2	Please add the text "(to the extent required to be made pursuant to such Funding Agreement or Security Document)" immediately after the text "Funding Agreement or Security Agreement" in item (c).	See Question 41.	1/25/08
43.	CDA 3.7.3	Please delete Section 3.7.3. The Developer should have operational flexibility to allocate funds as appropriate and needed. Money is fungible and debt proceeds can be used to pay certain O&M expenses.	No change. TxDOT believes the Developer has the flexibility to manage its cash flows except that it should first pay all amounts due to TxDOT and carry out its required O&M obligations.	10/19/07
44.	CDA 3.7.3	Please amend Section 3.7.3 to read as follows: "Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, specifically including all amounts due to TxDOT under Sections 5.3 and 5.5 before they may be used and applied for any other purpose."	Addendum #3 is expected to make the requested change.	1/25/08
45.	CDA 3.7.3 5.3 Exhibit 7, Part C	Please amend Section 3.7.3 as follows: "Toll Revenues shall be used first to pay all current and outstanding operations and maintenance costs, ~~specifically including all amounts due TxDOT under Sections 5.3 and 5.5, before they may be used and applied for any other purpose~~." As currently drafted, the CDA requires that payments for TxDOT, such as Revenue Payments and Refinancing Gains be paid first in the waterfall, as an O&M cost. Neither Revenue Payments nor Refinancing Gains should be payable until the satisfaction by Developer of the restricted payments test under the financing documents, as payment earlier in the waterfall seems inconsistent with the idea that TxDOT is sharing in the Project upside.	No change.	1/25/08
46.	CDA 3.7.3	"Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, specifically including all amounts due to TxDOT under Sections 5.3 and 5.5, before they	No change is necessary. The phrase "any other purpose" includes payment to any Lender.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	5.3 Exhibit 7 - Part C	may be used and applied for any other purpose including any payment due to any Lender." We request the revised language for tax reasons.		
47.	CDA 3.7.4	Please add the text "or the Project Debt, the Security Documents or any Funding Agreements" immediately after the text "under this Agreement" at the end of the first sentence.	No change is necessary. TxDOT requires that the Project's collateral not be used outside of the Project. Please note that Section 3.7.4 does not preclude the use of Toll Revenues to pay any debt, obligation or liability related to the Project (e.g., including Project Debt).	10/19/07
48.	CDA 3.7.4	Please add the text "or the Project Debt, the Security Documents or any Funding Agreements" immediately after the text "under this Agreement" at the end of the first sentence.	See Question 47.	1/25/08
49.	CDA 3.7.5	"Developer acknowledges and agrees that it shall not be entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the Lease other than those resulting from cost savings, Toll Revenues, Incidental Charges, Compensation Amounts and Termination Compensation in accordance with the provisions of this Agreement, and earnings thereon. The Parties acknowledge that this Agreement and the Lease contain commercially reasonable provisions and allow Developer ~~no more than~~ a reasonable rate of return and compensation commensurate with risk." We request the revised language for tax reasons.	Addendum #6 is expected to make the requested change.	4/4/08
50.	CDA 3.7.5	"Developer acknowledges and agrees that it shall not be entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the Lease other than those resulting from cost savings, Toll Revenues, Incidental Charges, Compensation Amounts and Termination Compensation in accordance with the provisions of this Agreement, and earnings thereon. The Parties acknowledge that this Agreement and the Lease contain commercially reasonable provisions and allow Developer ~~no more than~~ a reasonable rate of return and compensation commensurate with risk." We request the revised language for tax reasons. TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.	See Question 49.	5/9/08
51.	CDA 4.1.2	Please confirm that the Existing Improvements are fully completed, and TxDOT does not have any further work to	The Existing Improvements are completed.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		perform in that regard.		
52.	CDA 4.1.3	Please add the text ", as of the Effective Date," immediately after the text "Developer warrants and represents that" in the first line.	Addendum #1 is expected to revise the section.	10/19/07
53.	CDA 4.1.3	Please add the text ", as of the Effective Date," immediately after the text "Developer warrants and represents that" in the first line.	See Question 52.	1/25/08
54.	CDA 4.1.4	"Developer exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms of its financing; *provided* that such changes shall not derogate TxDOT's obligations expressly assumed hereunder." This language may be construed to contradict the termination compensation provisions in Exhibit 23, which provides for compensation of floating rate interest.	We do not believe there is a contradiction because Exhibit 23 does not address changes in the interest rate with respect to Developer's financing.	10/19/07
55.	CDA 4.1.4.1	Please amend Section 4.1.4.1 as follows: "Unless Developer or TxDOT elects to terminate this Agreement pursuant to Section 4.1.4.5, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Project Debt (including any sub-debt), in a total amount, which when combined with all unconditional equity commitments acceptable to the Collateral Agent, is not less than the total capital funding set forth in Exhibit 5, by not later than the Project Financing Deadline, without any right to extension on account of any Relief Event (notwithstanding any other provision of this Agreement to the contrary), except that such deadline may be extended by the period of delay in Developer's ability to achieve Financial Close directly caused by TxDOT-Caused Delay, TxDOT Change, ~~or~~ Discriminatory Action, material adverse change conditions or litigation challenging a NEPA Approval that is filed before lapse of the applicable statue of limitations and remains pending on the Project Financing Deadline." Please delete (a) in its entirety from Section 4.1.4.5, as it should be moved to Section 4.1.4.1, as stated above. Developer should have an equitable extension of time for delays in achieving Final Close that are outside of its control, including litigation challenging a NEPA Approval. TxDOT should not be entitled to terminate the CDA for litigation challenging a NEPA Approval—instead, the Project Financing Deadline should be extended.	Addendum #3 is expected to require the parties to engage in good faith negotiations for a period of 30 days before either party may exercise its election to terminate if litigation challenging a NEPA Approval is filed before financial close. This will give the parties the opportunity to determine whether an extension is feasible, and whether the parties are willing to mutually agree upon adjustments, if any, in the essential business terms by reason of the delay.	1/25/08
56.	CDA 4.1.4.1	Please amend Section 4.1.4.1 as follows: "Unless Developer or TxDOT elects to terminate this Agreement pursuant to Section	No change. The requested language is too broad. The Developer may time the market within the two 90-day allowable extensions of	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		4.1.4.5, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Project Debt (including any sub-debt), in a total amount, which when combined with all unconditional equity commitments acceptable to the Collateral Agent, is not less than the total capital funding set forth in Exhibit 5, by not later than the Project Financing Deadline, without any right to extension on account of any Relief Event (notwithstanding any other provision of this Agreement to the contrary), except that such deadline may be extended by the period of delay in Developer's ability to achieve Financial Close directly caused by TxDOT-Caused Delay, TxDOT Change, ~~or~~ Discriminatory Action, or material adverse change in market conditions." Developer should be entitled to an equitable extension of time to achieve Financial Close for delays that are outside of its control due to significant adverse changes in market conditions. Although we are seeking a firm underwriting from our potential lenders, their commitment letters are conditioned on the absence of, among other things, a material adverse change in market conditions.	the financial close deadline.	
57.	CDA 4.1.4.1	Please add the word "approval" after the text "such environmental reevaluation" at the end of clause (a). Addendum #5 contemplates that Financial Close may be extended until the date that is 60 days after the date that the environmental reevaluation is obtained. The Proposer cannot indefinitely bear execution risk on its financing arrangements and it will not be possible to obtain commitments from Lenders which are open indefinitely. Financial Close should occur regardless of the timing of receipt of the environmental reevaluation approval.	Addendum #6 is expected to make the requested change. The provision gives the Developer flexibility to achieve Financial Close; it does not prevent Developer from achieving Financial Close prior to receipt of the environmental reevaluation approval.	5/9/08
58.	CDA 4.1.4.2	Please delete clause (b). TxDOT will be provided with the copies of the executed agreements which have to be in compliance with the CDA anyway. TxDOT will not have any further approval rights. In clause (e) please insert the text "(except to the extent that such documents are not required to be executed on such date)" after the text "Initial Security Documents" in the second line.	See Question 59 regarding clause (b). Addendum #3 is expected to reviseclause (e).	1/25/08
59.	CDA 4.1.4.2(b)	"Developer has delivered to TxDOT for review and comment drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Project Debt not later than ~~14~~7 days prior to the proposed date for Financial Close; provided that	Addendum #3 is expected to change 14 days to 10 days and to clarify that TxDOT's right to review and comment on the documents is governed by Section 6.3.7.1, except clause (b) thereof.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		TxDOT's review and comment of the proposed Initial Funding Agreements and Initial Security Documents shall be limited to ensuring that the requirements of 4.1.4.1 will have been satisfied upon Financial Close;" TxDOT's right to review the funding documents and security documents should be limited to ensuring compliance with Section 4.1.4.1. Also, 14 days is too tight considering that the Developer will only have 2 months to achieve financial close after the award date.		
60.	CDA 4.1.4.2(b), 4.4.2.1, 6.2.2, 6.3.2, 6.3.6, 10.5.2	Please revise so that it is ensured that whenever TxDOT has a right to review and comment, such review rights are restricted to ensure (i) compliance with the CDA, (ii) TxDOT's obligation under the CDA Documents are not increased above and beyond TxDOT's obligation which are already contemplated by the CDA Documents and (iii) no conflict with TxDOT's step-in rights.	No change. Section 6.3.7 sets forth the basis for TxDOT's right to review and comment.	4/4/08
61.	CDA 4.1.4.2(d)	"Developer has delivered to TxDOT true and complete executed copies of the direct lender agreement under Section 20.9.4, if any;" Is this the intended cross-reference?	Addendum #3 is expected to make the requested change.	1/25/08
62.	CDA 4.1.4.3(c), (d)	Please delete the last sentence in each clause as it sets forth an unworkable and very subjective standard.	No change. TxDOT will not provide protection if Developer's schedule does not provide normal and customary time periods.	4/4/08
63.	CDA 4.1.4.3(f)	"If TIFIA credit assistance is part of the initial financing under Developer's Project Plan of Finance, the failure or unreasonable delay of the TIFIA Joint Program Office to close financing after Developer has satisfied all requirements and conditions of the conditional term sheet and draft credit agreement provided to proposers prior to the Proposal Due Date." An unreasonable delay by the TIFIA JPO should not constitute a Developer Default. This language conforms to the changes in Section 4.1.4.3(c) regarding the PABs Issuer.	No change. TxDOT believes the reasons for the additional protection provided for the PABs Issuer do not apply to the TIFIA JPO.	4/4/08
64.	CDA 4.1.4.3(c)	In clause (c) please provide that also delays to Financial Close due the PABs Issuer (the current exception only covers refusal not delay) excuse the Developer (together with all other related excuses relevant in the context of the forfeiture of the Proposal Security).	Addendum #3 is expected to make the requested change, provided the delay is not attributable to the Developer.	1/25/08
65.	CDA 4.1.4.3	Please add the text "to be" before the text "in Developer Default" in the third to last line and the text "in accordance with the terms hereof" after the text "terminate this Agreement" in the last line.	Addendum #3 is expected to make the requested changes.	1/25/08
66.	CDA 4.1.4.3(f)	TIFIA JPO is not defined.	Addendum #3 is expected to replace "JPO" with "Joint Program Office."	1/25/08
67.	CDA	"TxDOT will bear the risk and have the benefit of changes in	Addendum #6 is expected to extend the interest rate protection	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	4.1.4.5	market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on July 14, 2008 and ending at ~~on the earlier of (a)~~ 10:00 a.m. on the date of Financial Close ~~or (b) 10:00 a.m. on _____, 2008 [executed version to include date that is 90 days after original financial close deadline set forth in ITP Section 1.6.3]~~ (the "last date of the market interest rate protection period"). . .	period from 90 days to 180 days.	
68.	CDA 4.3.4	"The Security Documents as a whole securing each separate issuance of debt (other than bonds) shall encumber the entire Developer's Interest, provided that the foregoing does not preclude subordinate Security Documents or equipment lease financing." Certain bond issuances (such as L/C backed or monoline wrapped bonds) will not necessarily result in the encumbrance of the entire Developer's Interest.	No change. TxDOT requires a single entity controlling the entire project, in case a lender exercises a step-in right.	10/19/07
69.	CDA 4.3.6	Please delete the text "on its face" after the text "a conspicuous recital" in the fourth line.	Addendum #1 is expected to make the requested change.	10/19/07
70.	CDA 4.3.9	Please delete clause (b). Further, please delete the text "or the issuance of additional Project Debt as described in clause (b)" after the text "Funding Agreement or Security Document" in tenth line. Finally, please delete the last sentence.	No change. TxDOT requires adequate funding to achieve the purposes set forth in clause (b).	10/19/07
71.	CDA 4.3.9	Please delete clause (b). Further, please delete the text "or the issuance of additional Project Debt as described in clause (b)" after the text "Funding Agreement or Security Document" in tenth line. Finally, please delete the last sentence.	See Question 70.	1/25/08
72.	CDA 4.3.11	Please add at the end of clause (a) of such section the following text, "or in any other instrument or agreement signed by TxDOT in favor of such Lender or Collateral Agent". This is consistent with Section 4.2.3 and would include, for example, a direct agreement with the Collateral Agent.	Addendum #1 is expected to add "or in any direct lender agreement pursuant to Section 20.9.4."	10/19/07
73.	CDA 4.3.11	Please add at the end of clause (a) of such section the following text, "or in any other instrument or agreement signed by TxDOT in favor of such Lender or Collateral Agent". This is consistent with Section 4.2.3.	See Question 71. Section 4.2.3 will be revised to be consistent with the rest of the CDA.	1/25/08
74.	CDA 4.3.12	Please delete in its entirety.	See Question 43.	10/19/07
75.	CDA 4.3.12	Please delete in its entirety.	See Question 43.	1/25/08
76.	CDA 4.4.3.1	TxDOT should only get reimbursed at closing if TxDOT has delivered a written invoice to Developer at least two Business Days prior to closing. Please also add a reference to the direct	Addendum #1 is expected to make the requested changes.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		agreement with the Lenders in the carve-out in the first sentence.		
77.	CDA 5.3 Exhibit 7 Part C	As currently drafted, it appears as if the Toll Revenue will be shared first in the waterfall. This seems inconsistent with the idea that TxDOT is sharing in Project upside. Additionally, the immediate lump sum annual payment requirement may result in cash flow management difficulties.	TxDOT believes this provision is appropriate. Any revenue sharing is not effective until the Developer earns an appropriate IRR as described in Part C of Exhibit 7, is payable in arrears and can be planned for.	10/19/07
78.	CDA 5.3	Please replace current heading with "Revenue Payments" and make a corresponding change in the Table of Contents. Further, please replace references to TxDOT's "right to share in/of Toll Revenues" with "payment".	Addendum #1 is expected to change the references to "Revenue Payment."	10/19/07
79.	CDA 5.3	"TxDOT's rights to payment related to Toll Revenues for the Project are set forth in Part C of Exhibit 7. Developer agrees to pay TxDOT such amounts as compensation to TxDOT in exchange for TxDOT's grant to Developer of franchise rights that will permit Developer to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Project pursuant to the Lease." We request the revised language for tax reasons.	No change. See Question 23.	4/4/08
80.	CDA 5.5 Exhibit 7 Part D	Like the revenue sharing, it appears as if any Refinancing Gains will be paid first in the waterfall and will also be based only on projected, and not realized, gain.	TxDOT's share of any Refinancing Gain may be paid to correspond with the anticipated timing of any future Distributions. See Exhibit 7, Part D, Section 2.	10/19/07
81.	CDA 5.5 Exhibit 7 Part D	Although the Refinancing Gain may be paid to correspond with the anticipated timing of future distributions, both Section 2 of Exhibit 7--Part D and the definition of Refinancing Gain say that the Refinancing Gain is based on the Net Present Value of the Distributions to be made over the remaining period of the Term following the Refinancing, as projected immediately prior to the Refinancing. The Refinancing Gains should be based on realized gain, not just projected gain.	No change.	1/25/08
82.	CDA 5.5	"TxDOT's rights to ~~share in~~ a portion of any Refinancing Gain are set forth in Part D of Exhibit 7. Developer agrees to pay TxDOT such ~~share of Refinancing Gain~~ amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of franchise rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Project pursuant to the Lease." We request the revised language for tax reasons.	Addendum #6 is expected to make the requested changes except the last change. See Question 23.	4/4/08
83.	CDA 5.5	"TxDOT's rights to ~~share in~~a portion of any Refinancing Gain are set forth in Part D of Exhibit 7. Developer agrees to pay TxDOT such ~~share of Refinancing Gain~~amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to	See Question 82.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Project pursuant to the Lease." We request the revised language for tax reasons. TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.		
84.	CDA 5.6	"~~Developer's~~ The Project's rights to receive a contribution ~~payment~~ of the Public Funds Amount are set forth in Part E of Exhibit 7." We request the revised language for tax reasons.	No change. The Project does not receive payment. It is necessary to identify a party.	4/4/08
85.	CDA 6.1.2 Definition: clause (k) of "Relief Event" and clause (j) of "Compensation Event"	Clause (k) of the definition of "Relief Event" should be amended as follows: "Discovery of (i) subsurface or latent physical conditions ~~at the actual boring holes~~ identified in the geotechnical reports included in the Reference Information Documents that differ materially from the subsurface conditions indicated in such geotechnical reports ~~at such boring holes~~, excluding any such conditions known to Developer prior to the Proposal Due Date, or (ii) physical conditions within the Project Right of Way of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement, excluding any such conditions known to Developer prior to the Proposal Due Date or that would become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date ~~(for avoidance of doubt, conditions away from the actual boring holes that differ from conditions extrapolated from such boring data and that are not within clause (ii) above are not a Relief Event)~~;" Also, clause (j) of the definition of "Compensation Event" should be amended to reflect the exact wording of above. We suggest not limiting the Relief Event concerning geophysical risks to conditions at the actual boring holes.	See Question 8.	10/19/07
86.	CDA 6.1.2, 6.1.3	Please carve out clause (k) of the definition of Compensation Event.	Do you mean clause (j)? See Question 87.	10/19/07
87.	CDA 6.1.2, 6.1.3	Please carve out clause (j) of the definition of Compensation Event.	Addendum #3 is expected to make the requested change.	1/25/08
88.	CDA 6.2.1	"Developer shall obtain all other Governmental Approvals required in connection with the Project, the Project Right of Way or the Work (unless failure to obtain a Governmental Approval would not have a material adverse effect on the Project), including any modifications, renewals and extensions of the	See Question 15.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		TxDOT-Provided Approvals, including those required in connection with a Compensation Event."		
89.	CDA 6.2.1	Please advise which governmental approvals have been obtained by TxDOT. Please insert the text "As of the Effective Date" in the beginning of the first sentence.	The dates and anticipated dates for all Governmental Approvals are stated in Section 4.2.3 of Book 2A.	10/19/07
90.	CDA 6.2.1	Please insert the text "As of the Effective Date" in the beginning of the first sentence.	Addendum #3 is expected to make the requested change.	1/25/08
91.	CDA 6.2.1	"(a) As of the Effective Date, TxDOT has obtained the TxDOT-Provided Approvals, including those set forth in clauses (f), (g) and (h) of Section 4.2.3 of the Technical Provisions ~~based on the schematic contained in the Reference Information Documents;~~ provided, however, changes to the design which are necessary based on any TxDOT-Provided Approvals obtained after the date that is ninety (90) days prior to the Proposal Due Date shall be deemed a TxDOT Change. TxDOT shall also apply for any environmental reevaluations necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, and Developer shall comply with its obligations under Section 6.2.12.1 in connection therewith. (b) Subject to Section 6.2.12, ~~and to~~ Developer's right to a Relief Event and Compensation Event for a TxDOT-Caused Delay under clause (g) of the definition of TxDOT-Caused Delay, and Developer's right to terminate under Section 19.14, Developer shall obtain all other Governmental Approvals required in connection with the Project, the Project Right of Way or the Work, including any modifications, renewals and extensions of the TxDOT-Provided Approvals, including those required in connection with a Compensation Event. (c) Developer shall deliver to TxDOT true and complete copies of all new or amended Governmental Approvals." It is our understanding that the TxDOT-Provided Approvals listed in clauses (f), (g) and (h) of Section 4.2.3 of the Technical Provisions have not been obtained as of yet. Each proposer needs to be protected from the possibility of a last minute design change in the event that those approvals, once obtained, would require changes to the design of the Project. If any changes are required based on those approvals, and such approvals are not obtained prior to the date that is 90 days prior to the Proposal Due Date, TxDOT should be responsible for any increased costs and delays resulting from the new design required under those approvals. This risk should be allocated to TxDOT as it is the entity currently involved in obtaining these approvals.	Addendum #6 is expected to add Developer's right to terminate, but not the other requested changes.	5/29/08
92.	CDA	Please insert the text "with respect to such differences in the	No change. The first sentence already states "resulting from or	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	6.2.3	schematic design" before the text ", and (c)" in the tenth line. Further, please insert the text "in connection therewith" after the text "and cost of litigation" in the tenth line.	arising out of any associated change in the Project location and design."	
93.	CDA 6.2.3	Please insert the text "with respect to such differences in the schematic design" before the text ", and (c)" in the tenth line. Further, please insert the text "in connection therewith" after the text "and cost of litigation" in the tenth line.	See Question 92.	1/25/08
94.	CDA 6.2.3 6.2.4	"In the event Developer's design differs from the schematic contained in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, <u>other than</u> ~~including~~ differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 2, as between TxDOT and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Project location and design . . ." If an alternative technical concept has been accepted by TxDOT, the Developer should not bear the entire risk of delays relating to governmental approvals.	See changes in Addendum #5.	1/25/08
95.	CDA 6.2.3	"Subject to Developer's right to a Relief Event and Compensation Event for a TxDOT-Caused Delay under clause (g) of the definition of TxDOT-Caused Delay <u>and Developer's right to terminate under Section 19.14</u>, in the event Developer's design differs from the schematic contained in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, including differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 2, . . ."	Addendum #6 is expected to make the requested change.	5/29/08
96.	CDA 6.2.4	Please delete in its entirety.	Addendum #6 is expected to add Developer's right to terminate.	5/29/08
97.	CDA 6.2.5	Please provide copies of these documents as they don't seem to be in the data room.	TxDOT has provided these documents in the RID with Addendum #3.	1/25/08
98.	CDA 6.2.5	Please provide copies of the agreements listed in Section 6.2.5.	See Question 97.	5/29/08
99.	CDA 6.2.6	In the first line, please replace the text "reasonably assist" with the text "use its reasonable best efforts".	No change. A "reasonably assist" standard is appropriate. In addition, a "reasonable best efforts" standard is not clear.	10/19/07
100.	CDA 6.2.6	In the first line, please replace the text "reasonably assist" with the text "use its reasonable best efforts".	See Question 99.	1/25/08
101.	CDA 6.2.7	In the first line, please insert the text ", in all material respects" after the text "Developer shall comply".	No change. Developer is required to comply with all Governmental Approvals. Note that Section 17.1.1.11 already ties Developer Defaults to materiality.	10/19/07
102.	CDA	In the first line, please insert the text ", in all material respects"	See Question 101.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	6.2.7	after the text "Developer shall comply".		
103.	CDA 6.2.8	Please insert the word "necessary" after the text "applications and other" in the fifth line and delete the text "in form approved by TxDOT" in the 6th line.	Adding "necessary" is not required because the clause is prefaced by "Developer shall undertake necessary efforts." TxDOT's approval is required for Governmental Approvals that must be issued in TxDOT's name.	10/19/07
104.	CDA 6.2.8	Please insert the word "necessary" after the text "applications and other" in the fifth line and delete the text "in form approved by TxDOT" in the 6th line.	See Question 103.	1/25/08
105.	CDA 6.2.12.2	Please clarify how "net benefits" which relate to the environmental re-evaluation will be measured.	Similar to measuring any detriments, including, for design and construction costs, based on the inflation index provided.	5/9/08
106.	CDA 6.2.12.2 (Addendum 5)	Please delete in its entirety.	No change. The provision is intended to mirror 13.2.6.2.	5/29/08
107.	CDA 6.2.12.2(b)	With regard to TxDOT obtaining an environmental reevaluation approval required due to an ATC in less than the 12 months anticipated, there would not be any real decrease in design and construction costs unless NTP 2 has already been issued (and therefore construction could commence on the work affected by the ATC). Therefore, please revise the definition of ENR CCI(a) as follows: "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 NTP 2, whichever is later."	See changes to the CDA.	7/10/08
108.	CDA 6.2.12.2(b)	Since float is a shared project resource and only the activities that are on the Critical Path are subject to a TxDOT-Caused Delay, these are also the only activities for which TxDOT should be able to claim any benefit due to a decrease in design and construction costs resulting from early approval of an ATC related environmental reevaluation. We therefore request that the calculation of the decrease in design and construction costs be based only on the affected Payment Activities that are also on the Critical Path by revising the following definition in this section: "∑PA(r) is the sum of the Payment Activities associated with the portion of the Project subject to the environmental reevaluation which are also on the Critical Path."	No change.	7/10/08
109.	CDA 6.3.2.4	To the extent that TxDOT is entitled to an extension of time, Developer should be entitled to an equal extension of time.	No change. Giving Developer a time extension to the extent that TxDOT is entitled to a time extension is not appropriate because any such time extensions are within Developer's control and can be built in its Project Baseline Schedule. Developer can avoid allowing TxDOT an extension of time by staying within the	10/19/07 1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
			maximum number of submittals.	
110.	CDA 6.3.2.4	To the extent that TxDOT is entitled to an extension of time, Developer should be entitled to an equal extension of time. If TxDOT allocates more time to it or the Independent Engineer to review Submittals, such time extension affects the Developer and its obligation to comply with the various deadlines in the Milestone Schedule. Such affects have to be reflected by an extension of time to the Developer (whether through a Relief Event or otherwise).	See Question 109.	4/4/08
111.	CDA 6.3.2.5	Time periods should not be extended for a Relief Event as set forth in clause (e) of the definition of Relief Event.	No change. It is appropriate to allow an extension of time for TxDOT and the Independent Engineer due to Developer's failure to perform or observe its covenants or obligations. Please note that the parenthetical modifies each clause to refer to acts of Developer rather than acts of TxDOT.	10/19/07
112.	CDA 6.3.2.5	Time periods should not be extended for a Relief Event as set forth in clause (e) of the definition of Relief Event.	See Question 111.	1/25/08
113.	CDA 6.3.3	"…If the approval is subject to the good faith discretion of TxDOT, then its decision shall be binding unless it is finally determined through the Dispute Resolution Procedures and by clear and convincing evidence that such decision was arbitrary or capricious. For avoidance of doubt, if the decision is determined through the Dispute Resolution Procedures to be arbitrary and capricious and causes delay, it will constitute and be treated as a TxDOT Caused Delay." This is a clarification point to make explicit that the Dispute Resolution Procedures shall apply.	Addendum #1 is expected to make the requested changes.	10/19/07
114.	CDA 6.3.3	Approvals or consents by TxDOT should not be based on sole, absolute or unfettered discretion. A reasonable basis should be a guiding principle.	No change. Sole, absolute or unfettered discretion can be appropriate in certain situations.	10/19/07
115.	CDA 6.3.3	Approvals or consents by TxDOT should not be based on sole, absolute or unfettered discretion. A reasonable basis should be a guiding principle.	See Question 114.	1/25/08
116.	CDA 6.3.5 6.3.6	Delete Section 6.3.5 in its entirety. Amend Section 6.3.6 as follows: "Whenever the CDA Documents indicate that Developer is to deliver a Submittal to TxDOT but express no requirement for TxDOT review, comment, disapproval, prior approval or other TxDOT action, then Developer is under no obligation to provide TxDOT any period of time to review the Submittal or obtain approval of it from TxDOT. ~~before proceeding with further Work, and TxDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in~~	No change. Developer is responsible for ensuring that Developer's Work complies with all applicable requirements. The submittals are for TxDOT's information.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		~~accordance with Section 6.3.7.1. No failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.~~ There should be a period of time after which, if TxDOT does not respond, TxDOT should be deemed to have accepted such Submittal.		
117.	CDA 6.3.8.1	Please insert the text "that are otherwise non-conforming with the terms of the CDA Documents" after the text "materials or Work" in the sixth line. Further please insert the text "with respect to any Deviation, Nonconforming Work or any violation of this Agreement which is not cured" at the end of the first sentence.	The suggested text is not appropriate. Provisions regarding compliance of Work are addressed elsewhere.	10/19/07
118.	CDA 6.3.8.1	Please insert the text "that are otherwise non-conforming with the terms of the CDA Documents" after the text "materials or Work" in the sixth line. Further please insert the text "with respect to any Deviation, Nonconforming Work or any violation of this Agreement which is not cured" at the end of the first sentence.	See Question 117.	1/25/08
119.	CDA 7.1.5	Commercially reasonable efforts to mitigate shall not require Developer to take any action that would prejudice or impair Construction Work or give rise to an increase in costs for the Developer.	No change. The term "commercially reasonable" is sufficiently defined. TxDOT believes that it is appropriate to consider the cost of an action when determining whether the action is reasonable. Otherwise, since any effort will likely entail some cost, the proposed change would effectively eliminate the requirement.	10/19/07
120.	CDA 7.1.5	Commercially reasonable efforts to mitigate shall not require Developer to take any action that would prejudice or impair Construction Work or give rise to an increase in costs for the Developer.	See Question 119.	1/25/08
121.	CDA 7.2.5	"References in the Technical Provisions or Technical Documents to manuals or other publications governing the Design Work or Construction Work prior to the latest Service Commencement Date shall mean the most recent editions in effect as of <u>the date that is ninety (90) days prior to</u> the Proposal Due Date, unless expressly provided otherwise (e.g., Section 7.3.5.2, paragraph 3 of the Technical Provisions). . ." Sections 7.2.5. 7.2.7, 7.5.3 and 7.14.1.1 of the CDA all specify that Technical Provisions, regulations, manuals and standards are established at the Proposal Due Date. As the Proposal Due date continues to change, it would be preferable to set a date for establishing such standards. We suggest such date should be	No change.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the date that is 90 days prior to the Proposal Due Date.		
122.	CDA 7.2.6 7.2.7 Exhibit 1 Book 3 14.1.1	"…Technical Provisions and Technical Documents to conform to such new or revised statues or regulations, shall be treated as ~~Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT change to Technical Provisions and Technical Documents;~~ a TxDOT Change. However, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards." There is inconsistency between clause 7.2.6 and the definition of Change in Law and Book 3. Therefore, clause 7.2.7 should refer to TxDOT Change instead of Change in Law.	Please clarify the inconsistency. Section 7.2.7 generally requires that a change in law that also changes a technical requirement be treated as a change in law rather than as a TxDOT change in technical requirements.	10/19/07
123.	CDA 7.2.7	The "c" in TxDOT Change should be upper case.	Addendum #3 is expected to make the requested change.	10/19/07
124.	CDA 7.2.7	The "c" in TxDOT Change should be upper case in the third to last line. The use of the lower case is inconsistent with the defined terms usage.	See Question 123.	1/25/08
125.	CDA 7.2.7	"New or revised statutes or regulations adopted after the date that is ninety (90) days prior to the Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, related to the Design Work and Construction Work, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards." Sections 7.2.5. 7.2.7, 7.5.3 and 7.14.1.1 of the CDA all specify that Technical Provisions, regulations, manuals and standards are established at the Proposal Due Date. As the Proposal Due date continues to change, it would be preferable to set a date for establishing such standards. We suggest such date should be the date that is 90 days prior to the Proposal Due Date.	No change.	5/29/08
126.	CDA 7.3	Add a section 7.3.3 that defines the approval standard for design drawings.	Developer shall develop its own approval standard in accordance with the CDA Documents.	1/25/08
127.	CDA 7.4 7.5	Clause (p) of the definition of "Compensation Event": "Failure to obtain, or unreasonable and unjustified delay in obtaining, a Governmental Approval from any Governmental Entity, or	No change. Developer is in a better position to negotiate with Utility Owners than TxDOT. Note that under Section 7.5.2.1, TxDOT agrees to cooperate as reasonably requested by Developer	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	Definition: "Compensation Event"	unreasonable and unjustified delay by a Utility Owner with whom Developer has been unable to enter into a Utility Agreement in connection with a Utility Adjustment, except to the extent that such failure or delay in obtaining a Governmental Approval or delay by such a Utility Owner results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property);" An unjustified delay in achieving an Utilities Adjustment is not included as a Compensation Event, only as a Relief Event, but an unjustified delay could be very costly, and the Developer should not bear this entire risk. See proposed wording.	in pursuing Utility Agreements.	
128.	CDA 7.4.1 Book 2A, §10.2	CDA, Book 1, Section 7.4.1 states "TxDOT has completed, or shall undertake and complete at its own cost and expense, the acquisition of the Project Right of Way (except Additional Properties), in accordance with Section 7 of the Technical Provisions (including the schedule for acquisition set forth therein)." And "Developer shall undertake and complete the acquisition of Additional Properties in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Plan and all applicable Laws relating to such acquisition, including the Uniform Act. Wherever Section 7 of the Technical Provisions purports to impose obligations on Developer for acquisition of "Project Right of Way" or "Project ROW", it shall be deemed to refer only to Additional Properties. The above references to Section 7 of the Technical Provisions indicate that TxDOT will perform all clearance and demolition activities for Project ROW, including removal of buildings and all other existing improvements. However, Book 2A, Section 10.2 states "Existing buildings within the Project Right of Way (ROW) that are not occupied by the Developer shall be removed within 30 Days after the start of Construction Work. TxDOT has entered into agreements with certain Property owners not impacted by the Work. These agreements will allow the owner to remain in a building for a defined time. The Developer shall coordinate all building removals with TxDOT." It is clear that TxDOT is acquiring the Project ROW, however, please clarify whether the Developer or TxDOT is responsible for	Addendum #3 is expected to clarify TxDOT's clearance and demolition obligations.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		clearance and demolition of existing improvements on Project ROW including buildings and other appurtenances. If TxDOT is performing clearance and demolition activities for Project ROW, please clearly define which properties and to what extent TxDOT is performing this work. In other words, what will the condition of the properties be after TxDOT performs the clearance and demolition and what work will remain for the Developer before the new construction can occur. For any clearance and demolition being performed by TxDOT, please provide a clear timeframe for when this work will be completed. Please provide copies of the agreements between TxDOT and Property owners referred to above under Book 2A, Section 10.2.		
129.	CDA 7.4.1	Please insert the text "(including the schedule for acquisition noted therein)" at the end of the Section.	Addendum #1 is expected to clarify the section.	10/19/07
130.	CDA 7.4.1	"TxDOT has completed, or shall undertake and complete at its own cost and expense, the acquisition of Project Right of Way (except Additional Properties), in accordance with Section 7 of the Technical Provisions (including the schedule for acquisition set forth therein), as well as any additional Project Right of Way required in connection with the IH 35E Capacity Improvement Section to accommodate the functionality requirements of the Ultimate Configuration."	No change, but see Questions and Answers Matrix re Book 2B and Reference Information Documents Question 43.	5/29/08
131.	CDA 7.4.2	"All Project Right of Way, including Additional Properties other than temporary interests in property for Project Specific Locations, shall be acquired in the name of the State. TxDOT ~~Developer~~ shall undertake and complete the acquisition of Additional Properties in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Plan and all applicable Laws relating to such acquisition, including the Uniform Act. Wherever Section 7 of the Technical Provisions purports to impose obligations on Developer for acquisition of "Project Right of Way" or "Project ROW", it shall be deemed to refer only to Additional Properties. *OR* "All Project Right of Way, including Additional Properties other than temporary interests in property for Project Specific Locations, shall be acquired in the name of the State. Developer shall undertake and complete the acquisition of Additional Properties in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Plan and all applicable Laws relating to such acquisition, including the Uniform Act. Wherever Section 7 of the Technical Provisions	No change. The CDA already contemplates TxDOT support (e.g., see Section 7.4.4 of the CDA and Sections 7.2.12 and 7.2.14 of the Technical Provisions). TxDOT will bear schedule and cost risk relating to Project Right of Way Acquisition (see Section 7.4.1). Any such TxDOT failure may constitute a Compensation Event and/or Relief Event as a TxDOT-Caused Delay.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		purports to impose obligations on Developer for acquisition of "Project Right of Way" or "Project ROW", it shall be deemed to refer only to Additional Properties. TxDot will give support to the Developer for the acquisition of the above mentioned Additional Properties and these Additional Properties to be acquired by the Developer shall be clearly specified." Moreover, it is inappropriate that the Developer bear the entire schedule and increased cost risk relating to Project Right of Way Acquisition.		
132.	CDA 7.4.4	TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages for Additional Properties, and (b) except as provided below, undertake eminent domain proceedings, if necessary, for Additional Properties in accordance with the procedures and time frames established in Section 7 of the Technical Requirements and the approved Right of Way Acquisition Plan. TxDOT shall be entitled to provide disapproval of Acquisition Packages for Additional Properties if it is justified and there is a negative impact to the Project. TxDOT shouldn't disapprove the Acquisition Packages for Additional Properties on its discretion if the Developer will be the sole responsible this acquisition.	No change. Under Section 6.3.4.1, if the CDA indicates that a Submittal is subject to TxDOT's approval and no particular standard for the approval is stated, then the standard is reasonableness.	10/19/07
133.	CDA 7.4.6.2	Delete this provision in its entirety. This Section should be deleted because we can not waive to present a claim for an action or omission of a third party.	No change. The Right of Way Acquisition Manager is a Developer representative designated by Developer and is therefore not a third party.	10/19/07
134.	CDA 7.5	In many instances, the new ROW will include areas already encumbered by a utility easement. No information has been provided that states whether they are in place by easement or by permit. If the utility owner is currently in an easement and requires relocation within an easement, will TxDOT provide the easement?	No, except if otherwise expressly provided in the CDA (e.g., TXU).	4/4/08
135.	CDA 7.5.1	According to such section, TxDOT is required to provide the Developer with the benefit of those "provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their own expenses". Upon the request of Developer, TxDOT should identify those applicable provisions within a specified time period.	TxDOT is researching this request and intends to notify the proposers of any such provisions that it becomes aware of. At this time TxDOT is not aware of any.	10/19/07
136.	CDA 7.5.1	According to such section, TxDOT is required to provide the Developer with the benefit of those "provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their own expenses". Upon the	See Question 135.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		request of Developer, TxDOT should identify those applicable provisions within a specified time period.		
137.	CDA 7.5.1	According to this Section, TxDOT is required to provide the Developer with the benefit of those "provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their own expense." Upon request from the Developer, can TxDOT identify those applicable provisions within a specified time?	See Question 135.	4/4/08
138.	CDA 7.5.2.4	Please insert the word "material" before the text "obligations imposed".	No change. The Developer's duty is with respect to all obligations, not just material obligations.	10/19/07
139.	CDA 7.5.2.4	Please insert the word "material" before the text "obligations imposed".	See Question 135.	1/25/08
140.	CDA 7.5.3	"Each Utility Adjustment (whether performed by Developer or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the date that is ninety (90) days prior to the Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreement(s). Developer is solely responsible for negotiating any terms and conditions of its Utility Agreements that might limit a Utility Owner's amendments and additions to its Adjustment Standards after the date that is ninety (90) days prior to the Proposal Due Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreement(s), and all other requirements specified in Section 6 of the Technical Provisions." Sections 7.2.5. 7.2.7, 7.5.3 and 7.14.1.1 of the CDA all specify that Technical Provisions, regulations, manuals and standards are established at the Proposal Due Date. As the Proposal Due date continues to change, it would be preferable to set a date for establishing such standards. We suggest such date should be the date that is 90 days prior to the Proposal Due Date.	No change.	5/29/08
141.	CDA 7.5.7.2	Please delete clause (b).	No change. TxDOT requires the time period to be reasonable in order for it to intercede on Developer's behalf.	10/19/07
142.	CDA 7.5.7.2	Please delete clause (b).	See Question 141.	1/25/08
143.	CDA 7.5.7.3	In the first sentence, please revise the clause to eliminate the reference to the condition set forth in Section 7.5.7.2(b). Accordingly, the reference in the second sentence should be to Sections 7.5.7.2(b) and (c).	See Question 141.	10/19/07
144.	CDA	In the first sentence, please revise the clause to eliminate the	See Question 141.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	7.5.7.3	reference to the condition set forth in Section 7.5.7.2(b). Accordingly, the reference in the second sentence should be to Sections 7.5.7.2(b) and (c).		
145.	CDA 7.5.7.4	If TxDOT has issued a Directive Letter directing Developer to proceed with a Utility Adjustment, TxDOT shall bear the risk of any claims for damages, costs and expenses sought by Utility Owner(s) in connection with the same.	This provision is intended for the benefit of Developer. Addendum #1 is expected to revise the Section to say if Developer does not have the authority to proceed with a Utility Adjustment, it could request the authority from TxDOT and if TxDOT agrees, TxDOT will issue a Directive Letter.	10/19/07
146.	CDA 7.6.1	"Except to the extent expressly permitted in writing by TxDOT, Developer shall not commence or permit or suffer commencement of construction of a Section until TxDOT issues NTP2. TxDOT shall issue NTP2 within 5 Business Days after the satisfaction of the conditions set forth in Section 7.7.2.2 and all of the following conditions ~~have been satisfied~~:" It should be made clear that TxDOT has an affirmative obligation to issue NTP2 upon the satisfaction of the conditions, because the Developer does not appear to be given any additional time for delays caused by TxDOT's failure to issue NTP2. Please clarify the scope of operations work during the construction period before Service Commencement. Some of the conditions set forth in Sections 7.6.1.9 through 7.6.1.15 should be satisfied on or prior to the Operating Commencement Date of each segment, not as a condition to the issuance of NTP2. As currently drafted, the Developer would not be able to commence construction with respect to one segment until these conditions relating to operation had been satisfied for all segments.	Failure to issue NTP2 within 60 days after the anticipated issuance date set forth in Section 7.7 of the CDA constitutes a TxDOT-Caused Delay (see clause (a) of the definition of TxDOT-Caused Delay). A TxDOT-Caused Delay may be both a Relief Event and a Compensation Event. Addendum #1 is expected to reduce the 60-day period to 30 days and clarify the scope of operations work during the construction period before Service Commencement. See Questions and Answers Matrix re ITP and Book 2A Question 216. Note that the conditions set forth in Section 7.6.1 are not conditions to issuance of NTP2. Rather, issuance of NTP2 is a condition to commencement of construction. See Question 148.	10/19/07
147.	CDA 7.6.1	Please confirm that no approval by TxDOT to the commencement of construction is required.	No approval by TxDOT is required.	1/25/08
148.	CDA 7.6.1.1	Please add the word "preliminary" after the text "All Governmental Approvals necessary to begin…". While the lack of a US Corp of Engineers permit might preclude work around a particular creek or river, it should allow for construction to start in areas where the permit is not applicable.	Addendum #1 is expected to revise Section 7.6.1 to apply to the Project or applicable portion thereof.	10/19/07
149.	CDA 7.6.1.1	Please add the word "preliminary" after the text "All Governmental Approvals necessary to begin…". While the lack of a US Corp of Engineers permit might preclude work around a particular creek or river, it should allow for construction to start in areas where the permit is not applicable.	See Question 148.	1/25/08
150.	CDA 7.6.1.2	"Fee simple title or other property rights acceptable to TxDOT in its ~~sole~~reasonable discretion for the Project Right of Way necessary for commencement of construction . . ."	Addendum #1 is expected to clarify that fee simple title is not subject to acceptance in TxDOT's sole discretion.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		All conditions to commencement of construction need to be objective. As currently drafted, TxDOT could refuse to issue NTP2 by claiming that the property rights are not acceptable, but the Developer would have no means by which to appeal such decision.		
151.	CDA 7.6.1.2	Please delete in its entirety.	The provision is necessary to the extent that Developer obtains any right of way (e.g., Additional Properties). With respect to TxDOT-provided right of way, the CDA addresses TxDOT's responsibility to obtain sufficient title. Clause (d) of the definition of TxDOT-Caused Delay requires that Developer has the right to take and maintain possession of the parcel for all purposes, including commencement of construction. Clause (r)(i) of the definition of Compensation Event contemplates that TxDOT's title must not interfere with or adversely affect performance of Work.	1/25/08
152.	CDA 7.6.1.2	Please delete in its entirety. As previously discussed, it is TxDOT's responsibility to assure that title for the Project Right of Way has been appropriately conveyed. According to the CDA, all title responsibility rests with TxDOT not the Developer.	See Question 151.	4/4/08
153.	CDA 7.6.1 7.6.1.8	"*Partial plan packages may be approved provided that developer accepts consequences of conflict with subsequent partial plan submittals.*" Clarify if construction may proceed within a section prior to completing ALL design and approvals within section. The noted section implies an entire section cannot commence until all design and approvals are obtained.	Provided all other requirements of the CDA Documents are complied with, Construction Work may proceed upon the issuance of Released for Construction Documents.	1/25/08
154.	CDA 7.6.1.9	Please delete the text ", in form acceptable to TxDOT" in the third line since the form of the written certificate has already been agreed with TxDOT.	No change. The required items in clause (a) are not intended to be exhaustive.	10/19/07
155.	CDA 7.6.1.9	Please delete the text ", in form acceptable to TxDOT" in the third line since the form of the written certificate has already been agreed with TxDOT.	See Question 154.	1/25/08
156.	CDA 7.6.1.9 7.6.1.12	These conditions should be conditions to Service Commencement (see Section 7.8.3), instead of conditions to the commencement of construction work.	No change. TxDOT believes each requirement is appropriate.	10/19/07
157.	CDA 7.6.1.9 & 7.6.1.12	These conditions should be conditions to Service Commencement (see Section 7.8.3), instead of conditions to the commencement of construction work.	See Question 156.	1/25/08
158.	CDA 7.6.1.19 (deleted)	A precondition for Commencement of Construction is that Developer has provided TxDOT with Released for Construction Documents required under Section 2.2.10 of Book 2B and that TxDOT´s comments have been resolved. This provision seems to indicate that full detail design should be in place prior to	Addendum #1 is expected to delete this section.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Commencement of Construction. The Contractor should be provided with the opportunity to begin construction with Early Construction Documents at its own risk.		
159.	CDA 7.6.1.19 (deleted)	Please delete. Financial Close should not be a condition to commencement of construction on the project.	Addendum #3 is expected to make the requested change, but will require Financial Close as a condition for drawing on public funds	1/25/08
160.	CDA 7.6.1.20 (deleted)	As with other notice provisions, please make this notice requirement a separate covenant, as opposed to a condition for commencement of construction.	Addendum #1 is expected to make the requested change.	10/19/07
161.	CDA 7.6.2	"Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until TxDOT issues NTP2, which shall be issued within 5 Business Days after all of the conditions set forth in Section 7.6.1 that are applicable to the Utility Adjustment . . . have been satisfied . . ." TxDOT should have an affirmative obligation to issue NTP2 promptly upon the satisfaction of the conditions.	See Question 146.	10/19/07
162.	CDA 7.6.2	Utility Adjustments should be permitted to proceed prior to NTP2.	No change. TxDOT requires the stated conditions precedent for Utility Adjustments.	10/19/07
163.	CDA 7.6.2	Utility Adjustments should be permitted to proceed prior to NTP2.	See Question 162.	1/25/08
164.	CDA 7.7.1	Please delete the following language as unreasonable: "and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance."	No change. Deadlines need to be objective for enforcement provisions to be meaningful. Because of the importance of the CDA timelines and to provide clarity, time extensions are limited to those conditions expressly provided in the CDA.	10/19/07
165.	CDA 7.7.1	Please delete the following language as unreasonable: "and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance."	See Question 164.	1/25/08
166.	CDA 7.7.1	Please delete the following language as unreasonable: "and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance." We appreciate TxDOT's reply that deadlines need to be objective. However, we are not suggesting that the Developer does not have to follow any deadline. We are merely saying that to the extent that the Developer has any rights at law or in equity, it should be able to exercise these rights. We are not suggesting to grant to the Developer any rights which it would not have anyway.	See Question 164.	4/4/08
167.	CDA 7.7.2.1 7.7.2.2 19.4.3	Section 7.7.2.1: "TxDOT shall issue~~anticipates issuing~~ NTP1 concurrently with execution and delivery of this Agreement and receipt by the payee, in good funds, of the Concession Payment under Part A, Section 1 of Exhibit 7. . ."	See Question 146.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Section 7.2.2.2: "TxDOT shall issue~~anticipates issuing~~ concurrently with TxDOT's approval, in accordance with Section 9.1 of this Agreement and Section 2 of the Technical Provisions, of all the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 1 to the Technical Provisions and achievement of all other conditions to issuance of NTP2 referenced in Section 7.6.1 hereof and satisfaction of the following conditions~~the CDA Documents, including~~:" Issuance of NTPs should be based on objective criteria, and TxDOT should have an affirmative obligation to issue the NTPs promptly once these conditions are met. The Developer should have a right extend the milestones set forth in the CDA by which Developer's obligations must be completed if TxDOT delays in issuing NTP1 or NTP2 once all the conditions are met. Additionally, the 365 day waiting period set forth in Section 19.4.3 before the agreement can be terminated if TxDOT does not issue the NTPs is very long and will likely be problematic for lenders.		
168.	CDA 7.7.2.1	Please replace the text "anticipates issuing" in the first line with the text "shall issue" and insert the word "the" before the text "execution and delivery" in the first line.	See Question 146.	10/19/07
169.	CDA 7.7.2.1	Please replace the text "anticipates issuing" in the first line with the text "shall issue" and insert the word "the" before the text "execution and delivery" in the first line.	See Question 146.	1/25/08
170.	CDA 7.7.2.1	Please amend the first sentence as follows: "TxDOT anticipates issuing NTP1 concurrently with execution and delivery of this Agreement ~~and receipt by the payee, in good funds, of the Concession Payment under Part A, Section 1 of Exhibit 7~~." NTP1 should be issued prior to Financial Close and payment of any Concession Payment.	Addendum #6 is expected to make the requested change.	5/29/08
171.	CDA 7.7.2.2	Please replace the text "anticipates issuing" in the first line with the text "shall issue". Section 7.7.2.2 needs to identify all of the conditions that must be satisfied to achieve the issuance of NTP2. Therefore, please replace the words "other conditions to issuance of NTP2 referenced in the CDA Documents, including" with the words "the following conditions". A process and specific timeline needs to be set forth for TxDOT review and responses/approvals in respect of any condition for which TxDOT input is required.	See Question 146. Addendum #1 is expected to replace the words "all other conditions to issuance of NTP2 referenced in the CDA Documents, including" with the words "the following conditions" as requested.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
172.	CDA 7.7.2.2	Please replace the text "anticipates issuing" in the first line with the text "shall issue".	See Question 171.	1/25/08
173.	CDA 7.7.2.2	"TxDOT anticipates issuing NTP2 concurrently with TxDOT's approval, in accordance with Section 9.1 of this Agreement and Section 2 of the Technical Provisions, of all the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 1 to the Technical Provisions and achievement of the following conditions, but shall in no event issue NTP2 prior to Financial Close . . ." NTP2 should in no event be issued prior to Financial Close.	No change, but note that Addendum #6 is expected to revise the definition of Service Commencement Deadline in Exhibit 9 to contemplate environmental reevaluations necessary in connection with an alternative technical concept approved by TxDOT.	5/29/08
174.	CDA 7.7.3	The concept of a deadline to satisfy NTP2 conditions is acceptable, provided a clear process for TxDOT's review and approvals is incorporated in this Section.	No change. Where particular conditions require TxDOT review, comment and/or approval, the procedures are specified in Section 6.3.	10/19/07
175.	CDA 7.7.3	The concept of a deadline to satisfy NTP2 conditions is acceptable, provided a clear process for TxDOT's review and approvals is incorporated in this Section.	See Question 174.	1/25/08
176.	CDA 7.7.6 13.1.5	"All Float contained in the Project Schedule, as shown in the initial Project Baseline Schedule or as generated thereafter, shall be considered a Developer resource and shall not be available to TxDOT in mitigation of delay caused by Relief Events ~~a shared resource among TxDOT, Developer and the Design-Build Contractor available to any or all such parties as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Milestone Schedule Deadlines~~. All Float shall be shown as such in the Project Schedule on each affected schedule path. TxDOT shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Developer shall monitor, account for and maintain Float in accordance with critical path methodology." Float should be available for use solely by Developer and should not be eroded for causes attributable to TxDOT or other causes outside Developer's control. In addition, Developer should have the benefit of all float generated by it during the course of construction.	See Question 177.	10/19/07
177.	CDA 7.7.6	Please provide that Float shall not be available to TxDOT in the event there are Relief Events as identified in clauses (d) through (i) and clause (r) of the definition of Relief Event. (This provision was accepted in SH 121).	Addendum #1 is expected to make the requested changes.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
178.	CDA 7.7.6	All Float contained in the Project Schedule should be a resource solely for the Developer and should not be shared with TxDOT.	No change. See Question 177.	1/25/08
179.	CDA 7.8.1.1	Please replace the word "will" with the word "shall".	Addendum #1 is expected to make the requested change.	10/19/07
180.	CDA 7.8.1.3	Substantial Completion should be defined as the achievement of specified criteria. As currently drafted, TxDOT has the discretion to decide what constitutes Substantial Completion. The criteria set forth in this provision is not exhaustive or objective.	Addendum #1 is expected to clarify the required criteria.	10/19/07
181.	CDA 7.8.1.3	"~~In order for~~ Substantial Completion shall ~~to~~ occur upon satisfaction of~~,~~ the following criteria ~~must be satisfied~~:" Please also delete "whether" in clauses (a) through (i). This language merely clarifies that these are the only conditions to Substantial Completion.	Addendum #3 is expected to make the requested changes.	1/25/08
182.	CDA 7.8.1.3	Please insert the text "(but not other criteria)" after the text "of the following criteria" in the second line.	See Question 181.	10/19/07
183.	CDA 7.8.1.7	TxDOT is required to issue a certificate of Substantial Completion 5 days AFTER expiry of the notice period. Given that this certificate is a condition to Service Commencement (7.8.3.1 (a)), this certificate should be issued sooner. Please change the 5 day period to 3 days.	No change. TxDOT requires five days.	1/25/08
184.	CDA 7.8.3.1	In clause (a), please insert the text "in accordance with and as required pursuant to Section 7.8.1 hereof" after the text "Substantial Completion". In clause (b), please insert a semi-colon at the end. In clause (e) please insert the text "of the Managed Lanes" after the text "for use and operation". In clause (f) please insert the text "in accordance with and as required by Section 7.8.2 hereof". (Equivalent language was accepted in SH 121.)	No change with respect to clause (a); Substantial Completion is defined with respect to Section 7.8.1. Addendum #3 is expected to add "of the Project Segment" after "for use and operation" in clause (e) and to add "in accordance with Section 7.8.2" at the end of clause (f).	10/19/07
185.	CDA 7.8.3.1	In clause (a), please insert the text "in accordance with and as required pursuant to Section 7.8.1 hereof" after the text "Substantial Completion". In clause (e) please insert the text "of the Managed Lanes" after the text "for use and operation". In clause (f) please insert the text "in accordance with and as required by Section 7.8.2 hereof".	See Question 184.	1/25/08
186.	CDA 7.8.3.1(a)	Provision should be deleted and replaced with: "Substantial Completion has been achieved;"	No change. Note that the definition of Substantial Completion includes issuance of a certificate.	10/19/07
187.	CDA 7.8.3.2	Please insert a period at the end.	No change.	10/19/07
188.	CDA 7.8.3.5	Is the 20-day period in addition to the 20-day period mentioned in the previous Sections?	Addendum #1 is expected to clarify this section.	10/19/07
189.	CDA 7.8.4.2	Please replace the word "will" with the word "shall" in the first sentence.	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
190.	CDA 7.8.5 Definition of Service Commencement	Please advise whether there will be the opportunity to open the toll road by section, and commence revenue service on a section-by-section basis. See Section 7.14.1.4 in this regard.	See Question 432.	10/19/07
191.	CDA 7.9 Exhibit 11	Our lenders remain highly concerned about allocation of risk in respect of third party releases of hazardous materials. This is a risk that our contractors are unwilling to bear as well as our potential lenders. There is a concern that lenders and potential Substituted Entities may be deterred from exercising their step-in rights under the CDA and Direct Agreement to the extent that such generator liability will attach to them. They will likely choose to terminate the agreement, rather than take on this liability.	No change. TxDOT believes it is appropriate for the party who operates and maintains the Project to be responsible for third party spills. This responsibility is no different than it would be for any other business. In addition, please note that the CDA allows a Lender to step-in in the name of a Lender affiliate.	4/4/08
192.	CDA 7.9.2	Section 7.9.2 states, " Either Party, at its election and expense, or both Parties by joint election and at equally shared expense, shall have the right to conduct and complete (a) an updated Phase 1 Hazardous Materials Investigation of each parcel of the Project Right of Way, and (b) an original Phase 1 Hazardous Materials Investigation of each parcel of Additional Properties to be added to the Project Right of Way due to TxDOT Changes, in each case not later than 90 days after the date TxDOT makes available to Developer such parcel." Please clarify what justifies joint election and equally shared expense.	Mutual agreement by TxDOT and Developer.	1/25/08
193.	CDA 7.9.2 Definitions of "Phase 2 Hazardous Materials Investigation" and "Pre-existing Hazardous Materials"	Please amend Section 7.9.2 as follows: "Either Party, at its election and expense, or both Parties by joint election and at equally shared expense, shall have the right to conduct and complete (a) an updated Phase 1 Hazardous Materials Investigation, and if, as a result of such Phase 1 Hazardous Materials Investigation, facts are revealed that would reasonably necessitate a Phase 2 Hazardous Materials Investigation, a Phase 2 Hazardous Materials Investigation, of each parcel of the Project Right of Way, and (b) an original Phase 1 Hazardous Materials Investigation, and if, as a result of such Phase 1 Hazardous Materials Investigation, facts are revealed that would reasonably necessitate a Phase 2 Hazardous Materials Investigation, a Phase 2 Hazardous Materials Investigation, of each parcel of Additional Properties to be added to the Project Right of Way due to TxDOT Changes, in each case not later than 90 days, or, in the case of a Phase 2 Hazardous Materials Investigation, such time as is reasonably required to conduct and complete such Phase 2 Hazardous	Addendum #6 is expected to contemplate Phase 2 Hazardous Materials Investigations within a 180-day limit.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Materials Investigation after the date TxDOT makes available to Developer such parcel. (For this purpose "makes available" has the meaning set forth in the definition of Pre-Existing Hazardous Materials.)" Please add the following definition to Exhibit 1: "Phase 2 Hazardous Materials Investigation means an environmental assessment conducted materially in accordance with ASTM E1903-97, or any future replacement or revision thereof, to evaluate Recognized Environmental Conditions and potential Recognized Environmental Conditions." Please amend the definition of "Pre-existing Hazardous Materials" as follows: "… (i) The phase 1 investigations of the Project conducted by TxDOT prior to the Effective Date entitled "Hazardous Materials Report, Limited Phase I Environmental Site Assessment for LBJ West Corridor, From Luna Road to US 75 on IH 635 and From Valwood Parkway to Loop 12 on IH 35E," prepared by Civil Associates, Inc., dated December 15, 2006 and "Expanded Phase I Reevaluation for LBJ West Corridor, CSJ 2374-01-068, From Luna Road to US 75 on IH 635 and From Loop 12 to Valwood Parkway on IH 35E" prepared by Lopez Garcia Group dated November 2007, or any updated Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation supplementing the foregoing reports prepared as and when set forth in Section 7.9.2 of the Agreement; and (ii) As to any Additional Properties required by TxDOT to be included in the Project Right of Way as a result of TxDOT Changes, any Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation thereof prepared and delivered as and when set forth in Section 7.9.2 of the Agreement." As previously discussed, the risk allocation in respect of Hazardous Materials is of critical concern to our potential financiers. Under the current draft of the CDA, the baseline for determining whether Hazardous Materials are pre-existing or not is the Phase 1 Hazardous Materials Investigation; however, such Phase 1 report will not necessarily clearly identify the existence of Hazardous Materials. The Developer must have a right to do additional testing. This point is critically important to our		

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		potential lenders as the Developer bears the high risk and cost of proving that any Hazardous Materials not identified in the Phase 1 Hazardous Materials Investigation were in fact pre-existing. Thus, we ask that in addition to the ability to update the Phase 1 Investigation, the Developer, if facts are revealed that would reasonably necessitate a phase 2 investigation, be given the right to carry out a Phase 2 Hazardous Materials Investigation that will more accurately identify the existence of any Hazardous Materials.		
194.	CDA 7.9.2	Please amend Section 7.9.2 as follows: "Either Party, at its election and expense, or both Parties by joint election and at equally shared expense, shall have the right to conduct and complete (a) an updated Phase 1 Hazardous Materials Investigation, and if, as a result of such Phase 1 Hazardous Materials Investigation, facts are revealed that would reasonably necessitate a Phase 2 Hazardous Materials Investigation, a Phase 2 Hazardous Materials Investigation, of each parcel of the Project Right of Way, and (b) an original Phase 1 Hazardous Materials Investigation, and if, as a result of such Phase 1 Hazardous Materials Investigation, facts are revealed that would reasonably necessitate a Phase 2 Hazardous Materials Investigation, a Phase 2 Hazardous Materials Investigation, of each parcel of Additional Properties to be added to the Project Right of Way due to TxDOT Changes, in each case not later than 90 days, or, in the case of a Phase 2 Hazardous Materials Investigation, such time as is reasonably required to conduct and complete such Phase 2 Hazardous Materials Investigation after the date TxDOT makes available to Developer such parcel. (For this purpose "makes available" has the meaning set forth in the definition of Pre-Existing Hazardous Materials.)" TxDOT indicated in the last Q&A Matrix that it would make our requested changes, however it would apply the 90-day limit to both Phase 1 and Phase 2 investigations and that any investigation beyond such period would not be dispositive of whether a condition was pre-existing. It is inappropriate to require a 90-day period for Phase 2 investigations. The most efficient way to test for Hazardous Materials is only to conduct Phase 2 investigations, which can be costly, where it is suspected that there might be Hazardous Materials. The Developer should have the opportunity to	See Question 193.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		conduct such an evaluation at any point where it is suspected Hazardous Materials might be present. Such examinations, even if conducted years later, can accurately pinpoint the approximate timing of a Hazardous Material spill, so such 90-day limitation is unnecessary. Furthermore, if such a 90-day limitation is established, Developer will be forced to have to conduct a full Phase 2 on the entire Project in order to protect its interest. This is inefficient and costly, and not a risk that the Developer will bear. Please eliminate the 90-day limitation in respect of the Phase 2 investigation, and confirm that the other changes will be provided in the next draft of the CDA.		
195.	CDA 7.9.3.2	Section 7.9.3.2 states, " If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer's schedule for use of and operations on the Project Right of Way, TxDOT has not undertaken remedial action required of it under Section A.2 of Exhibit 11, Developer may provide TxDOT with written notice that it will undertake the remedial action itself." Define reasonable timeframe for TxDOT to undertake remediation action.	A reasonable timeframe will depend on the "nature and extent of the contamination, the type and extent of remedial action required and the potential impact." Please note that a reciprocal right is provided in Section 7.9.3.1.	1/25/08
196.	CDA 7.9.5.1	Please include the words "and arranger" after the word "generator" in the second line.	Addendum #3 is expected to make the requested change. See Question 199.	1/25/08
197.	CDA 7.9.5.3	"~~Notwithstanding any contrary provision of the CDA Documents, under no circumstances whatsoever shall any~~ Any TxDOT-Caused Delay arising out of or relating to (a) its review and approval or disapproval of remediation plans for removal and off-Site disposal of Pre-existing Hazardous Materials or Hazardous Materials that any Person claims to be Preexisting Hazardous Materials, (b) any other act or failure to act by TxDOT in its capacity as generator for off-Site disposal of Pre-existing Hazardous Materials, or (c) any Dispute over whether Hazardous Materials are Pre-existing Hazardous Materials shall constitute a ~~Compensation Event or otherwise entitle Developer to any compensation from TxDOT or other remedy against TxDOT, other than remedies available where any of the foregoing constitutes a~~ Relief Event." The delays caused by a default or an action of the TxDOT shall constitute a Relief Event.	No change. TxDOT requires this provision in order to cover its risks relating to Hazardous Materials.	10/19/07
198.	CDA	~~"Notwithstanding any contrary provision of the CDA Documents,~~	No change. But see Question 196.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	7.9.5.3	~~under no circumstances whatsoever shall any~~ Any TxDOT-Caused Delay arising out of or relating to (a) its review and approval or disapproval of remediation plans for removal and off-Site disposal of Pre-existing Hazardous Materials or Hazardous Materials that any Person claims to be Preexisting Hazardous Materials, (b) any other act or failure to act by TxDOT in its capacity as generator for off-Site disposal of Pre-existing Hazardous Materials, or (c) any Dispute over whether Hazardous Materials are Pre-existing Hazardous Materials shall constitute a ~~Compensation Event or otherwise entitle Developer to any compensation from TxDOT or other remedy against TxDOT, other than remedies available where any of the foregoing constitutes a~~ Relief Event." The delays caused by a default or an action of the TxDOT shall constitute a Relief Event, but should also be treated as a Compensation Event in accordance with clause (s) of the definition of "Compensation Event" if applicable. As currently drafted, the language appears to not allow such TxDOT-Caused Delays to be treated as Compensation Events.		
199.	CDA 7.9.5.4	Please rephrase as follows: "To the extent permitted by applicable Law, TxDOT shall indemnify, save, protect and defend Developer from third party claims, causes of action and Losses arising out of or related to generator and/or arranger liability for the Pre-existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material for which TxDOT is considered the generator pursuant to this Section, specifically excluding generator liability for actual and threatened Developer Releases of Hazardous Materials."	Addendum #3 is expected to make the requested change. It will be clarified that TxDOT's assumption of arranger status does not relieve the Developer of its responsibilities for carrying out remediation under Section 7.9.1. In assuming arranger status and liability, TxDOT will require (1) approval of remediation plans whenever it is the arranger and (2) reciprocal assumption of arranger status and liability by the Developer under Section 7.9.6. Conforming changes also will be made to Sections 6.1.2, 6.1.3, 7.9.5.2 and 7.9.5.3.	1/25/08
200.	CDA 7.10	"Throughout the course of the Design Work and Construction Work, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval and any other ~~similar~~ Governmental Approvals for the Project required by law, or under the CDA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals in accordance with Section 4 of the Technical Provisions." The expression "similar" is too broad.	Addendum #1 is expected to make the first requested change.	10/19/07
201.	CDA 7.12.1	Please insert the text ", to the extent possible using commercially reasonable efforts," before the text "Developer shall also cause" in the third line.	No change. TxDOT requires the benefit of these warranties. Note that Section 7.12.1 only applies to the extent Developer obtains any warranties and excludes mass-marketed items. TxDOT believes that it is appropriate to require a Contractor that is willing	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
			to extend a warranty to Developer to extend such warranty to TxDOT.	
202.	CDA 7.12.1	Please insert the text ", to the extent possible using commercially reasonable efforts," before the text "Developer shall also cause" in the third line.	See Question 201.	1/25/08
203.	CDA 7.12.1	Please insert the text ", to the extent possible using commercially best efforts," before the text "Developer shall also cause" in the third line. We appreciate TxDOT's argument that this Section only refers to warranties that the Developer obtains. However, even though the Developer may have obtained a certain warranty does not necessarily mean that it is possible to expressly extend these warranties to TxDOT. TxDOT should be comfortable if the Developer will use its commercially best efforts. If a warranty cannot be extended to TxDOT despite commercially best efforts on the part of the Developer then the provision as is would be meaningless anyway.	See Question 201.	4/4/08
204.	CDA 7.14 17.14.1.4	Section 17.14.1.4 should be amended as follows: "This limited warranty shall expire ~~one~~10 years after the Operating Commencement Date ~~for the IH 635/US 75 Interchange~~." Existing Improvements that suffer from latent defects should be treated as Relief Events if such defects result in a loss of Toll Revenues. The limited warranty for Latent Defects should apply to any improvement or rehabilitation work carried out by TxDOT, not only to the I-75 Interchange, until the Operating Commencement Date. Warranty periods for Latent Defects typically extend for 10 or more years. In this project, considering a 5 year construction period, a warranty of 1 year may not be sufficient. The warranty should be extended at least 10 years after the Operating Commencement Date.	No change. This limited warranty is being provided to add value for the portion of the Project that TxDOT expects will not be reconstructed. Note that the IH 635/US 75 Interchange has already been open for over two years, and so it will be open significantly longer than the one-year warranty term.	10/19/07
205.	CDA 7.14 17.14.1.4 7.14.1.3 Exhibit 1	Section 7.14.1.4 should be amended as follows: "This limited warranty shall expire ~~one~~ three (3) years after the Operating Commencement Date ~~for the IH 635/US 75 Interchange~~." Section 7.14.1.3 should be amended as follows: "In addition to Developer's other remedies hereunder, TxDOT shall be liable for ~~TxDOT's liability under this limited warranty is limited to~~ the ~~direct~~ cost (a) to correct latent defects covered by this warranty and (b) to correct physical loss or harm to the Project resulting from such latent defects, but only to the extent such loss or harm is not insured and not required to be insured under this	No change. See Question 204.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Agreement (herein, "resulting uninsured physical loss"). ~~TxDOT shall have no other obligation or liability to Developer arising out of or relating to latent defects in the Existing Improvements, including for loss of Toll Revenues and for third party damage, harm, injury, loss, cost or expense.~~" Existing Improvements that suffer from latent defects should be treated as a Relief Event and a Compensation Event. The limited warranty for Latent Defects should apply to any improvement or rehabilitation work carried out by TxDOT, not only to the I-75 Interchange, until the Operating Commencement Date. The definition of "Existing Improvements" should be expanded to include the existing facility within the IH-635 Section and IH-635/IH-35E Interchange limits (within the Project limits). Warranty periods for Latent Defects typically extend for 10 or more years. In this project, considering a 5 year construction period, a warranty of 1 year may not be sufficient. The warranty should be extended at least 3 years after the Operating Commencement Date. Also, liability should not be limited to "resulting uninsured physical loss" and should include amounts for losses exceeding and/or not recovered from applicable insurance policies. TxDOT liability for latent defects should also protect Developer from third party damage, harm, injury, loss or expense.		
206.	CDA 7.14.1.1	"TxDOT warrants that the Existing Improvements shall be free of latent defects in design, materials, equipment and workmanship, as measured from the requirements, criteria, standards and specifications in the relevant contracts under which the Existing Improvements were constructed. A defect shall be considered latent only if it is not known or disclosed to Developer as of the Proposal Due Date and would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice. This limited warranty does not apply to Work of design and construction performed by any Utility Owner on its own Utilities<u>, being the responsibility of such latent defect of the Utility Owners</u>." In no case, the Developer should be responsible for any previous latent defect or for any latent defect existing in Works that belongs to a third party.	No change. TxDOT's limited warranty only applies to the Existing Improvements. Since the provision does not create a Developer warranty of a Utility Owner's work, the language is unnecessary. As the responsible party for operations and maintenance, the Developer will, however, have to deal with the Utility Owner, and will bear the risk, if defects or problems in the Utility Owner's work require on-site repairs or adversely affect the Project.	10/19/07
207.	CDA 7.14.1.1	Please amend Section 7.14.1.1 as follows: "TxDOT warrants that the Existing Improvements shall be free of latent defects in design, materials, equipment and workmanship,	See Question 206.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		as measured from the requirements, criteria, standards and specifications in the relevant contracts under which the Existing Improvements were constructed. A defect shall be considered latent only if it is not known or disclosed to Developer as of the Proposal Due Date and would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice. This limited warranty does not apply to Work of design and construction performed by any Utility Owner on its own Utilities, it being understood that the Developer shall not bear responsibility for any such latent defect."		
208.	CDA 7.14.1.1	The Developer is granted relief for latent defects on Existing Improvements. The term "Existing Improvements" is defined as within the limits of the IH635/US75 Interchange. The definition should be expanded to include the existing facility within the IH635 Section, IH35E Section and IH635/IH35E Interchange limits (within the Project limits).	No change. See Question 204.	10/19/07
209.	CDA 7.14.1.1	The Developer is granted relief for latent defects on Existing Improvements. The term "Existing Improvements" is defined as within the limits of the IH635/US75 Interchange. The definition should be expanded to include the existing facility within the IH635 Section, IH35E Section and IH635/IH35E Interchange limits (within the Project limits).	See Question 208.	1/25/08
210.	CDA 7.14.1.1	Please amend 7.14.1.1 as follows: "TxDOT warrants that the Existing Improvements shall be free of latent defects in design, materials, equipment and workmanship, as measured from the requirements, criteria, standards and specifications in the relevant contracts under which the Existing Improvements were constructed. A defect shall be considered latent only if it is not known or disclosed to Developer as of the Proposal Due Date and would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice. This limited warranty does not apply to Work of design and construction performed by any Utility Owner on its own Utilities, it being understood that the Developer shall not bear responsibility for any such latent defect, on work performed prior to commencement of project." Added language to better clarify previous response to question.	See Question 206.	4/4/08
211.	CDA 7.14.1.1	"TxDOT warrants that the Existing Improvements shall be free of latent defects in design, materials, equipment and workmanship, as measured from the requirements, criteria, standards and specifications in the relevant contracts under which the Existing Improvements were constructed. A defect shall be considered	No change.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		latent only if it is not known or disclosed to Developer as of the date that is ninety (90) days prior to the Proposal Due Date and would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice. This limited warranty does not apply to Work of design and construction performed by any Utility Owner on its own Utilities." Sections 7.2.5. 7.2.7, 7.5.3 and 7.14.1.1 of the CDA all specify that Technical Provisions, regulations, manuals and standards are established at the Proposal Due Date. As the Proposal Due date continues to change, it would be preferable to set a date for establishing such standards. We suggest such date should be the date that is 90 days prior to the Proposal Due Date.		
212.	CDA 7.14.1.2	"This limited warranty is the ~~sole~~ warranty from TxDOT of the Existing Improvements, and all other warranties, express or implied, are hereby disclaimed~~,~~ ~~including any warranty of suitability or fitness for purpose~~." The limitation of warranties is too large.	No change.	10/19/07
213.	CDA 7.14.1.3	TxDOT's liability under this limited warranty is limited to the ~~direct~~ cost (a) to correct latent defects covered by this warranty and (b) to correct physical loss or harm to the Project resulting from such latent defects, but only to the extent such loss or harm is not insured and not required to be insured under this Agreement (herein, "resulting uninsured physical loss"). ~~TxDOT shall have no other obligation or liability to Developer arising out of or relating to latent defects in the Existing Improvements, including for loss of Toll Revenues and for third party damage, harm, injury, loss, cost or expense.~~	See Question 212.	10/19/07
214.	CDA 7.14.1.3	Liability should not be limited to "resulting uninsured physical losses" and should include amounts for losses exceeding and/or not recovered from applicable insurance policies. TxDOT liability for latent defects should also protect Developer from third party damage, harm, injury, loss or expense.	No change. Third party liability is beyond the intended scope of the warranty.	10/19/07
215.	CDA 7.14.1.3	Liability should not be limited to "resulting uninsured physical losses" and should include amounts for losses exceeding and/or not recovered from applicable insurance policies. TxDOT liability for latent defects should also protect Developer from third party damage, harm, injury, loss or expense.	See Question 214.	1/25/08
216.	CDA 7.14.1.3	Liability should not be limited to "resulting uninsured physical losses" and should include amounts for losses exceeding and/or not recovered from applicable insurance policies.	See Question 214.	4/4/08
217.	CDA 7.14.2	Please delete the text "and maintenance and operational requirements" after the text "Safety Standards" in the last	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		sentence.		
218.	CDA 7.14.2	Please delete the text "and maintenance and operational requirements" after the text "Safety Standards" in the last sentence.	See Question 217.	1/25/08
219.	CDA 8.1.1	Based on the wording of such section, there does not appear to be a grace period that would normally account for construction scheduling and staging. Considering an operating period that starts at the time of D/B construction, the Developer could be in breach of preexisting nonconforming key performance measures and subject to assessment of noncompliance points. It would be unfortunate if there were sections that, for instance, would require immediate remediation, although they were scheduled for reconstruction in say year 3 of the D/B schedule. Please include a grace period to account for construction scheduling and staging.	The Technical Provisions contemplate a grace period. See Section 19.5.7 of the Technical Provisions.	10/19/07
220.	CDA 8.1.2	Material changes to Technical Documents and Safety Standards, as well as material revisions to existing manuals and publications, made relating to O&M Work after the Proposal Due Date (whether of general applicability or discriminatory) should be deemed to be Compensation Events. Moreover, if any such change requires major work (whether attributable to a change of general applicability or a discriminatory change) on any Element of the Project, an equitable extension in the time to complete should be granted through a Change Order.	Developer should anticipate and plan for changes to the applicable technical requirements applicable to the O&M Work over the term of the CDA. As a result, only Discriminatory Actions will constitute Compensation Events.	10/19/07
221.	CDA 8.1.2	Developer is unable to anticipate and plan for changes to technical requirements applicable to the O&M Work over the term of the CDA. Developer must be granted time to institute an implementation plan for changes to the Technical Documents (i.e. these changes cannot be implemented immediately), and during that time, there should be no adverse consequences to Developer (i.e. assessment of non-compliance points, etc.). Also, material changes to Technical Documents and Safety Standards, as well as material revisions to existing manuals and publications, made relating to O&M Work after the Proposal Due Date (whether of general applicability or discriminatory) should be deemed to be Compensation Events. Moreover, if any such change requires major work (whether attributable to a change of general applicability or a discriminatory change) on any Element of the Project, an equitable extension in the time to complete should be granted through a Change Order.	No change. TxDOT believes reasonable time periods to implement the changes are already provided throughout Section 8.1.2. See, e.g., Section 8.1.2.4. See Question 220.	1/25/08
222.	CDA 8.1.2.2	In this Section, TxDOT establishes its right to change and potentially make the Technical Documents and Safety Standards more onerous. Presumably, these changes would be related to	Developer has the right to compensation for discriminatory changes but not for non-discriminatory changes. See Question 210. Regarding changed, added or replaced technical documents	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		safety compliance, global changes in standards, etc. that would also apply to other similar projects. However, the section also identifies that Discriminatory Changes may also apply. In short, the Developer has the right to compensation for discriminatory changes, but not with respect to non-discriminatory changes. Nevertheless, commencement of work must proceed as scheduled. Please confirm. Further, if there are changed, added or replaced technical documents or safety standards, such standards should be included in Book 3 and replace inconsistent provisions of the technical provisions, rather than superseding such provisions only to the extent designated by TxDOT in its sole discretion.	or safety standards, see Question 2.	
223.	CDA 8.1.2.9	The "c" in TxDOT Change should be upper case in the third to last line. This provision should also apply to changes in Adjustment Standards. Please delete the last two lines after the semi-colon.	Addendum #3 is expected to make the first requested change. Grandfathering of Adjustment Standards is a matter between Developer and the Utility Owner, and could be addressed in the Utility Agreement.	10/19/07
224.	CDA 8.1.2.9	The "c" in TxDOT Change should be upper case in the third to last line. This provision should also apply to changes in Adjustment Standards. Please delete the last two lines after the semi-colon.	See Question 223.	1/25/08
225.	CDA 8.1.4	Please insert the text "in all material respects" at the end of the first sentence.	No change.	10/19/07
226.	CDA 8.1.4	Please insert the text "in all material respects" at the end of the first sentence.	See Question 225.	1/25/08
227.	CDA 8.1.6	Dependant on the nature of the business accessing the frontage road, i.e., bus terminal or trucking agency, there may be increased pavement damage as a result of the operations for which the Developer would not be able to seek relief. More importantly, what recourse does the Developer have if the permit holder fails to complete or maintain their works in accordance with accepted construction practices?	No change. This is an appropriate risk for the operator of the Project. Developer's recourse will be those available at law.	10/19/07
228.	CDA 8.1.6	Dependant on the nature of the business accessing the frontage road, i.e., bus terminal or trucking agency, there may be significant extraordinary increased pavement damage as a result of the operations that the Developer would not be able to seek relief. We suggest the inclusion of a Relief Event clause to address this and similar potential situations.	See Question 227.	1/25/08
229.	CDA 8.1.7 Exhibit 21	We would like to better understand how the speed limits will be set, particularly with regard to how the speed studies may change speed limits over time and what role local authorities may have in setting and changing speed limits. The setting of the speed limits (either on the Managed Lanes or on the General Purpose Lanes) affects our model, so any	Addendum #1 and Addendum #3 are expected to replace assessing a toll rebate with assessing a tiered noncompliance point system in the event average speeds are below 50 mph. See Exhibit 21, Attachment 1. Addendum #1 and Addendum #3 are also expected to provide that if the posted speed limit is less than 60 mph in the Managed	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		changes to the theoretical speed limits will likely mean an adjustment to the model. We believe that changes to speed limits during the term should only be related to changes in standards or safety issues, and the model should be adjusted according to those changes. Moreover, it is very important to the marketability of the project that factors outside the control of the Developer and affecting the speed limits should be considered Relief Events and/or Compensation Events. This information is particularly important in light of the high liquidated damage penalties that the Developer must pay if the average speed is less than 50 mph. These liquidated damages are very high and introduce a very serious risk. This risk will be very difficult to quantify – and to explain to the market. At this stage in the process, and given the fact that the speed limits have still not been determined, it is difficult to guaranty an average speed of 50 mph. Also, because no similar project exists today, it is difficult to establish with full confidence Developer's capacity to manage speeds by changing the toll rates in the required timely manner. In accordance with TxDOTs primary objective to maximize mobility, it is likely that a target speed of around 50 mph will be established. However, it is important that posted speed limits allow us to achieve our target speeds (i.e. average of 50 mph), otherwise the target speed should be reduced. The threat of the loss of 25% revenue in the face of any small reduction in speeds over any single measurement period below this target speed appears unreasonably severe. As the average speed will be subject to a certain variation if we are penalized for average speeds just below 50 mph we will need to target a higher average, which may be not possible at certain locations. Given the geometry of the managed lanes and the design speeds of certain components, and given the apparent requirement to allow the use of the facility by even the largest commercial vehicles, it is easy to imagine traffic conditions other than unreasonable flow levels where it is impossible to maintain speeds of 50 mph as required. Further the text is unclear how a 'period' is defined. What is the	Lanes, then the 50 mph average speeds requirement (and associated noncompliance point triggers) will be reduced. See Exhibit 4, Section G.5.	

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		definition of period? Is it a rolling period (i.e. any consecutive x minutes) or a pre-scheduled block? How long is it? In the face of these points, we would suggest that TxDOT adopt a less restrictive approach, in line with similar approaches adopted elsewhere, where (i) the penalty for missing the target speed is less severe and (ii) the measurement period is more extensive to allow for the unavoidable periods of slower flow which follow from unpredictable driving habits?		
230.	CDA 8.2.1.1	Developer should not be required to receive TxDOT's prior approval to execute any O&M Contract unless the Developer elects not to self-perform any significant aspect of the operations and maintenance of the Project, including toll operations.	Please clarify the question. TxDOT assumes that if the Developer elects to self-perform O&M, there would not exist any O&M Contract.	10/19/07
231.	CDA 8.2.1.1	Developer should not be required to receive TxDOT's prior approval to execute any O&M Contract unless the Developer elects not to self-perform any significant aspect of the operations and maintenance of the Project, including toll operations.	See Question 230.	1/25/08
232.	CDA 8.2.2.1	Please add the text "as to it" after the text "is in full force and effect" in clause (c).	Addendum #3 is expected to make the requested change.	1/25/08
233.	CDA 8.2.2.1	"Developer warrants and represents that (a) on the Effective Date it and NTTA entered into the NTTA Tolling Services Agreement for back office toll collection and customer services for the Project and such NTTA Tolling Services Agreement was duly executed by Developer, (b) on the Effective Date it delivered to TxDOT a true and complete copy of the NTTA Tolling Services Agreement~~, (c) as of the Effective Date the NTTA Tolling Services Agreement is in full force and effect~~ and (d) from December 21, 2006 through the Effective Date, it has not had any communications with NTTA regarding the Project, including the procurement and services potentially to be provided by NTTA, except as expressly authorized by and in accordance with the procedures set forth in Section 2.2.3 of Volume I of the RFP (Instructions to Proposers)." The Developer cannot make representations regarding NTTA, but is willing to represent that the TSA was duly executed by the Developer. Please also note that this section remains subject to review, pending finalization of the Tolling Services Agreement (TSA). We will expect that any default by NTTA under the TSA shall be a TxDOT Default under the CDA. Such default to be added in the list for Section 17.5.1	Addendum #3 is expected to add due execution by Developer. See Question 232.	1/25/08
234.	CDA 8.2.2.2	While Developer can consent to TxDOT attending meetings with NTTA, it cannot speak for NTTA as to whether NTTA will also	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		consent to TxDOT's participation. Hence, in the second sentence, please limit Developer's obligation to its consent to TxDOT's participation, rather than an unconditional obligation to afford TxDOT the right to participate.		
235.	CDA 8.2.2.2	Please note that this section remains subject to review, pending delivery of the draft of the Tolling Services Agreement (TSA). We will expect that any default by NTTA under the TSA shall be a TxDOT Default under the CDA. Such default to be added in the list for Section 17.5.1.	Developer's remedy will be in the TSA. TxDOT will not assume liability for NTTA defaults. However, Addendum #1 is expected, among other changes, to provide that compliance by NTTA under the initial TSA and any amendments to the TSA approved by TxDOT will satisfy any directly corresponding but inconsistent requirement under the CDA. See Section 17.1.4.	10/19/07
236.	CDA 8.2.2.2	Any material default by NTTA under the NTTA tolling agreement must constitute a TxDOT Default.	See Question 235.	1/25/08
237.	CDA 8.2.2.3	Please delete the word ", created" after the word "delivered" in the second line and the word "proposed" after the text "or any other" in the fourth line. Further, please add the word "material" before the text "documentation relating to the NTTA Tolling Services Agreement".	Addendum #1 is expected to revise Section 8.2.2.3.	10/19/07
238.	CDA 8.2.2.3	Please delete the word "proposed" after the text "or any other" in the fourth line. Further, please add the word "material" before the text "documentation relating to the NTTA Tolling Services Agreement".	Addendum #3 is expected to make the requested changes.	1/25/08
239.	CDA 8.3	Please amend section so that TxDOT has to maintain the highway in accordance with either (i) current TxDOT maintenance standards or, (ii) to the extent the OMR performance measures have a higher standard, the OMR performance measures.	No change.	10/19/07
240.	CDA 8.3	Please amend section so that TxDOT has to maintain the highway in accordance with either (i) current TxDOT maintenance standards or, (ii) to the extent the OMR performance measures have a higher standard, the OMR performance measures.	See Question 239.	1/25/08
241.	CDA 8.7.1	The Developer appears to have the option to retain NTTA, but this needs to be reviewed in light of SB 792.	Addendum #1 is expected to change "If" in the last sentence to "Whenever."	10/19/07
242.	CDA 8.7.1	"Commencing on the Service Commencement Date and continuing throughout the Term, Developer (or its designee, which may also include a public agency such as NTTA) shall be responsible for toll collection, violation processing, revenue handling and accounting, and customer service and support for the Managed Lanes. Developer shall conduct its violation processing and enforcement activities in compliance with applicable Laws; provided, however, that whenever ~~Whenever~~ Developer retains a public agency (including NTTA) to perform toll violation processing and enforcement, the Laws applicable to	Addendum #3 is expected to make the second and third requested changes.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		such agency's violation processing and enforcement activities, including those pertaining to fees, costs and penalties it may charge to Users, shall apply. Notwithstanding anything herein to the contrary, Developer shall not be liable under this Agreement for any violation of Law by NTTA in respect of its violation processing and enforcement activities." It should be made clear throughout the CDA that toll collection, violation processing/enforcement will be done, at least initially, by NTTA. Developer should not be liable under this provision if NTTA's violation processing and enforcement activities violate applicable Law.		
243.	CDA 8.7.3 Exhibit 1	Exhibit 1: Definition of "Compensation Event" (q) While we understand the importance of interoperability, Developer should not bear the risk of being required to modify the electronic toll collection system in the future to ensure interoperability.	We are not clear what you are requesting in addition to clause (q) of the definition of Compensation Event.	10/19/07
244.	CDA 8.7.3 Exhibit 1	While we understand the importance of interoperability, Developer should not bear the risk of being required to modify the electronic toll collection system in the future to ensure interoperability. As currently drafted, clause (q) of the definition of "Compensation Event" only covers "cardinal" changes, however we believe all changes/modifications (not just cardinal changes) should be covered.	No change. Addendum #3, however, is expected to obligate TxDOT to involve Developer in any changes to interoperability standards.	1/25/08
245.	CDA 8.7.3 Exhibit 1: Definition of "Compensation Event" (q)	Clause (q) of the definition of "Compensation Event": "A cardinal change in or from the Electronic Toll Collection System technology, but only where such change is required under Section 12.1.3(c) of the Agreement. For this purpose, "cardinal change" means a fundamental, categorical change in the nature or scope of such technology~~, not merely changes in radio frequencies, transponder modes, evolutionary upgrades and similar Technology Enhancements~~;" Radio frequency changes, etc. can be quite costly to the Developer. Please delete the requested language or alternatively, please set forth a threshold upon which technology changes shall be deemed "cardinal".	No change. Developer should contemplate that technological changes will be required. TxDOT believes that the term "cardinal change" appropriately reflects those fundamental changes for which TxDOT would provide compensation, and that such term is adequately defined in law. TxDOT does not agree that changes in radio frequencies, etc. may be cardinal changes. TxDOT is unwilling to set a threshold because any such amount will be arbitrary and may not capture such fundamental changes. Please note that because any such change is required to maintain interoperability, TxDOT expects that any such change would only result after careful deliberations.	4/4/08
246.	CDA 8.7.3	Clause (q) of the definition of "Compensation Event": "A cardinal change in or from the Electronic Toll Collection System technology, but only where such change is required under Section 12.1.3(c) of the Agreement. For this purpose, "cardinal change" means a fundamental, categorical change in the nature or scope of such technology~~, not merely changes in radio frequencies, transponder modes, evolutionary upgrades and~~	See Question 245.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		~~similar Technology Enhancements~~;" Radio frequency changes, etc. can be quite costly to the Developer. Please delete the requested language or alternatively, please set forth a threshold upon which technology changes shall be deemed "cardinal".		
247.	CDA 8.7.4	"If 2 years prior to commencement of toll operations…" The Developer needs to know the interoperability framework far enough in advance to be able to design, integrate and test the equipment.	Addendum #1 is expected to revise the section.	10/19/07
248.	CDA 8.7.4	Please restore the text "prior to commencement of toll operations" after the word "If" in the first sentence.	Addendum #3 is expected to make the requested change.	1/25/08
249.	CDA 8.7.5	Please revise sub-clause (ii) as follows: "(ii) it is within 2 years following the date on which Developer's termination rights under the NTTA Tolling Services Agreement become both vested and exercisable.	Addendum #6 is expected to add new Section 8.7.6 to address defaults within two years after a change in law.	1/25/08
250.	CDA 8.7.5	Please add the following language after the text "to provide such services" in the 6th line "or it is within 2 years following the date on which Developer's termination rights under the NTTA Tolling Services Agreement become both vested and exercisable".	See Question 249.	4/4/08
251.	CDA 8.7.5	"If (a) the NTTA Tolling Services Agreement provides to Developer the remedy of stepping in or intervening to take over interim performance of NTTA's obligations thereunder in order to cure an NTTA default or to prevent loss or harm pending cure of an NTTA default, (b) Developer validly exercises or determines that it will exercise such a remedy, and (c) at such time (i) the Project remains subject to an obligation under applicable Law to use NTTA to provide such services or (ii) following a change in Law that removes the obligation for the Project to use NTTA to provide such services, it is within the then current Service Period (as such term is defined in the NTTA Tolling Services Agreement) or prior to the Service Commencement Date of the first Toll Segment, then at Developer's option, TxDOT will act as Developer's designated agent for the purpose of performing NTTA's customer service and back office services for the Project and electronic funds transfer functions pending cure of the NTTA default, subject to the following terms and conditions." In the event of a change in law that removes the obligation to use NTTA to provide tolling services, Section 21(e)(ii) of the TSA does not allow the Developer to terminate the TSA for convenience until the later to occur of (i) 12 months after notice of termination is delivered and (ii) the end of the then-current Service Period (or if the change in law occurs prior to the first	See Question 249.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Service Commencement Date, the end of the initial Service Period) (the "*Convenience Termination Date*"). If an NTTA Default occurs after such a change in law, but prior to the Convenience Termination Date, Developer will not have had the opportunity to carry out the transition contemplated to occur in conjunction with the Convenience Termination Date and will therefore not be in a position to step into NTTA's shoes. Because the letter of credit provided under the TSA is not adequately sized to cover our anticipated transition period, TxDOT must be required to step in following an NTTA default until Developer is able to effectively transition.		
252.	CDA 8.7.5	"If (a) the NTTA Tolling Services Agreement provides to Developer the remedy of stepping in or intervening to take over interim performance of NTTA's obligations thereunder in order to cure an NTTA default or to prevent loss or harm pending cure of an NTTA default, (b) Developer validly exercises or determines that it will exercise such a remedy, and (c) at such time (i) the Project remains subject to an obligation under applicable Law to use NTTA to provide such services or (ii) following a change in Law that removes the obligation for the Project to use NTTA to provide such services, it is within the then current Service Period (as such term is defined in the NTTA Tolling Services Agreement) or prior to the Service Commencement Date of the first Toll Segment, then at Developer's option, TxDOT will act as Developer's designated agent for the purpose of performing NTTA's customer service and back office services for the Project and electronic funds transfer functions pending cure of the NTTA default, subject to the following terms and conditions." We appreciate your proposed change described in the Q&A Matrix, however, the obligation for TxDOT to step-in must exist for the entire time that Developer is unable to exercise its termination right. In the event of a change in law that removes the obligation to use NTTA to provide tolling services, Section 21(e)(ii) of the TSA does not allow the Developer to terminate the TSA for convenience until the later to occur of (i) 12 months after notice of termination is delivered and (ii) the end of the then-current Service Period (or if the change in law occurs prior to the first Service Commencement Date, the end of the initial Service Period) (the "*Convenience Termination Date*"). If an NTTA Default occurs after such a change in law, but prior to the Convenience Termination Date, Developer will not have had the	See Question 249.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		opportunity to carry out the transition contemplated to occur in conjunction with the Convenience Termination Date and will therefore not be in a position to step into NTTA's shoes. Please see the below example that better illustrates this point: Example: Assume that during the initial Service Period, NTTA is not in default under the TSA and a change in law occurs in year 5. Even if Developer delivers notice to terminate the TSA at the time the law changes, Section 21(e)(ii) of the TSA requires that such termination will not be effective until the end of that Service Period (i.e. the 10th anniversary of the Service Commencement Date). If NTTA defaults in year 8, i.e. after the 2 years following the change in law, Developer would not be protected, because TxDOT will have no obligation to step-in. Developer would try to step-in and terminate under Section 21(e)(i), however, the transition period would always be longer than 6 months. Because the letter of credit provided under the TSA is not adequately sized, TxDOT must be required to step in until Developer's option to terminate the TSA is actually exercisable.		
253.	CDA 8.7.5	Please add new Sections 8.7.5.5 and 8.7.6.5 to require amounts payable by TxDOT to Developer as a result of its performance of tolling services under 8.7.5 or 8.7.6, respectively, be paid directly to the trustee under the Project Trust Agreement.	Change is not necessary. Sections 7(a) and (b) of the TxDOT TSA (Exhibit 13) already provide that all toll revenues are to be paid via the custodial arrangements to the trustee. The TxDOT TSA will govern, and if TxDOT were to violate this covenant, it would constitute a CDA default per CDA Section 17.5.1.1.	7/10/08
254.	CDA 8.7.5.3	"As a condition to TxDOT's obligation to act as Developer's designated agent, Developer shall deliver to TxDOT a written indemnity, in form and substance reasonably acceptable to TxDOT [and substantially in the form of Exhibit [__] attached hereto] ~~in its good faith discretion~~, against any claims, Losses, suits, demands, damages, costs and expenses NTTA may assert against TxDOT by reason of such action by TxDOT." TxDOT's approval of the indemnity should be based on a reasonableness standard. Additionally, it may be beneficial, in the interest of time, to agree upon a form of indemnity in advance.	Addendum #6 is expected to add the required indemnity to Section 16.5.1.14.	1/25/08
255.	CDA 8.7.5.3	Please delete section 8.7.5.3 in its entirety. We do not feel it is appropriate to provide an indemnity to TxDOT if it steps in due to an NTTA default. We are not providing such an indemnity to NTTA, and TxDOT is not providing a reciprocal indemnity to us.	No change. Providing this indemnity is a condition to TxDOT agreeing to step-in.	4/4/08
256.	CDA 8.7.5.3	Please delete section 8.7.5.3 in its entirety. We do not feel it is appropriate to provide an indemnity to TxDOT	See Question 255.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		if it steps in due to an NTTA default. We are not providing such an indemnity to NTTA, and TxDOT is not providing a reciprocal indemnity to us.		
257.	CDA 8.7.5.4	Please delete the text "shall use diligent efforts to" before the text "carry out the scope" in the second line of such Section.	Addendum #1 is expected to revise the section.	10/19/07
258.	CDA 8.7.5.4	Please provide for a 4-month transition period. As the letter of credit will be required to be provided only 6 months prior to Service Commencement Date and thereafter will cover only 6 months of revenues. The Developer will need some time to offer the situation and determine its course of action. In addition, the TSA with TxDOT will need to contemplate both appropriate transition mechanics and termination mechanics to address potential cures under the NTTA TSA. Lastly, the timing relating to the notice and the execution of the TxDOT TSA will need to be considered.	No change. TxDOT will require six months to guarantee this transition.	1/25/08
259.	CDA 8.7.5.4	The TSA with TxDOT will need to contemplate both appropriate transition mechanics and termination mechanics to address potential cures under the NTTA TSA. In addition, the timing relating to the notice and the execution of the TxDOT TSA will need to be appropriately coordinated. Please provide us with a draft of the TxDOT Tolling Services Agreement, setting forth transition mechanics, etc. at your earliest convenience.	Addendum #6 is expected to provide the TxDOT TSA.	4/4/08
260.	CDA 8.7.5.4	"If Developer validly exercises this option, then the Parties shall promptly execute and deliver a tolling services agreement in the form attached to this Agreement as Exhibit 13 (the "TxDOT Tolling Services Agreement"); and thereafter the Parties shall cooperate and coordinate to transition customer service, back office services and electronic funds transfer functions from NTTA to TxDOT in accordance with the transition plan adopted by Developer and NTTA under the NTTA Tolling Services Agreement and consistent with TxDOT's systems and procedures, in order to avoid interruption of toll collection and enforcement for the Project. If Developer diligently assists and cooperates with TxDOT and if such transition plan is consistent with TxDOT's systems and procedures, TxDOT will be ready and able to commence provision of customer service, back office services and electronic funds transfer functions for Developer within six months after receiving notice requesting TxDOT's services. If Developer has diligently assisted and cooperated with TxDOT yet TxDOT is unable to commence such services at the level required under the NTTA Tolling Services Agreement within six (6) months, TxDOT shall compensate Developer for the impact on Toll Revenues for each day after such six (6)	Addendum #6 is expected to clarify that if TxDOT fails to perform its obligations under Section 8.7.5.5, such event will be a TxDOT Default without any cure period, by adding the following new Sections: 17.5.1.3 TxDOT fails to be ready and able to commence provision of customer service, back office services and electronic funds transfer functions for Developer in accordance with Section 8.7.5 or 8.7.6; 17.5.2.3 Respecting a TxDOT Default under Section 17.5.1.3, no cure period. Please see the form of TxDOT TSA, attached to the CDA as Exhibit 13 as part of Addendum #6, for the applicable remedies in the event of a TxDOT or Developer default under the TxDOT TSA. These agreements will not have cross-defaults. In addition, Addendum #6 is expected to obligate TxDOT, at Developer's option, to put in place custodial arrangements whenever the TxDOT TSA is in effect.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		month period until TxDOT is able to commence such services, based on the daily average net Toll Revenues received during the comparable days and times over the six months immediately preceding the NTTA default. TxDOT shall have no obligation to post any letter of credit or other security for TxDOT's obligations to Developer as its designee. At either Party's request, the Parties shall negotiate in good faith a written agreement setting forth additional and supplemental terms and conditions pertaining to TxDOT's services as designee. ~~No default or failure to perform by either Party pursuant to the designee arrangement or any related agreement shall constitute a default under the CDA Documents.~~" Please add a definition of "TxDOT Tolling Services Agreement" to Exhibit 1, which should read as follows: "TxDOT Tolling Services Agreement has the meaning set forth in Section 8.7.5.5 of the Agreement." The letter of credit provided by NTTA is only sized to cover 6 months worth of lost Toll Revenues. In the event that TxDOT is unable to adequately transition within 6 months, Developer must be compensated for any lost Toll Revenues after such 6 month period. Moreover, a default by TxDOT under its TSA must be a default under the CDA. Please see our comments related to Section 17.5.1.4 for further explanation on our position.		
261.	CDA 8.7.5.4	"If Developer validly exercises this option, then the Parties shall promptly execute and deliver a tolling services agreement in the form attached to this Agreement as Exhibit 13 (the "TxDOT Tolling Services Agreement"); and thereafter the Parties shall cooperate and coordinate to transition customer service, back office services and electronic funds transfer functions from NTTA to TxDOT in accordance with the transition plan adopted by Developer and NTTA under the NTTA Tolling Services Agreement and consistent with TxDOT's systems and procedures, in order to avoid interruption of toll collection and enforcement for the Project. If Developer diligently assists and cooperates with TxDOT and if such transition plan is consistent with TxDOT's systems and procedures, TxDOT will be ready and able to commence provision of customer service, back office services and electronic funds transfer functions for Developer within six months after receiving notice requesting TxDOT's services. If Developer has diligently assisted and cooperated with TxDOT yet TxDOT is unable to commence such services at	See Question 260.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the level required under the NTTA Tolling Services Agreement within six (6) months, TxDOT shall compensate Developer for the impact on Toll Revenues for each day after such six (6) month period until TxDOT is able to commence such services, based on the daily average net Toll Revenues received during the comparable days and times over the six months immediately preceding the NTTA default. TxDOT shall have no obligation to post any letter of credit or other security for TxDOT's obligations to Developer as its designee. At either Party's request, the Parties shall negotiate in good faith a written agreement setting forth additional and supplemental terms and conditions pertaining to TxDOT's services as designee. ~~No default or failure to perform by either Party pursuant to the designee arrangement or any related agreement shall constitute a default under the CDA Documents.~~" Please add a definition of "TxDOT Tolling Services Agreement" to Exhibit 1, which should read as follows: "TxDOT Tolling Services Agreement has the meaning set forth in Section 8.7.5.5 of the Agreement." It is imperative that we and our lenders see the form of TxDOT TSA. TxDOT indicated in the Q&A Matrix that the form would be provided, and that Section 17.5.1.3 would be added to reflect that failure of TxDOT to step-in within 6 months would constitute a TxDOT default with no cure period. It is our understanding the TxDOT will not be providing any letter of credit under the TxDOT TSA, and thus it is important that a default by TxDOT under its TSA also be a default under the CDA. Until we have had an opportunity to review the form of TxDOT TSA, and become satisfied that the remedies provided thereunder are adequate to cover Developer's lost Toll Revenues, we reserve the right to require such a cross-default. Please see our comments related to Section 17.5.1.4 for further explanation on our position.		
262.	CDA 8.7.8	We are of the opinion that this article should be deleted completely (pending of seeing the final version of the TSA). If the TSA works the way this type of services are rendered, NTTA should act as the forefront of the Developer when being interoperable with the remaining Transponder issuers, so these arrangements must be set in the context of the interoperable contracts they have to support Interoperatibility which do obviously need to be consistent with the TSA.	No change. This provision is intended for the benefit of the Developer (although it may be moot under the TSA with NTTA).	10/19/07
263.	CDA	Section 8.7.7 of the CDA should be modified to delete the two	Section 8.7.7 has been modified.	7/10/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	8.7.7	references to the phrase "modified to provide for termination when TxDOT completes performance of the services under the TxDOT Tolling Services Agreement". Rather than such references, the CDA should have an additional Section 8.7.11 that provides for the termination of the Developer as a beneficiary under the Master Custody Agreement in the event TxDOT no longer provides such tolling services and has paid all amounts owning to Developer related to such services. The new Section 8.7.11 would work in the same way as the termination language in clause (d) of Section 19.10.11 which deals with termination of Developer as such a beneficiary after TxDOT's obligation to toll the Project is over.		
264.	CDA 8.7.11	Accordingly, please add a new Section 8.7.11 as follows: "8.7.11 At such time as TxDOT no longer is providing the services contemplated by Sections 8.7.5 or 8.7.6 and all amounts due Developer by TxDOT in connection with such services are paid in full, TxDOT and Developer, promptly upon the other Party's request, shall execute such certificates, releases and other documents, including written confirmation of termination of any joinder agreement entered into pursuant to Section 8.7.7, as the other Party reasonably requests to confirm the foregoing."	Change is not necessary. See changes to Section 8.7.7	7/10/08
265.	CDA 8.8.4	Please insert the word “customary” before the text “nondisclosure agreement” and delete the text “the terms of which have been previously approved by TxDOT in its good faith discretion” in the seventh to last line.	Addendum #3 is expected to delete “in its good faith discretion” (thereby changing the standard to reasonableness).	10/19/07
266.	CDA 8.8.4	Please insert the word “customary” before the text “nondisclosure agreement” and delete the text “the terms of which have been previously approved by TxDOT in its good faith discretion” in the seventh to last line.	See Question 265.	1/25/08
267.	CDA 8.9.1.3	Will it be possible for the Developer to meet with Texas Department of Public Safety during the RFP phase to better define the scope and cost of services to be provided by the Department of Public Safety? The additional information needed includes: 1. Who (which agency, and location) will be patrolling the road for incident response and speed limit enforcement? 2. What is the typical frequency of patrols on this section of IH-635? 3. Will there be any cost to the Developer for typical patrolling and incident response? 4. If the Developer requires additional services, are they available and what will be the cost for the following:	Note that the general rule against contacting Stakeholders under ITP Section 2.2.3(d) excludes the Texas Department of Public Safety under the definition of Stakeholder. Several agencies have the authority to patrol, including the City of Dallas, the Dallas County Sheriff’s Department and the Department of Public Safety. Developer would not be obligated to pay for normal law enforcement on the Project. Developer would have to pay if it desired additional or enhanced law enforcement services.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		4a. Rolling lane closures. 4b. Individual patrol officers with cars for assistance with MOT during O&M activities on the roadway. 4c. Additional cycles of patrolling the roadway.		
268.	CDA 8.9.1.3 (see also Book 2B, 22.3.6)	Will it be possible for the Developer to meet with Texas Department of Public Safety during the RFP phase to better define the scope and cost of services to be provided by the Department of Public Safety? The additional information needed includes: 1.Who (which agency, and location) will be patrolling the road for incident response and speed limit enforcement? 2. What is the typical frequency of patrols on this section of IH635? 3. Will there be any cost to the developer for typical patrolling and incident response? 4. If the Developer requires additional services, are they available and what will be the cost for the following: 4a. Rolling lane closures. 4b. Individual patrol officers with cars for assistance with MOT during O&M activities on the roadway. 4c. Additional cycles of patrolling the roadway.	See Question 267.	5/9/08
269.	CDA 8.9.1.7	The coordination and cooperation of Developer with the installation, maintenance and replacement of the cameras should be at TxDOT's expense, not the Developer.	No change.	1/25/08
270.	CDA 8.11.1.1	Need clarification regarding how the Handback Requirements Reserve account will not be considered an asset of Developer.	The Handback Requirements Reserve will be set up as a trust asset not subject to any liens (it will be an asset of the trustee).	10/19/07
271.	CDA 8.11.4	At the expiration or any earlier termination of the Term for any reason, including termination due to TxDOT Default, all the funds in the Handback Requirements Reserve, excluding the 10% for contingency, shall be and become the sole property of TxDOT. There is no reason for giving the 10% contingency to TxDOT as the Developer is now out, and the funds in that account should be enough for the works.	No change. At the expiration or earlier termination of the Term, the portion of the Handback Requirements Reserve allocated to current work (including contingency) will be returned to Developer if not used and the portion of the Handback Requirements Reserve allocated to future work (including contingency) will not be returned to Developer.	10/19/07
272.	CDA 8.11.4.2	TxDOT at its election may offset any Termination Compensation owing to Developer by the amount at the Handback Requirement Reserve owing to TxDOT, excluding the 10% for contingency. If the 10% for contingency has the meaning of "contingency" it should not be used by TxDOT to offset any payments to Developer.	See Question 271.	10/19/07
273.	CDA	Please insert the text "(but that is not made available to)" after	No change. "Owing" connotes money not yet received.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	8.11.4.2	the text "Handback Requirements Reserve owing" in the fifth line.		
274.	CDA 8.11.4.2	Please insert the text "(but that is not made available to)" after the text "Handback Requirements Reserve owing" in the fifth line.	See Question 273.	1/25/08
275.	CDA 8.11.5.1	Please insert the word "immediately" after the text "TxDOT shall" in the ninth line.	Addendum #1 is expected to specify 30 days for TxDOT to release any applicable amounts.	10/19/07
276.	CDA 8.11.5.1	Please replace the text "Within 30 days after" with the word "Upon" in the beginning of the third sentence. Please insert the word "immediately" after the text "TxDOT shall" in the ninth line.	Addendum #3 is expected to replace "Within 30 days" with "Promptly."	1/25/08
277.	CDA 8.11.5.4	Please insert the text "for use in accordance with the terms hereof" at the end of the Section.	No change. This is already the case.	10/19/07
278.	CDA 8.11.5.4	Please insert the text "for use in accordance with the terms hereof" at the end of the Section.	See Question 277.	1/25/08
279.	CDA 9.1.8	In all instances in the CDA where Developer is required to cause the Contractor or other parties to take certain actions and/or to comply with certain requirements, Developer should be required to use its commercially reasonable efforts to cause such entity to comply, rather than an unqualified obligation. For example, Developer may not be able to cause NTTA to comply.	Addendum #1 is expected to replace "shall cause" with "shall contractually require."	10/19/07
280.	CDA 9.2.4.1	In clause (a), please delete the text "or its designee" after the text "the Governor of Texas" and please delete clause "(b)".	Addendum #3 is expected to revise Section 9.2.4.1 to refer to suspensions of tolling under Section 3.6.	10/19/07
281.	CDA 9.2.4.1	In clause (a), please delete the text "or its designee" after the text "the Governor of Texas" and please delete clause "(b)".	See Question 280.	1/25/08
282.	CDA 9.2.4.1	"Issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control, of the Project during any period that (a) tolling is suspended under Section 3.6 or (b) the Executive Director determines such action will be in the public interest as a result of an emergency or natural disaster (notwithstanding the foregoing, however, Developer shall be entitled to the compensation set forth in Section 3.6.3); and" This additional language merely clarifies that Developer shall still be entitled to the compensation set forth in Section 3.6.3 as applicable.	No change is necessary. Developer's right to compensation is addressed in Section 3.6. TxDOT views the obligations in 9.2.4.1 and 3.6 as separate.	4/4/08
283.	CDA 9.2.4.1	"Issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control, of the Project during any period that (a) tolling is suspended under Section 3.6 or (b) the Executive Director determines such action will be in the public interest as a result of an emergency or natural disaster (notwithstanding the foregoing, however, Developer shall be	See Question 282.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		entitled to the compensation set forth in Section 3.6.3); and" Thank you for your confirmation that Developer shall be compensated as set forth in Section 3.6. We would request that this additional language still be added, as it is merely clarificatory. As currently drafted, the language in Section 9.2.4.1 is broader than the language set forth in Section 3.6, making TxDOT able to issue a Directive Letter and assume control of the Project in more circumstances than what are described in Section 3.6. We request this language to make explicit that Developer will be entitled to compensation where appropriate.		
284.	CDA 9.3.1.1	When is the agreement with the Independent Engineer expected to be reached? It is not entirely clear that the identity of the Independent Engineer could change during the Term. Please clarify.	The executed Independent Engineer Agreement is a condition to commercial close (ITP Section 6.1.1). Addendum #3 is expected to revise the ITP to reflect that the Independent Engineer will be the first ranked firm that has been prequalified by TxDOT and listed on ITP Exhibit H-2 (unless such firm results in a conflict of interest, in which case the next ranked firm will be selected). No termination of the Independent Engineer shall become effective until a replacement is selected and engaged in accordance with the CDA (ITP Exhibit H-1, Section 7.11). See CDA Section 24.1.	1/25/08
285.	CDA 9.3.1.2(g) and 9.3.1.7(f)	It would seem that the Independent Engineer's responsibilities under CDA Section 9.3.1.2(g) should be defined as follows: (g) reviewing the random selection procedures for selecting Auditable Sections and ensuring that the Auditable Sections are selected in accordance with the random selection procedures, periodically accompanying Developer on physical inspections associated with Developer's Audit Inspections, reviewing the ~~conducting its own~~ Audit Inspections to ensure conformance with established procedures, assessing and scoring Developer's O&M Records, and assessing and ~~scoring the condition of Elements~~ reviewing the Developer's condition scores, as provided ~~in Section 22.4~~ Book 2, Section 19.5 of the Technical Provisions. We believe the two sections of the CDA repeated below are in conflict in reference to the bold faced duties. Section 9.3.1.2 directs the Independent Engineer to perform certain duties including: *(g) Selecting Auditable Sections, accompanying Developer on physical inspections associated with Developer's Audit Inspections, conducting its own Audit Inspections, assessing and scoring Developer's O&M Records, and assessing and scoring*	Addendum #6 is expected to revise Section 9.3.1.2(g) to read as follows: (g) Reviewing the establishment and plans of Auditable Sections submitted for approval in accordance with Section 19.3.2 of the Technical Provisions, reviewing the random selection procedures for selecting Auditable Sections and ensuring that the Auditable Sections are selected in accordance with the random selection procedures, accompanying Developer on physical inspections associated with Developer's Audit Inspections, conducting audit inspections, assessing and scoring Developer's O&M Records, and assessing and scoring the condition of Elements, as provided in Section 19.5 of the Technical Provisions	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the condition of Elements, as provided in Section 22.4 of the Technical Provisions; In section 9.3.1.7 the Independent Engineer has no authority or responsibility for certain duties including: *(f) Undertake Developer's primary responsibility for quality assurance and quality control;* The Developer is required per Book 2A and B Section 19.5 to establish inspection procedures and carry out inspections on randomly selected Audit Sections, and to report quarterly to TxDOT and the Independent Engineer.		
286.	CDA 9.3.1.2(i)	The provision is overly intrusive and should be more narrowly tailored, i.e., "Auditing the relevant records of Key Contractors for the sole purposes of confirming compliance with CDA Documents and applicable Law." At a minimum, please insert the text ", to the extent possible," before the text "the books and records".	Addendum #3 is expected to change "to confirm" to "for the sole purpose of confirming."	10/19/07
287.	CDA 9.3.1.2(i)	The provision is overly intrusive and should be more narrowly tailored, i.e., "Auditing the relevant records of Key Contractors for the sole purposes of confirming compliance with CDA Documents and applicable Law." At a minimum, please insert the text ", to the extent possible," before the text "the books and records".	See Question 286.	1/25/08
288.	CDA 9.3.3.3	Please insert confidentiality language in connection with information delivered pursuant to the last sentence.	No change. Note the confidentiality requirements in the Independent Engineer Agreement that apply to TxDOT and the Independent Engineer.	10/19/07
289.	CDA 9.3.3.3	Please insert confidentiality language in connection with information delivered pursuant to the last sentence.	See Question 288.	1/25/08
290.	CDA 10.3.2	Increase threshold in definition of "Key Contracts" above $25 million. The $25 million threshold for Key Contracts seems low, given the overall value of the Project.	No change.	10/19/07
291.	CDA 10.3.2.4 10.3.2.5	Rights of the Design-Build Contractor shall not be reduced, limited, restricted, or diluted if an assignment occurs. TxDOT shall retain liability for any obligations arising prior to the assignment date.	No change. TxDOT does not accept liability for obligations arising prior to the assignment to TxDOT. Note that the Design-Build Contractor will retain its rights against the original contracting party, so its rights will not be reduced.	10/19/07
292.	CDA 10.3.2.4 10.3.2.5	Rights of the Design-Build Contractor shall not be reduced, limited, restricted, or diluted if an assignment occurs. TxDOT shall retain liability for any obligations arising prior to the assignment date.	See Question 291.	1/25/08
293.	CDA 10.3.2.9	This provision should be deleted as contractors will most likely be unwilling to forego lost profits or business opportunities in the	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		case of a Termination for Convenience.		
294.	CDA 10.3.3.1	Please delete the text "or O&M Contract" in the first sentence in each instance that it occurs as well as the text "for review and approval" at the end of such sentence. Further, please replace the 2nd sentence with the following text" The Design-Build Contract shall (i) be consistent with the applicable requirements of the CDA Documents in all material respects, including compliance and consistency with this Article 10 or with the applicable requirements of Section 22.1 regarding maintenance of books and records as well as (ii) incorporate the applicable federal requirements set forth in Exhibit 8 and (iii) be consistent with the requirements of the relevant scope of Work." TxDOT will be provided with a copy of the Design-Build Contract in advance, but should have no further approval rights.	Addendum #3 is expected to change TxDOT's right to review and approve to a right to review and comment. Otherwise TxDOT's control would be limited to declaring a breach if a Contract does not meet the stated requirements. Addendum #3 is expected to delete clause (b). TxDOT requires clauses (c) and (d) to protect against, for example, a provision that increases the price if the contract is assumed by TxDOT.	1/25/08
295.	CDA 10.5.1.4	"Contractor" in the third line should be lower case.	Addendum #1 is expected to make the requested change.	10/19/07
296.	CDA 10.5.2	Please delete the first sentence – if the contract is compliant with this Section, a copy following execution should be sufficient.	No change. Otherwise TxDOT's control would be limited to declaring a breach after the fact.	10/19/07
297.	CDA 10.5.2	Please delete the first sentence – if the contract is compliant with this Section, a copy following execution should be sufficient.	See Question 296.	1/25/08
298.	CDA 10.5.3	Please insert the text "(including customary advance payments)" at the end of the first sentence.	No change. Advance payments are allowed as long as they are consistent with arm's length, competitive transactions of similar scope.	10/19/07
299.	CDA 10.5.3	Please insert the text "(including customary advance payments)" at the end of the first sentence.	See Question 298.	1/25/08
300.	CDA 10.5.3	Please insert the text "(including customary advance payments)" at the end of the first sentence. We appreciate TxDOT's concern that the Developer should not make random and inappropriate advance payments to Affiliates. However, in the context of Design-Build Contracts, advance payments are very customary since otherwise most Design-Build Contractors won't start construction. If the Developer uses an Affiliate as the Design-Build Contractor, it should not be precluded from making advance payments to such affiliated Design-Build Contractor. Accordingly, all that the requested additional language would do would be to include CUSTOMARY advance payments.	See Question 298.	4/4/08
301.	CDA 10.10.2	Please reinsert exception for contracts with TxDOT or Governmental Entities.	No change. Note that the requested exception is provided in the last sentence.	10/19/07
302.	CDA 10.10.2	Please reinsert exception for contracts with TxDOT or Governmental Entities.	See Question 301.	1/25/08
303.	CDA 10.13.1	Ten days is an insufficient period of time. The funds come from Developer not TxDOT. Sixty days is more reasonable.	No change. Ten days is required under Texas Government Code, Chapter 2251, Subchapter B.	10/19/07
304.	CDA	Ten days is an insufficient period of time. The funds come from	See Question 303.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	10.13.1	Developer not TxDOT. Sixty days is more reasonable.		
305.	CDA 11.1.1	Definition: "Compensation Event" and "Relief Event" If any Related Transportation Facilities (or any activity carried out in connection therewith) adversely impacts the Project (including, by virtue of required changes in the geometry and design of entrances and exits, etc.), such events should constitute Relief Events and Compensation Events.	Such activities should be contemplated by the Developer as a result of the Project being a part of a system.	10/19/07
306.	CDA 11.1.1	Definition: "Compensation Event" and "Relief Event" If any Related Transportation Facilities (or any activity carried out in connection therewith) adversely impacts the Project (including, by virtue of required changes in the geometry and design of entrances and exits, etc.), such events should constitute Relief Events and Compensation Events.	See Question 305.	1/25/08
307.	CDA 11.1.1	Traffic restriction and phasing around DNT interchange is problematic. It is recommended that TxDOT enter into specific protocols with owners of Related Transportation Facilities (i.e., NTTA) that ensure their understanding and acceptance of traffic disturbances throughout the construction stage of the Project.	The applicable requirements are set forth in the Technical Provisions.	10/19/07
308.	CDA 11.1.2	Disruptions to the Construction Work related to construction, operation or otherwise of the Related Transportation Facility should give rise to a Relief Event.	No change. Disruptions are appropriately addressed in clauses (h) and (i) of the definition of Relief Event.	10/19/07
309.	CDA 11.1.2	Disruptions to the Construction Work related to construction, operation or otherwise of the Related Transportation Facility should give rise to a Relief Event.	See Question 308.	1/25/08
310.	CDA 11.2.2	Please insert the text “(It being understood and agreed that the exercise of any such Business Opportunities shall not unduly interfere with the Developer’s rights hereunder).” at the end of the first sentence.	No change. But see the protections set forth in Section 11.2.4.	10/19/07
311.	CDA 11.2.2	Please insert the text “(It being understood and agreed that the exercise of any such Business Opportunities shall not unduly interfere with the Developer’s rights hereunder).” at the end of the first sentence.	No change.	1/25/08
312.	CDA 11.2.3.2	Please add the following language: "For the avoidance of doubt, the Developer shall be entitled to install a reasonable excess of capacity in its communications network as a safety reserve, which shall not be considered as a Business Opportunity reserved to TxDOT".	Addendum #3 is expected to add the requested language with the addition of “devoted exclusively to the operation of the Project “ after “network.”	1/25/08
313.	CDA 11.2.4.1	Please delete the words “expansion” and “replacement”.	No change.	10/19/07
314.	CDA 11.2.4.1	Please delete the words “expansion” and “replacement”.	See Question 313.	1/25/08
315.	CDA	Please amend the definition of “Unplanned Revenue Impacting	Addendum #3 is expected to revise the definition of “Unplanned	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	11.3	Facilities means any newly constructed or upgraded existing facilities, limited access main lane of a highway which TxDOT or an entity either pursuant to a contract with TxDOT and on TxDOT's behalf or independently, builds within the Airspace or within an area that extends up to four (4) miles from either side of the centerline of the Project and opens to traffic during the Term, excluding, however, the following . . . (k) All transportation projects and facilities that are not specifically newly constructed or upgraded existing facilities, limited access main lanes of a highway, including passenger and freight rail facilities and other modes of transportation not included in the Project." Delete (j) from the definition of "Unplanned Revenue Impacting Facilities" because it is not a restriction listed in Section 370.103(c) of the Transportation Code. Although Section 371.103 of the Transportation Code prohibits a CDA from containing a provision that limits or prohibits TxDOT's ability to construct, reconstruct, expand, rehabilitate, etc. a highway or other transportation project, the statute does, allow TxDOT to compensate the Developer for the loss of toll revenues attributable to the construction of a limited access highway project located within an area that extends up to 4 miles from either side of the centerline of the Project minus the Developer's decreased operating and maintenance costs attributable to the highway project, if any. The language in Section 371.103(b) of the Transportation Code does not include a limitation for only newly constructed limited access highway project. Our proposed language takes into account upgrades of existing facilities that may impact the Project. Our addition of "or independently" is meant to cover an entity, such as NTTA, that might also construct a facility that impacts the Project. We also propose mirroring the language set forth in the statute to include the 4-mile area described above. The compensation provisions should mirror the language in Section 371.103(b) of the Transportation Code, and not be limited to "Airspace". We would also like confirmation that any conversions of frontage roads into managed lanes or acceleration of timing of projects in the Mobility Plan will be considered an "Unplanned Revenue Impacting Facilities"	Revenue Impacting Facilities" to encompass limited access main lanes that did not previously exist, whether resulting from new construction or upgrade of an existing non-limited access facility. See Questions 313 and 801.	
316.	CDA	Definition: "Unplanned Revenue Impacting Facility"	Addendum #1 is expected to delete "private" and clarify that any	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	11.3	"Unplanned Revenue Impacting Facilities means any newly constructed, limited access main lane of a highway which TxDOT or a any otherprivate entity pursuant to a contract with TxDOT builds within the Airspace or within an area that extends up to four (4) miles from either side of the centerline of the Project and opens to traffic during the Term, excluding, however, the following . . . (k) All transportation projects and facilities that are not specifically newly constructed, limited access main lanes of a highway, including passenger and freight rail facilities and other modes of transportation not included in the Project." Delete (j) from the definition of "Unplanned Revenue Impacting Facilities" because it is not a restriction listed in Section 370.103(c) of the Transportation Code. We would also like confirmation that any conversions of frontage roads into managed lanes or acceleration of timing of projects in the Mobility Plan will be considered "Unplanned Revenue Impacting Facilities." Senate Bill 792 added Chapter 371 to Subtitle G, Title 6 of the Transportation Code. Section 371.103 of the Transportation Code prohibits a CDA from containing a provision the limits or prohibits TxDOT's ability to construct, reconstruct, expand, rehabilitate, etc. a highway or other transportation project. This Bill does, however, allow TxDOT to compensate the Developer for the loss of toll revenues attributable to the construction of a limited access highway project located within an area that extends up to 4 miles from either side of the centerline of the Project minus the Developer's decreased operating and maintenance costs attributable to the highway project, if any. The compensation provisions should mirror the language in the Senate Bill, and not be limited to "Airspace".	such entity is acting on TxDOT's behalf. See Questions 315 and 801.	
317.	CDA 11.3.2.1	"The Compensation Amount shall include the increase in Developer's cost ~~directly~~ caused by the construction or operating activities." The Developer may suffer certain costs that can not be classified as direct, but could affect the Developer's total cost.	No change.	10/19/07
318.	CDA 11.3.2.8	"If any Unplanned Revenue Impacting Facility for which compensation is paid or payable pursuant to Section 11.3.2.6 or 11.3.2.7 is modified physically or operationally after opening for traffic operations so that it is substantially different from the original Unplanned Revenue Impacting Facility (as described in	Addendum #6 is expected to make the requested change (replacing "for" for "in connection with").	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Section 11.3.2.4) and as a result thereof Developer experiences a further adverse effect on the amount of Toll Revenues, then Developer shall be entitled to further compensation for such impact, offset by any further gain in Toll Revenues, if any, attributable to other future additions or expansions of access points to the Managed Lanes by TxDOT or a Governmental Entity that are not included as part of the Work and that are in operation at the time Developer first delivers its Claim for further compensation to TxDOT. Such further compensation amount shall also include (i) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction, reconstruction, renewal, replacement or expansion activities in connection with such modification and (ii) the increase in Developer's costs directly caused by construction or operating activities in connection with such modification. The foregoing right to further compensation shall be subject to the same terms and conditions as set forth in Section 11.3.2.7, with the deadline for making Claim running from the date the changes in the original Unplanned Revenue Impacting Facility are substantially completed." This revised language merely clarifies what the further compensation should also includes (and it mirrors the language in Section 11.3.2.1).		
319.	CDA 11.3.2.8	"If any Unplanned Revenue Impacting Facility for which compensation is paid or payable pursuant to Section 11.3.2.6 or 11.3.2.7 is modified physically or operationally after opening for traffic operations so that it is substantially different from the original Unplanned Revenue Impacting Facility (as described in Section 11.3.2.4) and as a result thereof Developer experiences a further adverse effect on the amount of Toll Revenues, then Developer shall be entitled to further compensation for such impact, offset by any further gain in Toll Revenues, if any, attributable to other future additions or expansions of access points to the Managed Lanes by TxDOT or a Governmental Entity that are not included as part of the Work and that are in operation at the time Developer first delivers its Claim for further compensation to TxDOT. Such further compensation amount shall also include (i) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction, reconstruction, renewal, replacement or expansion activities in connection with such modification and (ii) the increase in Developer's costs directly caused by construction or operating activities in connection with such modification. The foregoing	See Question 318.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		right to further compensation shall be subject to the same terms and conditions as set forth in Section 11.3.2.7, with the deadline for making Claim running from the date the changes in the original Unplanned Revenue Impacting Facility are substantially completed." This revised language merely clarifies what the further compensation should also include (and it mirrors the language in Section 11.3.2.1). TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.		
320.	CDA 11.3.4	Please insert the text "or to the increased traffic levels caused thereby" at the end of the first sentence.	No change. Not necessary.	10/19/07
321.	CDA 11.3.4	Please insert the text "or to the increased traffic levels caused thereby" at the end of the first sentence.	See Question 320.	1/25/08
322.	CDA 12.1.1 12.1.2 Exhibit 19	We would request deleting these sections. No Capacity Improvements or Project Extensions are currently envisioned, as per Exhibit 19.	No change. While no Capacity Improvements or Project Extensions are required per Exhibit 19, the CDA structure supports the programmatic approach.	10/19/07
323.	CDA 12.1.3	"Except as provided otherwise in Exhibit 19, Developer (in the absence of a Compensation Event with respect to which Section 13.2 would apply) at its expense shall be obligated to make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects, (b) under the Renewal Work Schedule or (c) to maintain interoperability in accordance with Sections 8.7.2 and 8.7.3 and other applicable provisions of the CDA Documents." This provision should not override Developer's ability to obtain compensation for Compensation Events pursuant to Section 13.2. According to 8.7.3, Developer is obliged by any agreement or memorandum of understanding in which TXDOT is party with any other public agency or private party operating tolled highway facilities within the State for interoperability, to enhance its Technology. Developer should be a party to the agreement, not just a subsidiary of TxDOT's decisions.	No change. The provision is independent of Compensation Events and not intended to override Developer's ability to obtain compensation for Compensation Events.	10/19/07
324.	CDA 12.2	"Except with respect to Capacity Improvements required in the last 15 years of the Term, Developer acknowledges and represents that the cost of mandatory Upgrades and future financing therefore are incorporated into the Base Case Financial Model. Accordingly, other than as provided in Exhibit	Addendum #3 is expected to change "mandatory Upgrades" in the second line to "any mandatory Upgrades (required under Section 12.1)." See Question 322.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		19 with respect to Capacity Improvements required in the last 15 years of the Term, no mandatory Upgrade (other than mandatory Upgrades attributable to a Change in Law or directed by TxDOT) shall be treated as a Compensation Event or otherwise entitle Developer to any Claim against TxDOT. Developer should not bear the risk of a Change in Law or TxDOT order requiring a mandatory Upgrade.		
325.	CDA 12.2	"Except with respect to Capacity Improvements required in the last 15 years of the Term, Developer acknowledges and represents that the cost of mandatory Upgrades and future financing therefore are incorporated into the Base Case Financial Model. Accordingly, other than as provided in Exhibit 19 with respect to Capacity Improvements required in the last 15 years of the Term, no mandatory Upgrade (other than mandatory Upgrades attributable to a Change in Law or directed by TxDOT) shall be treated as a Compensation Event or otherwise entitle Developer to any Claim against TxDOT. Developer should not bear the risk of a Change in Law or TxDOT order requiring a mandatory Upgrade.	See Question 324.	1/25/08
326.	CDA 12.3.1	With respect to capacity improvements that are part of the Ultimate Configuration, but are not required pursuant to Section 12.1 or 12.3.3, only review and comment of TxDOT and the Independent Engineer should be required.	Addendum #1 is expected to make the requested change.	10/19/07
327.	CDA 12.4.2.2 12.4.3 17.3.3.2 17.3.8.2(c)	Section 12.4.3 should be amended as follows: "Developer may contest a Safety Compliance Order by delivering to TxDOT written notice setting forth (a) Developer's claim that the condition or risk causing the Safety Compliance Order exists despite prior compliance with Technical Documents and Safety Standards, or Developer's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order. The definition of "Safety Compliance" should be amended as follows: "Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that the Independent Engineer or TxDOT has reasonably determined to exist by investigation or analysis ~~(including if the condition or risk exists despite prior compliance with Technical Documents and Safety Standards but excluding a condition or risk directly and primarily caused by compliance with Technical Documents and Safety Standards)~~. Developer should not have to cover all costs and expenses for	No change. TxDOT believes that it is appropriate for the Developer to be responsible for safety.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		implementing Safety Compliance or Safety Compliance Orders that are not related to the fault of the Developer. If the condition or risk causing the Safety Compliance exists despite prior compliance with Technical Documents and Safety Standards, Developer should be entitled to a Compensation Event (or Relief Event if TxDOT orders a suspension of the Work pursuant to Section 17.3.8.2(c) of the CDA).		
328.	CDA 12.4.2.2	Please delete clause (c) as unreasonable.	Addendum #1 is expected to replace clause (c) with a requirement for Developer to undertake best special efforts to overcome any inability to perform safety compliance work caused by a Force Majeure or Relief Event.	10/19/07
329.	CDA 12.4.2.3	Please delete "special" before "efforts" or explain what is contemplated by "special efforts".	Addendum #3 is expected to delete "special."	1/25/08
330.	CDA 13.1.3.1	"If for any reason Developer fails to deliver such written Relief Event Notice: (a) Within ~~30~~ 60 days following the date (herein the "starting date") on which Developer first became aware ~~(or should have been aware, using all reasonable due diligence)~~ of the Relief Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief (including extension of the Term) for adverse effect attributable to the Relief Event accruing after such ~~30~~ 60-day deadline and until the date Developer submits the written Relief Event Notice; and (b) Within ~~90~~ 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event . . ." 30 days for delivery of the Relief Event Notice in clause (a) may not be sufficient, given the complexity of this project. Clause (b) should be amended to provide for more days. It is too subjective and to difficult to prove. Cases of waiver to claim for relief must be strictly limited and fixed.	Clause (a). No change. TxDOT has determined that the timelines and parenthetical are appropriate. Clause (b). See Question 331.	10/19/07
331.	CDA 13.1.3.1(b)	The irrevocable waiver for adverse effects attributable to Relief Events should occur after 180 days, instead of 90 days. (This provision was accepted in SH 121).	Addendum #1 is expected to make the requested change.	10/19/07
332.	CDA 13.1.4.1(b)	1. The Relief Event causes a delay in performance that continues for a consecutive period of at least ~~180~~ 90 days, or there occurs a cumulative period of delay in performance of at	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		least ~~180~~90 days in any consecutive 36-month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least ~~60~~30 days each. 2. The Relief Event causes a delay in performance that continues for a consecutive period of at least 180 days, or there occurs a cumulative period of delay in performance of at least 180 days, without any limit in period, due only to Relief Events causing delays in performance that continue for a consecutive period of at least 30 days each. The risk that the Developer faces for possible accumulating several or many periods, but not reaching the 180 days proposed by TxDOT and not being entitled to Relief Event is enormous.		
333.	CDA 13.1.4.1(b)	1. The Relief Event causes a delay in performance that continues for a consecutive period of at least ~~180~~ 90 days, or there occurs a cumulative period of delay in performance of at least ~~180~~ 90 days in any consecutive 36-month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least ~~60~~ 30 days each. 2. The Relief Event causes a delay in performance that continues for a consecutive period of at least 180 days, or there occurs a cumulative period of delay in performance of at least 180 days, without any limit in period, due only to Relief Events causing delays in performance that continue for a consecutive period of at least 30 days each. The risk that the Developer faces for possible accumulating several or many periods, but not reaching the 180 days proposed by TxDOT and not being entitled to Relief Event is enormous.	See Question 332.	1/25/08
334.	CDA 13.1.4.1(b)	The dates in this provision are unreasonable and make the eventuality of a Relief Event highly improbable. The provision should be revised as follows: "The Relief Event causes delay in performance that continues for a consecutive period of at least 60 days, or there occurs a cumulative period of delays in performance of at least 60 days in any consecutive 36 month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least 20 days each." The parenthetical should be removed.	No change. This has nothing to do with whether a Relief Event occurs, only whether the term is extended due to a Relief Event. See Question 332.	10/19/07
335.	CDA 13.1.4.1(b)	The dates in this provision are unreasonable and make the eventuality of compensation improbable. The provision should be revised as follows: "The Relief Event causes delay in	See Question 334.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		performance that continues for a consecutive period of at least 90 days, or there occurs a cumulative period of delays in performance of at least 90 days in any consecutive 36 month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least 30 days each." The parenthetical should be removed.		
336.	CDA 13.1.4.4	"Except as provided below, if a Relief Event subject to this Section 13.1.4 occurs and the cumulative extensions of the term of the Lease to which Developer is entitled by reason thereof would, absent a limit under Applicable Laws, exceed the limit then possible under applicable Laws, then the adverse cost and revenue impacts of the Relief Event that would otherwise be made up through extension of the term of the Lease from and beyond the limit then possible under applicable Laws up to but not exceeding a cumulative extension to the term of the Lease of ten years shall be treated as a Compensation Event. Compensation Amounts for such cost and revenue impacts shall be subject to Sections 13.2.4.1 through 13.2.4.4. ~~This provision shall not apply, and no Compensation Amount shall be owing with respect, to Relief Events under clauses (a) and (c) of the definition of Relief Event.~~" Force Majeure and Change in Law should not be excluded in this instance.	No change. Force Majeure Events are addressed in Section 19.2. TxDOT has determined that Change in Law is an appropriate risk for Developer to bear, particularly given the addition of Section 13.1.4.4.	10/19/07
337.	CDA 13.1.4.4	"Except as provided below, if a Relief Event subject to this Section 13.1.4 occurs and the cumulative extensions of the term of the Lease to which Developer is entitled by reason thereof would, absent a limit under Applicable Laws, exceed the limit then possible under applicable Laws, then the adverse cost and revenue impacts of the Relief Event that would otherwise be made up through extension of the term of the Lease from and beyond the limit then possible under applicable Laws up to but not exceeding a cumulative extension to the term of the Lease of ten years shall be treated as a Compensation Event. Compensation Amounts for such cost and revenue impacts shall be subject to Sections 13.2.4.1 through 13.2.4.4. This provision shall not apply, and no Compensation Amount shall be owing with respect, to Relief Events under clauses (a) ~~and (c)~~ of the definition of Relief Event<u>; provided that no compensation shall be owing under clause (a) of the definition of Relief Event to the extent that circumstances surrounding such event enables Developer to exercise its rights under Section 19.2</u>." Change in Law should not be excluded in this instance.	No change. See Question 336.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Additionally, the exclusion for Force Majeure Events should only apply to the extent that Developer is able to exercise its termination rights under Section 19.2.		
338.	CDA 13.1.4.4	This section should be revised to clarify that compensation is payable from day 1 of the delay as described in Section 13.1.3.1(b) which gives rise to a Relief Event. Please delete last sentence. The Developer should receive compensation for the two excluded events as well since otherwise Developer would realize losses to no fault of its own.	No change. Section 13.1.4.2 refers to the impact of the entire Relief Event. See Question 32.	10/19/07
339.	CDA 13.1.4.4	Please delete last sentence. The Developer should receive compensation for the two excluded events as well since otherwise Developer would realize losses through no fault of its own.	See Question 336.	1/25/08
340.	CDA 13.1.5	This provision needs to include an objective standard for the extension of time required to be granted in order to enable Developer to comply with its obligations upon the occurrence of a Relief Event. As currently written, it appears as if TxDOT has discretion in how much of an extension it grants in a Relief Event Determination.	No change. The standard is set forth in Section 13.1.4.2. See Section 13.1.2 of the CDA and Section 2.1.1.4 of the Technical Proposals.	10/19/07
341.	CDA 13.1.5.1	"If Developer complies with the notice and information requirements in Sections 13.1 and 13.2, then within 30 days after receiving the Relief Event Notice and Relief Request (and, if applicable a final Relief Request update) TxDOT, acting reasonably and with consideration given to recommendations made by the Independent Engineer, which recommendations shall have been delivered to TxDOT by the Independent Engineer within 25 days of receipt of the Relief Event Notice, shall issue a Relief Event Determination." The Developer should not bear the risk of a delay in the issuance of a Relief Event Determination because of a delay by the IE in providing its recommendations to TxDOT. Because we do not have access to the IE Master Agreement we do not know if this is an obligation and time period imposed on the IE.	No change. TxDOT's 30-day timeframe is not dependent on a response by the Independent Engineer. The Independent Engineer's response time will be set forth in the IE Agreement.	10/19/07
342.	CDA 13.2.2.2	The 90 day period should be changed to a 180 day period. (This provision was accepted in SH 121).	Addendum #1 is expected to make the requested change.	10/19/07
343.	CDA 13.2.4	". . . If Developer stands ready to commence good faith negotiations to determine the Compensation Amount within the foregoing time period but for any reason TxDOT does not commence, and thereafter continue, to engage therein within the foregoing time period, then, subject to compliance with the notice and information requirements in Sections 13.2.1 and 13.2.2, Developer shall have the right to assert a Claim against TxDOT for the relevant Compensation Amount (if any) . . ."	Addendum #3 is expected to make the requested change.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Developer should be able to exercise its rights under Section 13.2.4 to assert a Claim against TxDOT even if TxDOT has commenced negotiation, but then refuses to continue negotiations.		
344.	CDA 13.2.4	Please replace the text ", and thereafter" with the word "or" in the second sentence as this provision should also apply if the Developer commenced good faith negotiations and TxDOT does not continue to engage.	No change is necessary. If TxDOT fails to both commence good faith negotiations and to continue to engage in such negotiations, Developer will have the right to assert a Claim.	4/4/08
345.	CDA 13.2.6	The Compensation Amount that Developer is entitled to receive upon a delay in obtaining the environmental reevaluation approval should be 100% of the amount determined under Section 13.2.	The increase in design and construction costs (per the given formula) will be assessed at 100%.	5/9/08
346.	CDA 13.2.6.2 (Addendum 5)	"Under ~~both~~ clause (d) of the definition of Compensation Event in respect of ~~and under~~ clause (g) of the definition of TxDOT-Caused Delay only, then the Compensation Amount shall (i) include an amount necessary to compensate Developer for any adverse impacts on its economic position attributable to changes in the financing terms and conditions set forth in the Initial Funding Agreements that are executed after expiration of the financing commitment letters upon which the financing terms and conditions set forth in the Base Case Financial Model approved by the Parties as of the Effective Date are based from those financing terms and conditions assumed in such Base Case Financial Model, but (ii) not include any compensation for loss of Toll Revenue, provided, such limitation with respect to Toll Revenues shall only be applicable to the extent the failure to obtain the environmental reevaluation is not attributable to a TxDOT Default. ~~equal 80% of the amount determined under this Section 13.2 not including this Section 13.2.6.2. For the purpose of determining the increase in design and construction costs (if any) associated with the TxDOT-Caused Delay, the increase shall be the greater of zero or the result of the following formula:~~ ~~$\Sigma PA_{(f)} \times (ENR\ CCI_{(a)} - ENR\ CCI_{(f)})$~~ ~~$ENR\ CCI_{(f)}$~~ ~~Where:~~ ~~$\Sigma PA_{(f)}$ is the sum of the Payment Activities associated with the portion of the Project subject to the environmental reevaluation.~~ ~~$ENR\ CCI_{(f)}$ is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date that is 12 months after the Effective Date.~~	Addendum #6 is expected to make minor changes to Section 13.2.6.2.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		~~ENR $CCI_{(a)}$ is the final 20-city average ENR construction cost index as published in the most recent weekly edition of ENR prior to the date of the environmental reevaluation approval.~~ ~~Notwithstanding anything to the contrary herein, if ENR $CCI_{(f)}$ is greater than or equal to ENR $CCI_{(a)}$, there shall be no increase in design and construction costs.~~"		
347.	CDA 13.2.6.6 13.2.6.7	Please amend Section 13.2.6.6 as follows and add a new Section 13.2.6.7: "13.2.6.6Under clause (s) of the definition of Compensation Event, then the Compensation Amount shall be limited as set forth in Section 13.1.4.4~~.~~; or 13.2.6.7 Under clause (t) of the definition of Compensation Event, then Compensation Event shall not include any compensation for loss of Toll Revenue."	No change.	5/29/08
348.	CDA 13.2.9	TxDOT shall pay such Compensation Amount in a form mutually agreed between TxDOT and the Developer. The Developer should not face the risk of being compensated in a form only elected by TxDOT as it can influence its finance.	The NPV will be the same and TxDOT requires this flexibility to elect the payment methodology. Developer is protected if TxDOT elects to make periodic payments by the requirement that periodic payments correspond to when the cost or revenue impact is anticipated to occur, so such election should not impact Developer's cash flow. In addition, federal regulations prohibit payments in advance of services performed, so that TxDOT could not use federal funds to make a lump sum payment covering future design and construction cost impacts. Addendum #3 is expected to clarify the Section.	10/19/07
349.	CDA 13.2.9	Please reinsert a time period by which payment by TxDOT has to be received, not later than 30 days.	See Question 348.	10/19/07
350.	CDA 13.2.9	Please reinsert a time period by which payment by TxDOT has to be received, which period should not be later than 30 days. The CDA should provide that the Compensation Amounts are payable in a lump sum unless otherwise agreed to by the parties, except for compensation for future lost Toll Revenues that can be paid at the time (but not later) that such loss is scheduled to occur). The use of the dispute resolution mechanism is inappropriate to determine the payment methodology or timing.	See Question 348.	1/25/08
351.	CDA 13.2.9	Every selected payment method has to be governed by the overriding principle set out in 13.2.9.1 that no method may be chosen if it will not yield the amount necessary to restore Developer to the same economic position it would have been in if the Compensation Event had not occurred. Accordingly, please clarify that whenever TxDOT elects to make periodic	No change is necessary. Regardless of payment method, Developer's compensation will reflect the net present value. Because any periodic compensation payments must correspond to when the cost and Toll Revenue impacts are anticipated to occur, any such election should not have a further impact on the cost impacts of Developer's compensation.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		compensation payments, the cost to Developer of incurring additional Project Debt to fund any current cost impacts of a Compensation Event shall be reflected in the Compensation Amount payable by TxDOT.		
352.	CDA 13.2.9.1	"No method may be chosen if it will not yield the amount necessary to restore Developer to the same economic position it would have been in if the Compensation Event had not occurred~~, except as specifically provided otherwise in this Agreement~~." We request the revised language for tax reasons.	No change. It is appropriate to incorporate any requirement affecting compensation specifically provided in the Agreement. See, for example, Question 32.	4/4/08
353.	CDA Article 14	Please insert the text "Except as otherwise set forth in this Agreement," in the beginning of the third sentence.	No change. The third sentence already contemplates monetary compensation and other relief "specifically provided under the terms of this Agreement."	10/19/07
354.	CDA Article 14	Please insert the text "Except as otherwise set forth in this Agreement," in the beginning of the third sentence.	See Question 353.	1/25/08
355.	CDA 14.1.1	Please delete the newly inserted text "in the ability to toll any portion of the Project" or limit TxDOT's ability to change the ability to toll to the IH 35E Section only (as contemplated in the CDA).	Addendum #6 is expected to change "in the ability to toll any portion of the Project" to "in the ability to toll any portion of the IH 35E Section or IH 35E Capacity Improvement Section."	4/4/08
356.	CDA 14.1.2.2	"Within ~~five~~ten Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, TxDOT and Developer shall consult to define the proposed scope of the change. Within ~~five~~ten days after the initial consultation, or such longer period to which the Parties may mutually agree, TxDOT and Developer shall consult concerning the estimated financial and schedule impacts." The time period of 5 days to define the new scope of the change and other 5 days to consult financial and schedule impacts seems tight, regardless of the 60 day period for Developer's response.	No change.	10/19/07
357.	CDA 14.2.2	"TxDOT, in its sole discretion (and, if it so elects, after receiving a comprehensive report from the Independent Engineer regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer. TxDOT may condition its approval on new or a modification of compensation for TxDOT under this Agreement in order to share equally in the ~~estimated~~actual net cost savings and revenue benefit, if any, attributable to the proposed change." TxDOT should only benefit from actual net cost savings and revenue benefits, not estimated ones, especially given the fact that the Developer bears the risk for all increased costs or revenue losses.	No change. Like Compensation Events, TxDOT believes that it is appropriate for Change Requests to be based on estimates.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
358.	CDA 14.2.2	"TxDOT, in its sole discretion (and, if it so elects, after receiving a comprehensive report from the Independent Engineer regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer. TxDOT may condition its approval on new or a modification of compensation for TxDOT under this Agreement in order to share equally in the ~~estimated~~actual net cost savings and revenue benefit, if any, attributable to the proposed change." TxDOT should only benefit from actual net cost savings and revenue benefits, not estimated ones, especially given the fact that the Developer bears the risk for all increased costs or revenue losses.	See Question 357.	1/25/08
359.	CDA 15.1.2	Please delete the text "the most realistic and" before the text "reasonable for the Project" in the beginning of the sixth line.	Addendum #3 is expected to make the requested change.	10/19/07
360.	CDA 15.1.2	1. Please delete the text ", which audit will be updated after the Financial Close" in the third line. 2. Further, please delete the text "the most realistic and" before the text "reasonable for the Project" in the beginning of the sixth line.	1. Addendum #3 is expected to replace clause (b) with "was audited and verified by an independent recognized model auditor prior to the Effective Date and will be audited and verified by an independent recognized model auditor within two Business Days after Financial Close" and to add a new Section 5.4.5 to require Developer to update the audit and opinion within two Business Days after Financial Close. 2. See Question 359.	1/25/08
361.	CDA 15.1.4	"Without derogating rights expressly granted hereunder, ~~As of the Effective Date,~~ Developer has, as of the Effective Date, evaluated the constraints affecting design and construction of the Project, including the Project Right of Way limits as well as the conditions of the NEPA Approval, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints." Developer should not make representations and warranties about certain aspect of the Project for which it did not have control (i.e. sub-surface geophysical risk, etc.).	No change. Developer should be able to provide the constructability warranty. Such warranty does not preclude Developer's rights with respect to Compensation Events and Relief Events.	10/19/07
362.	CDA 15.1.5	Archeological, paleontological, cultural resources and T&E species are all environmental resources that are investigated from ROW line to ROW line in the EAs. If no impacts were determined to exist for these resources and the documents have been approved by TxDOT/FWHA and resource agencies, wouldn't this environmental clearance remain valid unless other circumstances occur as stated in Section 6.2.3? Proposer is concerned that TxDOT is not representing the studies and conclusion of the RIDs as stated on Page 4 of this CDA. Wouldn't environmental clearance warrant the support of	Developer should perform its own investigation. TxDOT does not represent and warrant the conclusions of the EAs. TxDOT's responsibilities with respect to archeological, paleontological and cultural resources and T&E species are as set forth in the CDA.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the findings and investigations included in the EAs and subsequent reevaluations?		
363.	CDA 15.1.11	Please delete the text "and, if applicable, each member of Developer" before the text ", in accordance with its terms" in the fourth line	Addendum #1 is expected to clarify applicability as "if a joint venture or unincorporated business association."	10/19/07
364.	CDA 15.1.11	Please delete the text "a joint venture" before the text "or unincorporated business association" in the fourth line.	No change.	1/25/08
365.	CDA 15.1.14	Please insert the text "To the best of Developer's knowledge" after the text "as follows:" in the second line of such Section.	No change.	10/19/07
366.	CDA 15.1.14	Please insert the text "To the best of Developer's knowledge" after the text "as follows:" in the second line of such Section.	See Question 365.	1/25/08
367.	CDA 15.1.15	Please insert the text "To the best of Developer's knowledge" after the text "as follows:" in the second line of such Section.	Addendum #1 is expected to exclude NTTA.	10/19/07
368.	CDA 15.1.15	Please insert the text "To the best of Developer's knowledge" after the text "as follows:" in the second line of such Section.	No further change. See Question 367.	1/25/08
369.	CDA 15.2	TxDOT should provide representations and warranties regarding: i. the Managed Lanes are managed lanes "that increase traffic efficiency by using various design and operational strategies (including congestion priced tolls)" as required by the Transportation Code; ii. CDA Documents and the Principal Project Documents to which TxDOT is a party are valid and binding obligations of TxDOT; iii. due execution, delivery, performance and enforceability; iv. no conflicts; v. no taxes relating to leasehold estate; vi. valid title to property; vii. no liens on property; and viii. environmental matters.	i. No change. Both parties should do their own due diligence. But see Question 739. ii. Addendum #1 is expected to add a representation and warranty. iii. Addendum #1 is expected to add a representation and warranty regarding enforceability. Due execution, delivery and performance are addressed by Section 15.2.1. iv. Without any limitation, such a warranty may put TxDOT in immediate breach. For example, the recent scope change to IH 35E will be in conflict with the MTP (TxDOT will be at risk to obtain the necessary changes) and there may be utility agreements that conflict with the need for such utilities to be relocated. Addendum #6 is expected to include the following warranty (and counterpart warranty by Developer): "The execution and delivery by TxDOT of this Agreement, the Lease and the Principal Project Documents to which TxDOT is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound." v, vi, vii. No change. A remedy is provided via Compensation Events (clause (r)). viii. No change. Risk allocation is addressed elsewhere in the CDA, including NEPA finality provisions, and Developer should do its own due diligence.	10/19/07
370.	CDA 15.2	TxDOT should provide representations and warranties regarding: - the Managed Lanes are managed lanes "that increase traffic efficiency by using various design and operational strategies (including congestion priced tolls)" as required by the Transportation Code; - due execution, delivery and performance;	See Question 369.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		- no conflicts; - no taxes relating to leasehold estate; - valid title to property; - no liens on property; and - environmental matters. These representations and warranties are customary and relate to fundamental matters regarding the transaction.		
371.	CDA 15.2	Please add representations and warranties by TxDOT with respect to the following limited matters: - the Managed Lanes are managed lanes "that increase traffic efficiency by using various design and operational strategies (including congestion priced tolls)" as required by the Transportation Code; and - no conflicts.	See Question 369.	4/4/08
372.	CDA 15.4	Please delete this provision.	No change.	4/4/08
373.	CDA 16.1.2.4(a)	Please delete the text "be in form reasonably satisfactory to TxDOT" in the 4th sentence.	Addendum #3 is expected to make the requested change.	10/19/07
374.	CDA 16.1.2.4(a)	Please delete the text "be in form reasonably satisfactory to TxDOT" in the 4th sentence.	See Question 373.	1/25/08
375.	CDA 16.1.2.4(a)	Delete reference to "written evidence of insurance". Most information required is stated on the certificate of insurance. Written evidence of insurance as described is almost providing the complete policy. Certificates of insurance are the customary proof of insurance in the marketplace.	Certificates do not provide adequate descriptions of insurance. The insurance is for the benefit of TxDOT as well as for Developer.	10/19/07
376.	CDA 16.1.2.4(b)	Delete reference to providing certified copies of insurance policies and modifications thereto, and evidence of payment of premium within 15 days. Substitute deletions with: <u>renewal certificates of insurance prior to expiration of existing policies</u>. Insurance policies are proprietary and providing certified copies is unacceptable. Renewal policies are not available within 15 days of policy expiration. Payment of insurance policies is not always a lump sum payment; payment terms can vary and are generally not paid in full within 15 days. Entire paragraph – Not market	Addendum #3 is expected to revise clause (b) to read: "In addition, within 15 days after availability, Developer shall deliver to TxDOT . . . " and deleting 16.1.2.4(b)(ii) (satisfactory evidence of payment of the premium). See Question 375.	10/19/07
377.	CDA 16.1.2.4(c)	Delete reference to providing certified copies of insurance policies and modifications thereto, and evidence of payment of premium within 15 days.	Addendum #3 is expected to delete "and payment." See Question 35.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Substitute deletions with: renewal certificates of insurance prior to expiration of existing policies. Generally OK, but proof of coverage and payment issues need to follow preceding paragraph.		
378.	CDA 16.1.2.7(a)	In clause (a) please include the text ", to the extent covered thereby" after the text "Project consultants" in the last line.	Addendum #1 is expected to make the requested change.	10/19/07
379.	CDA 16.1.2.7(c)	Coverage afforded additional insureds should be limited to the limits required by contract, not full limits purchased by insured. Additional insurance limits purchased for the protection of the Developer should not be diluted by or available to the additional insureds. Additional insured requirement will be met as contractually stated.	It is appropriate for TxDOT to be covered for the full limits. Ultimately, TxDOT is paying for such insurance.	10/19/07
380.	CDA 16.1.2.7(c)	Policies with Insured in Additions to Developer (c): Include breach and fraud: Additional insured endorsement may exclude liability due to the sole negligence, breach and fraud of the additional insured party. Those scenarios are out of the control of the Developer.	No change.	10/19/07
381.	CDA 16.1.2.9	Please insert the text "and Contractors" after the text "Developer-Related Entities" in the first line.	Not necessary. See definition of Developer-Related Entity.	10/19/07
382.	CDA 16.1.2.9	Please insert the text "and Contractors" after the text "Developer-Related Entities" in the first line.	See Question 381.	1/25/08
383.	CDA 16.1.2.12	Adjustment in Coverage Amount: To include a benchmarking clause and to share the risk between TxDOT and the Developer. It is an important risk out of the control of the Developer due to market conditions and should be shared among the parties.	No change. The possibility that insurance rates will rise is part of any business, and include factors within Developer's control.	10/19/07
384.	CDA 16.1.2.12(c)	In clause (c), please replace the word "and" before clause (iv) with a comma and insert the text "and (v) availability of increased coverage and the cost thereof" at the end of the clause.	Addendum #3 is expected to add: "(v) the provisions regarding unavailability of increased coverage set forth in Section 16.1.2.13."	10/19/07
385.	CDA 16.1.2.12(c)	In clause (c), please insert the text "and (v) availability of increased coverage and the cost thereof" at the end of the clause.	See Question 384.	1/25/08
386.	CDA 16.1.2.13	"Developer shall not be excused from satisfying the insurance requirements of this Section 16.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including Insurance Policy limits) are not available on commercially reasonable terms, Developer shall bear the burden of proving either that (i) the same is not available at all in the	See Question 391.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		global insurance and reinsurance markets or (ii) the premiums for the same have increased by 200% or more ~~so materially increased~~ over those previously paid for the same coverage ~~that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded~~. . . ." We suggest using the proposed language as it is a more customary in the PPP market and a more objective threshold for determining whether insurance is not commercially available.		
387.	CDA Exhibit 1 – Relief Events	Clause (b) of the definition of "Relief Event": "Fire, explosion, flood, earthquake, hurricane, tornado or national or statewide (i.e. State of Texas) strike or act of terrorism; ~~provided, however, that if insurance for the risks of flood, earthquake, hurricane or tornado become commercially unavailable under Section 16.1.2.13 of the Agreement, such event shall be deemed a Force Majeure Event and not a Relief Event;~~" As currently drafted, events such as flood, earthquake, hurricane or tornado are only considered Relief Events if insurance for such risks is commercially unavailable. It is important that these events be treated as Relief Events. Under termination for Force Majeure, TXDOT must only pay the Developer Outstanding Senior Debt plus demobilization expenses. However, if a Relief Event becomes a Compensation Event, TxDOT must pay the Developer an amount necessary to restore the Developer to the same economic position it would have been if the Compensation Event had not occurred.	Addendum #1 is expected to clarify the definition of Relief Event. If insurance for the risks of flood, earthquake, hurricane or tornado are commercially available, such events will be considered Relief Events under clause (b) of the definition of Relief Event. If insurance for the risks of flood, earthquake, hurricane or tornado become commercially unavailable, such events will not be considered Relief Events under clause (b) of the definition of Relief Event, but will be deemed Force Majeure Events (and therefore will be considered Relief Events under clause (a) of the definition of Relief Event). Examples of the significance of this distinction are found in Sections 13.1.4.4 and 19.2.	10/19/07
388.	CDA 16.1.2.13(b) Exhibit 1 – Relief Events	Clause (b) of the definition of "Relief Event": "Fire, explosion, flood, earthquake, hurricane, tornado or national or statewide (i.e. State of Texas) strike or act of terrorism; provided, however, that if insurance for the risks of flood, earthquake, hurricane or tornado become commercially unavailable under Section 16.1.2.13 of the Agreement, such event shall be deemed a Force Majeure Event and not a Relief Event under this clause (b);"	No change. Please note that acts of terrorism are included as Relief Events under the definition of Force Majeure Events.	1/25/08
389.	CDA(c) 16.1.2.13	In clause (c) please delete the text "commercially available" and replace it with the text "on commercially reasonable terms" in the fourth line as well as at the end of the clause.	Addendum #1 is expected to make the requested change.	10/19/07
390.	CDA 16.1.2.13(c)	In clause (c) please add the text "unavailable" before the text "on commercially reasonable terms".	Addendum #3 is expected to add "available" before "on commercially reasonable terms."	1/25/08
391.	CDA 16.1.2.13	"Developer shall not be excused from satisfying the insurance requirements of this Section 16.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages,	No change. TxDOT believes the existing standard is appropriate.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		including Insurance Policy limits) are not available on commercially reasonable terms, Developer shall bear the burden of proving either that (i) the same is not available at all in the global insurance and reinsurance markets or (ii) the premiums for the same have increased by 200% or more ~~so materially increased~~ over those previously paid for the same coverage ~~that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded~~. . . ." We suggest using the proposed language as it is a more objective threshold for determining whether insurance is not commercially available.		
392.	CDA 16.1.2.14	Option to include defense costs should be available to Developer on all lines of coverage. Not market to mandate whether defense costs are within/outside limits and eroding limits. Developer's risk.	No change. The insurance is for the benefit of TxDOT as well as for Developer.	10/19/07
393.	CDA 16.1.2.15	Please insert the text "for which Developer is responsible pursuant to this Agreement" after the text "in favor of an Indemnified Party" in the last line.	Addendum #3 is expected to clarify this section.	10/19/07
394.	CDA 16.1.2.15	Please insert the text "for which Developer is responsible pursuant to this Agreement" after the text "in favor of an Indemnified Party" in the last line.	See Question 393.	1/25/08
395.	CDA 16.1.3	To remove: 16.1.3.1. 16.1.3.2 – Proofs of coverage should correspond with those in #1 above (certificate of insurance vs. description of insurance) To add: 16.1.3.3. In any case, any additional policies will not become an obligation with TxDOT, and at any time the Additional Insurance Policies might be contracted and eliminated at the sole description of the Developer. To retain flexibility, since we can additional insurance not only because of the lenders but also as an internal policy of risk management.	See Questions 375 and 377. Section 16.1.3.2 does not obligate Developer to carry insurance in addition to that required under the CDA. Therefore, the proposed Section 16.1.3.3 is not necessary.	10/19/07
396.	CDA 16.1.4	To add: If TxDOT does not notify in time and manner as required by the Insurance Policy, the Developer will not have any responsibility. We should comply with the insurance policies.	Addendum #1 is expected to add that if as a result of an unreasonable TxDOT delay, TxDOT loses coverage under a required insurance policy, then Developer shall be relieved of any obligation otherwise owing to TxDOT to the extent of the required coverage.	10/19/07
397.	CDA 16.1.4.2	Please delete "unreasonable" in second sentence before "TxDOT delay".	Addendum #3 is expected to make the requested change.	1/25/08
398.	CDA	Please insert the text "or if Developer has undertaken diligent	No change. If the insurer is not obligated to pay because	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	16.1.4.3	efforts to collect the same" at the end of the Section.	Developer failed to meet its obligation to procure coverage or failed to timely file a claim, pay premiums, etc., Developer should be deemed to self-insure, as 16.1.4.3 provides. Please note that 16.1.4.3 does not deem Developer to self-insure if it is not able to collect despite diligent efforts. Rather, Developer is deemed to self-insure for failure to assert claims or prosecute claims diligently.	
399.	CDA 16.1.4.3	Please insert the text "or if Developer has undertaken diligent efforts to collect the same" at the end of the Section.	See Question 398.	1/25/08
400.	CDA 16.1.4.3	Please insert the text "or if the Developer has undertaken diligent efforts to collect the same" at the end of the Section. Even though we agree with TxDOT that it is sensible to deem the Developer to self-insure if it is in breach of its insurance obligations, it is inequitable to punish the Developer if it has undertaken diligent efforts to collect, enforce, etc. the insurance. In other words, punishment for breaches is fair, punishment for a mere inability despite diligent efforts, is not.	See Question 398.	4/4/08
401.	CDA 16.2	Add: "the lesser of $250,000,000 or" after "in an amount equal to" in the 4th line. Other prime contractors may have contracts exceeding $250,000,000 and will not be able to obtain bonds in amounts greater than $250,000,000.	Addendum #1 is expected to make this change.	10/19/07
402.	CDA 16.2 17.3.7	It is our understanding that the payment and performance bonds provided by the various contractors may include co-obligee riders in favor of TxDOT and the lenders. Please confirm that this is correct.	This is correct, provided that no joint check from the surety may be made to both Developer and Collateral Agent where TxDOT is also a joint payee. Accordingly, under the bond, the surety may make payment by check issued jointly to TxDOT and Developer as primary obligee, provided that if the surety receives from Collateral Agent a written notice demanding payments in lieu of the primary obligee, then the surety will issue any joint check to TxDOT and Collateral Agent. In addition, the surety bond shall preclude a joint check, and provide for payment solely to TxDOT, where the surety has not received from either the primary obligee or Collateral Agent a written demand on the bond within 15 days after the surety receives a written demand on the bond from TxDOT.	4/4/08
403.	CDA 16.2.1	The form of payment and performance bonds should include the ability to provide a letter of credit in an agreed form. The provision of a Performance Bond and Payment Bond is not required by law. At TxDOT's request, the Proposer has previously provided a legal opinion from Texas counsel relating to such issue. Has TxDOT been able to review and reconsider?	Addendum #3 is expected to provide a mechanism whereby a proposer may propose a letter of credit in lieu of a payment and performance bond.	10/19/07
404.	CDA 16.2.1	The form of payment and performance bonds should include the ability to provide a letter of credit in an agreed form. The provision of a Performance Bond and Payment Bond is not required by law. At TxDOT's request, the Proposer has	See Question 403.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		previously provided a legal opinion from Texas counsel relating to such issue. Has TxDOT been able to review and reconsider?		
405.	CDA 16.2.1	Please explain what the term "prime" means in clause (b). In addition, we would like the Developer and the Contractors to have the ability to post a letter of credit in lieu of a payment and performance bond. TxDOT's responses had indicated that Addendum # 1 would allow this option, however, we did find it in the CDA. If this has been added, could you please indicate the section in the CDA, or if it was not added, could you please verify that this will be added to the next draft?	"Prime" means a direct contract with Developer. See Question 403.	1/25/08
406.	CDA 16.2.1	The requirement to provide one payment and one performance bond is acceptable in principle. However, the provisions have to be revised to ensure that the two instruments offset one another, i.e. a draw under one instrument reduces the coverage under the other.	No change. Two separate bonds are intended. This change makes the CDA consistent with the two separate bonds required in the ITP.	4/4/08
407.	CDA 16.2.1	Please add the following text "The Payment and Performance Bonds shall be subject to draw as and when provided in Section 17.3.7 to pay unpaid amounts due relating to Construction Work performed pursuant to the CDA or Design-Build Contract." at the end of such section.	The request does not appear appropriate because Section 16.2 addresses security from the Design-Build Contractor and Section 17.3.7 addresses security from Developer.	5/9/08
408.	CDA 16.2.2	The total coverage for all Payment and Performance Bonds to be provided under Section 16.2 should not exceed $250,000,000 in the aggregate.	See Question 406.	4/10/08
409.	CDA 16.2.4, 16.4.2, 17.3.4, 17.3.7	It must be clarified that TxDOT shall not have the right to enforce security until expiration of the Developer cure period and expiration of the lender cure periods.	No change. TxDOT should not have to wait until expiration of cure periods if Developer and Lenders fail to commence and diligently work on cure, if they fail to act on a surety bond from a Contractor within 30 days, or if they fail to diligently pursue rights under a guaranty. See Sections 17.2.4 and 18.3.7. If Developer of Lenders commence and diligently work on cure, TxDOT will forebear. This is what is stated in the referenced sections.	10/19/07
410.	CDA 16.2.4, 16.4.2, 17.3.4, 17.3.7	Please clarify or revise so that it is ensured that TxDOT should not have the right to enforce security until expiration of Developer's and Lender's cure periods. The Lenders' cure periods – which are already inappropriately short – should take into account the timing requirements of customary intercreditor mechanics (particularly in light of PBAs and TIFIA being part of the initial base case). Therefore, Lenders should not be subject to an obligation "to commence and diligently work on cure" as a condition to fully enjoying the benefit of their cure period.	No change. Section 17.3.7 already requires expiration of Developer's cure period before TxDOT can enforce its security. Sections 16.2.4 and 16.4.2 already require TxDOT to forbear from enforcing its security as long as Developer or a Lender is diligently pursuing its remedies. TxDOT is bargaining for performance. To require TxDOT to wait until the end of all cure periods, which could be over a year, without the Developer and Lenders diligently pursuing their remedies, is unacceptable.	1/25/08
411.	CDA 16.3.1.1(g)	In clause (g), please add the text "or payee" at the end of such clause.	No change. TxDOT believes the provision is correct as written.	10/19/07
412.	CDA 16.3.1.1(g)	In clause (g), please add the text "or payee" at the end of such clause.	See Question 411.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
413.	CDA 16.3.1.2	Please insert the text "(and if any cure or grace period applicable to such failure shall have passed)" before the text "or (b) Developer" at the end of clause (a).	No change is necessary. Please note that these general provisions are qualified as "unless otherwise expressly provided," including, for example, Section 17.3.7.	10/19/07
414.	CDA 16.3.1.2	Please insert the text "(and if any cure or grace period applicable to such failure shall have passed)" before the text "or (b) Developer" at the end of clause (a).	See Question 413.	1/25/08
415.	CDA 16.3.1.2	"TxDOT shall have the right to draw on the letter of credit after not less than two Business Days' prior written notice to Developer for draws under clause (a) below and without prior notice to Developer for draws under clause (b) below, unless otherwise expressly provided in the CDA Documents with respect to the letter of credit, if (a) Developer has failed to pay or perform when due the duty, obligation or liability under the CDA Documents for which the letter of credit is held, but only if such failure remains uncured after expiration of any Lender cure period, or (b) Developer for any reason fails to deliver to TxDOT a new or replacement letter of credit . . ." Similar to section 16.2.4 and 16.4.2, in respect of payment and performance bonds and guarantees, respectively, TxDOT should not draw on any letter of credit, until expiration of the applicable lender cure period.	See Question 413.	1/25/08
416.	CDA 16.3.1.2	"TxDOT shall have the right to draw on the letter of credit after not less than two Business Days' prior written notice to Developer for draws under clause (a) below and without prior notice to Developer for draws under clause (b) below, unless otherwise expressly provided in the CDA Documents with respect to the letter of credit, if (a) Developer has failed to pay or perform when due the duty, obligation or liability under the CDA Documents for which the letter of credit is held, but only if such failure remains uncured after expiration of any Lender cure period (notwithstanding the foregoing, such letter of credit may be drawn prior to the expiration of any applicable Lender cure period if used to satisfy liquidated damage payments assessed in accordance with Section 17.4 or . . ." While we appreciate that Section 17.3.7 includes a provision stating "unless otherwise expressly provided," the requested language is more precise in specifying that TxDOT should not draw on any letter of credit until expiration of the applicable lender cure period. This provision is similar to Sections 16.2.4 and 16.4.2, in respect of payment and performance bonds and guarantees, respectively.	Addendum #6 is expected to replace "two Business Days" with a reference to the time period in Section 17.3.7.	4/4/08
417.	CDA	Please insert the text ", in accordance with the terms of (and as	Addendum #1 is expected to revise this Section by inserting	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	16.5.1.10	permitted by) the CDA Documents" after the text "where TxDOT has delegated" in the third line of such Section.	"pursuant to the terms of the CDA Documents" and deleting "under the CDA Documents."	
418.	CDA 16.5.1.13	Please delete the text "If applicable, the authorization, issuance, sale, trading, redemption or servicing of the PAB, or" in the beginning of such Section.	Addendum #3 is expected to clarify that this provision addresses violations of any federal or state securities or similar laws.	10/19/07
419.	CDA 16.5.1.13	Please delete the text "If applicable, the authorization, issuance, sale, trading, redemption or servicing of the PAB, or" in the beginning of such Section.	See Question 418.	1/25/08
420.	CDA 16.5.3	Please insert the text "claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and" before the text "third party Loss" in the 2nd line.	Addendum #3 is expected to replace "third party Loss" with "claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party."	10/19/07
421.	CDA 16.5.3	Please insert the text "claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and" before the text "third party Loss" in the 2nd line.	See Question 420.	1/25/08
422.	CDA 16.5.3	Please change language back to previous version and insert the text "or the commencement of any of the proceedings noted above" after the text "third party Loss" in the second line.	No change.	10/19/07
423.	CDA 16.5.3	Please change language back to previous version and insert the text "or the commencement of any of the proceedings noted above" after the text "third party Loss" in the second line.	See Question 422.	1/25/08
424.	CDA Article 17	Generally, the cure periods are too short.	TxDOT believes the cure periods are appropriate.	10/19/07
425.	CDA 17.1.1	"Subject to relief from its performance obligations pursuant to Sections 13.1.5.1 and 13.1.5.2, Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions and expiration of the applicable cure periods described in Section 7.2 (each a Developer Default"):" Developer Default should be defined to include expiration of the applicable cure periods.	No change. The cure period affects the remedy.	10/19/07
426.	CDA 17.1.1.1	We are assessing whether a longer cure period should apply for the failure to satisfy all conditions to issuance of NTP2 by the NTP2 Deadline. (see Section 17.1.2.2 and comment 409). Please insert the text "(as contemplated herein)" after the text "fails to begin Work" in the first line.	See Question 428.	1/25/08
427.	CDA 17.1.1.1(d), (e)	Please add grace period of "30 days" for both events.	No change. Section 17.1.2.2 provides a cure period of 15 days for each event.	1/25/08
428.	CDA 17.1.1.1	We are assessing whether a longer cure period should apply for the failure to satisfy all conditions to issuance of NTP2 by the NTP2 Deadline. (see Section 17.1.2.2 and comment 363). Please insert the text "(as contemplated herein)" after the text	Addendum #1 is expected to extend the cure period for defaults under Section 17.1.1.1(b). First line. No change. There is no other provision that contemplates beginning Work within such deadline.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"fails to begin Work" in the first line. In clause (b), please insert the text "required to be satisfied by Developer" after "issuance of NTP2".	Clause (b). Addendum #1 is expected to make the requested change.	
429.	CDA 17.1.1.1(e)	". . . (e) fails to achieve Final Acceptance for alla Toll Segment by the Final Acceptance Deadline for the lastToll Segment, as the same may be extended pursuant to this Agreement;" If Developer fails to meet the Final Acceptance Deadline for a Toll Segment, it will pay the applicable liquidated damages. TxDOT should not have a right to terminate the CDA because one of the Toll Segments has not reached Final Acceptance by its Final Acceptance Deadline, as long as Developer is paying the liquidated damages.	Addendum #6 is expected to revise the section.	5/9/08
430.	CDA 17.1.1.2	Section 17.1.1.2 to be amended as follows: "An Abandonment occurs and continues for a period of 180 days which materially, adversely affects Developer's ability to fulfill its obligations under this Agreement" Definition of "Abandonment" to be amended as follows: "Abandonment means that Developer abandons all or a material part of the Project, which abandonment shall have occurred if (a) Developer demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially interferes with ability to continue, to construct or operate all or a material part of the Project and (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project or a material part thereof is performed ~~for a continuous period of more than 45 days~~." As currently drafted, the concept of Abandonment is too subjective for an asset class where the Developer's presence is not physically required to perform duties.	No change. TxDOT believes 45 days is adequate. The definition is not tied to, and does not require, continual physical presence. Failure to perform Work is easily avoided, because "Work" encompasses numerous activities, including those not involving physical presence.	10/19/07
431.	CDA 17.1.1.3 17.1.2.5 20.4.3	"Developer fails to achieve ~~Service Commencement~~ Substantial Completion by the ~~Service Commencement Deadline~~ Long Stop Date, as the same may be extended pursuant to this Agreement;" Section 17.1.2.5 shall be deleted, as failure to achieve Substantial Completion by the Long Stop Date shall not give the Developer any additional cure periods. Section 20.4.3 shall be amended as follows: "If Developer fails to achieve Substantial Completion ~~Service Commencement~~ by the Long Stop Date TxDOT may proceed to terminate this	No change. Achieving Service Commencement is the critical milestone (rather than a completed Managed Lanes without traffic). Note that under Section 7.8.3.1(f), only preparation of the Punch List is required.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Agreement and the Lease without further notice to, or opportunity to cure by, the Lender." Note: all references to Service Commencement by the Service Commencement Deadline throughout the CDA should be amended to reference Substantial Completion by the Long Stop Date. The concept of Substantial Completion is less ambiguous, and will avoid possible trivial disputes regarding small outstanding Punch List items. Because the conditions to Substantial Completion will be more explicitly set forth, there will be less likelihood of disagreement about whether this default has occurred.		
432.	CDA 17.1.1.3	Please confirm that Service Commencement requires the opening only of the initial segment or section of the toll road.	Addendum #3 is expected to allow Service Commencement to occur by Toll Segment.	10/19/07
433.	CDA 17.1.1.5	Please delete the text "or Independent Engineer Agreement" after the text "under the CDA Documents".	No change. The Independent Engineer Agreement is an integral component of the CDA.	10/19/07
434.	CDA 17.1.1.5	Please delete the text "or Independent Engineer Agreement" after the text "under the CDA Documents".	See Question 433.	1/25/08
435.	CDA 17.1.1.6	"There occurs any use of the Project or Airspace or any portion thereof by any Developer-Related Entity in violation of this Agreement, the Technical Provisions, Technical Documents, Governmental Approvals or Laws ~~(except violations of Law by Persons other than Developer-Related Entities)~~;" This is merely to clarify that it is only a Developer Default, if the violation is due to the action of a Developer-Related Entity. As currently written, the exception only applied to violations of Law.	Addendum #1 is expected to make the requested change	10/19/07
436.	CDA 17.1.1.6	Please insert the text "by any Developer-Related Entity" after the text "There occurs any use" in the first line of such Section. Further, please delete the text in the parenthesis at the end of the Section.	See Question 435.	10/19/07
437.	CDA 17.1.1.7 17.1.2.2	"There occurs any closure of the Project or any material portion thereof, or any lane closure, except in the case of an Emergency or as expressly permitted otherwise in this Agreement, the Technical Provisions and the TxDOT-approved Traffic Management Plan;" This provision is somewhat vague. Although it references closures permitted in the Agreement and Technical Provisions generally, it is clearer to specify what some of these permitted closures are explicitly. Additionally, the complexity of the project should entitle the	No change to Section 17.1.1.7. The provision allowing closures permitted in the Agreement and Technical Provisions should stand on its own. However, Addendum #1 is expected to clarify lane closures in the Technical Provisions.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Developer to a longer period to cure an unexpected closure.		
438.	CDA 17.1.1.7	Please insert the text "by any Developer-Related Entity" after the text "There occurs any closure" in the first line of such Section.	No change. Developer has responsibility for operations and maintenance of the Project. Developer will be entitled to protection through Compensation and Relief Events.	10/19/07
439.	CDA 17.1.1.7	Please insert the text "by any Developer-Related Entity" after the text "There occurs any closure" in the first line of such Section.	See Question 438.	1/25/08
440.	CDA 17.1.1.8	"Any representation or warranty in the CDA Documents made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to TxDOT pursuant to the CDA Documents is false or materially misleading or inaccurate when made or omits material information when made and which has had a material adverse effect on the Project;" It is customary for events of default related to representations and warranties to have a MAE qualifier.	No change. Materiality will affect the availability of remedies. But see Question 441.	10/19/07
441.	CDA 17.1.1.8	Please insert the word "materially" before the text "inaccurate when made" in the last line.	Addendum #3 is expected to make the requested change.	10/19/07
442.	CDA 17.1.1.8	Please insert the word "materially" before the text "inaccurate when made" in the last line.	See Question 441.	1/25/08
443.	CDA 17.1.1.10	"Developer, in violation of Article 21, (i) makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Lease, the Project or Developer's Interest, or (ii) there occurs a Change of Control~~, in violation of Article 21~~; Assignments made in compliance with Article 21 should not be Developer Defaults.	Addendum #1 is expected to make the requested change.	10/19/07
444.	CDA 17.1.1.11	"Developer materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition not otherwise expressly covered by Section 17.1.1 and required to be observed or performed by Developer under the CDA Documents, including material failure to perform the Design Work, Construction Work, O&M Work or any material portion thereof in accordance with the CDA Documents;" We suggest making explicit that this Developer Default does not override any others which are expressly set forth in Section 17.1.1.	Addendum #1 is expected to change the provision as follows: "Developer materially fails to timely observe or perform or cause to be observed or performed any ~~other~~ material covenant, agreement, obligation, term or condition ~~not otherwise expressly covered by Section 17.1.1 and~~ required to be observed or performed by Developer under the CDA Documents and not otherwise expressly covered by Section 17.1.1, including material failure to perform the Design Work, Construction Work, O&M Work or any material portion thereof in accordance with the CDA Documents;"	10/19/07
445.	CDA 17.1.1.12	Delete the provision in its entirety.	Addendum #1 is expected to revise this provision to more closely conform with federal regulations.	10/19/07
446.	CDA 17.1.1.12	Please replace current Section with the following: "After exhaustion of all rights of appeal, there occurs any	No change.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		suspension or debarment (distinguished from ineligibility due to lack of financial qualifications) of Developer or any Key Contractor whose work is not completed, from bidding, proposing or contracting with any federal or State department or agency;".		
447.	CDA 17.1.1.15	"An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect . . . and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of ~~60~~120 days;" Provisions of this type generally allow for longer cure periods than just 60 days, as coordinating a cure for an involuntary insolvency actions can be time-consuming. Potential lenders will be particularly sensitive to this cure period, as they are not given any additional cures for this type of default.	No change. Automatic stay and ability to assume CDA protect Developer and Lenders against TxDOT enforcement actions after first 60 days.	10/19/07
448.	CDA 17.1.1.15	Please replace the current "60 days" grace period with "120 days".	See Question 447.	1/25/08
449.	CDA 17.1.1.15	Please replace the current "60 days" grace period with "120 days".	See Question 447.	4/4/08
450.	CDA 17.1.1.17	Please revise the Section as follows: "Developer fails to timely satisfy its financing obligations under Section 4.1.4, unless such failure is excused as more specifically set forth in Section 4.1.4.4."	Addendum #3 is expected to make the requested change.	1/25/08
451.	CDA 17.1.2.2	The 15 day period should be changed to a 60 day period.	No change. But see Question 428.	10/19/07
452.	CDA 17.1.2.2	The 15 day period should be changed to a 60 day period.	See Question 451.	1/25/08
453.	CDA 17.1.2.2 17.1.2.3	Section 17.1.2.2: "Respecting a Developer Default under Section 17.1.1.1 (other than Section 17.1.1.1(b) and (d)), 17.1.1.7, 17.1.1.9 or 17.1.1.10, a period of 15 days after TxDOT delivers to Developer written notice of the Developer Default . . ." Section 17.1.2.3: "Respecting a Developer Default under Section 17.1.1.1(b), 17.1.1.1(d), 17.1.1.2, 17.1.1.5, 17.1.1.6 or 17.1.1.13(b), a period of 30 days after TxDOT delivers to Developer written notice of the Developer Default;" TxDOT's response in the last Q&A matrix (Question 405 now) indicated that it would allow a 30 day cure period for clause (d) of Section 17.1.1.1, but Addendum #3 did not show it.	No change. See Question 229.	4/4/08
454.	CDA 17.1.2.2	Section 17.1.2.2: "Respecting a Developer Default under Section 17.1.1.1 (other than Section 17.1.1.1(b) and (d)), 17.1.1.7,	See Question 453.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	17.1.2.3	17.1.1.9 or 17.1.10, a period of 15 days after TxDOT delivers to Developer written notice of the Developer Default." Section 17.1.2.3: "Respecting a Developer Default under Section 17.1.1.1(b), 17.1.1.1(d), 17.1.1.2, 17.1.1.5, 17.1.1.6 or 17.1.1.13(b), a period of 30 days after TxDOT delivers to Developer written notice of the Developer Default;" TxDOT had previously responded that it would provide a 30 day cure period for Section 17.1.1.1(d) regarding failure to begin O&M Work for each section by the applicable Operating Commencement Date. In the last Q&A Matrix, however, TxDOT indicated that it would not provide the extra cure period. We believe that such a cure period is necessary.		
455.	CDA 17.1.3.1	Please delete ", together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged".	No change. It is not appropriate for Developer to earn interest on disgorged amounts.	1/25/08
456.	CDA 17.1.4.1	Please add the text "NTTA and" before the text "the NTTA Tolling Services Agreement" in the heading of such Section.	No change.	1/25/08
457.	CDA 17.1.4.2	Please explicitly provide that an NTTA Default can never lead to the assessment of Noncompliance Points and/or liquidated damages under the CDA.	Addendum #6 is expected to change "(including any Persistent Developer Default resulting from the assessment of Noncompliance Points)" to "or result in the assessment of Noncompliance Points."	4/4/08
458.	CDA 17.1.4.2	Please delete "other than a breach that results in Noncompliance Points" in the first sentence. Further, please add the text "(including any Persistent Developer Default resulting from the assessment of Non-Compliance Points)" after the text "constitute a Developer Default". Please add the following new sentence at the end of such section "Developer, other than in respect of the payment of liquidated damages as a result of the assessment of Non-Compliance Points on account of a NTTA default, shall not be responsible for such NTTA default hereunder." (Subject to the TSA providing that NTTA will reimburse Developer for such liquidated damages obligation.)	See Question 457.	1/25/08
459.	CDA 17.1.4.2	"In no event shall ~~If~~ a breach by NTTA under the NTTA Tolling Services Agreement ~~also constitutes a breach by Developer under this Agreement, then such breach by Developer under this Agreement shall not be deemed to~~ constitute a Developer Default (including any Persistent Developer Default resulting from the assessment of Noncompliance Points) so long as Developer diligently pursues cure under the NTTA Tolling Services Agreement; provided, however, Noncompliance Points may be assessed against Developer during such breach and	See Question 457. The intent of the last sentence of Section 17.1.4.2 is to clarify that an NTTA breach does not excuse all (unrelated) Developer performance under the CDA.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Developer may be liable for liquidated damages related to such Noncompliance Points, in accordance with Section 17.4.2.1 (it being acknowledged by both parties that such liquidated damages shall be the sole remedy available to TxDOT). ~~For the avoidance of doubt, any breach by NTTA under the NTTA Tolling Services Agreement shall not excuse any other breach by Developer under this Agreement.~~" TxDOT's only remedy in the event of an NTTA default should be assessment of Noncompliance Points and the liquidated damages related thereto. We believe that this was the intent of the language, but that the proposed language is more accurate.		
460.	CDA 17.1.4.2	"If a breach by NTTA under the NTTA Tolling Services Agreement or a breach by TxDOT under the TxDOT Tolling Service Agreement also constitutes a breach by Developer under this Agreement, then such breach by Developer under this Agreement shall not be deemed to constitute a Developer Default ~~(including any Persistent Developer Default resulting from~~ or result in the assessment of Noncompliance Points~~)~~ so long as Developer diligently pursues cure under the NTTA Tolling Services Agreement. For the avoidance of doubt, any breach by NTTA under the NTTA Tolling Services Agreement shall not excuse any unrelated~~other~~ breach by Developer under this Agreement." TxDOT indicated in the last Q&A that the next draft of the CDA will clarify that a breach by NTTA under the TSA will not constitute a breach by Developer under the CDA and not result in the assessment of Noncompliance Points. Please confirm that this is correct. Moreover, if a breach occurs by TxDOT under the TxDOT Tolling Services Agreement when TxDOT steps in, this should also excuse Developer from its obligations under the CDA. Also, it is our understanding that the last sentence was intended to clarify that an NTTA breach does not excuse a Developer's unrelated breach. We believe the proposed language makes this clearer.	Addendum #6 is expected to make the intent of the requested changes, except the last change. The use of "other" in the second sentence is intended to address breaches not covered by the first sentence.	5/9/08
461.	CDA 17.2.1	The CDA is unclear as to when a Warning Notice can be issued, either to Developer or to the lender.	TxDOT may issue a Warning Notice for a material Developer Default as specifically identified under Section 17.2.1. Note that any notice of a Developer Default may, if it concerns a matter under Section 17.2.1, also be issued as a Warning Notice. Also note that delay in issuing a Warning Notice extends Developer and Lender cure periods before TxDOT could exercise certain	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
			remedies tied to a Warning Notice (including termination). See Sections 17.2.2.2 and 20.4.	
462.	CDA 17.2.2.2	"If TxDOT issues a Warning Notice under Section 17.2.1 for any Developer Default after it issues a notice of such Developer Default, then the cure period available to Developer, if any, for such Developer Default before TxDOT may seek to appoint a receiver for Developer, remove Developer, ~~or~~ terminate this Agreement and the Lease or exercise any other remedy (other than the assessment of Noncompliance Points and imposition of liquidated damages in accordance with Section 17.4) on account of such Developer Default shall be extended by the time period between the date the notice of such Developer Default was issued and the date the Warning Notice is issued. No later issuance of a Warning Notice shall extend the time when TxDOT may exercise any other remedy respecting such Developer Default." TxDOT should not be able to exercise any remedies (including drawing the performance security) until expiration of the Developer and Lenders' cure periods.	No change. A Warning Notice is only intended to be required for specified remedies.	4/4/08
463.	CDA 17.3.2	Please delete the text "as determined by TxDOT" before the text "acting reasonably" in the second to last line. The Default is determined objectively and the same should apply to the cure.	No change. Note that TxDOT is required to act reasonably.	10/19/07
464.	CDA 17.3.2	Please delete the text "as determined by TxDOT" before the text "acting reasonably" in the second to last line. The Default is determined objectively and the same should apply to the cure.	See Question 463.	1/25/08
465.	CDA 17.3.3.2	Please insert the text "(to the extent undertaken by TxDOT) after the text "in connection with such work" in the fourth line.	No change. The requested language is already included in the first two lines.	10/19/07
466.	CDA 17.3.3.4	Please insert the text "or at the time of" after the words "delivered prior to" in the second line.	No change. The existing language is required to provide clarity.	10/19/07
467.	CDA 17.3.3.4	Please insert the text "or at the time of" after the words "delivered prior to" in the second line.	See Question 466.	1/25/08
468.	CDA 17.3.3.5	Please add the following sentence at the end of such Section: "The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (a) TxDOT was mistaken in believing such a Developer Default occurred and (b) the third party liability is not insured and not required to be insured under this Agreement".	Addendum #3 is expected to make the requested change with the addition of "(c) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct" (and to make the same change to Section 17.3.2).	10/19/07
469.	CDA 17.3.3.5	Please add the following sentence at the end of such Section: "The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third party bodily injury or property damage arising out of any such	See Question 468.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		TxDOT action, if and to the extent (a) TxDOT was mistaken in believing such a Developer Default occurred and (b) the third party liability is not insured and not required to be insured under this Agreement".		
470.	CDA 17.3.4.1	In clause (b), please insert the text ", in each case with respect to the Developer Default or such other breaches or failures," at the end of such clause. In clause (f), please insert the text ", in each case with respect to the Developer Default or such other breaches or failures," after the text "subcontractors and suppliers" in the third line of such clause.	The requested language is already included in Section 17.3.4.1.	10/19/07
471.	CDA 17.3.4.1	In clause (b), please insert the text ", in each case with respect to the Developer Default or such other breaches or failures," at the end of such clause. In clause (f), please insert the text ", in each case with respect to the Developer Default or such other breaches or failures," after the text "subcontractors and suppliers" in the third line of such clause.	See Question 470.	1/25/08
472.	CDA 17.3.5	"Subject to Sections 17.3.10 and 17.3.11 and the provisions on liquidated damages set forth in Section 17.4, TxDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages) on account of the occurrence of a Developer Default, including (a) loss of any compensation due TxDOT under this Agreement proximately caused by the Developer Default (but excluding any consequential damages, lost profits or payment of any lost Revenue Share Amount), (b) actual ~~and projected~~ costs to remedy any defective part of the Work, (c) actual ~~and projected~~ costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Project to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance with the CDA Documents, (d) actual ~~and projected~~ costs to TxDOT to terminate, take over the Project, re-procure and replace Developer, (e) actual ~~and projected~~ delay costs and (f) actual ~~and projected~~ increases in costs to TxDOT to complete the Project if not completed, together with interest thereon from and after the date any amount becomes due to TxDOT until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points or other rate specified therefor in this Agreement. . . ." Developer should not be responsible for projected costs, only	No change. The provision is subject to Section 17.3.11. See Question 357.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		actual costs.		
473.	CDA 17.3.5.1	Please insert the text "(but excluding any consequential damages or payment of any lost Revenue Share Amount)" after the text "caused by the Developer Default" in the fifth line.	See Question 474.	10/19/07
474.	CDA 17.3.5.1	Please insert the text "(but excluding any consequential damages or payment of any lost Revenue Payment Amount)" after the text "caused by the Developer Default" in the fifth line. Please delete clauses (a) through (f). TxDOT should have all rights under applicable Laws. To the extent such Laws provide for the recovery of the costs envisioned in such clauses, TxDOT will receive the benefit of such remedies. However, if that is not the case, and except as contractually provided for elsewhere in the CDA, TxDOT should not benefit from additional compensation.	No change is necessary. Please note that the provision is already subject to Section 17.3.11. Addendum #3 is expected to add after "including" the words ", to the extent available at Law,". The purpose of the list is to make evident what the intent and expectations of the parties are regarding the type and measure of damages TxDOT would suffer.	1/25/08
475.	CDA 17.3.5.1	Please insert the text "(but excluding any consequential damages or payment of any lost Revenue Payment Amount)" after the text "caused by the Developer Default" in the fifth line. The last Q&A suggested that this change would be made, but this is not the case.	See Question 474.	4/4/08
476.	CDA 17.3.5.1	Please add the following proviso to the end of Section 17.3.5.1: "; provided however, no damages shall be recoverable until the expiration of the Developer and Lenders' applicable cure periods (other than the imposition of liquidated damages in accordance with Section 17.4)." No damages, other than liquidated damages, should be recoverable prior to the expiration of the Developer and Lenders' cure periods.	No change. The timing for when TxDOT may exercise its remedies is set forth with respect to each default. TxDOT's right to damages, including its right to interest, however, is measured from the date that Developer is delinquent.	4/4/08
477.	CDA 17.3.5.1	Please add the following proviso to the end of Section 17.3.5.1: "; provided however, no damages shall be recoverable unless the Developer and Lenders' applicable cure periods have expired (other than the imposition of liquidated damages in accordance with Section 17.4). If damages are recoverable hereunder, any interest thereon shall accrue from the date of occurrence of the Developer Default." We acknowledge that TxDOT's right to damages for interest should be measured from the date that Developer is delinquent, however, payment of damages (other than liquidated damages in specific instances) should not occur until after the applicable Developer and Lender cure periods have expired.	TxDOT's right to all damages is appropriately measured from the date that Developer is delinquent. See Question 476.	5/9/08
478.	CDA 17.3.5.2	There should be no offset rights with respect to the Public Funds Amount.	No change. Note that TxDOT's offset right applies only to liquidated Claims. It is unreasonable for TxDOT to be required to make a payment to Developer if Developer owes TxDOT an	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
			undisputed amount.	
479.	CDA 17.3.5.2	There should be no offset rights with respect to the Public Funds Amount.	See Question 478.	1/25/08
480.	CDA 17.3.5.3(b)	Please delete.	The provision addresses the ability to meaningfully fund the TxDOT Claims Account pursuant to clause (a). Addendum #6 is expected to revise the first two sentences as follows: (b) TxDOT may elect, by written notice to Developer, to require from Developer a letter of credit in any amount TxDOT designates in its notice, up to the lesser of (i) the disputed portion of the Claim less the amount of funds, if any, held in the TxDOT Claims Account for such Claim or (ii) the letter of credit cap. For purposes of this clause (b), (A) the "letter of credit cap" shall initially be $20 million, (B) on January 1 of every year following the Effective Date, the letter of credit cap shall be adjusted by a percentage equal to the percentage increase in the CPI between the CPI at the beginning of the one-year period and the CPI at the end of the one-year period and (C) in addition to the adjustment in clause (B), on the date that is five years prior to the end of the Term, the "letter of credit cap" shall double from the amount immediately prior to such date.	4/4/08
481.	CDA 17.3.5.3(b)	Please delete this provision in its entirety. The Developer should not have an obligation to post such a letter of credit. This obligation is not reciprocal for a TxDOT Default, and could cause a potential cash flow problem for the Developer. This potential cash flow problem is further aggravated by the fact that failure to post such a letter of credit constitutes a Developer Default. TxDOT is adequately protected because it can already deduct damages from the termination compensation.	See Question 480.	4/4/08
482.	CDA 17.3.5.3(b)	Please delete this provision in its entirety. The Developer should not have an obligation to post such a letter of credit. This obligation is not reciprocal for a TxDOT Default, and could cause a potential cash flow problem for the Developer. This potential cash flow problem is further aggravated by the fact that failure to post such a letter of credit constitutes a Developer Default. TxDOT is adequately protected because it can already deduct damages from the termination compensation.	See Question 480.	5/9/08
483.	CDA 17.3.6.2	"If Developer (a) complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan, (b) as a result thereof achieves the requirements set forth in Sections 17.3.6.1(a) and (b), and (c) as of the date it achieves such requirements there exist no other	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		uncured Developer Defaults for which a Warning Notice was given, then TxDOT shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by ~~25%~~50%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default." In the CDA, Noncompliance Points are only reduced by 25% if the Developer adheres to the approved remedial plan, whereas in previous CDAs, the Noncompliance Points were reduced by 50%.		
484.	CDA 17.3.6.2	The percentage reduction of cured Non-Compliance Points should be 50%. (This provision was accepted in SH 121).	See Question 483.	10/19/07
485.	CDA 17.3.7	Please add the following text "; with the exception that proceeds from a draw of the Payment and Performance Bonds shall solely be used to pay unpaid amounts due relating to Construction Work performed pursuant to the CDA or Design-Build Contract." at the end of the second to last sentence.	No change is needed because Section 17.3.7 addresses security for performance of Developer's obligations, whereas Section 16.2 calls for bonds as security for performance of the Design-Build Contractor's or other prime Contractor's obligations. TxDOT will clarify, however, that the last sentence only addresses rights to draw upon security for reasons other than a Developer Default.	5/9/08
486.	CDA 17.3.8.1	Please insert the text "(but solely for the duration of such uncured Developer Default)" after the text "by written order to Developer" in the fifth line.	The requested text is addressed in the last paragraph of the Section.	10/19/07
487.	CDA 17.3.8.1	Please insert the text "(but solely for the duration of such uncured Developer Default)" after the text "by written order to Developer" in the fifth line.	See Question 486.	1/25/08
488.	CDA 17.3.8.4	Please add the text "or Compensation Events" after the text "except potential Relief Events" in line 4.	Addendum #1 is expected to make the requested change.	10/19/07
489.	CDA 17.3.9, 19.5.4 19.8.2	TxDOT's obligation to pay the termination value in the case of an event of termination should not be subject to deduction by virtue of damages incurred by TxDOT.	No change. Damages are a standard remedy with respect to a default.	10/19/07
490.	CDA 17.3.11.2	In clause (f), please insert the text "(but excluding any payment on account of future Revenue Share Amounts)" at the end of such clause. Please delete clause (g) in its entirety.	Addendum #1 is expected to make the requested changes.	10/19/07
491.	CDA 17.3.11.2(g)	Delete this provision in its entirety. Developer should not be responsible for consequential damages relating to a loss in the Revenue Share Amount attributable to a Developer Default.	See Question 490.	10/19/07
492.	CDA 17.3.11.2(g) 17.6.4.2(e)	Please amend <u>Section 17.3.11.2(g)</u> as follows: "Amounts Developer may owe or be obligated to reimburse to TxDOT under the express provisions of the CDA Documents, including TxDOT's Recoverable Costs <u>in respect of any period</u>	No change. The clauses are meant to include express provisions of the CDA Documents that address the period prior to and after termination.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		prior to termination;" Please amend Section 17.6.4.2(e) as follows: "Any other specified amounts TxDOT may owe or be obligated to reimburse to Developer under the express provisions of the CDA Documents in respect of any period prior to termination;" Please add the requested language to make clear that such the exception to the limitation on consequential damages only covers amounts that are already payable, not damages resulting because of the termination. This change should be made in both Section 17.3.2(g) and 17.6.4.2(e) in order to make the limitation reciprocal.		
493.	CDA 17.3.11.2(g) 17.6.4.2(e)	Please amend Section 17.3.11.2(g) as follows: "Amounts Developer may owe or be obligated to reimburse to TxDOT under the express provisions of the CDA Documents, including TxDOT's Recoverable Costs in respect of any period prior to termination;" Please amend Section 17.6.4.2(e) as follows: "Any other specified amounts TxDOT may owe or be obligated to reimburse to Developer under the express provisions of the CDA Documents in respect of any period prior to termination;" Please add the requested language to make clear that such exception to the limitation on consequential damages only covers amounts that are already payable, not damages resulting because of the termination. This change should be made in both Section 17.3.2(g) and 17.6.4.2(e) in order to make the limitation reciprocal. We understand that the clauses are meant to include express provisions of the CDA Documents, however these express provisions include the open-ended remedy for damages, making the language becomes circular.	See Question 492.	5/9/08
494.	CDA 17.4.1.1	Please delete the second sentence as unreasonable.	No change. Liquidated damages should apply for failure to meet the deadlines, even if such failure is subsequently cured.	10/19/07
495.	CDA 17.4.1.1	Please delete the second sentence as unreasonable.	See Question 494.	1/25/08
496.	CDA 17.4.1.2 17.4.2.3 17.4.3.2 17.4.4.3	Please amend 17.4.1.2 as follows: "Developer and TxDOT acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of late Service Commencement for all Toll Segments or late Final Acceptance for a Toll	Addendum #6 is expected to make the requested changes.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Segment. . .” Please amend 17.4.2.3 as follows: “Developer and TxDOT acknowledge~~s~~ that such liquidated damages are reasonable in order to compensate TxDOT . . .” Please amend 17.4.3.2 as follows: “Developer and TxDOT acknowledge~~s~~ that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur by reason of the matters that result in Lane Rental Charges. . . .” Please amend 17.4.4.3 as follows: “Developer acknowledges that the time period TxDOT has provided to Developer to close the Initial Project Debt is ample and reasonable, and both Developer and TxDOT acknowledge that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of the lost opportunity to TxDOT represented by the CDA Documents. . .” General Comment: Both parties (not just the Developer) should acknowledge that the various liquidated damages are reasonable in order to compensate TxDOT.		
497.	CDA 17.4.1.2 17.4.2.3 17.4.3.2 17.4.4.3	Please amend 17.4.1.2 as follows: “Developer and TxDOT acknowledge~~s~~ that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of late Service Commencement for all Toll Segments or late Final Acceptance for a Toll Segment. . .” Please amend 17.4.2.3 as follows: “Developer and TxDOT acknowledge~~s~~ that such liquidated damages are reasonable in order to compensate TxDOT . . .” Please amend 17.4.3.2 as follows: “Developer and TxDOT acknowledge~~s~~ that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur by reason of the matters that result in Lane Rental Charges. . . .” Please amend 17.4.4.3 as follows:	See Question 496.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"Developer acknowledges that the time period TxDOT has provided to Developer to close the Initial Project Debt is ample and reasonable, and both Developer and TxDOT acknowledge that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of the lost opportunity to TxDOT represented by the CDA Documents. . ." General Comment: Both parties (not just the Developer) should acknowledge that the various liquidated damages are reasonable in order to compensate TxDOT. TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.		
498.	CDA 17.4.2 Exhibit 21	The Non-Compliance Points regime and the payment of liquidated damages in respect of the same is overly burdensome and may apply with greater frequency than is appropriate. The Proposer is in the process of reviewing the same in greater detail and will suggest changes which would make such regime more workable and appropriate.	Addendum #1 is expected to revise the Noncompliance Points regime with respect to Persistent Developer Defaults.	10/19/07
499.	CDA 17.4.2 Exhibit 21	The Non-Compliance Points regime and the payment of liquidated damages in respect of the same is overly burdensome and may apply with greater frequency than is appropriate. The Proposer is in the process of reviewing the same in greater detail and will suggest changes which would make such regime more workable and appropriate.	See Question 498.	1/25/08
500.	CDA 17.4.4	Liquidated Damages for failure to achieve Financial Close should be reduced by any amounts invested by the Sponsors in the Project between Commercial Close and Financial Close.	No change. Amounts invested may have no direct relation to value to TxDOT from those expenditures upon taking back the Project. In any event, TxDOT's determination of the security amount took into account possible investment in the Project.	1/25/08
501.	CDA 17.4.4.1	Please revise Section so that it provides that the Developer is only obligated in case and to the extent it is in breach of its obligation with respect to Average Speeds as set forth in Exhibit 4 and only in the amounts as set forth in Exhibit 21.	Addendum #3 is expected to delete Section 17.4.4. Noncompliance Points will apply instead.	1/25/08
502.	CDA 17.4.4.3	Please delete the reference to "loss of potential revenue payment for TxDOT" – since the reference to loss of the Revenue Share Payment in 17.3.11.2 has also been removed.	Addendum #3 is expected to make the requested change.	1/25/08
503.	CDA 17.4.4.3	Please replace the text "Developer acknowledges that the time period TxDOT has provided to Developer to close the Initial Project Debt is ample and reasonable, that without closing for the Initial Project Debt there will be no practicable ability for Developer to timely perform its obligations under the CDA Documents" with the following text:	Addendum #3 is expected to delete "that without closing for the Initial Project Debt there will be no practicable ability for Developer to timely perform its obligations under the CDA Documents" and "loss of potential revenue payment for TxDOT."	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"The Parties acknowledge and agree that the time period TxDOT has provided to Developer to close the Initial Project Debt is ample and reasonable and because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by TxDOT if financial closing is not achieved by the Project Financing Deadline (except as otherwise provided herein)". The statement that " without closing for the Initial Project Debt there will be no practicable ability for Developer to timely perform its obligations under the CDA Documents" is incorrect as these obligations could be funded with equity. Further, please delete the text "loss of potential revenue payment for TxDOT" after the text "a portion of the Concession Payment" in the 6th to last line.		
504.	CDA 17.4.5.1	1. Please replace the text "fails" before the text "to achieve the minimum" with "breaches its obligations under Exhibit 4". 2. Further, please add the text ", unless excused pursuant to Section 4.1.4.5" after the text "financing obligations under Section 4.1.4" in the 5th line. 3. Finally, please clarify when payments due to noncompliance points kick in. (This question is related to the question relating to Non-Compliance points below.)	1. Addendum #3 is expected to delete this text. See Question 480. 2. No change necessary. The reference to Section 4.1.4 already includes the exceptions contained in Section 4.1.4.5. 3. Please see Sections 17.4.7.1 and 18.3.	1/25/08
505.	CDA 17.4.6.1	Coordinating payment of liquidated damages will likely take more than 20 days.	Addendum #1 is expected to lengthen the payment period to 30 days.	10/19/07
506.	CDA 17.4.6.1	Please replace the 20-day period for payment with a 30-day period for payment. (This provision was accepted in SH 121).	See Question 505.	10/19/07
507.	CDA 17.5.1.4	"An event of default by TxDOT occurs under the Lease or the TxDOT Tolling Services Agreement; or" If TxDOT has stepped in because of an NTTA default under the TSA, but then defaults itself, this must become a cross-default under the CDA. This is extremely important in light of SB792 and the fact that TxDOT will not be posting a letter of credit. Developer should not bear the risk that both NTTA and TxDOT default in their obligations under their respective TSAs. Instead, a default by TxDOT under the TxDOT TSA should constitute a TxDOT default under the CDA for which Developer may terminate the CDA and collect the applicable termination compensation.	No change. See Question 260.	4/4/08
508.	CDA 17.5.1.4	"An event of default by TxDOT occurs under the Lease or the TxDOT Tolling Services Agreement; or" If TxDOT has stepped in because of an NTTA default under the TSA, but then defaults itself, this must become a cross-default under the CDA. This is extremely important in light of SB792	See Question 507.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		and the fact that TxDOT will not be posting a letter of credit. Developer should not bear the risk that both NTTA and TxDOT default in their obligations under their respective TSAs. Instead, a default by TxDOT under the TxDOT TSA should constitute a TxDOT default under the CDA for which Developer may terminate the CDA and collect the applicable termination compensation.		
509.	CDA 17.5.1.6	TxDOT appropriation of Developer shares should be a TxDOT Default. Please note that this section is subject to further review.	The definition of Developer's Interest includes Developer's shares.	10/19/07
510.	CDA 17.5.1.6 Exhibit 1	TxDOT appropriation of Developer shares should be a TxDOT Default. TxDOT has indicated that the definition of "Developer's Interest" is meant to include Developer's shares, we request that the definition explicitly include Developer's shares.	Addendum #3 is expected to make it a TxDOT Default if TxDOT were to appropriate beneficial interests in Developer.	1/25/08
511.	CDA 17.5.1.6	This provision should cover appropriations by other governmental entities as well.	Appropriations by other governmental entities is not proper since TxDOT has no control of any such actions.	10/19/07
512.	CDA 17.5.1.6	This provision should cover appropriations by other governmental entities as well.	See Question 511.	1/25/08
513.	CDA 17.5.1.6	"TxDOT or any other Governmental Entity confiscates or appropriates all or any other material part of the Developer's Interest or of the beneficial interests in Developer, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement." It is important to our potential financiers that confiscation or appropriation by Governmental Entities other than TxDOT should constitute a TxDOT Default or, at a minimum, a Force Majeure Event.	No change.	4/4/08
514.	CDA 17.5.2.2	TxDOT's cure periods are very long.	TxDOT has determined that TxDOT's cure periods are appropriate.	10/19/07
515.	CDA 17.6.2.1	Please make it clear that the payment of a Compensation Amount in this circumstance shall be a lump sum payment, and not a periodic payment.	See Question 348.	10/19/07
516.	CDA 17.6.2.1	Please make it clear that the payment of a Compensation Amount in this circumstance shall be a lump sum payment, and not a periodic payment.	See Question 348.	1/25/08
517.	CDA 17.6.3	Please insert the text "(including any amounts for which no dispute exists)" after the text "Dispute Resolution Procedures or otherwise" in the second line	The requested language is already contemplated in the definition of Claim and therefore is not needed.	10/19/07
518.	CDA 17.6.3	Please insert the text "(including any amounts for which no dispute exists)" after the text "Dispute Resolution Procedures or otherwise" in the second line	See Question 517.	1/25/08
519.	CDA	Please replace the word "such" in the fourth line with the text "the	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	17.6.4.3	relevant".		
520.	CDA 17.6.4.3	Please replace the word "such" in the fourth line with the text "the relevant".	See Question 519.	1/25/08
521.	CDA 17.6.4.4	Please insert the text "or to specifically enjoin TxDOT from violating its obligations pursuant to this Agreement" at the end of clause (b).	No change. Developer's remedy for TxDOT's breach is damages. See Question 548.	10/19/07
522.	CDA 17.6.4.4	Please insert the text "or to specifically enjoin TxDOT from violating its obligations pursuant to this Agreement" at the end of clause (b).	See Question 521.	1/25/08
523.	CDA 17.6.4.4	The Developer should be afforded with equitable relief following a TxDOT breach of its obligations.	See Question 521.	4/4/08
524.	CDA 17.6.4.4	"Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against TxDOT, except (a) for any sustainable action in mandamus, (b) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 22.4, or to specifically enforce TxDOT's duty of confidentiality under Section 22.4.6, (c) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the CDA Documents, ~~or~~ (d) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute, or (e) for specific performance of TxDOT's obligations under Section 8.7.5". Developer must be able to enforce TxDOT's obligations to step-in following an NTTA default under the TSA.	See Question 521.	4/4/08
525.	CDA 17.7	Please change the title from "Partnering" to "Mutual Cooperation". While we understand "partnering" and "public-private partnership" are both generally recognized terms that TxDOT has used in the past, we ask that TxDOT strongly consider the use of the phrase "mutual cooperation" as a substitute throughout this Section as it has been used in similar transactions and will help ameliorate any tax issues that arise from the use of the term "partnership".	No change. Partnering is a commonly understood term.	4/4/08
526.	CDA 17.7.1	"Compliance with the provisions of this Section 17.7 or the terms of any ~~partnering~~ charter of mutual cooperation is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any Issue under the relevant procedures	See Question 525.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		specified in Section 17.8."		
527.	CDA 17.7.2	"TxDOT and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding ~~"partnering"~~ process of mutual cooperation drawing upon the strengths of each organization to identify and achieve reciprocal goals."	See Question 525.	4/4/08
528.	CDA 17.7.3	"The objectives of the ~~partnering~~this process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the CDA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles."	See Question 525.	4/4/08
529.	CDA 17.7.4	"In continuance of their existing ~~partnering~~ process of mutual cooperation, within 90 days after the Effective Date TxDOT and Developer shall attend a team building workshop and through such workshop negotiate and sign a mutually acceptable non-binding ~~partnering~~ charter of mutual cooperation to govern the process of ~~partnering for~~ managing the Project. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and ~~partnering~~ meetings between them, in order to further the goals of the ~~partnering~~ process of mutual cooperation. The charter shall call for the formation and meetings of a ~~partnering~~ panel of mutual cooperation, identify the Key Personnel of Developer and key representatives of TxDOT who shall serve on the ~~partnering~~ panel of mutual cooperation, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct ~~partnering~~ panel of mutual cooperation meetings, who should attend such meetings, and, subject to Section 17.8.9, exchange of statements, materials and communications during ~~partnering~~ panel of mutual cooperation meetings. In any event, the ~~partnering~~ charter of mutual cooperation shall recognize and be consistent with the obligations of TxDOT and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes."	See Question 525.	4/4/08
530.	CDA	"Under the non-binding procedures, rules and guidelines of the	See Question 525.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	17.7.5	~~partnering~~ charter of mutual cooperation, the Parties will address at ~~partnering~~ meetings of mutual cooperation specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters."		
531.	CDA 17.7.6	"If Developer and TxDOT succeed in resolving a Claim or Dispute through the ~~partnering~~ procedures of mutual cooperation, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith."	See Question 525.	4/4/08
532.	CDA 17.8.1.1	Please state expressly that the Dispute Resolution Procedures of Article 17.8 are intended to be exclusive where they apply. This is implied in Subsection (b) but should be expressly stated, especially as Section 17.8.10 ("Venue and Jurisdiction") is broad and creates confusion in the absence of such express language.	Addendum #3 is expected to clarify this.	10/19/07
533.	CDA 17.8.1.1	Please state expressly that the Dispute Resolution Procedures of Article 17.8 are intended to be exclusive where they apply. This is implied in Subsection (b) but should be expressly stated, especially as Section 17.8.10 ("Venue and Jurisdiction") is broad and creates confusion in the absence of such express language.	See Question 532.	1/25/08
534.	CDA 17.8.1.1(a)	"If partnering fails to resolve an issue and Developer elects to pursue a formal Claim or Dispute with TxDOT, the Claim or Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112, the TxDOT contract claims rules (43 Texas Administrative Code Part 1) and the Dispute Resolution Procedures established thereunder, as the same may be amended from time to time, provided that these amendment(s) shall not affect a dispute which is pending." This clauses leaves open the option of amending these procedures from time to time, and no provision is made regarding the consequences these amendment(s) may have over an open procedure, creating quite some insecurity to the parties and issue(s) involved in the open procedure.	It may not be possible to protect pending disputes from such amendments. E.g. If the amendment were to abolish ALJ position, or change the role or authority of the Executive Director of TxDOT, it would inevitably affect pending disputes.	10/19/07
535.	CDA 17.8.1.1(b)	"Dispute Resolution Procedures" is defined in Exhibit 1 to the CDA as "the procedures for resolving Disputes set forth in Section 17.8 of the Agreement." This definition includes the "Informal Resolution Procedures" of Section 17.8.3. However, in Section 17.8.1.1(b), the "Informal Resolution Procedures" are listed as separate from the Dispute Resolution Procedures. This is inconsistent and this is an inconsistency throughout Section 17.8. For instance, in Section 17.8.1.5, it appears that the term "Dispute Resolution Procedures" is intended to include the	17.8.1.1(b). The Informal Dispute Resolution Procedures are part of the Dispute Resolution Procedures. Addendum #3 is expected to clarify this. Addendum #3 is expected to clarify Sections 17.8.1.5 and 17.8.3.4. The intent is that disputes listed in Sections 17.8.1.1(b)(i), (ii) and (iii) are not subject to the Informal Resolution Procedures, but that matters under Sections 17.8.1.5(c), (d), (i) and (j) could be submitted to the Informal Resolution Procedures at the option of	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"Informal Resolution Procedures." However, in the first sentence of Section 17.8.2, the term Dispute Resolution Procedures appears not to include the Informal Resolution Procedures. Section 17.8.1.1(b) as currently drafted gives the impression that the intent is that the disputes listed in Section 17.8.1.1(b)(i), (ii) and (iii) are not subject to either the Informal Resolution Procedures or the Dispute Resolution Procedures (as those terms are used therein). However, Section 17.8.3.4(b)(ii) instead gives the impression that the intent is, at least with respect to disputes that can go to Travis County, Texas district court, that these disputes are subject to the Informal Resolution Procedures (though not to the other Dispute Resolution Procedures). Please clarify this. Section 17.8.1.1(b)(i) refers to Section 17.8.1.2(b): Why is this right provided only for TxDOT and not for the Developer? In addition, these provisions appear to give TxDOT the possibility to go to Texas court whenever it wants simply by phrasing some equitable type of relief sought. (See also Section 17.8.1.5(c).)	the claiming party. 17.8.1.1(b)(i). No change. Developer's relief is appropriate and consistent with policy and law.	
536.	CDA 17.8.1.1(b)	"Dispute Resolution Procedures" is defined in Exhibit 1 to the CDA as "the procedures for resolving Disputes set forth in Section 17.8 of the Agreement." This definition includes the "Informal Resolution Procedures" of Section 17.8.3. However, in Section 17.8.1.1(b), the "Informal Resolution Procedures" are listed as separate from the Dispute Resolution Procedures. This is inconsistent and this is an inconsistency throughout Section 17.8. For instance, in Section 17.8.1.5, it appears that the term "Dispute Resolution Procedures" is intended to include the "Informal Resolution Procedures." However, in the first sentence of Section 17.8.2, the term Dispute Resolution Procedures appears not to include the Informal Resolution Procedures. Section 17.8.1.1(b) as currently drafted gives the impression that the intent is that the disputes listed in Section 17.8.1.1(b)(i), (ii) and (iii) are not subject to either the Informal Resolution Procedures or the Dispute Resolution Procedures (as those terms are used therein). However, Section 17.8.3.4(b)(ii) instead gives the impression that the intent is, at least with respect to disputes that can go to Travis County, Texas district court, that these disputes are subject to the Informal Resolution Procedures (though not to the other Dispute Resolution Procedures). Please clarify this. Section 17.8.1.1(b)(i) refers to Section 17.8.1.2(b): Why is this	See Question 535.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		right provided only for TxDOT and not for the Developer? In addition, these provisions appear to give TxDOT the possibility to go to Texas court whenever it wants simply by phrasing some equitable type of relief sought. (See also Section 17.8.1.5(c).)		
537.	CDA 17.8.1.2	Please clarify why the reference to mandamus relief from the Supreme Court of Texas pursuant to Section 22.002 of the Government Code was deleted from the Section.	Addendum #3 is expected to add "or that curtails Developer's right to mandamus relief from the Supreme Court of Texas pursuant to Section 22.002 of the Government Code."	1/25/08
538.	CDA 17.8.1.4(a)	It should be clarified whether only the Disputes Board procedure of Section 17.8.4 is to be replaced by arbitration. At the very least, "all or part of" should be added between "as a substitute for" and "the Dispute Resolution Procedures." Again, it is unclear what is meant by the term "Dispute Resolution Procedures here. Would it include also the Informal Resolution Procedures"? The procedures set forth in Sections 17.8.5 and 17.8.6?	See Question 535.	10/19/07
539.	CDA 17.8.1.4(a)	It should be clarified whether only the Disputes Board procedure of Section 17.8.4 is to be replaced by arbitration. At the very least, "all or part of" should be added between "as a substitute for" and "the Dispute Resolution Procedures." Again, it is unclear what is meant by the term "Dispute Resolution Procedures here. Would it include also the Informal Resolution Procedures"? The procedures set forth in Sections 17.8.5 and 17.8.6?	See Question 535.	1/25/08
540.	CDA 17.8.1.5	(k) "Any dispute(s) arising between IE and Developer related to the Project under the IESA." Disputes arising between Developer and IE are not listed as excluded from the DRP and the ITP expressly establishes that these disputes are subject to Arbitration (Exhibit 9 ITP clause 7.23).	No change. The requested change is not necessary.	10/19/07
541.	CDA 17.8.2	In the first sentence, "or by a district court in Travis County, Texas" is overly broad and could be interpreted to mean that the district court in Travis County, Texas is at all times an alternative to the Dispute Resolution Procedures. This should be clarified.	Addendum #3 is expected to clarify this Section.	10/19/07
542.	CDA 17.8.2	In the first sentence, "or by a district court in Travis County, Texas" is overly broad and could be interpreted to mean that the district court in Travis County, Texas is at all times an alternative to the Dispute Resolution Procedures. This should be clarified.	See Question 541.	1/25/08
543.	CDA 17.8.3.1	Please add a new clause (d) as follows: "(d) If the Dispute is not resolved in accordance with the preceding paragraph, the following provisions will apply."	Addendum #3 is expected to clarify that Section 17.8.3.3 will apply if the dispute is not resolved pursuant to Section 17.8.3.1(c).	10/19/07
544.	CDA 17.8.3.1	Please add a new clause (d) as follows: "(d) If the Dispute is not resolved in accordance with the preceding paragraph, the following provisions will apply."	See Question 543.	1/25/08
545.	CDA	Please insert the word "have" between the words "shall" and "no" in the first line.	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
546.	CDA 17.8.3.2	Please explain the meaning of this provision in view of the fact that Section 17.8.3.4(a) provides for a mere option in any event.	Addendum #3 is expected to delete Section 17.8.3.2. In addition, Section 17.8.3.3 is expected to be revised to allow five Business Days Fast-Track Disputes.	10/19/07
547.	CDA 17.8.3.2	Please explain the meaning of this provision in view of the fact that Section 17.8.3.4(a) provides for a mere option in any event.	See Question 545.	1/25/08
548.	CDA 17.8.3.3(b)(ii)	Please explain the purpose and meaning of this provision. Is the reference intended to be to Section 17.8.1.2? Are these types of disputes subject to the previous Informal Resolution Procedures?	Addendum #3 is expected to change the reference to Section 17.8.1.2 and to clarify these procedures.	10/19/07
549.	CDA 17.8.3.3(b)(ii)	Please explain the purpose and meaning of this provision. Is the reference intended to be to Section 17.8.1.2? Are these types of disputes subject to the previous Informal Resolution Procedures?	See Question 548.	1/25/08
550.	CDA 17.8.8	This provision should be part of Section 17.8.4 ("Disputes Board; Finality of Disputes Board Decision") as it relates entirely to what use can be made of Independent Engineer Evidence in Disputes Board procedures.	Addendum #3 is expected to clarify that the provision applies to any proceedings, not just those before the Disputes Board.	10/19/07
551.	CDA 17.8.8	This provision should be part of Section 17.8.4 ("Disputes Board; Finality of Disputes Board Decision") as it relates entirely to what use can be made of Independent Engineer Evidence in Disputes Board procedures.	See Question 550.	1/25/08
552.	CDA 17.8.9.1	This provision, as drafted, gives the impression that the described material is not subject to disclosure in a subsequent Disputes Board procedure under Section 17.8.4. However, this is contradicted by Section 5.6 of the Disputes Board Agreement in Exhibit 22 to the CDA. Please clarify.	Addendum #3 is expected to revise Section 5.6 of the Disputes Board Agreement to be consistent with Section 17.8.9.1 of the CDA.	10/19/07
553.	CDA 17.8.9.1	This provision, as drafted, gives the impression that the described material is not subject to disclosure in a subsequent Disputes Board procedure under Section 17.8.4. However, this is contradicted by Section 5.6 of the Disputes Board Agreement in Exhibit 22 to the CDA. Please clarify.	See Question 552.	1/25/08
554.	CDA 17.8.10	This provision is phrased too broadly and gives the impression that the parties can go to Travis county court for any Dispute. Please clarify.	No change is necessary. The provision states that it applies to any action or proceeding "that is permitted to be brought by a Party in court." Article 17 is very specific about the procedures that must be used before either Party may go to court.	10/19/07
555.	CDA 17.8.10	This provision is phrased too broadly and gives the impression that the parties can go to Travis county court for any Dispute. Please clarify.	See Question 554.	1/25/08
556.	CDA 17.8.11	It should be clear throughout the provision that the work is to continue also during the Informal Resolution Procedures (whether by stating so expressly or whether because it is clear that the Informal Resolution Procedures are part of Dispute Resolution Procedures as that term is defined in Exhibit 1 to the	Addendum #3 is expected to clarify this. See Question 535.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		CDA, see previous comment).		
557.	CDA 17.8.11	It should be clear throughout the provision that the work is to continue also during the Informal Resolution Procedures (whether by stating so expressly or whether because it is clear that the Informal Resolution Procedures are part of Dispute Resolution Procedures as that term is defined in Exhibit 1 to the CDA, see previous comment).	See Question 556.	1/25/08
558.	CDA 17.8.11	In the first sentence, please add the text "(including Informal Resolution Procedures)" after the text "Dispute Resolution Procedures" – the most recent Q&A indicated that Addendum 3 would clarify this which is not the case.	Addendum #6 is expected to make the requested change.	4/4/08
559.	CDA 18.2.1.3	This provision should allow some mechanism by which the Developer can appeal an assessment of Noncompliance Points. This provisions should also allow Developer the right to explain why Noncompliance Points should not be assessed. Also, it is unclear as to whether TxDOT may assess Noncompliance Points even if the Independent Engineer's recommends that such points are not appropriate.	Section 18.4 provides a dispute resolution mechanism. TxDOT may assess Noncompliance Points if the Independent Engineer recommends against such points, although under Section 18.4.7, the opinion of the Independent Engineer will receive substantial weight in resolving a dispute.	10/19/07
560.	CDA 18.2.3	Please include the word "reasonably" after the text "of the cure and, if" in the sixth line and after the text "30 days, or if TxDOT" in the penultimate line of such Section.	Addendum #1 is expected to make the requested changes.	10/19/07
561.	CDA 18.3.1 Exhibit 21	Some of these penalties seem onerous, especially given the fact that assessment of Noncompliance Points by TxDOT does not preclude TxDOT from any other right or remedy available to it. i. Please confirm that we may not be assessed Noncompliance Points related to breaches of failures caused by either Relief Events, Compensation Events, Emergencies or any other event beyond the Developer's control. ii. We do not believe that liquidated damages should be assessed for Noncompliance Points unless, after expiration of a cure period, it remains uncured. It is typical to expect Cure Periods to be available to the Developer prior to the assessment of economic penalties. iii. The number of Uncured Noncompliance Points that trigger liquidated damages (50 prior to Service Commencement and 35 thereafter) is too low, especially considering the fact that there are single breaches that may trigger up to 13 Noncompliance Points. iv. Category C breaches have no cure period. Can we therefore assume they do not count for the purposes of calculating	i. If a Relief Event precludes performance of an obligation, performance is excused and Noncompliance Points are not assessed. See Section 13.1.6.1. ii. Noncompliance Points have been divided into three categories. Type A events are not awarded until after the cure period, Type B events are awarded before the cure period and Type C events have no cure period. iii. No change. iv. Yes. Addendum #3 is expected to clarify the definition of Uncured Noncompliance Points. v. The Noncompliance Points were calculated with respect to the expected loss to TxDOT and Users based on specific analysis of expected loss.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		liquidated damages related to Uncured Noncompliance Points? v. We believe that for some of the breaches included in the table, the number of Noncompliance Points assessed are too high.		
562.	CDA 18.3.1 Exhibit 21	1. We do not believe that liquidated damages should be assessed for Noncompliance Points unless, after expiration of a cure period, it remains uncured, even for Type B events. It is typical to expect Cure Periods to be available to the Developer prior to the assessment of economic penalties. 2. The number of Uncured Noncompliance Points that trigger liquidated damages (50 prior to Service Commencement and 35 thereafter) is too low, especially considering the fact that there are single breaches that may trigger up to 13 Noncompliance Points. 3. TxDOT indicated that Addendum #1 would clarify that Category C cure periods would not count for the purposed of calculating liquidated damages related to Uncured Noncompliance Points, can you confirm that this change will be made?	1. No change. 2. See Question 561(iii). 3. This is expected to be clarified in Addendum #3. See Question 561(iv).	1/25/08
563.	CDA 18.3.1 Exhibit 21	We note the answers to Question 542 now and the changes made to Schedule 21, but we have very significant concerns associated with the potential of non-compliance points that could be assigned for Category 1 and 2 Defects in accordance with Reference #'s 76 and 77 to Attachment 1 to Exhibit 21. For both of these references we believe that non-compliance points should not be assigned until after the cure period has ended. Under the current criteria, noncompliance points will be assigned once a Category 1 or 2 defect is identified, regardless of the cure period, as both failures pertain to assessment category B. This seems to be and unreasonable and impossible standard to meet and certainly almost unbiddable. We suggest that the criteria for Assessment Categories A, B, and C need to be re-evaluated to exclude the assignment of non-compliance points until the Developer has had a reasonable time to remedy the defect.	Noncompliance Points will only be assessed if there has been a failure to respond to the Defect in accordance with the times listed in the columns entitled "Response to Defects" in the Performance and Measurement Table. The cure periods listed for such noncompliance in Attachment 1 to Exhibit 21 of the CDA is expected to be amended in Addendum #6 to clarify this.	5/9/08
564.	CDA 18.5.3	Please insert the text "when permitted hereunder and in accordance with the terms hereof" at the end of such Section.	TxDOT's right under Section 18.5.3 is unqualified.	10/19/07
565.	CDA 18.5.3	Please insert the text "when permitted hereunder and in accordance with the terms hereof" at the end of such Section.	See Question 564.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
566.	CDA 19.1 Exhibit 23	Compensation for a termination for convenience should be analyzed and reviewed pending finalization of the proposed rules before the Senate.	Noted.	10/19/07
567.	CDA 19.2.1.2	The period of "270 consecutive days" should be reduced to "180 consecutive days" in clauses (a) and (b).	Addendum #1 is expected to make the requested change.	10/19/07
568.	CDA 19.2.1.2(b)	"Such notice is delivered on or after the last Service Commencement Date, as a direct result of the Force Majeure Event all or <u>any portion</u> ~~substantially all~~ of the Project becomes and remains inoperable for a period of 180 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such suspension of operations is not attributable to another concurrent delay;" In order for Developer's interest to be protected in the event of a Force Majeure, its right to terminate the CDA must be easily exercisable. TxDOT has indicated that Developer should not be entitled to collect any compensation for a Force Majeure Event under Section 13.1.4.4 because it can terminate the CDA, however, as currently drafted, the CDA can only be terminated if the Force Majeure affects all or substantially all of the Project. If Developer cannot receive compensation for Force Majeure Events, then it should have the ability to terminate if a portion but not all of the Project is affected by a Force Majeure Event.	No change. "Any portion" is too broad.	4/4/08
569.	CDA 19.2.1.2(b)	"Such notice is delivered on or after the last Service Commencement Date, as a direct result of the Force Majeure Event all or <u>any material portion</u>~~substantially all~~ of the Project becomes and remains inoperable for a period of 180 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such suspension of operations is not attributable to another concurrent delay;" We understand that TxDOT feels that the term "any portion" is too broad, and thus we suggest "any material portion". As currently drafted, the provision does not allow the Developer to easily exercise its termination right if a Force Majeure Event occurs. Based on conversations with TxDOT and the current draft of the CDA, TxDOT is unwilling to provide any compensation to Developer for a Force Majeure Event under Section 13.1.4.4. TxDOT's rationale for not providing a Compensation Event was that Developer could just exercise its termination right, however, as currently drafted, the CDA can only be terminated if the Force Majeure affects all or substantially all of the Project. If Developer cannot receive compensation for Force Majeure Events, then it should have the	Addendum #6 is expected to make the requested change but also require that such suspension of operations has a substantial impact on the economic viability of the Project.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		ability to terminate if a material portion but not substantially all of the Project is affected by a Force Majeure Event. Developer is unable to take on the full risk of a Force Majeure Event that does not affect "substantially all" of the Project.		
570.	CDA 19.2.3.1(c)	"The lesser of (i) loss of Toll Revenues from and after the date Developer delivers its written notice of conditional election to terminate directly resulting from the Force Majeure Event, determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 13.2 (it being understood that the loss of Toll Revenue shall be based on the daily average net Toll Revenues received during the comparable days and times over the six months immediately preceding the Force Majeure Event), and (ii) an amount equal to (A) regularly scheduled debt service on Project Debt, other than Subordinate Debt, accrued during the period of delay due to the Force Majeure Event after the date Developer delivers its written notice of conditional election to terminate, plus (B) Developer's unavoidable, reasonable operating and maintenance costs during such period, minus (C) Toll Revenues during such period; minus The proposed language merely clarifies how the loss of Toll Revenue shall be calculated (i.e. looking at the 6 months prior to the Force Majeure Event).	Addendum #6 is expected to provide generally that compensation for loss of Toll Revenues will be calculated based on the daily average net Toll Revenues received during comparable days and times over the six months immediately preceding the event. See Section 13.2.4.2(b).	4/4/08
571.	CDA 19.2.3.1(c)	"The lesser of (i) loss of Toll Revenues from and after the date Developer delivers its written notice of conditional election to terminate directly resulting from the Force Majeure Event, determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 13.2 (it being understood that the loss of Toll Revenue shall be based on the daily average net Toll Revenues received during the comparable days and times over the six months immediately preceding the Force Majeure Event), and (ii) an amount equal to (A) regularly scheduled debt service on Project Debt, other than Subordinate Debt, accrued during the period of delay due to the Force Majeure Event after the date Developer delivers its written notice of conditional election to terminate, plus (B) Developer's unavoidable, reasonable operating and maintenance costs during such period, minus (C) Toll Revenues during such period; minus The proposed language merely clarifies how the loss of Toll Revenue shall be calculated (i.e. looking at the 6 months prior to the Force Majeure Event).	See Question 571.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		TxDOT has indicated in the Q&A that the next draft of the CDA will provide generally that compensation for loss of Toll Revenue will be calculated based on the daily average net Toll Revenues received during comparable days and times over the 6 months immediately preceding the event. Please confirm that this is correct.		
572.	CDA 19.2.3.4	30 months as it is established in the CDA for the Developer to be forced to continue working in the Project suffering a Force Majeure Event is too long.	Addendum #1 is expected to reduce the 30-month period to 24 months.	10/19/07
573.	CDA 19.2.3.4	"If either of the effects from the Force Majeure Event described in Section 19.2.1.2 continues for ~~24~~12 months or more from its inception, Developer may deliver to the other Party a new written notice of its unconditional election to terminate this Agreement and the Lease, in which case neither Party shall have any further option to continue this Agreement and the Lease in effect." 24 months as it is established in the CDA for the Developer to be forced to continue working in the Project suffering a Force Majeure Event is still too long. We request a 12 month period.	No further change. See Question 572.	1/25/08
574.	CDA 19.2.3.4	"If either of the effects from the Force Majeure Event described in Section 19.2.1.2 continues for ~~24~~12 months or more from its inception, Developer may deliver to the other Party a new written notice of its unconditional election to terminate this Agreement and the Lease, in which case neither Party shall have any further option to continue this Agreement and the Lease in effect." While we appreciate that TxDOT has reduced the number of months from 30 to 24 months, we, and our potential financiers, still believe that 24 months is too long to force the Developer to continue working if the Project is suffering from a Force Majeure Event. We again request a 12 month period.	See Question 573.	4/4/08
575.	CDA 19.3.1.2	Please insert the text "if later," following "or," in the parenthetical text at the end of the Section.	Addendum #3 is expected to delete the parenthetical, which would result in the same time period as the body of the Section. See Sections 17.1.1.13, 17.1.2.1 and 17.1.2.3. For example, under Section 17.3.6.1, Developer has 45 days to prepare a remedial plan, and under Section 17.3.6.3, Developer has a five-day cure period. Likewise, under Section 17.1.1.13(a), Developer has 45 days to deliver a remedial plan, and under 17.1.2.1, Developer has a five-day cure period. Section 19.3.1.2 contemplates a Developer Default for which TxDOT issues a Warning Notice under Section 17.2, which includes a default under Section 17.1.1.13(a) (*after* the 45-day period).	10/19/07
576.	CDA 19.3.1.2	Please insert the text "if later," following "or," in the parenthetical text at the end of the Section.	See Question 575.	1/25/08
577.	CDA	Please add "(other than a Persistent Developer Default)" after	No change is necessary. See Question 575.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	19.3.1.2	the text "any other Developer Default" in the first line. If TxDOT required the Developer to prepare a remedial plan, it shouldn't be entitled to terminate the CDA while the Developer is preparing the remedial plan in accordance with TxDOT's instructions. Alternatively, please insert the text "or Section 17.3.6" following the text "Section 17.2.2".		
578.	CDA 19.3.4	This section needs to be revised to clarify that only if the Developer defaults in its obligation to reach financial close and none of the excuses to reaching financial close pursuant to Section 4.1.4.4 are available, should TxDOT have an additional termination right.	No change, but see Question 450.	1/25/08
579.	CDA 19.4	Please provide for Developer's right to terminate the CDA in case TxDOT breaches its obligations (other than payment) under the CDA or its representations and warranties set forth in the CDA.	TxDOT is contracting for Developer's performance, while Developer is contracting for the opportunity to earn a return. Thus, upon a TxDOT Default, Developer is entitled to compensation, and as long as it receives compensation, Developer should not have a right to terminate. If TxDOT owes damages and fails to pay, then Developer will also be entitled to termination. Note that Developer also has other important termination rights not tied to a TxDOT Default that protect its and the Lenders' interests, including Force Majeure Events, failure to issue NTPs, prolonged TxDOT work suspension, Termination By Court Ruling, lack of NEPA Finality and breach of TxDOT's warranties (see Question 898).	1/25/08
580.	CDA 19.4	Please provide for Developer's right to terminate the CDA in case TxDOT breaches its material obligations (other than payment) under the CDA or its representations and warranties set forth in the CDA. Please note that currently the breach of TxDOT representation does not grant termination rights to Developer.	See Question 581.	4/4/08
581.	CDA 19.4.2	As currently drafted, the Developer cannot terminate the CDA if a suspension under Section 17.3.8.1 occurs. Lenders will likely require the right to terminate, even if the suspension is due to the Developer's fault. 365 days will likely be too long a period. We suggest a shorter period (i.e. 60-90 days, etc.)	No change. Suspensions under 17.3.8.1 would be the result of Developer breaches, and TxDOT is required to lift the suspension when the Developer cures. TxDOT cannot be forced to relinquish the benefits of the CDA and to pay termination compensation because a Lender chooses to require termination due to Developer Default. The Lender's protection is to step in. 365 days is appropriate. Developer has the additional remedy of a Compensation Event and Relief Event during the first 365 days. Section 17.3.8.4 indicates that these suspensions are treated as TxDOT Changes.	10/19/07
582.	CDA 19.4.2	As currently drafted, the Developer cannot terminate the CDA if a suspension under Section 17.3.8.1 occurs. Lenders will likely require the right to terminate, even if the suspension is due to the Developer's fault. 365 days will likely be too long a period. We suggest a shorter period (i.e. 60-90 days, etc.)	See Question 584.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
583.	CDA 19.5.1.4	This section enables TxDOT to increase inspections by the Independent Engineer and requires the Developer to share in the increased cost of the inspections. Since increasing the inspections points to a breakdown of trust it seems more appropriate that the cost of extra inspections be borne by the party initiating the termination.	No change. TxDOT believes sharing the costs is equitable and avoids the complications of allocating initiation of the termination to a party.	1/25/08
584.	CDA 19.5.5	"If as of the Termination Date Developer has not completed construction of all or part of the Project and Utility Adjustments that are part of the Construction Work, TxDOT may elect, by written notice to Developer and the Design-Build Contractor delivered within 90 days after the Termination Date, to continue in effect the Design-Build Contract or to require its termination. If TxDOT does not deliver written notice of election within such time period, TxDOT shall be deemed to elect to require termination of the Design-Build Contract. If TxDOT elects (and, in the event such termination is a result of a TxDOT Default, the Design-Build Contractor also elects) to continue the Design-Build Contract in effect, then Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Design-Build Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT elects (or is deemed to elect) to require termination of the Design-Build Contract or, in the case where termination of the Agreement is a result of a TxDOT Default, if the Design-Build Contractor elects to not continue the Design-Build Contract, then Developer shall . . ." In the event of a TxDOT Default under the CDA, the Design-Build Contractor should not be required to continue the Design-Build Contract with TxDOT, but should have the right to terminate such agreement.	No change. A TxDOT default may not have anything to do with the pass-through obligations under the Design-Build Contract (e.g., failure to compensate for lost revenues). If the TxDOT default affects the Design-Build Contract, e.g. failure to pay by TxDOT, resulting in failure to pay the Design-Build Contractor, it will have its own remedies, including suspension of work and termination.	10/19/07
585.	CDA 19.5.5.6	Please replace the word "be" and replace it with the word "reasonably" in the first line of such Section.	Addendum #1 is expected to make the requested change.	10/19/07
586.	CDA 19.5.7	"If as of the Termination Date Developer has entered into any O&M Contract, TxDOT shall elect, by written notice to Developer, to continue it in effect (if the O&M Contractor agrees to continue such O&M Contract) or require its termination; provided that if a Lender is entitled to New Agreements following termination, TxDOT shall not elect to terminate any such Contract until the Lender's right to New Agreements expires without exercise. If TxDOT elects (and the O&M Contractor, in the event such termination of the Agreement was a result of a	See Question 587.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		TxDOT Default, elects) to continue any such Contract in effect, then on or about the Termination Date (or promptly after any later election to terminate) Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date." In the event of a TxDOT Default under the CDA, the O&M Contractor should not be required to continue the O&M with TxDOT, but should have the right to terminate such agreement.		
587.	CDA 19.5.11	Please insert the text "at TxDOT's expense," before the text "for a reasonable period," in the first line of such Section.	No change. This is an integral component of the work and should not require additional payment.	10/19/07
588.	CDA 19.5.11	Please insert the text "at TxDOT's expense," before the text "for a reasonable period," in the first line of such Section.	See Question 587.	1/25/08
589.	CDA 19.5.12	"On the Termination Date, Developer shall (i) execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Project and Project Right of Way, including that set forth in the recorded Memorandum of Lease, as amended by each recorded Amendment to Memorandum of Lease, and (ii) record a termination of the Memorandum of Lease."	Addendum #6 is expected to make the requested change.	4/4/08
590.	CDA 19.5.12	"On the Termination Date, Developer shall (i) execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Project and Project Right of Way, including that set forth in the recorded Memorandum of Lease, as amended by each recorded Amendment to Memorandum of Lease, and (ii) record a termination of the Memorandum of Lease." TxDOT's response in the Q&A Matrix indicated that this change would be made in the subsequent draft of the CDA. Please confirm this is correct.	See Question 589.	5/9/08
591.	CDA 19.5.14.4	Please insert the text "To the extent permitted by applicable law," in the beginning of such Section.	No change. As successor operator of the Project, TxDOT will be entitled to this information, and will be subject to applicable Laws regarding Patron Confidential Information.	10/19/07
592.	CDA 19.5.14.4	Please insert the text "To the extent permitted by applicable law," in the beginning of such Section.	See Question 591.	1/25/08
593.	CDA 19.5.14.5	"All other work product and Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the Project or the Project Right of Way and that has been paid for, provided	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5." TxDOT should only benefit from Intellectual Property owned by Affiliates of the Developer (such as the Design-Build Contractor, etc.) that has been paid for already. Contractors will be unlikely to turn over work product or intellectual property if the CDA is terminated prior to when such work product or intellectual property would have used in the construction/operation of the Project, because the contractor would not been paid for such work product or intellectual property.		
594.	CDA 19.5.20	Please include the word "reasonably" after the words "in such manner as TxDOT may" in the first line of such Section.	Addendum #1 is expected to make the requested change.	10/19/07
595.	CDA 19.7.3	Please insert the text "(unless TxDOT is also a party thereto)" before the text "as of the Termination Date" in the fourth line of such Section.	Addendum #3 is expected to make the requested change.	10/19/07
596.	CDA 19.7.3	Please insert the text "(unless TxDOT is also a party thereto)" before the text "as of the Termination Date" in the fourth line of such Section.	See Question 595.	1/25/08
597.	CDA 19.8.1	Please delete the second sentence. This would only be appropriate to the extent that the relevant Termination Compensation has been irrevocably paid pursuant to the termination provisions.	No change. Compensation Amounts only apply to Compensation Events. Termination Compensation, which applies to termination of the Agreement, is not waived by such sentence.	4/4/08
598.	CDA 19.8.2	Please insert the text "and except for any Claims resulting from the gross negligence, willful misconduct or bad faith of TxDOT" at the end of the first sentence of such Section.	No change.	10/19/07
599.	CDA 19.8.2	Please insert the text "and except for any Claims resulting from the gross negligence, willful misconduct or bad faith of TxDOT" at the end of the first sentence of such Section.	See Question 598.	1/25/08
600.	CDA 19.10	This Section does not reflect the custody agreement, but instead references a custodial arrangement with Wachovia. The Wachovia custody agreement has been terminated and a new agreement put in place - the Master Lockbox and Custodial Account Agreement between The Bank of New York Trust Company, N.A. and TxDOT. Section 19.10 of the CDA should be revised to reflect the current custody agreement. In addition, the Developer should get the benefit of such arrangement.	Addendum #3 is expected to revise Sections 19.10.4 through 19.10.7 to reflect the current Master Lockbox and Custodial Account Agreement between TxDOT and The Bank of New York Trust Company, N.A. and to state that TxDOT will agree to enter into a joinder agreement to designate Developer as a beneficiary if and when Section 19.10 applies. Such Master Agreement will be included in the Reference Information Documents, and a form of joinder agreement will be added as an exhibit to the CDA.	1/25/08
601.	CDA 19.10.4	If TxDOT is required to toll the Project after termination of the CDA (because there are unsatisfied Claims owing from TxDOT to Developer at the termination of the CDA), TxDOT should be required to make Developer a party to the Custody Agreement through the execution of a joinder agreement. This Section should be revised to reflect this.	See Question 600.	1/25/08
602.	CDA	Please provide a copy of the Master Lockbox and Custodial	TxDOT provided this on June 3, 2008	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	19.10.4	Agreement.		
603.	CDA 19.12.1	Please insert the text "/or" after the text "the Lease and" in the third line of such Section.	Addendum #3 is expected to replace "this Agreement, the Lease and the Principal Project Documents" with "this Agreement and/or the Lease."	10/19/07
604.	CDA 19.12.1	Please insert the text "/or" after the text "the Lease and" in the third line of such Section.	See Question 603.	1/25/08
605.	CDA 19.12.1	Please insert the text "and/or the Principal Project Documents" after the text "the Lease." in the third line of such Section.	No change.	4/4/08
606.	CDA 19.13	The right to terminate should occur if the NEPA Finality Date has not occurred within three years after the Effective Date. In this regard, please provide in Exhibit 7 that the Developer may pay the Concession Payment to the trustee in escrow pending NEPA Finality. (This provision was accepted in SH 121).	No change. TxDOT has determined that five years is the appropriate period.	10/19/07
607.	CDA 19.13.1	Please replace the word "five" with the word "three" in the first sentence.	See Question 606.	1/25/08
608.	CDA 19.13.1	"In the event the NEPA Finality Date with respect to any NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 has not occurred by the date that is ~~five~~ six years from the date such NEPA Approval or environmental reevaluation, as applicable, is obtained ~~after the Effective Date~~, or any extension thereof mutually agreed to in writing by the Parties, each Party, at its sole election, may thereafter terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to the other Party and the Collateral Agent under the Security Documents other than the Subordinated Security Documents. However, if the NEPA Finality Date occurs before written notice of termination is delivered, then no such notice shall be effective and neither Party shall have a right to terminate under this Section 19.13."	No change.	5/29/08
609.	CDA 19.14	If TxDOT is unable to obtain the environmental re-evaluation approval, then Developer must have a reciprocal termination right after a specified long stop date; and the termination compensation payable should be the same as the compensation payable upon TxDOT's election to terminate. Before the right of either party to terminate arises, there should be an obligation on TxDOT and the Developer to seek to agree the terms of a TxDOT Change which will allow the Project to proceed on a basis consistent with the failure to obtain the approval (or the receipt of the approval subject In Section 19.14.1, please add the word "approval" after the word "reevaluation" in the second sentence.	Addendum #6 is expected to address the requested changes.. Sections 19.14.1, 19.14.3 and 19.14.3 have been rewritten as of 1/12/09.	5/9/08
610.	CDA	If TxDOT fails to obtain an environmental reevaluation required	Addendum #6 is expected to provide a right of termination to	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	19.14.1 (Addendum 5)	in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 within 12 months after the Effective Date, TxDOT or Developer may~~, in its sole discretion,~~ at any time prior to obtaining the reevaluation, elect to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to the other Party ~~Developer~~ and the Collateral Agent under the Security Documents other than Subordinated Security Documents."	Developer in new Section 19.14.2.. Sections 19.14.1, 19.14.3 and 19.14.3 have been rewritten as of 1/12/09.	
611.	CDA 19.14.2 (Addendum 5)	Please delete in its entirety. This provision is not necessary.	No change. Sections 19.14.1, 19.14.3 and 19.14.3 have been rewritten as of 1/12/09.	5/29/08
612.	CDA 19.14.3 (Addendum 5)	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. Notwithstanding anything to the contrary, Developer shall also be entitled to any Compensation Amount payable in respect of a Compensation Event that occurred prior to the early termination hereunder. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures."	No change. The CDA already thoroughly deals with the interrelationship between payments for Compensation Events and payments for Termination Compensation.. Sections 19.14.1, 19.14.3 and 19.14.3 have been rewritten as of 1/12/09.	5/29/08
613.	CDA 20.1.3	Please delete second sentence. Making enforceability against TxDOT of any assignment of a Funding Agreement subject to delivery of a copy to TxDOT and deposit thereof into an Intellectual Property Escrow will increase syndication risk (particularly in respect of retail syndication) and transactional costs. [Please note that all comments to Section 20 of the CDA should also be considered as comments to the corresponding sections of the Lenders Direct Agreement.]	Addendum #3 is expected to replace "such assignment shall not be binding upon TxDOT" with "TxDOT shall not be charged with notice of such assignment, and no assignee shall be entitled to the rights, benefits and protections of this Article 20."	1/25/08
614.	CDA 20.3	Please delete the word "and" after "Warning Notice". Insert the words ", and copies of any Change Order or Request for Change Proposal" after "O&M Contract". The Lenders would expect to receive directly from TxDOT copies of any Change Order or Request for Change Proposal.	No change. Developer should have this responsibility under the loan documents.	1/25/08
615.	CDA 20.4 20.4.4	General Comment: most of the cure and step-in rights are determined with reference to delivery of the Warning Notice by TxDOT, but the CDA as a whole is vague/confusing about when a Warning Notice can be issued to the Developer and the Collateral Agent. It must be made explicit that the Lender cure periods commence after the Developer cure periods have ended. Moreover, the Lenders will likely also require an additional notice that the Developer cure period ended or at the very least, a timely notice	Regarding Warning Notices, see Question 461. In general, the Lender's cure period (if any) depends on the type of Developer Default, including whether the default is peculiar to the Developer and is not curable by the lender, failure to pay a monetary obligation, failure to achieve Service Commencement and other defaults. In certain circumstances, for example, the lender's cure period may be extended to 360 days. See Section 20.4.10. The Lender cure periods start concurrently with Developer cure periods, and in most instances last longer, so there	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		of when the Developer cure period began, so they may monitor when their cure period begins. Lenders will also likely require more than 30 days in which to effect cures.	is no need for an additional notice. These provisions are *more* favorable to Lenders than this comment.	
616.	CDA 20.4 20.4.4 20.4.5.3	Please amend Section 20.4.4 as follows: "As to such Developer Default, other than (a) ~~the failure to pay a monetary obligation, (b)~~ the failure to achieve Service Commencement by the deadline set forth in Section 20.4.3 and (~~c~~ b) Developer Defaults governed by Section 20.4.7, the Collateral Agent shall have a 60-day cure period ~~have the same period to cure as is available to Developer under Section 17.2.2, plus 30 days,~~ which cure period shall commence on the later of (i) expiration of the Developer's cure period and (ii) ~~from~~ delivery of the Warning Notice to the Collateral Agent~~. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days.~~ However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Project (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within 60 days after TxDOT delivers the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period of that available to Developer under Section 17.1.2 ~~17.2.2~~ plus 180 days, unless extended pursuant to Section 20.4.10." Please amend Section 20.4.5.3 as follows: "Not later than ~~30~~ 60 days after receiving the Warning Notice (but only after the later of (i) receipt of the Warning Notice and (ii) the expiry of the relevant Developer cure period), initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project;" Section 20.4.4: It is our understanding that the Collateral Agent's cure period shall run concurrently with that of the Developer. By allowing the Collateral Agent's cure period to run concurrently with the Developer's cure period, the Developer is at risk that the Lenders will call a default under the financing documents prior to expiration of the Developer's cure period under the CDA. This approach is counterproductive for all parties, as it is often the Developer who is in the best position to cure any default, and should have the full benefit of its cure period. We would like to make explicit that the Lenders' cure	Addendum #3 is expected to limit the Lender's cure period so that it commences after the Developer's initial cure period expires; however, there will be no requirement for any separate or additional notice from TxDOT, and no extension of any deadline for Lenders to cure, beyond those already provided in Article 20.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		period only commences after expiration of the Developer's cure period. We deleted (a) in Section 20.4.4 because it provides for a 60-day cure period under Section 20.4.2, which is the same as is requested by our language. Section 20.4.5.3: Initiating procedures to obtain possession will likely take longer than 30 days, due to the expected size of (and intercreditor issues related to) the lending syndicate. The Collateral Agent must be provided with sufficient time to coordinate the syndicate in order to properly effect a cure. We suggest changing the Lenders' cure period to the cure period afforded 60 days, as this will give the Collateral Agent more time.		
617.	CDA 20.4	Please delete second sentence. If financial close will not be achieved, there will not be Security Documents.	No change. Section 20.4 will not apply if there is no Lender.	1/25/08
618.	CDA 20.4.1	1. Insert the words "or suspend the performance of its obligations thereunder" after "Lease". The contractual relation should be preserved while the Lenders determine whether or not to exercise their cure or step-in rights. 2. Further, please replace the words "Warning Notice" with the words "Lender Warning Notice". Modify all references in the CDA to Warning Notice accordingly. A Warning Notice is "a written notice that TxDOT delivers to Developer pursuant to Section 17.2.1" (see definition of "Warning Notice"). Therefore, TxDOT may deliver to the Collateral Agent a copy of a Warning Notice (as provided in Section 17.2.1) but not a Warning Notice itself. Because TxDOT shall deliver to the Collateral Agent copies of all Warning Notices (see Section 17.2.1 and 20.4.3), the Collateral Agent would not be able to determine, upon receipt thereof, whether such notice is the Warning Notice contemplated in this Section 20.4.1 (and, consequently, whether the cure period granted to the Lenders under Section 20.4.2, 20.4.3 or 20.4.4, as applicable, has commenced). It is essential for the project bankability that the CDA (i) provides for Lender cure periods that do not overlap with Developer cure periods, and (ii) clearly identifies the event triggering the commencement of any Lender cure period. Please see, to that respect, the proposed definition of "Lender Warning Notice".	1. No change. TxDOT must reserve its rights to suspension (e.g., regarding unsafe conditions, failure to provide insurance, etc.). 2. Addendum #3 is expected to change the references in Section 20.4 to delivery of a Warning Notice to the Collateral Agent to a copy of the Warning Notice. This change will harmonize Section 20.4 with Section 17.2.1 and the definition of Warning Notice. There is no need for a separate "Lender Warning Notice" to put Lenders on notice of Developer Default. A copy of the notice Developer receives is quite capable of clearly informing the Lenders of the default and establishing the cure period for the Lenders.	1/25/08
619.	CDA 20.4.1	It is essential for the project bankability that the CDA (i) provides for Lender cure periods that do not overlap with Developer cure	See changes to Section 20.4.1 in Addendum 3 and Questions 616 and 618.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		periods, and (ii) clearly identifies the event triggering the commencement of any Lender cure period.		
620.	CDA 20.4.2	"If such Developer Default consists of Developer's failure to pay a monetary obligation, the Collateral Agent may cure such Developer Default by paying all amounts due, except for amounts subject to a good faith dispute, within 60 days after TxDOT delivers the Warning Notice to the Collateral Agent. If cure is not effected within such 60-day period, TxDOT may proceed to terminate this Agreement and the Lease without further notice to, or opportunity to cure by, the Lender." 60 days may be sufficient to arrange payment for a debt that is not subject to dispute or ambiguity; however, if the Lenders are disputing the amount in good faith, the Lenders will require more time.	No change. Note that if there is a dispute and TxDOT terminates and ultimately it is found that the termination was wrongful, it will be treated as a Termination for Convenience with considerably more compensation due. Also note that Lenders have the option to pay and then have the Developer contest.	10/19/07
621.	CDA 20.4.2	Please insert the text ", except for amounts subject to a good faith dispute," after the text "by paying all amounts due" at the end of the second line. Lenders should not be forced, as a condition to the exercise of step-in rights, to pay amounts that were being disputed by Developer prior to the occurrence of the event triggering such step-in rights or that the lenders consider in good faith that should be disputed.	See Question 620.	1/25/08
622.	CDA 20.4.2	Insert the words "or suspend the performance of its obligations thereunder" after the word "Lease".	No change.	1/25/08
623.	CDA 20.4.3	1. Replace the word "latter" with the word "later". 2. Further, please insert a new sub-clause (c) that reads "180 days after the delivery to the Collateral Agent of a Lender Warning Notice," after "Section 20.4.9),". 3. It is a condition for any extension of the Long Stop Date under Section 20.4.9 of the CDA that the Collateral Agent or it Substituted Entity shall have obtained ownership of the Developer's Interest and full possession of the Project to the exclusion of Developer. Consistently with the general principle set forth in Section 20.4.1 (i.e., notice plus reasonable opportunity to cure), the Collateral Agent should be given sufficient time to take full possession of the Project and cause Service Commencement to be achieved. 4. Finally, please insert the words "or suspend the performance of its obligations thereunder" after the word "Lease".	1. No change. 2. No change. See Question 532. 3. No change. Article 20, as well as the Long Stop Date itself, already are fully consistent with the principle of providing the Lender reasonable opportunity to obtain possession and achieve Service Commencement. E.g. Lenders have 210 days after receiving a copy of the Warning Notice to obtain possession (Sections 20.4.5, 20.4.6), and then another 180 days to effect completion of cure (Section 20.4.6). The 180 day period to complete cure after obtaining possession can be extended another 180 days (Section 20.4.10). If the Collateral Agent is unable to obtain possession via foreclosure or court order within 210 days, it can obtain new direct agreements with TxDOT after TxDOT terminates. After getting new direct agreements, it will have the 180 + 180 days to complete cure, and also will then be in position to extend the Long Stop Date by up to 180 days under Section 20.4.9.2. 4. See Question 618, item 1.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
624.	CDA 20.4.4	"As to such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement for all Toll Segments by the deadline set forth in Section 20.4.3 and (c) Developer Defaults governed by Section 20.4.7, the Collateral Agent shall have a cure period ending 30 days after the later of (~~a~~x) the date the Developer's cure period expires and (~~b~~y) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Project (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within the later of (x) 30 days after the date Developer's cure period expires and (y) 60 days after TxDOT delivers a copy of the Warning Notice, and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending on the later of 180 days after (x) the date Developer's cure period expires and (y) the date of delivery of a copy of the Warning Notice to the Collateral Agent, unless extended pursuant to Section 20.4.10." The cure periods should all be keyed off of either the expiration of the Developer's cure period or the delivery to the Collateral Agent of the Warning Notice, whichever is later. These modifications merely provide consistency throughout the document.	Addendum #6 is expected to substantially make the requested change.	4/4/08
625.	CDA 20.4.4	"As to such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement for all Toll Segments by the deadline set forth in Section 20.4.3 and (c) Developer Defaults governed by Section 20.4.7, the Collateral Agent shall have a cure period ending 30 days after the later of (~~a~~x) the date the Developer's cure period expires and (~~b~~y) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Project (e.g. cure of	See Question 624.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Developer Defaults under Sections 17.1.1.9 and 17.1.1.16) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within the later of (x) 30 days after the date Developer's cure period expires and (y) 60 days after TxDOT delivers a copy of the Warning Notice, and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending on the later of 180 days after (x) the date Developer's cure period expires and (y) the date of delivery of a copy of the Warning Notice to the Collateral Agent, unless extended pursuant to Section 20.4.10." The cure periods should all be keyed off of either the expiration of the Developer's cure period or the delivery to the Collateral Agent of the Warning Notice, whichever is later. These modifications merely provide consistency throughout the document. TxDOT's response in the Q&A Matrix indicated that these change would be made in the subsequent draft of the CDA. Please confirm this is correct.		
626.	CDA 20.4.5.3	Please replace the number "30" with the number "60". The current cure period is not sufficient. (Please note that all comments to Section 20 of the CDA should also be considered as comments to the corresponding sections of the Lenders Direct Agreement.)	No change. Please note that the Collateral Agent is required to "initiate" action within 30 days.	1/25/08
627.	CDA 20.4.5	Please insert the words "or its Substituted Entity" after the words "Collateral Agent".	No change. There will be no Substituted Entity at this point.	1/25/08
628.	CDA 20.4.5.3	"Not later than ~~30~~60 days after receiving the Warning Notice termination of the relevant Developer cure period, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project;" Initiating procedures to obtain possession will likely take longer than 30 days, due to the expected size of (and intercreditor issues related to) the lending syndicate.	No change.	10/19/07
629.	CDA 20.4.5.3	"Within the later of (a) ~~five~~30 days after expiration of the Developer's cure period, if any, and (b) 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project; and" The lenders will need more than 5 days after expiration of the	No change. The lenders will have prior notice of the default, and therefore could begin coordinating their efforts prior to the five-day period.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Developer's cure period to coordinate efforts to obtain possession, as the syndicate will likely be quite large.		
630.	CDA 20.4.5.3	"Within the later of (a) ~~five~~15 days after expiration of the Developer's cure period, if any, and (b)than 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project; and" The lenders will need more than 5 days after expiration of the Developer's cure period to coordinate efforts to obtain possession, as the syndicate will likely be quite large.	See Question 629.	5/9/08
631.	CDA 20.4.6 20.4.7 20.4.8	Section 20.4.6 to be amended as follows: "The Collateral Agent shall exercise the right provided in Section 20.4.5 by giving TxDOT written notice of the exercise of the same 30 days after TxDOT delivers to the Collateral Agent the Warning Notice. . . . In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in this Agreement which cannot be cured or performed until the Collateral Agent obtains possession, the Collateral Agent shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 20.4.10; provided, however, such 180-day deadline shall not be applicable in the event of a Developer Default under Sections 17.1.1.14 or 17.1.1.15 if the Collateral Agent has commenced proceedings in good faith to enforce its rights. The Lenders will expect to have cure rights with regards to insolvency defaults and if the Developer does not deliver a remedial plan. The 180-day time limit is unlikely to be met for insolvency events, as the lenders will not be able to obtain possession without getting approval of the bankruptcy court. Typically, in a bankruptcy situation, lenders are given no time limit, so long as they have commenced proceedings to enforce their rights.	No change. The requested change is not appropriate or necessary. Automatic stay will prevent termination, pending lifting of stay or rejection in bankruptcy. Upon such a termination, Lender gets the right to New Agreements. See Sections 20.4.7 and 20.4.8.	10/19/07
632.	CDA 20.4.6 20.4.7 20.4.8	1. Please delete the requirement that the Lenders have to have taken possession by a specified deadline or alternatively, extend the "180 day" significantly. 2. In any event, no deadline should apply to Developer Defaults (i) arising from Developer's failure to deliver or comply with a remedial plan or (ii) that are insolvency-related. Forcing the	1. No change. See Question 618, item 3. Please note that Section 20.4.10 allows an additional extension of up to 180 days. 2. No change. Under no circumstances will TxDOT accept cure periods without reasonable deadlines. Also, nothing obligates Lenders to enter into new agreements. It is an option made available to Lenders where they need possession to cure but are	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		lenders to enter into a New Agreement in those scenarios is not the most efficient solution. Lenders should be allowed, in those cases, to exercise their contractual remedies and preserve the existing contractual relationships.	unable to effectively foreclose or otherwise obtain possession and control of the Developer's Interest within 210 days, such as where the Developer, as a debtor in bankruptcy, rejects the CDA and thereby deprives the Lender of its security or collateral interest in the Developer's future contract rights and leasehold estate.	
633.	CDA 20.4.6	Please insert the word "within" after the words "exercise of the same". Further, please insert the words "or the Substituted Entity" after the words "the Collateral Agent" in the twelfth line.	Addendum #3 is expected revise Section 20.4.6.	1/25/08
634.	CDA 20.4.6	"The Collateral Agent shall exercise the right provided in Section 20.4.5 by giving TxDOT written notice of the exercise of the same within the later of (a) five days after expiration of the Developer's cure period, if any, and (b) 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after the later of (x) the date the Developer's cure period expires and (y) the date TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession and ownership an assumption in writing of all duties, obligations and liabilities of Developer under this Agreement and the Lease . . ." The cure periods should all be keyed off of either the expiration of the Developer's cure period or the delivery to the Collateral Agent of the Warning Notice, whichever is later. These modifications merely provide consistency throughout the document.	No change. As a result of splitting the cure period, TxDOT will not extend any deadline for Lenders to cure beyond those already provided in Article 20. See Question 616.	4/4/08
635.	CDA 20.4.6	"The Collateral Agent shall exercise the right provided in Section 20.4.5 by giving TxDOT written notice of the exercise of the same within the later of (a) five days after expiration of the Developer's cure period, if any, and (b) 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after the later of (x) the date the Developer's cure period expires and (y) the date TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession and ownership an assumption in writing of all duties, obligations and liabilities of Developer under this Agreement and the Lease . . ."	See Question 634.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		This revised language is not intended to provide Lenders with additional cure periods, it merely ensures that all cure periods are keyed off of either the expiration of the Developer's cure period OR, in the event that a Warning Notice was not sent to the Lenders when it was sent to the Developer, delivery to the Collateral Agent of the Warning Notice. This provision protects the Lenders so that their cure period does not run without them having had notice that a Default had occurred.		
636.	CDA 20.4.8	"If TxDOT terminates this Agreement and the Lease under Section 20.4.6 for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after the later of (x) the date the Developer's cure period expires and (y) the date TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 20.4.7, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of this Agreement written notice of the termination and a statement of any and all sums which would at that time be due under this Agreement and the Lease then known to TxDOT. . . ." This revised language is not intended to provide Lenders with additional cure periods, it merely ensures that all cure periods are keyed off of either the expiration of the Developer's cure period OR, in the event that a Warning Notice was not sent to the Lenders when it was sent to the Developer, delivery to the Collateral Agent of the Warning Notice. This provision protects the Lenders so that their cure period does not run without them having had notice that a Default had occurred.	See Question 634.	5/9/08
637.	CDA 20.4.8	"If TxDOT terminates this Agreement and the Lease under Section 20.4.6 for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after the later of (x) the date the Developer's cure period expires and (y) the date TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 20.4.7, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of this Agreement written notice of the termination and a statement of any and all sums which would at that time be due under this Agreement and the Lease then known to TxDOT. . . ." The cure periods should all be keyed off of either the expiration of the Developer's cure period or the delivery to the Collateral Agent of the Warning Notice, whichever is later. These modifications merely provide consistency throughout the document.	No change. See Question 634.	4/4/08
638.	CDA	Please insert the words "and of any outstanding Developer	No change is necessary. Section 20.9 entitles the Lender to an	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	20.4.8	Default as of the termination date" after "then known to TxDOT". To determine whether or not to enter into a New Agreement, the Lenders should be informed not only of the amounts due and unpaid as of the termination date but also of any outstanding Developer Default as of such date.	estoppel certificate from TxDOT upon request which includes statements on the existence of Developer Defaults. Section 20.9.3 entitles the Lender and Substituted Entity to rely.	
639.	CDA 20.4.8.2	Please insert the following at the end of the paragraph: "To the extent an agreement with any Governmental Entity, including a tolling agreement with NTTA, is required to be entered, failure by such Governmental Entity to enter into such agreement within 30 days from timely receipt of the written notice, written commitment and New Agreements duly executed shall, at the option of the Lenders, be deemed a Termination by Convenience. It is essential for the Lenders to have absolute certainty regarding their ability to enter into a New Agreement. The risk of Governmental Entities not performing should not be borne by the Lenders.	No change is required. See TSA Sections 23(a)(ii) and 23(b).	1/25/08
640.	CDA 20.4.8.2	Please insert the following at the end of the paragraph: "To the extent an agreement with any Governmental Entity, including a tolling agreement with NTTA, is required to be entered, failure by such Governmental Entity to enter into such agreement within 30 days from timely receipt of the written notice, written commitment and New Agreements duly executed shall, at the option of the Lenders, be deemed a Termination by Convenience. It is essential for the Lenders to have absolute certainty regarding their ability to enter into a New Agreement and related documentation. How is TxDOT planning to address the risk of third party action being required and not performed in that scenario? The proposed lender protection regime -- which provides for relatively short lender cure periods or, in certain instances, for no lender cure periods -- is premised on the assumption that the Lenders can always enter into a New Agreement and related documents. If that basic assumption is flawed (e.g., because NTTA is not willing to enter into a new Project Trust Agreement), then the whole lender protection regime is materially affected.	TxDOT intends to seek a modification of Section 23(a) of the NTTA TSA to provide for assignment of it to any lender that obtains a New Agreement, without the necessity for NTTA consent. TxDOT does not agree that the CDA provides relatively short lender cure periods.	4/4/08
641.	CDA 20.4.8.4(b)	Please insert the word "those" and delete the words "any existing" after "fully remedy". Insert the words "specified by TxDOT in the statement delivered pursuant to Section 20.4.8" after the word "Lease" in the second line. See comment to Section 20.4.8 of the CDA. The Lenders should not be required to cure Developer Defaults other than those specified by TxDOT as existing as of the date of the 20.4.8-notice. The Lenders will certainly consider such notice when	Addendum #3 is expected to revise the Section.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		deciding whether or not to enter into a New Agreement.		
642.	CDA 20.4.9.1	When will the amount in Exhibit 24 which is referenced therein be specified?	Addendum #1 is expected to include the amount.	10/19/07
643.	CDA 20.4.10.4	"The Collateral Agent has prepared and submitted to TxDOT, and TxDOT has approved, a remedial plan for effecting full and complete cure, in form and substance reasonably satisfactory to TxDOT." This change is merely to make clear that TxDOT will use a reasonableness standard in approving the remedial plan. We believe this was the intent of the provision.	The requested change is not required. See Section 6.3.4.1.	10/19/07
644.	CDA 20.6	Introduce the concept of a "qualified Substituted Entity" and include more specific and objective criteria as to what TxDOT shall consider in approving or disapproving a Substituted Entity. Lenders will likely want more detail as to what the criteria for a Substituted Entity are, so that they can effectively select an entity to act as a Substituted Entity.	No change.	10/19/07
645.	CDA 21.4	Please insert the text ", so long as the Developer as a result of such assignment, does not incur any obligations to such other Persons" at the end of such Section.	The requested language is not necessary. Nothing obligates Developer to contract with such Persons.	10/19/07
646.	CDA 21.4	Please insert the text ", so long as the Developer as a result of such assignment, does not incur any obligations to such other Persons" at the end of such Section.	See Question 645.	1/25/08
647.	CDA 22.5.2	This section requires that the Financial Modeling Data is delivered into Intellectual Property escrow (if not delivered to TxDOT directly). The definition of Financial Modeling Data in Exhibit 1 to the CDA includes "(d) The Base Case Traffic Model and any future updates thereto or new traffic models and traffic data prepared by or on behalf of Developer related to Base Case Financial Model Updates". The Base Case Traffic Model remains the property of our traffic and revenue adviser, and therefore compliance with this requirement is not possible. This requirement is not market standard. Please explain TxDOT's objective in including this requirement.	No change. The purpose of the escrow is to preserve ownership and trade secrets. TxDOT requires access to this information because it could be highly relevant to evaluating future claims to compensation.	4/10/08
648.	CDA 24.2.2	Developer should receive reimbursement from TxDOT to the same extent as set forth in § 24.2.2 in the event that taxes will be imposed on the value of the right to collect tolls.	No change is necessary. A tax on tolls is a Compensation Event. See clause (o) of the definition of Compensation Event.	10/19/07
649.	CDA 24.2.2	Developer should receive reimbursement from TxDOT to the same extent as set forth in § 24.2.2 in the event that taxes will be imposed on the value of the right to collect tolls.	See Question 648.	1/25/08
650.	CDA General	Any amounts paid by TxDOT for losses incurred by Developer (including Compensation Amounts and Termination Compensation) shall also include losses incurred by the Design-	No change. TxDOT has no privity of contract or liability with the Design-Build Contractor. Note that the cost impacts of a Compensation Event could include increased Developer costs it	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Build Contractor.	would owe to Contractors directly attributable to the Compensation Event. See the definition of Compensation Amount. Also note that the measure of Termination Compensation in some instances includes demobilization costs owing by Developer to Contracts. See Exhibit 23.	
651.	CDA General	Any amounts paid by TxDOT for losses incurred by Developer (including Compensation Amounts and Termination Compensation) shall also include losses incurred by the Design-Build Contractor.	See Question 650.	1/25/08
652.	CDA General	Please provide details as to the envisioned approvals and permits necessary for the development of the Project.	Determining the necessary approvals and permits is a responsibility of Developer and will, to some extent, depend on Developer's solution.	10/19/07
653.	CDA General	Any Developer obligation to mitigate damages shall be qualified so that no such obligation is understood to require Developer to take actions that would prejudice performance of the works or give rise to an increase in costs for the Developer.	See Question 119.	10/19/07
654.	CDA General	TxDOT shall not exercise set-off rights against Developer with respect to payments directly due to the Design-Build Contractor for Compensation Events or otherwise.	See Question 478.	10/19/07
655.	CDA General	Please update the Table of Contents.	The table of contents is updated with each reissuance of the CDA.	1/25/08
656.	CDA General	Whenever TxDOT is provided with a discretionary right unless expressly provided that the same shall be at the sole discretion of TxDOT, please add language that provides that such right has to be exercised in a reasonable manner in each such instance: Section B.2. of Exhibit 4, Section F.6.b. of Exhibit 4, Section J of Exhibit 4.	No change is necessary. Section 6.3.4.1 provides that the standard is reasonableness if no other standard is provided. Sections B.2, F.6.b and J of Exhibit 4 all expressly provide for sole discretion.	1/25/08
657.	CDA General	TxDOT shall not exercise set-off rights against Developer with respect to payments directly due to the Design-Build Contractor for Compensation Events or otherwise.	See Question 478.	1/25/08
658.	CDA General	Please provide details as to the envisioned approvals and permits necessary for the development of the Project.	See Question 652.	1/25/08
659.	CDA General	Any Developer obligation to mitigate damages shall be qualified so that no such obligation is understood to require Developer to take actions that would prejudice performance of the works or give rise to an increase in costs for the Developer.	See Question 119.	1/25/08
660.	CDA General Public Funds Amount	1. The provisions governing the Public Funds should be consolidated into one section in the CDA. Right now, these provisions are spread all over the various documents which is confusing (e.g. provisions dealing with Public Funds can be found in Part E, Section 2.2 of Exhibit 7 to the CDA; in the definition of "Payment Activity" in Exhibit 1 to the CDA; in Section 5.6 of Exhibit C to the ITP, etc.).	1. The provisions governing the Public Funds are generally set forth in CDA Exhibit 7, Part E, Payment of Public Funds. However, it is necessary that they appear in other sections of the RFP as well. For example, it is necessary for provisions dealing with the procurement (including with respect to the Public Funds Amount) be placed in the ITP. Also, Exhibit 1 contains definitions used throughout the CDA, and so it is appropriate for the term to be	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		2. Please define "Total Project Construction Costs". 3. Finally, we would appreciate if you could refer us to statutory provisions which set forth (i) that only 10% of mobilization costs can be funded, (ii) that design and other costs are prorated (as required by the definition of "Payment Activity" the Exhibit 1 of the CDA) and which, in general, (iii) require the payment process as set out in Part E of Exhibit 7.	there as well. 2. The term "Total Project Construction Costs" as used in Attachment 2 to Exhibit 7 is defined therein as Proposal Form P, Part A, Box A. 3. These provisions are required by TxDOT. TxDOT believes they are consistent with law.	
661.	CDA General	We refer to CDA Q&A 636. The definition of Payment Activity in Exhibit 1 to the CDA says that Developer's indirect costs such as project management, administration, design, contingencies, etc. shall be prorated through all Payment Activities. We have sought TxDOT's feedback as to why design costs should be spread in all items, when the cost is not incurred during the entire construction period, but in specific moments. In CDA Q&A #636 we enquired as to whether this was a statutory requirement, and TxDOT indicated that this is not necessarily the case. We believe that it appropriate for design costs to be paid as they are incurred, unless there is some statutory requirement which does not allow this.	To help manage the use of any public funds, TxDOT requires payment to be made for completed physical work.	5/9/08
662.	CDA General	1. Addendum 4 contemplates the initial construction of two Managed Lanes along IH 35E from the Loop 12/IH 35E interchange to east of the IH 635/IH 35E. In addition, Addendum 4 further contemplates that in the event that TxDOT, in its discretion, issues NTP 3, an additional third Managed Lane will be required to be built by the Developer in each direction. As the initial scope of construction, as noted above, will only contemplate the construction of two Managed Lanes, the design and build contractor will, in respect of the initial construction works, construct the relevant substructure and related works for two Managed Lanes rather than three. In the event that NTP3 is indeed issued by TxDOT, the design build contractor will be required to construct all of the substructure and related works for the contemplated third Managed Lane. Such construction sequence, although it alleviates, in some regard, the need to increase the initial Public Funds Amount, will result in a Public Funds Amount Request with respect to the third lane that will be in excess of the original construction cost therefor. As per the terms of the CDA, the costs involved with the construction of the third lane and the underlying substructure will have to be provided by TxDOT (through Public Funds or otherwise). 2. Additionally, since the current draft of the CDA Documents does not give the Developer the right to start tolling a Toll	1. Any public funds requested for the IH 635 Section, IH 35E Section, IH 635/IH 35E Interchange and IH 635/US 75 Interchange (via the Public Funds Request) is separate from any public funds requested for the IH 35E Capacity Improvement Section (via the Capacity Improvement Funds Request). 2. Addendum #6 is expected allow a separate Toll Segment (changed to Project Segment) for the IH 35E Capacity Improvement Section. 3. See clause (2) above.	4/10/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Segment unless Service Commencement has occurred with respect to the whole Toll Segment, the issuance of NTP 3 will result in a delay of the Service Commencement Date for the Toll Segment affected by the work contemplates by NTP 3. The Developer must be reimbursed for any Loss of Toll Revenues or other damages or losses incurred as a result of such delay and any Public Funds available for the works contemplated by NTP3 must include all such amounts. 3. Lastly, the CDA should make it clear that in the absence of the issuance of NTP3 by the relevant deadline therefor, Substantial Completion, Final Acceptance and Service Commencement Date with respect to the Toll Segment containing the work to be contemplated by NTP3 can occur with further delay.		
663.	CDA General	Addendum #5 does not contemplate the situation where the environmental reevaluation approval is obtained, but on conditions which increase the cost of construction or extend the construction schedule. Either (i) TxDOT must compensate Developer 100% for the increase costs or schedule extension; or (ii) an obligation to seek to agree a TxDOT Change (discussed below), failing which termination rights arise, should apply.	Other than as contemplated in clause (g) of the definition of TxDOT-Caused Delay, such events are Developer's risk.	5/9/08
664.	CDA General	We expect TxDOT will issue an Addendum 6 that will reflect all the comments submitted by us on April 4, 2008 and April 10, 2008 that have not been addressed in Addendum 5. Please advise when such Addendum 6 will be forthcoming.	Correct.	5/9/08
665.	CDA General	The bid schedule does not provide dates for further TSA negotiations. The TSA has not been agreed by both parties. Please provide us with the opportunity to discuss the latest draft of the TSA and our comments submitted on April 18, 2008 and revise the bid schedule accordingly.	TxDOT has forwarded your comments to NTTA, but does not anticipate any further opportunities for discussion with NTTA.	5/9/08
666.	CDA General	CDA Section 4.1.4.1 - Please add the word "approval" where indicated in the following sentence from the first paragraph: "(a) if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation, such deadline may be extended until the date that is 60 days after the date that TxDOT obtains such environmental reevaluation approval (if later)" Similar changes should be made in all locations where the documents refer to TxDOT obtaining environmental reevaluation approval related to ATCs including, but not limited to CDA Sections 6.2.12.2 (3 locations), 19.14.1 (2 locations), Exhibit 1, Definition of NEPA Finality Date (1 location), Exhibit 1, Definition	Addendum #6 is expected to make the requested changes.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		of Operating Commencement Date (3 locations), Exhibit 1, definition of TxDOT-Caused Delay (g) (1 location), Exhibit 7, Part E.1. (1 location), Exhibit 9 (4 locations), Exhibit 23 Part E (2 locations), Exhibit 23 Part G (2 locations) (please see also separate comments below).		
667.	CDA General	The term "alternative technical concept" should be capitalized in all locations where it is used in the CDA and a definition for said term should be included in CDA Exhibit 1. The definition should be consistent with the ITP Section 3.1.	The use of the term "alternative technical concept" in the CDA should be sufficient because each use refers to a description in Exhibit 2.	5/9/08
668.	CDA Exhibit 1	Definition of "Abandonment": Please delete clause (a).	Addendum #1 is expected to add "clearly" before "demonstrates." Addendum #3 is expected to delete "or omissions."	10/19/07
669.	CDA Exhibit 1	Definition of "Abandonment": Please delete clause (a).	See Question 668.	1/25/08
670.	CDA Exhibit 1	Definition of "Additional Properties": "Additional Properties means properties proposed by Developer to be added to the Project Right of Way to be used for Project-related purposes that are not within the Project Right of Way boundaries identified in the NEPA Approvals, including those properties outside such boundaries to be used as Project Specific Locations, but excluding any additional Project Right of Way required in connection with the IH 35 Capacity Improvement Section to accommodate the functionality requirements of the Ultimate Configuration." Any additional properties required in connection with IH-35 Capacity Improvement Section to accommodate functionality requirements of the Ultimate Configuration should not be considered "Additional Properties" for which the Developer is responsible.	No change, but see Questions and Answers Matrix re Book 2B and Reference Information Documents Question 43.	5/29/08
671.	CDA Exhibit 1	Definitions of "Airspace"/"Unplanned Revenue Impacting Facilities" and §11.3 of the CDA: The contemplated non-compete protection is currently too narrowly defined. In addition to the vertical column, facilities in horizontally adjacent areas that may effectively adversely impact the Developer's operations should be included.	See Question 316.	10/19/07
672.	CDA Exhibit 1	Definitions of "Airspace"/"Unplanned Revenue Impacting Facilities" and §11.3 of the CDA: The contemplated non-compete protection is currently too narrowly defined. In addition to the vertical column, facilities in horizontally adjacent areas that may effectively adversely impact the Developer's operations should be included.	See Question 671.	1/25/08
673.	CDA Exhibit 1	Definition of "Base Case Financial Model": "Base Case Financial Model means the Financial Model	No change.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Formulas and the assumptions and information used by or incorporated in the Financial Model Formulas approved by the Parties as of the Effective Date for the Project other than the IH 35E Capacity Improvement Section, and if the Financial Close is after the Effective Date, as subsequently revised to reflect differences in the financing terms and conditions set forth in the Initial Funding Agreements from those assumed in the Financial Model Formulas approved as of the Effective Date and as otherwise approved by the Parties and subjected to an updated audit and opinion from the independent model auditor within two Business Days after Financial Close . . ."		
674.	CDA Exhibit 1	Definition of "Betterment": "Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means (x) any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility or (y) any mandatory upgrade required by law." The definition should include upgrades that are mandatory by law.	No change. See Question 223.	10/19/07
675.	CDA Exhibit 1	Definition of "Breakage Costs:" Please include the text "or customary" after the text "commercially reasonable" in the first line.	No change. It has to be commercially reasonable.	10/19/07
676.	CDA Exhibit 1	Definition of "Breakage Costs:" Please include the text "or customary" after the text "commercially reasonable" in the first line.	See Question 675.	1/25/08
677.	CDA Exhibit 1	Definition of Change in Law to include "any imposition of universal road pricing schemes within the Dallas Fort Worth area" Several municipalities and states are currently experimenting with universal road pricing schemes that charge drivers for driving on any road. If such a scheme was to be implemented in Dallas Fort Worth, it would have significant impact on the project as even small decreases in overall traffic volume will has large impacts on the revenue-generating capability of Managed Lane projects.	No change. The requested change is already contemplated within the definition of Change in Law.	10/19/07
678.	CDA Exhibit 1	Definition of "Change in Law:" Please replace the current definition with the following: "Change in Law means (a) the adoption of any Law after the Proposal	Addendum #3 is expected to make the requested changes in clause (b). The exclusions will, however, remain.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Due Date or (b) any change, amendment to, repeal or revocation of any Law or any change in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date".		
679.	CDA Exhibit 1	Definition of "Change in Law:" Please replace the current definition with the following: "Change in Law means (a) the adoption of any Law after the Proposal Due Date or (b) any change, amendment to, repeal or revocation of any Law or any change in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date".	See Question 677.	1/25/08
680.	CDA Exhibit 1	Definition of "Change of Control": Please include the text "immediately prior to such Change of Control" after the text "of the management of Developer" in the ninth line of such definition. Clause (a) should exclude from the concept of Change of Control a change in the possession of the power to direct or control the management of Developer due solely to bona fide open market transactions over recognized stock exchanges. In addition, in clause (e), the Developer should not be required to deliver copies of shareholder agreements to TxDOT.	Line 9. Addendum #1 is expected to make the requested change. Clause (a). Addendum #1 is expected to make the requested change. Clause (e). No change. TxDOT must have the ability to verify.	10/19/07
681.	CDA Exhibit 1	Definition of "Change of Control": In clause (e), the Developer should not be required to deliver copies of shareholder agreements to TxDOT.	See Question 680.	1/25/08
682.	CDA Exhibit 1	Definition of "Change Request" Please consider whether non-mandatory Upgrades that are part of the Ultimate Configuration should not be treated as a Change Request. Therefore, please add the words "that are not part of the Ultimate Configuration" at the end of such definition. (This provision was accepted in SH 121.)	No change is appropriate. But see Question 317.	10/19/07
683.	CDA Exhibit 1	Definition of "Change Request" Please consider whether non-mandatory Upgrades that are part of the Ultimate Configuration should not be treated as a Change Request. Therefore, please add the words "that are not part of the Ultimate Configuration" at the end of such definition. (This provision was accepted in SH 121.)	See Question 677.	1/25/08
684.	CDA Exhibit 1	Definition of "Comparable Limited Access Highways" Please delete the word "full" after the text "Highways that have" in the first line and replace it with the text ", in whole or in part,".	See revisions to the definition.	10/19/07
685.	CDA Exhibit 1	Definition of "Comparable Limited Access Highways" Please delete the word "full" after the text "Highways that have"	See Question 684.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		in the first line and replace it with the text ", in whole or in part,".		
686.	CDA Exhibit 1	Definitions of "Compensation Event" and "Relief Event": Add Relief Event (h) as a Compensation Event. Work done in the vicinity of the Project Right of Way that disrupts Developer's onsite Work could also increase costs. This risk should not be borne by the Developer alone.	No change. This is a normal risk of ownership. See Question 305.	10/19/07
687.	CDA Exhibit 1	Definitions of "Compensation Event" and "Relief Event": Add Relief Event (o) as a Compensation Event. All environmental issues are beyond the Developer's control and cannot be managed by it entirely. This risk should be shared with TxDOT.	No change. Note that Relief Events may become Compensation Events under Section 13.1.4.4. Developer will have the protection of clause (m) of the definition of Compensation Event. In addition, a termination remedy exists and any challenge should be known prior to close of financing.	10/19/07
688.	CDA Exhibit 1	Definitions of "Compensation Event" and "Relief Event": Add Relief Events (h) and (o) to Compensation Event. Relief Event (h): Work done in the vicinity of the Project Right of Way that disrupts Developer's onsite Work could also increase costs. This risk should not be borne by the Developer alone. Relief Event (o): All environmental issues are beyond the Developer's control and cannot be managed by it entirely. This risk should be shared with TxDOT.	See Questions 686 and 687.	1/25/08
689.	CDA Exhibit 1	Definitions of "Compensation Event" and "Relief Event": Please add the following as a Compensation Event and a Relief Event: "Any safety issue that arises as a result of Developer's compliance with the Technical Documents and Safety Standards;"	No change.	5/9/08
690.	CDA Exhibit 1	Definition of "Compensation Event" Failure to approve satisfaction of the conditions to commencement of construction should be treated as a Compensation Event. Please add the following text after the text "from any local Government Entity" in clause (p): "or unreasonable and unjustified delay by a Utility Owner with whom Developer has been unable to enter into a Utility Agreement in connection with a Utility Adjustment." It is unreasonable for the Developer to bear this risk. Please add a new clause (t): "occurrence of a Relief Event that directly causes delay in performance for a consecutive period of 270 days." The following Compensation Events should be added: i. Failure by TxDOT to provide lands; ii. Protest actions or a labor disputes; iii. Governmental expropriation or confiscation of property by	Failure to approve conditions to commencement of construction. No change. TxDOT does not issue an approval of the conditions precedent to commencement of construction. See Section 7.6.1. Clause (p). No change. TxDOT believes Developer is better able to manage this risk. Note that in this project utilities are generally entitled to 100% reimbursement. Clause (t). No change, but see clause (s). i. No change. Failure by TxDOT to provide lands is covered as a Compensation Event as a TxDOT-Caused Delay. ii. No change. iii. No change, but see Section 17.5.1.5. iv. No change, but see clauses (c) and (f) of the definition of Compensation Event.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		governmental authorities; and iv. TxDOT materially impeding the Developer from carrying out its obligations under this Agreement as a result of exercising its rights of access to the Project facilities under the CDA.		
691.	CDA Exhibit 1	Definition of "Compensation Event" 1. Please add the following text after the text "from any local Government Entity" in clause (p): "or unreasonable and unjustified delay by a Utility Owner with whom Developer has been unable to enter into a Utility Agreement in connection with a Utility Adjustment." It is unreasonable for the Developer to bear this risk. 2. The HOV Discount Factor and the HOV Discount Period described in Exhibit 4 to the CDA may be modified by TxDOT in its sole discretion. If the HOV Discount Factor were to be raised or the HOV Discount Period were decreased or eliminated by TxDOT, such modification will likely adversely impact the of HOV users. A decrease in traffic attributable to an increase of the HOV Discount Factor or a decrease of the HOV Discount Period should be a Compensation Event. 3. The following Compensation Events should be added: -Protest actions or labor disputes; and -TxDOT materially impeding the Developer from carrying out its obligations under the CDA as a result of exercising its rights of access to the Project facilities under the CDA.	1. See Question 690. 2. No change. 3. No change. Note that Section 11.2.4 provides that certain impacts impeding the Developer will be treated as Relief and Compensation Events.	1/25/08
692.	CDA Exhibit 1	Definition of "Compensation Event" The HOV Discount Factor and the HOV Discount Period described in Exhibit 4 to the CDA may be modified by TxDOT in its sole discretion. If the HOV Discount Factor were to be raised or the HOV Discount Period were decreased or eliminated by TxDOT, such modification will likely adversely impact the of HOV users. A decrease in traffic attributable to an increase of the HOV Discount Factor or a decrease of the HOV Discount Period should be a Compensation Event.	See Question 691(2).	4/4/08
693.	CDA Exhibit 1	Definition of "Compensation Event" Clause (i) should be amended as follows: "TxDOT's suspension of tolling pursuant to Section 3.6.1 (if the conditions of Section 3.6.1.1 through 3.6.1.3 have not been satisfied) and Section 3.6.3 of the Agreement to the extent set forth in Section 3.6.3 of the Agreement;" This language merely clarifies that if the conditions of 3.6.1.1 through 3.6.1.3 have not been satisfied, the Developer shall be	Addendum #6 is expected to provide compensation for suspension of tolling pursuant to Section 3.6.1 if the conditions of Sections 3.6.1.1 through 3.6.1.3 have not been satisfied. See Question 570.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		entitled to compensation. This provision is of great concern to our potential lenders.		
694.	CDA Exhibit 1	Definition of "Compensation Event" Clause (i) should be amended as follows: "TxDOT's suspension of tolling pursuant to Section 3.6.1 (if the conditions of Section 3.6.1.1 through 3.6.1.3 have not been satisfied) and Section 3.6.3 of the Agreement to the extent set forth in Section 3.6.3 of the Agreement;" This language merely clarifies that if the conditions of 3.6.1.1 through 3.6.1.3 have not been satisfied, the Developer shall be entitled to compensation. This provision is of great concern to our potential lenders. TxDOT's response in the Q&A Matrix indicated that compensation will be provided for suspension of tolling pursuant to 3.6.1 if the conditions of 3.6.1.1-3.6.1.3 are not satisfied. Please confirm this is correct.	See Question 693.	5/9/08
695.	CDA Exhibit 1	Definition of "Compensation Event" Clause (m): "Issuance by a court in a legal proceeding challenging any NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 of a temporary restraining order or other form of temporary injunction that prohibits prosecution of any portion of the Work or imposition of tolls; Clause (n): "Any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 as compared to the design concept indicated in the alternative that was the subject of the NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, except to the extent the change in design concept had already been incorporated into Developer's design schematics assumed in connection with the Base Case Financial Model; Clause (p): "Failure to obtain, or unreasonable and unjustified delay in obtaining, a Governmental Approval from any local Governmental Entity, except to the extent that such failure or delay results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance	Addendum #6 is expected to add the requested parenthetical to clause (p). See Question 740.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		with the NEPA Approval, environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer (other than in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2) of the design concept included in the NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property); Add a clause (t): "The imposition of any mitigation measures or pre-construction requirements pursuant to any environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, that are in addition to those required under the TxDOT-Provided Approvals obtained prior to the date which is ninety (90) days prior to the Proposal Due Date.		
696.	CDA Exhibit 1	Definition of "Completed Payment Activity" Please delete definition as it is not used.	See Exhibit 7, Part E.	10/19/07
697.	CDA Exhibit 1	Definition of "Completed Payment Activity" Please delete definition as it is not used.	See Question 696.	1/25/08
698.	CDA Exhibit 1	Definition of "Contractor" Please add the following text "other than NTTA" after the text "any Person" in the first line of such definition.	No change. Excluding NTTA would have unintended effects. See Question 703.	1/25/08
699.	CDA Exhibit 1	Definition of "Contractor" Please add the text "(other than NTTA)" after the word "Contractor" each time it occurs in the following provisions: Sections 7.1.3, 7.6.1.9, 8.9.1.7, 9.1.8, 9.3.3.1, 9.3.3.2, 10.2.1, 10.2.2, 10.2.3, 10.6.1, 10.6.3, 10.8.1, 10.8.3, 10.10.2, 10.11.1, 15.1.13, 16.1, 16.1.2.4, 16.1.2.5, 16.1.2.8, 16.1.2.9, 16.5.1.6, 23.1 and 24.5.3 of the CDA; Definitions of "Contract" and "Key Contractor" in Exhibit 1 of the CDA; Part H. 4. of Exhibit 4; Clause (d) of the introductory paragraph in Attachment 1 to Exhibit 8 of the CDA; Sections 8, 9 and 12 of Exhibit 20 of the CDA; In Ref. 19 and 20 of Exhibit 21 of the CDA; Section 5.7 of Exhibit C of the ITP; Section 16.5.1.6 of Exhibit 8 to Exhibit H-1 of the ITP; and Sections 16.2.1, 16.2.3.1, 16.2.4 and 16.2.4.1 of Form K of the ITP.	Addendum #6 is expected to make the requested changes other than in Sections 10.8.1 and 10.8.3 (see NTTA TSA Sections 25(b) and (c)), 10.10.2 and 10.11.1 (see last sentence of each such Section), the definitions of "Contract" and "Key Contract," Section 5.7 of Exhibit C of the ITP and Attachment 1 to Form K-1 (not currently applicable to NTTA because it will have no physical activity on the Project).	4/4/08
700.	CDA Exhibit 1	Definition of "Critical Path" This should also include reference to an effect on the Final	Addendum #3 is expected to revise the definition to read: "the longest chain(s), in terms of time, of logically connected activities	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Acceptance Date. (This provision was accepted in SH 121).	on the Project Schedule ending with ~~Service Commencement~~Final Acceptance. Any delay along a Critical Path will affect the calculated Service Commencement Date or Final Acceptance Date."	
701.	CDA Exhibit 1	Definition of "Critical Path" This should also include reference to an effect on the Final Acceptance Date. (This provision was accepted in SH 121).	See Question 700.	1/25/08
702.	CDA Exhibit 1	Definition of "Developer-Related Entities" Please delete clauses (c) and (d) in their entirety.	No change. Developer is responsible for acts and omissions of its Contractors.	10/19/07
703.	CDA Exhibit1	Definition of "Developer-Related Entities" 1. Please add the following text at the end of such definition "provided however that NTTA shall not be considered a Developer-Related Entity". 2. Further, please delete clauses (c) and (d) in their entirety. It is inappropriate for the Developer to incur liability for any such unrelated persons.	1. No change. This would have unintended effects, among other things, of (i) reducing TxDOT's 1.5.2 protections from claims of reliance on RIDs, (ii) reducing TxDOT's 6.3.2.5 protections from NTTA-caused delays, (iii) improperly removing 8.8.4 Patron Confidential Information provisions from application to NTTA, (iv) exonerating Developer from all responsibility for NTTA acts under 10.2.5, (v) exempting the NTTA contract from including the federally required anti-discrimination clause under 10.8.2, (vi) excluding the acts, omissions or harm NTTA might cause from Developer's indemnities, etc. 2. See Questions 698 and 702.	1/25/08
704.	CDA Exhibit 1	Definition of "Developer-Related Entities" Please add the text "(other than NTTA)" after the text "Developer-Related Entities" or "Developer-Related Entity", as the case may be, each time it occurs in the following provisions: Sections 1.5.2, 6.3.2.5, 6.3.8.1(b), 7.6.1.17, 8.9.1.1, 8.9.2.1, 10.2.5, 10.7.1, 10.7.1.3, 10.7.1.4, 10.7.1.6, 10.7.2, 10.8.2, 10.13, 16.1.2.13, 16.5.1.2, 16.5.1.3, 16.5.1.4, 16.5.1.5, 16.5.1.8, 16.5.1.9, 16.5.1.10, 16.5.1.11, 16.5.1.12, 16.5.1.13, 17.1.1.6, 17.3.11.2 and 24.2.2 of the CDA; The definitions of "Compensation Event" (clauses (f) and (p)), "Developer Release(s) of Hazardous Material", "Discriminatory Change in Law", "Relief Event" (first paragraph as well as clauses (i), (m), (o), (q) and (r)), "TxDOT Caused Delays" (first paragraph) and "TxDOT Release(s) of Hazardous Material" in Exhibit 1 of the CDA; Section 4 of Exhibit 4 of the CDA; Sections 16.5.1.1, 16.5.1.2, 16.5.1.3, 16.5.1.4, 16.5.1.5, 16.5.1.8, 16.5.1.9, 16.5.1.10, 16.5.1.11 and 16.5.1.12 in Exhibit 8 to Exhibit H-1 of the ITP. Further, please delete clauses (c) and (d) in their entirety. It is inappropriate for the Developer to incur liability for any such unrelated persons.	Addendum #6 is expected to add the parenthetical as requested other than to Sections 1.5.2, 6.3.2.5, 8.9.1.1 (not currently applicable to NTTA because it will have no physical activity on the Project, but if Developer and NTTA enter into a future agreement that would violate 8.9.1.1, Developer should be responsible), 8.9.2.1 (same reason), 10.8.2 (see NTTA TSA Section 25(b)), 16.1.2.13, 17.1.1.6 (there is no contemplated Airspace use by NTTA under the NTTA TSA other than its signage, but if Developer and NTTA enter into a future agreement that would violate 17.1.1.6, Developer should be responsible), "Developer Release(s) of Hazardous Materials" (the definition does not currently apply to NTTA because it will have no on-site activity that could expose it to liability, but if Developer and NTTA enter into a future agreement that leads to an NTTA release of Hazardous Materials, Developer should be responsible), clause (m) of "Release Event" (similar reason), "TxDOT Release(s) of Hazardous Materials" (similar reason), Section 4 of Exhibit 4 (similar reason).	4/4/08
705.	CDA Exhibit 1	Definition of "Discriminatory" or "Discriminatory Action" Please delete clauses (ii) through (v).	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
706.	CDA Exhibit 1	Definition of "Discriminatory" or "Discriminatory Action" Please delete clauses (ii) through (v).	See Question 705.	1/25/08
707.	CDA Exhibit 1	Definition of "Discriminatory Change in Law" Please add the following text "or affects and/or" before the text "the effect of which is." Please delete clauses (b) and (c).	No change.	10/19/07
708.	CDA Exhibit 1	Definition of "Discriminatory Change in Law" Please add the following text "or affects and/or" before the text "the effect of which is." Please delete clauses (b) and (c).	See Question 707.	1/25/08
709.	CDA Exhibit 1	Definition of "Disputes Board Member Misconduct" In Subsection (a), delete "ex parte communication or discussion between any Disputes Board member and either Party (or a member of the Conflicts Group on behalf of either Party) or other." The impermissible ex parte communications are adequately covered by the remainder of the sentence.	Addendum #1 is expected to revise Rule R-10(a) to read, "… (i) neither Party, including the members of its Conflicts Group and its counsel …"	10/19/07
710.	CDA Exhibit 1	Definition of "Disputes Board Member Misconduct" In Subsection (a), delete "ex parte communication or discussion between any Disputes Board member and either Party (or a member of the Conflicts Group on behalf of either Party) or other." The impermissible ex parte communications are adequately covered by the remainder of the sentence.	See Question 709.	1/25/08
711.	CDA Exhibit 1	Definition of "Dispute Resolution Procedures" Please exclude the "Informal Resolution Procedures" from the definition.	No change. Addendum #3, however, is expected to clarify the Dispute Resolution Procedures. See Question 520.	10/19/07
712.	CDA Exhibit 1	Definition of "Dispute Resolution Procedures" Please exclude the "Informal Resolution Procedures" from the definition.	See Question 711.	1/25/08
713.	CDA Exhibit 1	Definition of "Exempt Refinancing" Please replace the current clause (b) with the following text "(b) the refinancing, remarketing or replacement of any Project Debt which occurs as a contemplated feature of such Project Debt".	No change. The requested language would eviscerate the Refinancing notice and Refinancing Gain provisions, as virtually all Project Debt contemplates that it will eventually be refinanced. The existing definition already addresses Refinancings taken into account in the Base Case Financial Model.	10/19/07
714.	CDA Exhibit 1	Definition of "Exempt Refinancing" Please replace the current clause (b) with the following text "(b) the refinancing, remarketing or replacement of any Project Debt which occurs as a contemplated feature of such Project Debt and does not result in the issuance of different or additional Project Debt".	Addendum #3 is expected to add: "(e) Periodic resetting on a daily, weekly or monthly basis of interest on Project Debt at a variable or floating rate that is determined according to specific objective indices or criteria set forth in the Funding Agreement. Commercial paper does not qualify for exemption under this clause (e). For this purpose, "commercial paper" means a short-term debt instrument that is issued for varying terms (from 1 to 270 days) at interest rates that correspond to the individual terms placed. Commercial paper matures at the end of each term and may be subsequently reissued."	1/25/08
715.	CDA Exhibit 1	Definition of "Exempt Refinancing" In clause (e), please add the text "and remarketing" after the text	Addendum #6 is expected to revise clause (e).	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"Periodic resetting" in the beginning of the clause and replace the text "or monthly basis" with the text ", monthly or any similar basis" after the text "daily, weekly" in the first line.		
716.	CDA Exhibit 1	Definition of "Exempt Refinancing" Please remove the exclusion of commercial paper from the definition of exempt refinancing, or explain why it is necessary or appropriate.	See Question 715.	5/9/08
717.	CDA Exhibit 1	Definition of "Exempt Vehicles" Please insert the text "in accordance with the terms of the Agreement" after the text "operation of the Project" in the fourth line.	No change. See Question 39.	10/19/07
718.	CDA Exhibit 1	Definition of "Exempt Vehicles" Please insert the text "in accordance with the terms of the Agreement" after the text "operation of the Project" in the fourth line.	See Question 717.	1/25/08
719.	CDA Exhibit 1	Definition of "Existing Improvements" Please consider whether a more specific description of these improvements should be included in an annex.	Note that IH 635/US 75 Interchange is a defined term and is described in the Technical Provisions.	10/19/07
720.	CDA Exhibit 1	Definition of "Existing Improvements" Please consider whether a more specific description of these improvements should be included in an annex.	See Question 719.	1/25/08
721.	CDA Exhibit 1	Definition of "Fair Market Value" Please include the following new sentence in clause (a)(ii) of the definition "Notwithstanding anything herein to the contrary, all information relating to the occurrence of a Compensation Event should be treated without duplication in the manner as set forth in clause (e) of this definition."	Addendum #6 is expected to add "Subject to clause (e) below" to the beginning of clauses (a)(ii) and (a)(iv).	4/4/08
722.	CDA Exhibit 1	Definition of "Fair Market Value" in clause (iv) The Developer should have a right to compensation if it assigns its rights to insurance coverage relating to an unusual temporary event or circumstance specific to the Project.	No change. Insurance availability and assertion of coverage claims will be in Developer's control. It will make decisions on deductibles and policy amounts within the parameters of the CDA, and bears the risk of deductibles, inadequacy of coverage and failure to file claims.	10/19/07
723.	CDA Exhibit 1	Definition of "Fair Market Value" in clause (iv) The Developer should have a right to compensation if it assigns its rights to insurance coverage relating to an unusual temporary event or circumstance specific to the Project.	See Question 722.	1/25/08
724.	CDA Exhibit 1	Definition of "Fast-Track Dispute" Please insert "means" between "Dispute" and "any".	Addendum #1 is expected to make the requested change.	10/19/07
725.	CDA Exhibit 1	Definition of "Force Majeure"/"Relief Event" Please explain why unavailability of insurance for the risks of flood, earthquake, etc. shall be a Force Majeure Event and not a Relief Event, especially in light of the fact that a Force Majeure Event is also a Relief Event (see (a) of definition of Relief Event).	For certain purposes, Force Majeure Events are treated differently than Relief Events. See Question 388.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
726.	CDA Exhibit 1	Definition of "Force Majeure"/"Relief Event" Unavailability of insurance for the risks of flood, earthquake etc. shall all be a Relief Event, especially in light of the fact that a Force Majeure Event is also a Relief Event (see (a) of definition of Relief Event).	Unavailability of insurance for such risks will result in such risks being Relief Events under clause (a) of the definition of Relief Event rather than under clause (b) of the definition. See Question 725.	1/25/08
727.	CDA Exhibit 1	Definition of "Funding Agreement" In clause (a), please insert the text "premium letter" after the words "or control agreement," in the second line and the text "or any agreement relating to any financing of a PABs Issuer in connection with the Project" at the end of such clause.	No change. The requested text at end of the clause is already adequately covered by the last clause.	10/19/07
728.	CDA Exhibit 1	Definition of "Funding Agreement" In clause (a), please insert the text "premium letter" after the words "or control agreement," in the second line and the text "or any agreement relating to any financing of a PABs Issuer in connection with the Project" at the end of such clause.	Addendum #3 is expected to make the first requested change but not the second change. The phrase "or any agreement relating to any financing of a PABs Issuer in connection with the Project" is too vague and broad, and the laundry list already covers all the forms of funding agreements expected for bond financings, whether taxable or tax-exempt.	1/25/08
729.	CDA Exhibit 1	Definition of "Highway" Please consider whether a specific reference to Section 201.103 of the Texas Transportation Code should be included in this definition.	No change. Section 201.103 refers to the Commission's powers and duties and does not purport to fix a definition of highway.	10/19/07
730.	CDA Exhibit 1	Definition of "Highway" Please consider whether a specific reference to Section 201.103 of the Texas Transportation Code should be included in this definition.	See Question 729.	1/25/08
731.	CDA Exhibit 1	Definition of "Initial Senior Project Debt" Please clarify that any amounts contemplated (as available to be drawn) as part of the original financing to be provided for the construction of the new capacity improvement, even if not shown as drawn or outstanding as part of the financing plan as a result of the discretionary right of TxDOT to issue NTP3 would constitute "Initial Senior Project Debt".	The reference to "face amount" connotes that it include funds both drawn and available for draw.	4/10/08
732.	CDA Exhibit 1	Definition of "Intelligent Vehicle Highway System" Please reinsert definition as it is used in the definition of Unplanned Revenue Impacting Facilities.	Addendum #1 is expected to make the requested change.	10/19/07
733.	CDA Exhibit 1	Definition of "Interoperability Fee" Please insert the text "(including NTTA, TxDOT or any other third party)" after the text "which manages and operates" in the second line.	No change is required. The provision is written with reference to "any Person." Further, it may not always be the case, for example, that NTTA is included.	1/25/08
734.	CDA Exhibit 1	Definition of "Key Contract" Please delete clause (f). The provision adds an unnecessary restraint to the Design-Build Contractor.	No change. Clause (f) does not apply to the Design-Build Contractor's subcontracts, because it only concerns prime contracts.	10/19/07
735.	CDA Exhibit 1	Definition of "Key Contract" Please delete clause (f). The provision adds an unnecessary	See Question 734.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		restraint to the Design-Build Contractor.		
736.	CDA Exhibit 1	Add Definition of "Lender Warning Notice" means a written notice that TxDOT delivers to Developer pursuant to Section 20.4.1 and containing a reference to Section 20.4.1." See comment to Section 20.4.1.	No change. See Question 618.	1/25/08
737.	CDA Exhibit 1	Definition of "Losses" Please insert the word "reasonable" before the words "attorneys', accountant's and expert" in the second line.	No change. Note that the provision is reciprocal.	10/19/07
738.	CDA Exhibit 1	Definition of "Losses" Please insert the word "reasonable" before the words "attorneys', accountant's and expert" in the second line.	See Question 737.	1/25/08
739.	CDA Exhibit 1	Definition of "Managed Lanes" Please delete the words "that increase traffic efficiency by using various design and operational strategies (including congestion priced tolls)" in the first and second line as the definition should not be determined in respect of a qualitative analysis.	Addendum #1 is expected to change the definition, including making the requested deletion.	10/19/07
740.	CDA Exhibit 1	Definition of "NEPA Approval" "NEPA Approval means collectively, all Governmental Approvals required under NEPA in connection with the Project ~~each decision document issued by FHWA for the Project or a portion of the Project~~, including all those identified in Section 4.2 of the Technical Provisions and all approved supplements and reevaluations pertaining to the Project, but excluding any environmental reevaluations necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 ~~as of the Effective Date~~."	Addendum #6 is expected to clarify that the definition of NEPA Approval includes environmental reevaluations necessary in connection with alternative technical concepts approved by TxDOT and described in Exhibit 2.	5/29/08
741.	CDA Exhibit 1	Definition of "NEPA Finality Date" Please replace the word "first" with the word "last" before the text "to occur of (a)" in the first line.	See Question 745.	10/19/07
742.	CDA Exhibit 1	Definition of "NEPA Finality Date" Please insert the text "the last to occur of (a)" before the text "the date of expiration" in the first line and replace the text "; provided, however, that if any such legal action is filed within the statute of limitations, then NEPA Finality Date means" with the text "or (b)". Further, please replace the date "2007" with "2008" in each instance that it occurs.	See Question 745.	1/25/08
743.	CDA Exhibit 1	Definition of "NEPA Finality Date" Please provide the finality date for the NEPA approvals.	See Question 745.	1/25/08
744.	CDA Exhibit 1	Definition of "NEPA Finality Date" 1. Please add the word "approval" after the word "environmental reevaluation" in the proviso at the end of the definition of "NEPA Finality Date" both times it occurs. 2. Further, please delete or clarify the reference to "statute of	1. See Question 745. 2. TxDOT does not agree that the statute of limitations does not apply to FONSIs.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		limitations" as we understand there is no statute of limitations applicable to FONSIs.		
745.	CDA Exhibit 1	Definition of "NEPA Finality Date" "NEPA Finality Date means, with respect to any NEPA Approval or environmental reevaluations necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, the date of expiration, without the filing of a legal action, of the federal statute of limitations for commencing legal action to challenge the validity of such ~~any~~ NEPA Approval or environmental reevaluation ~~issued on or after the date that is six months after the date of the last TxDOT-Provided Approval~~; provided, however, that if any such legal action is filed within the statute of limitations, then NEPA Finality Date means the date of entry, if later, of a final, non-appealable dismissal with prejudice or judgment denying permanent injunctive relief in all legal actions brought challenging the validity of such ~~any~~ NEPA Approval or environmental reevaluation ~~issued on or after the date that is six months after the date of the last TxDOT-Provided Approval; provided, further, that if Developer's Proposal includes any alternative technical concepts approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation and there is a right to a private cause of action challenging the environmental reevaluation, then "the last TxDOT-Provided Approval" is deemed replaced with "the last TxDOT-Provided Approval or such environmental reevaluation~~."	Addendum #6 is expected to revise the definition as follows: NEPA Finality Date means the date of expiration, without the filing of a legal action, of the federal statute of limitations for commencing legal action to challenge the validity of any NEPA Approval; provided, however, that if any such legal action is filed within the statute of limitations, then NEPA Finality Date means the date of entry, if later, of a final, non-appealable dismissal with prejudice or judgment denying permanent injunctive relief in all legal actions brought challenging the validity of any NEPA Approval.	5/29/08
746.	CDA Exhibit 1	Definition of "NTP2 Conditions Deadline"" "NTP2 Conditions Deadline means (i) the outside date set forth in the Milestone Schedule by which Developer is obligated under the Agreement to satisfy all conditions to issuance of NTP2 or (ii) if a Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation, the Project Financing Deadline, in each case as such deadline may be extended for Relief Events from time to time pursuant to the Agreement."	No change. See Question 173.	5/29/08
747.	CDA Exhibit 1 §§ 2.1, 7.8.1, 7.8.3, 7.8.4	Definitions of "Operating Commencement Date", "Final Acceptance", "Service Commencement", "Substantial Completion" The Project as contemplated by the CDA is currently divided into (i) Sections and (ii) Toll Segments. The term "Section" only refers to the Operating Commencement Date, whereas the term "Toll Segment" is used for Substantial Completion, Service Commencement and Final Acceptance. Accordingly, as currently drafted, a Section has to be constructed, but a Toll	For purposes of Substantial Completion, Service Commencement and Final Acceptance, Addendum #6 is expected to change "Toll Segment" to new term "Project Segment." TxDOT does not believe the use of Section and Project Segment is inconsistent. Developer must commence construction of specified Sections (via Project Segments) by specified deadlines and must obtain Service Commencement of the entire Project (all Project Segments) by the Service Commencement Deadline.	4/10/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Segment has to be substantially completed. Either "Section" or "Toll Segment" needs to be used consistently to avoid a mismatch.		
748.	CDA Exhibit 1	Definition of "Operating Commencement Date" Please add the word "approval" after the text "obtains the environmental reevaluation" in clauses (a)(ii), (b)(ii) and (c)(ii) in the definition of "Operating Commencement Date" each time it occurs.	Addendum #6 is expected to make the requested changes.	5/9/08
749.	CDA Exhibit 1	Definition of "Payment Activity" Please define what constitutes "mobilization costs".	Addendum #6 is expected to define mobilization costs in Section 2.1.1.1 of the Technical Provisions.	4/4/08
750.	CDA Exhibit 1	Definition of "Payment Activity" Please revise the beginning of the definition as follows: "Payment Activity means a Schedule Activity at the lowest level of any branch of the WBS Level IV that represents all of the Work that is eligible…"	No change.	5/9/08
751.	CDA Exhibit 1	Definition of "Phase I Hazardous Materials Investigation" Please provide a copy of such assessment, if available.	All available investigations are in the RID.	1/25/08
752.	CDA Exhibit 1	Definition of "Phase 1 Hazardous Materials Investigation" "Phase 1 Hazardous Materials Investigation means an environmental assessment conducted materially in accordance with ASTM E-1527-0~~6~~5, or any future revision or replacement thereof, to identify Recognized Environmental Conditions and potential Recognized Environmental Conditions. If updated or original phase 1 investigations are conducted, minor variations from the ASTM standard should not invalidate the investigations. According to the ASTM website, ASTM E-1527-05 is the most recent version of the phase 1 standard.	Addendum #6 is expected to change ASTM E-1527-06 to ASTM E-1527-05. The term "materially" will not be added, but Addendum #6 is expected to clarify the use of the term Phase 1 Hazardous Materials Investigation in CDA Section 7.9.2 and the definition of Pre-existing Hazardous Materials.	4/4/08
753.	CDA Exhibit 1	Definition of "Phase 1 Hazardous Materials Investigation" "Phase 1 Hazardous Materials Investigation means an environmental assessment conducted materially in accordance with ASTM E-1527-0~~6~~5, or any future revision or replacement thereof, to identify Recognized Environmental Conditions and potential Recognized Environmental Conditions. If updated or original phase 1 investigations are conducted, minor variations from the ASTM standard should not invalidate the investigations. According to the ASTM website, ASTM E-1527-05 is the most recent version of the phase 1 standard.	See Question 752.	5/9/08
754.	CDA Exhibit 1	Definition of "Pre-Existing Hazardous Materials" When will the Phase 1 study referenced in the definition of Pre-Existing Hazardous Materials be provided?	Addendum #1 is expected to update the definition.	10/19/07
755.	CDA	Definition of "Pre-Existing Hazardous Materials"	All available investigations are in the RID.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	Exhibit 1	Please provide copies of the reports listed in clause (i) of such definition.		
756.	CDA Exhibit 1 Addendum 1	Definition of "Pre-Existing Hazardous Materials" Please include the reference to the TxDOT Phase I ESA performed for this project that was provided to the Proposer in the RID.	The definition refers to the investigations in the RID.	1/25/08
757.	CDA Exhibit 1	Definition of "Pre-Refinancing Data" Clause (g), please delete the text "and tax opinions" after the text "appropriate back up data" in the third line.	Addendum #3 is expected to change "tax opinions" to "tax letters, assumptions and other documentation." Because Refinancing Gain involves a Post-Tax calculation, such documentation will be relevant.	10/19/07
758.	CDA Exhibit 1	Definition of "Pre-Refinancing Data" Please add "(a)," after "under clause" in the second line or provide an explanation why this is supposed to be excluded from the definition. Clause (g), please delete the text "and tax opinions" after the text "appropriate back up data" in the third line.	Disclosure is appropriate because this refinancing can affect termination. See Question 757.	1/25/08
759.	CDA Exhibit 1	Definition of "Project Financing Deadline" Please delete the clause references "(a)" and "(b)" and replace the number "90" with the number "180".	Addendum #3 is expected to contemplate that the deadline may be extended by up to 180 days.	1/25/08
760.	CDA Exhibit 1	Definition of "Project Right of Way" Please provide copies of all real estate related documents affecting the property, including title reports and underlying lease and easement agreements as well as a survey of the property if available.	Indicative information is available in the RID. Detailed files have been furnished. Please note that TxDOT has committed to two utility companies that it will pay replacement costs for their existing utility relocations: TXU transmission at the IH 635/IH 35E interchange (relocation costs only) and Atmos Energy Gas line along the north side of IH 635 between Webb Chapel and Josey Lane (easement and relocation costs).	1/25/08
761.	CDA Exhibit 1	Definition of "Refinancing" 1. If the comment to the definition of "Exempt Refinancing" in item 303 above is not accepted, than the definition of "Refinancing" has to be rephrased so that a financing structure that contemplates renewable obligations or remarketing or refinancing of such obligation is excluded therefrom. 2. In clause (a) please delete the words "amendment, variation, novation, supplement," in the first line. Further, please insert the text "or any amendment, variation, novation or supplement of any" after the word "Project Debt" in the second line. Finally, please add the text "that result in any such refunding, defeasance or replacement" at the end of such clause. 3. Please delete clause (c) in its entirety. 4. In clause (d) (which becomes the new clause (c)), please replace the word "through" with the word "and" and the text "(c)" with the text "(b)", both in the last line of such clause.	1. No change. See response to Question 691. 2. Clause (a). No change. Note that certain amendments, etc. are Exempt Refinancings under clause (b) of that definition. 3. Clause (c). Addendum #1 is expected to make the following revisions: "The disposition by Developer of any rights or interests in, or the creation by Developer of any rights of participation in respect of, Project Debt, Funding Agreements and Security Documents or the creation or granting by Developer ~~or any Lender~~ of any other form of benefit or interest in either Project Debt, Funding Agreements and Security Documents or the Developer's Interest whether by way of security or otherwise; or" 4. Clause (d). No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
762.	CDA Exhibit 1	Definition of "Refinancing" In clause (a), please insert the words "that results in the issuance or incurrence of additional Project Debt" prior to the semi-colon appearing in such clause.	No change.	1/25/08
763.	CDA Exhibit 1	Definition of "Refinancing Data" In clause (f), please delete the text "and tax opinions (if any)" after the words "appropriate back up data" in the third line.	See response to Question 762.	10/19/07
764.	CDA Exhibit 1	Definition of "Refinancing Data" In clause (f), please delete the text "and tax opinions (if any)" after the words "appropriate back up data" in the third line.	See Question 762.	1/25/08
765.	CDA Exhibit 1	Definition of "Refinancing Gain" The definition has to be revised so that TxDOT will only receive a share in the Refinancing Gain if a refinancing leads to an IRR higher than the greater of (i) 10.5% and (ii) the IRR projected in the Base Case Model. Exempt Refinancings should be exempted from the calculation of any Refinancing Gain.	Addendum #1 is expected to change 10.5% to 12% and provide clarification with respect to Exempt Refinancings.	10/19/07
766.	CDA Exhibit 1	Definition of "Refinancing Gain" All Exempt Refinancing should be excluded from the calculation of Refinancing Gain, not only the one set forth in clause (a) of the definition of Refinancing Gain.	Refinancing Gain applies to all Refinancings other than any Exempt Refinancing under clause (a) of the definition of Exempt Refinancing, but it is calculated only at each non-Exempt Refinancing.	4/4/08
767.	CDA Exhibit 1	Definition of "Refinancing Gain" "Refinancing Gain means for any Refinancing other than an Exempt Refinancing and other than as set forth below an amount equal to the greater of zero and [(A – B) – C], where: A = the Net Present Value of the Distributions to be made over the remaining Term following the Refinancing, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and any previous Refinancings which resulted in no Refinancing Gain (other than any Exempt Refinancing under clauses (a) and (e) of the definition of Exempt Refinancing) being paid to TxDOT) and using the relevant Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing); . . ." Resetting (decrease) of periodic interest rates may result in a temporary gain to Developer, however, this gain would be out of Developer's control and would be of temporary nature, therefore it should be excluded from the calculation of Refinancing Gain.	See Question 766.	4/4/08
768.	CDA Exhibit 1	Definition of "Refinancing Gain" TxDOT has indicated that all Exempt Refinancing is excluded from the calculation of Refinancing Gain, as provided in the first paragraph of the definition. The references in "A" and "B" are	See Question 766.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		used to calculate the value of the distributions before and after a Refinancing. Please confirm that the next draft of the CDA is expected to clarify the definition.		
769.	CDA Exhibit 1	Definition of "Related Transportation Facilities." Please delete the words "upgrades and expansions thereof".	No change.	10/19/07
770.	CDA Exhibit 1	Definition of "Related Transportation Facilities." Please delete the words "upgrades and expansions thereof".	See Question 769.	1/25/08
771.	CDA Exhibit 1	Definition of "Released for Construction Documents" Please advise which documents are contemplated here as this is a condition precedent to the commencement of construction.	See Question 158.	10/19/07
772.	CDA Exhibit 1	Definition of "Relief Event" Please delete the word "material" before the text "delay or interruption" in the first sentence as it is overly broad. In clause (b), unavailability of insurance for risks of flood, earthquake, etc., should be deemed a Relief Event and not a Force Majeure Event. Failure by TxDOT to timely approve a remediation plan should be deemed a Relief Event. The failure of Utility Owners to reasonably cooperate as necessary in Utility Adjustments should be deemed a Relief Event. In clause (d), please add the text "or Discriminatory Change of Law" at the end of such clause. In clause (e), please include reference to approval of conditions to commencement of construction. Clause (k) should be expanded to include all latent defects and subsurface conditions, not only those at the boring holes.	Addendum #3 is expected to delete "material" before "delay or interruption" in the first sentence. See Question 726 regarding clause (b). See Question 196. Failure of Utility Owners to reasonably cooperate is deemed a Relief Event under clause (q) (or under the Utility Agreement). See Question 690. The requested change to clause (d) is not necessary given that Change in Law (clause (c)) includes Discriminatory Change of Law. See Question 687 regarding clause (e). See Question 8 regarding clause (k).	10/19/07
773.	CDA Exhibit 1	Definition of "Relief Event" 1. Please delete the word "material" before the text "delay or interruption" in the first sentence as it is overly broad. In clause (b), unavailability of insurance for risks of flood, earthquake, etc., should be deemed a Relief Event and not a Force Majeure Event. Failure by TxDOT to timely approve a remediation plan should be deemed a Relief Event. The failure of Utility Owners to reasonably cooperate as necessary in Utility Adjustments should be deemed a Relief Event. 2. Dependant on the nature of the business accessing the frontage road, i.e., bus terminal or trucking agency, there may be significant extraordinary increased pavement damage as a result of the operations that the Developer would not be able to seek relief. We suggest the inclusion of a Relief Event clause to	1. See Question 772. 2. No change. See Question 227.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		address this and similar potential situations (see also comment to Section 8.1.6).		
774.	CDA Exhibit 1	Definition of "Relief Event": Clause (e) to the definition should be amended as follows: "TXDOT failure to perform or observe any of its covenants or obligations under the Agreement or other CDA documents, including ~~unreasonable~~ failure to issue a certificate of Substantial Completion or certificate of satisfaction of conditions precedent to Service Commencement or Final Acceptance after Developer satisfies all applicable conditions and requirements for obtaining such a certificate." Note: this change should also be made in clause (c) of the definition of "Compensation Event". An additional category should be added as a Relief Event to the definition, as a clause (s): "Issuance of a directive from the U.S. Department of Homeland Security or comparable State agency regarding specific security threats to the Project or the region in which the Project is located or which the Project serves, to the extent such directive requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply." TxDOT will have an affirmative obligation to issue such certificates once Developer satisfies all conditions and requirements for obtaining such certificates, thus any failure or delay to issue such certificates are by definition "unreasonable" and should be considered a Relief Event.	Clause (e). Addendum #1 is expected to make this change. Clause (s). No change. The requested clause is already contemplated under Change in Law.	10/19/07
775.	CDA Exhibit 1	Definition of "Relief Event" 1. Failure by TxDOT to timely approve a remediation plan should be deemed a Relief Event. Developer shall be entitled to compensation in such event. 2. The failure of Utility Owners to reasonably cooperate as necessary in Utility Adjustments should be deemed a Relief Event. So far only the delay in cooperating by the Utility Owner is deemed to be a Relief Event.	1. See Question 772(3). 2. See Question 772(4).	4/4/08
776.	CDA Exhibit 1	Definition of "Relief Event" Clause (o): "Suspension, termination or interruption of a NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, except to the extent that such suspension, termination or interruption results from failure by any Developer-Related Entity to locate or design the Project or carry out the	Addendum #6 is expected to add the requested parenthetical. See Question 740.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		work in accordance with the NEPA Approval, environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer (other than in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2) of the design concept included in the NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property); Clause (p): "Any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 as compared to the design concept indicated in the alternative that was the subject of the NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, except to the extent the change in design concept had already been incorporated into Developer's design schematics assumed in connection with the Base Case Financial Model; Clause (q): "Failure to obtain, or unreasonable and unjustified delay in obtaining, a Governmental Approval from any local Governmental Entity, except to the extent that such failure or delay results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval, environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer (other than in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2) of the design concept included in the NEPA Approval or environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property);		

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Add a clause (s): "The imposition of any mitigation measures or pre-construction requirements pursuant to any environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, that are in addition to those required under the TxDOT-Provided Approvals obtained prior to the date which is ninety (90) days prior to the Proposal Due Date."		
777.	CDA Exhibit 1	Definition of "Right of Way Acquisition Plan" or "ROW Acquisition Plan" Please advise as to whether the reference to "acquisition of all parcels of land" is intended to refer to additional parcels of land? Please add the text "(other than any parcels of land required to be obtained by TxDOT pursuant to this Agreement," after the text "and operate the Project" in the third line.	Addendum #1 is expected to clarify the definition.	10/19/07
778.	CDA Exhibit 1	Definition of "Safety Compliance" "Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that the Independent Engineer and ~~or~~ TxDOT has reasonably determined to exist by investigation or analysis (including if the condition or risk exists despite prior compliance with Technical Documents and Safety Standards ~~but excluding a condition or risk directly and primarily caused by compliance with Technical Documents and Safety Standards~~). The Independent Engineer should always be required to determine whether a safety condition exists. Also, we do not understand what is meant by the exclusion at the end of the definition, and do not believe that Developer should bear this risk.	No change. It is appropriate for TxDOT or the IE to identify safety conditions. The deleted phrase at the end is for Developer's benefit, and protects Developer against safety risks directly caused by TxDOT's documents.	4/4/08
779.	CDA Exhibit 1	Definition of "Safety Compliance" "Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that the Independent Engineer and ~~or~~ TxDOT has reasonably determined to exist by investigation or analysis (~~including if the~~ excluding any condition or risk that exists despite prior compliance with Technical Documents and Safety Standards ~~but~~ and excluding a condition or risk directly and primarily caused by compliance with Technical Documents and Safety Standards). It is not appropriate for the Developer to bear the risk of a condition that arises despite compliance with or because of	See Question 778.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		compliance with the Technical Documents and Safety Standards. Developer should be compensated for any actions that it must take to remedy a safety issue that arises because of Developer's compliance with the Technical Documents and the Safety Standards. Moreover, we continue to believe that the Independent Engineer should always be required to determine whether a safety condition exists, as they are an independent third party.		
780.	CDA Exhibit 1	Definition of "Senior Debt Termination Amount" TxDOT has proposed a threshold for sub debt of LIBOR + 250bps. This is less than the 350bps threshold included in SH121, and in the current market it is not appropriate. Based on current pricing, the threshold for sub debt should be at least LIBOR + 450bps. The only accrued interest that should be excluded is one caused by a Developer default.	See Question 782.	10/19/07
781.	CDA Exhibit 1	Definition of "Senior Debt Termination Amount" Please delete clause (a)(B)(1). All bona fide third-party subordinated debt should be included. In order to address TxDOT's concern that the sponsors could inject equity as disguised subordinated debt, we suggest to add the following text at the end of clause (3) appearing in clause (a)(B) of the definition of Senior Debt Termination Amount: "and the subordinate Project Debt shall, for tax purposes, constitute indebtedness and not equity and shall not constitute the consideration paid for the sale of the economic rights in the Developer or Developer's shareholders, joint venture members and/or members." Delete sub-clause (c)(i)(B) in the definition of Senior Debt Termination Amount. All amounts due under the Funding Agreements should be considered for purposes of calculating the termination payment.	See Question 782.	1/25/08
782.	CDA Exhibit 1	Definition of "Senior Debt Termination Amount" Please delete (a)(iii)(B)(2). It is not appropriate that Senior Debt is determined by, among others, a reference to a maximum amount of debt service coverage. Further, it is also not appropriate to determine such amount by a reference to a minimum amount of debt service coverage. It is provided that the "aggregate debt service coverage ratio" will be determined in accordance with the terms of the written loan commitment for such subordinated Project Debt. However, the ratio requirements will differ between the various financing	TxDOT will not delete clause (a)(iii)(B)(2). TxDOT believes that it is appropriate to limit Developer's recovery of debt based on a maximum amount of debt service coverage. However, for purposes of calculating the termination compensation for Termination for Convenience and TxDOT Default, Addendum #6 is expected to expand clause (a)(iii)(B)(1) to include all unaffiliated third party debt included in the initial funding and that constitutes debt for tax purposes provided that for the purpose of determining the amount for breakage costs and payment of outstanding accrued interest, the maximum interest rate shall be limited to	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		documents. It is not apparent whether an average, minimum or other ratio is intended, and how accretion of interest (which should not preclude a qualification of subordinated debt as "Senior Debt") will be treated. Further, please amend the definition of Senior Debt Termination Amount to provide that the criteria included in clause (a)(iii)(B)(1) of the definition shall only apply to determine termination compensation payable under Exhibit 23 in case of Termination for a Developer Default. In all other termination events (Termination for TxDOT Default, Termination for Court Ruling, Termination for Convenience, Termination for Delayed NTP, Termination for Force Majeure and Termination for Lack of NEPA Finality) it is not appropriate to restrict the payment of the Senior Debt Termination Amount to the Developer to debt with an interest rate below LIBOR plus 450 basis points.	LIBOR plus 450 bps.	
783.	CDA Exhibit 1	Definition of "Senior Debt Termination Amount" "Senior Debt Termination Amount means: (a) All amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date, on Project Debt secured by Funding Agreements and Security Documents that (i) satisfy the terms and conditions set forth in Section 4.3 of the Agreement, ~~(ii) are not equity bridge loans~~ and (ii)~~(iii)~~ in the absence of termination and in the absence of any bankruptcy, insolvency or liquidation of Developer… Aggregate debt coverage ratio shall be determined in accordance with the terms of the written loan commitment for such subordinate Project Debt. For the avoidance of doubt, TIFIA financing that satisfies the terms and conditions set forth in Section 4.3 of the Agreement is expressly included and deemed to meet the terms set forth in clause (ii)(B) above~~. For purposes hereof, an equity bridge loan is a loan provided to Developer during the construction period of the Project for an amount of equity to be contributed by Affiliates or other equity investors, typically (but not necessarily) supported by one or more of a parent guaranty, recourse to the parent or letter of credit from another lending institution~~; plus The exclusion of equity bridge loans from the definition of Senior Debt Termination Amount will unnecessarily increase debt costs for the Project. Our potential lenders have raised concern about this exclusion, and have noted that such exclusion was not part of SH-121 or SH-130.	No change. As we are now recognizing the equity from the date of commitment for the purposes of termination for TXDOT convenience, it is appropriate to remove the equity bridge loan from the definition of the Senior Debt Termination Amount. More so, conceptually, equity bridge loan is in lieu of equity and therefore should be treated as such for the purposes of the termination provisions.	4/4/08
784.	CDA Exhibit 1	Definition of "Senior Debt Termination Amount" We refer to Question 777. Please explain why Senior Debt is	See Question 782.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		determined by reference to a maximum amount of debt service coverage.		
785.	CDA Exhibit 1	Definition of "Senior Debt Termination Amount" TxDOT has indicated in Question 778 that an equity bridge loan will be treated as equity for the purposes of the termination provisions. The definition of Contributed Unreturned Equity does not reflect this intention.	Addendum #6 is expected to make the requested change.	5/9/08
786.	CDA Exhibit 1	Definition of "Service Commencement" Please confirm whether this concept should apply on a section-by section basis. Please insert the text "(and tolling of)" before the text "the Managed Lanes" in the first line.	See Question 190 regarding applying this concept section-by-section. The requested text "(and tolling of)" is not required (see definition of the Managed Lanes).	10/19/07
787.	CDA Exhibit 1	Definition of "Service Commencement" Please insert the text "(and tolling of)" before the text "the Managed Lanes" in the first line.	See Question 786.	1/25/08
788.	CDA Exhibit 1	Definition of "Standard Drawing" Please add the following definition: "Standard Drawing means a drawing prepared by TxDOT depicting a fully developed engineering element that may be specified for use as part of a project. TxDOT accepts full professional liability for design adequacy of any element covered by a standard drawing. Engineering calculations are not required for elements covered by a standard drawing and used as part of a project." Include the definition of a standard drawing that defines the Design/Builder's responsibility w.r.t. any element built using standard drawings. It is assumed TxDOT will bear professional liability w.r.t. health/safety/welfare of the general public for items built using standard drawings. Standard drawings are an integral part of engineering practice in the state of Texas.	No change. All design is the responsibility of the Developer.	1/25/08
789.	CDA Exhibit 1	Definition of "Substantial Completion" Please insert the text "(and as required by)" after the text "a certificate in accordance with" in the third line.	The requested change is not needed. See Section 7.8.1.1.	10/19/07
790.	CDA Exhibit 1	Definition of "Substantial Completion" Please insert the text "(and as required by)" after the text "a certificate in accordance with" in the third line.	See Question 789.	1/25/08
791.	CDA Exhibit 1	Definition of "Toll Revenues" Please confirm the treatment of Refinancing Gain.	Refinancing Gain is not part of the definition of Toll Revenues.	10/19/07
792.	CDA Exhibit 1	Definition of "Transponder Issuer" Please insert a comma after the word "arrangement" and before the word "covenants" in the fifth line.	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
793.	CDA Exhibit 1	Definition of "TxDOT-Caused Delays" Please add the word "approval" after the word "environmental reevaluation" in the third line of the definition of "TxDOT-Caused Delays", clause g.	Addendum #6 is expected to make the requested change.	5/9/08
794.	CDA Exhibit 1	Definition of "TxDOT-Caused Delays" Clause (g): "If an environmental reevaluation is required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2, failure of TxDOT to obtain such environmental reevaluation that substantially allows the alternative technical concept within ~~12~~ 6 months after the ~~Effective~~ Proposal Due Date."	No change.	5/29/08
795.	CDA Exhibit 1	Definition of "TxDOT Change" Please replace the $50,000 threshold with a $10,000 threshold. (This provision was accepted in SH 121).	Addendum #1 is expected to make the requested change.	10/19/07
796.	CDA Exhibit 1	Definition of "TxDOT Change" "TxDOT Change means any of the following events that increases Developer's costs or adversely impacts Toll Revenues or both, by more than $10,000: (a) Any change that TxDOT has directed Developer to perform through a Change Order as described in Section 14.1 of the Agreement or a Directive Letter pursuant to Section 14.3 of the Agreement; ~~and~~ (b) Any other event that the CDA Documents expressly state shall be treated as a TxDOT Change; (c) Any reconstruction or redesign of the IH 35 Capacity Improvement Section necessary to accommodate the functionality requirements of the Ultimate Configuration; and (d) Any modification to any existing or new environmental approval related to the IH 35 Capacity Improvement Section and necessary to accommodate the functionality requirements of the Ultimate Configuration."	No change, but see Questions and Answers Matrix re Book 2B and Reference Information Documents Question 43.	5/29/08
797.	CDA Exhibit 1	Definition of "TxDOT's Recoverable Costs" In clause (a), please insert the word "reasonable" before the text "costs of any assistance" in the first line of such clause. In clause (b), please insert the word "Reasonable" in the beginning of such clause.	No change. It is appropriate for TxDOT to be able to recover all of its costs.	10/19/07
798.	CDA Exhibit 1	Definition of "TxDOT's Recoverable Costs" In clauses (a) and (c), please explain the rationale for the change. These are costs that TxDOT incurs in any event. In clause (a), please insert the word "reasonable" before the text "costs of any assistance" in the first line of such clause. In clause (b), please insert the word "Reasonable" in the beginning of such clause.	See Question 797.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
799.	CDA Exhibit 1	Definition of "TxDOT Release(s) of Hazardous Material" Please amend the definition as follows: "…TxDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that are in or part of construction materials and equipment incorporated into the Project and (ii) any ~~Hazardous Materials identified in the phase 1 investigation and report described in clause (i) of the definition of~~ Pre-Existing Hazardous Materials. Limiting the exclusion of Pre-existing Hazardous Materials to those identified in the existing phase 1 investigations creates an ambiguity with respect to Hazardous Materials introduced by TxDOT or its agents, etc. before the affected parcel was made available to Developer but not identified in the subject phase 1 investigations (i.e., such Hazardous Materials might meet the definition of TxDOT Releases of Hazardous Materials and Pre-existing Hazardous Materials). Excluding all Pre-Existing Hazardous Materials from the definition of TXDOT Releases of Hazardous Materials appears to be most consistent with Exhibit 11.	Addendum #6 is expected to make the requested change.	4/4/08
800.	CDA Exhibit 1	Definition of "TxDOT Release(s) of Hazardous Material" Please amend the definition as follows: "…TxDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that are in or part of construction materials and equipment incorporated into the Project and (ii) any ~~Hazardous Materials identified in the phase 1 investigation and report described in clause (i) of the definition of~~ Pre-Existing Hazardous Materials. Limiting the exclusion of Pre-existing Hazardous Materials to those identified in the existing phase 1 investigations creates an ambiguity with respect to Hazardous Materials introduced by TxDOT or its agents, etc. before the affected parcel was made available to Developer but not identified in the subject phase 1 investigations (i.e., such Hazardous Materials might meet the definition of TxDOT Releases of Hazardous Materials and Pre-existing Hazardous Materials). Excluding all Pre-Existing Hazardous Materials from the definition of TXDOT Releases of Hazardous Materials appears to be most consistent with Exhibit 11. TxDOT's response in the Q&A Matrix indicated that these change would be made in the subsequent draft of the CDA.	See Question 799.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Please confirm this is correct.		
801.	CDA Exhibit 1	Definition of "Unplanned Revenue-Impacting Facilities" Please explain the limitation to facilities constructed by TxDOT or a private entity with a contract with TxDOT rather than the State as well, as previously drafted. Please explain deletion in clause (d) of "Frontage Roads, crossing streets, crossing street by pass lanes, and, if applicable, Frontage Road grade separations".	The deletion of the State conforms to the requirement of SB 792. The change to clause (d) conforms to the exclusion of those facilities from the definition, per SB 792. See Question 316.	10/19/07
802.	CDA Exhibit 1	Definition of "User" Please consider whether persons traveling by non-motorized vehicles or on foot should be considered users. (This provision was accepted in SH 121.)	Addendum #1 is expected to make the requested change.	10/19/07
803.	CDA Exhibit 3 General	The Lease is not in recordable form. Therefore, a recordable Memorandum of the Lease shall be entered into since otherwise the Lenders won't be able to perfect their leasehold mortgage.	Addendum #3 is expected to make the requested change.	1/25/08
804.	CDA Exhibit 3 Section 1 of the Memorandum of Lease	"TxDOT and Developer have this day entered into a Lease (the "Lease") and on _____, 200__ TxDOT and Developer entered into a related Comprehensive Development Agreement, IH 635 Managed Lanes Project (the "Agreement"). Under the Lease ~~under which~~ Developer has agreed to, and does hereby, lease from TxDOT, and TxDOT has agreed to, and does hereby, lease to Developer, on the terms and conditions set forth in the Lease ~~and Agreement~~, the premises in the County of _____ in the State of Texas legally described in Exhibit A attached hereto and made a part hereof, all for the purpose described in the Lease and Agreement of financing, developing, constructing, operating and maintaining the Project on the Project Right of Way as described and defined in the Lease and Agreement. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement." We request the revised language for tax reasons.	Addendum #6 is expected to make the requested changes.	4/4/08
805.	CDA Exhibit 3 Section 1 of the Memorandum of Lease	"TxDOT and Developer have this day entered into a Lease (the "Lease") and on _____, 200__ TxDOT and Developer entered into a related Comprehensive Development Agreement, IH 635 Managed Lanes Project (the "Agreement"). Under the Lease ~~under which~~ Developer has agreed to, and does hereby, lease from TxDOT, and TxDOT has agreed to, and does hereby, lease to Developer, on the terms and conditions set forth in the Lease ~~and Agreement~~, the premises in the County of _____ in the State of Texas legally described in Exhibit A attached hereto and made a part hereof, all for the purpose described in the Lease and Agreement of financing,	See Question 804.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		developing, constructing, operating and maintaining the Project on the Project Right of Way as described and defined in the Lease and Agreement. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement." We request the revised language for tax reasons. TxDOT's response in the Q&A Matrix indicated that these change would be made in the subsequent draft of the CDA. Please confirm this is correct.		
806.	CDA Exhibit 3 1.4	In clause (a), please insert the text "(unless otherwise extended in accordance with the Agreement)" after the text "52 years after NTP2" in the second line of such clause.	The requested language is not needed. See clause (c).	10/19/07
807.	CDA Exhibit 3 1.4	In clause (a), please insert the text "(unless otherwise extended in accordance with the Agreement)" after the text "52 years after NTP2" in the second line of such clause.	See Question 806.	1/25/08
808.	CDA Exhibit 3 2.1	Please insert the text "(and without duplication but in full satisfaction of)" before the text "in Section 5.3" in the second line of such Section.	The requested language is not needed. Section 2.1 states that payment is addressed in the CDA.	10/19/07
809.	CDA Exhibit 3 2.1	Please insert the text "(and without duplication but in full satisfaction of)" before the text "in Section 5.3" in the second line of such Section.	See Question 808.	1/25/08
810.	Exhibit 3 2.1	"As rent for the Premises, Developer shall pay to TxDOT a portion of the Revenue Payment Amount, as set forth in Section 5.3 of the Agreement and Part C of Exhibit 7 to the Agreement. Developer's payment obligations are subject to the terms of the Agreement." We request the revised language for tax reasons.	No change. The requested change is inconsistent with the defined term in Part C of Exhibit 7.	4/4/08
811.	CDA Exhibit 3 4.2	Please delete the text "as provided in" and replace it with the text "solely to the extent permitted under" after the text "and other CDA Documents" in the second line of such Section.	The requested language is not needed. Section 4.2 states that this is addressed in the CDA.	10/19/07
812.	CDA Exhibit 3 4.2	Please delete the text "as provided in" and replace it with the text "solely to the extent permitted under" after the text "and other CDA Documents" in the second line of such Section.	See Question 811.	1/25/08
813.	CDA Exhibit 3 6.2	Please insert a new sentence at the end of such Section as follows: "However, any such exercise shall be accomplished so as to minimize any interference with Developer's business and operation."	No change. The matter is addressed by the last sentence. Note, for example, CDA Section 11.2.4.	10/19/07
814.	CDA Exhibit 3 6.2	Please insert a new sentence at the end of such Section as follows: "However, any such exercise shall be accomplished so as to minimize any interference with Developer's business and operation."	See Question 813.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
815.	CDA Exhibit 4	Through the TSA, IH-635 will be totally dependent on the performance of both the Service Provider as well as the different Transponder Issuers acting in the Marketplace. That means that the Interoperatibility framework established in between them is of crucial importance for the success of the IH-635. We will need to review the interoperability contracts between the different agencies (which will be exhibits to the TSA) in order to better understand what customer's rights, duties and obligations are within this context.	TxDOT will make this available to the proposers as soon as it is fully executed.	10/19/07
816.	CDA Exhibit 4	Traffic Committee Comments: We require further clarity on the conditions under which the Developer is freed of his obligation to operate the facility at a speed of at least 50mph. Specifically, under G:4:c, an event beyond Developer's control is defined to include Incidents or recurring congestion adjacent to the property outside the limits of the responsibility of the developer. Can we understand that this provision allows for a situation where high traffic volumes/congestion on the general purpose lanes and the frontage roads inhibit the egress of traffic from the managed lanes – causing delays and/or queuing on the managed lane facilities? Additional Issues to Consider: (1) If congestion on the TXDOT-managed part of the adjacent road network causes congestion on the Managed Lanes (and thus prevents drivers from realizing time savings), risk should be borne by TXDOT, as they are the only party capable of curing such condition. (2) Any campaign or actions aimed at impeding the average speed on the roads to hamper use of Managed Lanes should not be borne by Developer.	TxDOT will excuse the 50 mph requirement if the cause of the speed reduction is the result of an event that is beyond Developer's control.	10/19/07
817.	CDA Exhibit 4	The Base Toll Rate Cap (BTRC) will grow at a nominal rate of 2.5% pa. This does not allow for any real growth in tolls in the face of likely increase in the values of time of potential users. We believe this to be unreasonable and would like to discuss further.	Addendum #1 is expected to change the escalation to CPI. Note that the Developer may exceed the Base Toll Rate Cap under Section F.6.	10/19/07
818.	CDA Exhibit 4	At this time, we are unsure about the actual (rather than modeled) responsiveness of traffic to changes in toll levels – and the ability of the developer to regulate traffic flow and thus control the operating speeds on the facility. As an example, we are concerned about the impact of the requirement to fix the toll levels facing a user who transverses the entire facility as the user enters the first segment even though the user might not enter the third segment until a significant period later when traffic conditions might have changed.	Addendum #1 is expected to contain a limited testing period after converting to dynamic tolling.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		If this requirement is maintained, then the Developer should be offered a testing period during the first 180 days following the Service Commencement Date in which tests can be done to develop the appropriate algorithms for the control of the traffic.		
819.	CDA Exhibit 4	In G.3., please change "60 days" to "270 days".	No change. The initial 270 days for the first Toll Segment includes the 180-day Schedule Mode and a 90-day test period. After the initial 90-day test period, TxDOT believes that 60-day test periods are appropriate for subsequent Toll Segments.	4/4/08
820.	CDA Exhibit 4 A	"User Classifications are defined by ~~(a) occupancy combined with (b)~~ either (i) vehicle dimensions and the presence . . ." To avoid confusing costumers, we recommend making classification of the users consistent with how such classifications are done in other roadways. In a context in which the account holder will be using Turnpikes, where the classification criteria was decided at the time of opening the account, and Managed Lanes, where other eligibility criteria are consider together with the classification, we would strongly suggest not mixing both criteria in order not to confuse the customer. We suggest keeping eligibility criteria (whatever they are) which potentially lead to a discount, as something separate to the standard classification.	No change.	10/19/07
821.	CDA Exhibit 4	Please add the word "reasonable" before the text "discretion before implementation" in Section B.2. In Section C.1. please replace the word "shall" with the word "may" in the third line. Please add the following sentence at the end of C.1: "For the avoidance of doubt, Developer may use a tolling mode equal to Table D-1 at any time after the initial 180 days." In Section C.5. please delete the text "to any member of the public" in the second line after the text "make available". Please replace the term "Service Commencement" with the term "the Service Commencement Date" in clause D.2.b. Section F.2. should be amended by changing each reference from "D-1" to "F-1". In clause F.3.b., please add the text "(without reference to the time periods)" after the text "such schedule in the same manner" in the fourth line of such clause. In clause F.5.a., please replace the text "encourage and stimulate demand" with the text "accommodate User demand" in	Section B.2. No change. Section C.1. After the initial 180 days, Developer is required to operate the Managed Lanes in Dynamic Mode, including compliance with the performance requirements under Section G.2. Operating under Dynamic Mode, however, will not preclude the Developer from publishing a rate schedule. Addendum #3 is expected to clarify this in Section E. See also Question 818. Section C.5. Addendum #1 is expected to make the requested change. Section D.2.b. Addendum #1 is expected to make the requested change. Section F.3. Addendum #1 is expected to make the requested change. Section F.3.b. Addendum #1 is expected to make the requested change. Section F.5.a. Addendum #1 is expected to delete the text "encourage and stimulate demand." See Question 734.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the second line of such clause. In clauses F.5.b. and F.5.c., please replace the word "shall" with the word "may" each time it appears. Please add the following new clause (d) at the end of Section F.5. "(d) Notwithstanding anything to the contrary set forth herein (including clause (a) above), the Developer shall have the unfettered right to change and modify the Base Toll Rate at any time subject to Section F.6. below. In clause F.6.b. please add the word "reasonable" after the text "in TxDOT's sole" in the third line of such clause. Please replace the first two sentences of Section F.6.c. with the following sentence "After the initial 180 days after the Service Commencement Date, the Base Toll Rates may exceed the Base Rate Toll Cap so long as the Developer complies with the following parameters:" In clauses F.6.c.(i) through (iii), please add the text "then applicable" before the text "Base Toll Rate" each time it occurs. Please delete the word "appropriately" in the first line of clause F.6.c.iv. Please add the sentence "For purposes of this Section F.6., the term Base Toll Rate shall mean the Base Toll Rate as previously amended in accordance with this Section. In clause F.7., please add the text "(without reference to the time periods)" after the text "such schedule in the same manner" in the fourth line of such clause. Please change the time period referenced in clause G.2. from 180 days to 181 days. Please add the following text at the end of clause G.2.a. "(provided that the failure to so maintain shall be the basis for the payment of the amounts contemplated in Section 17.4.4.1 but not the basis for a Developer Default under Section 17). Please replace the first sentence of clause G.4. with the following text "Developer shall be excused from its obligation to maintain Average Speeds in the Managed Lanes at or above 50 mph for events that are beyond Developer's control and so long as Developer is in compliance with the terms of the CDA Documents."	Sections F.5.b and F.5.c. Addendum #1 is expected to make the change. Note that the performance requirements in Section G will continue to apply. Section F.5. Given the changes to Sections F.5.b and F.5.c, the requested change is not necessary. Section F.6.b. No change. This is a requirement of the RTC policy. Section F.6.c. Addendum #1 is expected to make the requested change regarding clause (c) (replacing "so long as" with "only if"). No change regarding clauses (c)(i) through (c)(iii). The requested language is not necessary. Addendum #1 is expected to make the requested change regarding clause (iv). Section F.6. No change. The requested language does not appear to be necessary given that clauses (i) and (iii) contemplate revisions to the Base Toll Rate. Section F.7. Addendum #1 is expected to make the requested change. Section G.2. See Question 818. Section G.2.a. No change. Note that this obligation is qualified by Section G.4, which excuses failures that are beyond Developer's control. Section G.4. Addendum #1 is expected to revise the first two sentences as follows: "Developer shall be excused from its obligation to maintain Average Speeds in the Managed Lanes at or above 50 mph only <u>if such failure is caused by</u>~~for~~ events that are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval of any of the Developer-Related Entities~~, and further provided that such events could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Developer~~, upon providing to TxDOT adequate written evidence thereof. Examples of events that ~~may be~~<u>are</u> beyond Developer's control include:"	
822.	CDA Exhibit 4 F.3(a)	"Developer shall determine the toll factor for each User Classification (the "Toll Factor"). Each Toll Factor shall not	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		exceed the applicable Maximum Toll Factor as shown in Table ~~D~~ **F**-1 (a) or ~~D~~ **F**-1(b). Developer shall select to use only one table for the Term. Any proposed change by Developer to Table ~~D~~ **F**-1 (a) or ~~D~~ **F**-1(b) shall constitute a proposed change in User Classification subject to the provision of Section 3.4 of the Agreement."		
823.	CDA Exhibit 4	We understand that the whole RFP may be revised in order to align the wording with NTTA's scope and responsibilities included into the TSA. This exhibit and the CDA generally is subject to review pending finalization of the TSA.	TxDOT intends to conform the RFP to be consistent with the TSA. See Question 235.	10/19/07
824.	CDA Exhibit 4	1. In Section C.1., please add the following sentence at the end of C.1.: "For the avoidance of doubt, the Developer may employ the use of schedule mode of the type contemplated by Table D-1 even when in Dynamic Mode, provided however, that this should not affect Developer's obligation to maintain Average Speeds as required by the CDA Documents." 2. Please add the following new clause (d) at the end of Section F.5. "(d) Notwithstanding anything to the contrary set forth herein (including clause (a) above), the Developer shall have the unfettered right to change and modify the Base Toll Rate at any time subject to Section F.6. below. 3. Please add the sentence "For purposes of this Section F.6., the term Base Toll Rate shall mean the Base Toll Rate as previously amended in accordance with this Section." 4. In clause G.1.a, please confirm that the speed on ramps will not be taken into account in the Average Speed calculation. 5. In clause G.1.c, please clarify the meaning of the word "Segment" as it is not a defined term. 6. In clause G.1.c(ii), please provide that each vehicle that self declares itself (or is otherwise identified) as an HOV or Motorcycle with a valid transponder will be eligible to receive the HOV discount. Please either delete the sentence "whether or not TxDOT determined such vehicle was eligible to receive HOV discount" or define the procedure that TxDOT will follow to determine if a vehicle is eligible or not for HOV discount. 7. In clause G.2.a, please confirm with a worked example how the volumes on each segment and direction are to be expanded from the minute measurements to the hourly volumes used to	1. Addendum #3 is expected to clarify that Developer may continue to employ the use of schedule mode. 2. Addendum #3 is expected to clarify Developer's discretion in setting toll rates. 3. No change is needed. See Question 821. 4. The speed on ramps will not be taken into account in the Average Speed calculation (see definition of Toll Segment). 5. "Segment" (changed to Toll Segment) is defined in Section B.1. 6. Addendum #3 is expected to clarify that each vehicle that self declares itself (or is otherwise identified) as an HOV or Motorcycle with a valid transponder will be eligible to receive the HOV discount. 7. TxDOT would prefer to clarify the existing contractual language to the extent the existing language is unclear, and invites your clarifications. Upon request, TxDOT will provide its comments to the proposer's examples during one-on-one meetings. 8. Addendum #3 is expected to make the requested change.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		determine toll rate increases. 8. Please change the time period referenced in clause G.2. from 180 days to 181 days.		
825.	CDA Exhibit 4 G.4(c)	"Incidents or recurring congestion (beyond the control of any Developer-Related Entity) adjacent to the Project outside the limits of responsibility of the Developer. if congestion on the Managed Lanes is caused by congestion on the general purpose lanes, on the frontage roads, and/or on the ramps connecting the former and the latter to the Managed Lanes, Developer should be excused from its obligation to maintain Average Speeds in the Managed Lanes at or above 50 mph. Documentation of corrective action include ITS still photos and video with time/date stamps." Congestion that is outside of the control of the Developer in the General Purposes Lanes or the ramps connecting the Managed Lanes to the remainder of the highway network that backs up onto the Managed Lanes should excuse the Developer of its obligations to maintain an Average Speed of 50 mph. Question 1: Can we understand that this provision allows for a situation where high traffic volumes/congestion on the general purpose lanes and the frontage roads inhibit the egress of traffic from the managed lanes – causing delays and/or queuing on the managed lane facilities? Question 2: Shall we consider that the exceptions to the average speed requirement include delays caused by congestion at ramps, to the extent they are beyond the control of the Developer (eg, unavailability of ROW for the required widenings)? If the answer to both questions is positive, section G.4 should include the proposed wording or a similar one, making clear that if congestion on the Managed Lanes is caused by congestion on the general purpose lanes, on the frontage roads, and/or on the ramps connecting the former and the latter to the Managed Lanes, Developer should be excused from its obligation to maintain Average Speeds in the Managed Lanes at or above 50 mph. In fact, there could be situations during peak periods where the ramps connecting the Managed Lanes to the remainder of the highway network (particularly to the Dallas North Tollway and to I-75) can become severely congested and traffic can back up on	Addendum #6 is expected to replace "Project outside the limits of responsibility of the Developer" with "Managed Lanes" in Exhibit 4, Section G.4(c).	5?28/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		I-635. Under this or other similar situations, which are beyond Developer's control, the speed levels will go below 50 mph.		
826.	CDA Exhibit 7	Conditions of Payment Requests. Some of the conditions may be difficult to obtain from third party contractors (i.e., the certificates and releases in Section 11(a) and (e)) and thus should be eliminated while others should be limited as customary (reps and warranties correct in all material respects).	See Question 832.	1/25/08
827.	CDA Exhibit 7 Part A.2	1. Please revise the first sentence of Section 2 to read "Within six months after the Service Commencement Date for the Toll Segment pertaining to the IH 35E Capacity Improvement Section, and solely to the extent that TxDOT has issued NTP3, Developer shall pay to TxDOT $_____[*to be provided in executed version (Proposal Form K, Box 6)*] in good and immediately available funds." Read literally, the Section currently provides that such Concession Payment would have to be paid within 6 months after the Service Commencement Deadline even if TxDOT will never issue NTP3. 2. Please add the following section to Exhibit 7: "Landscaping and Aesthetics Budget For the purposes of this Agreement, the Developer shall allocate $10 million (the Aesthetics Budget) toward the capital cost of the landscaping and aesthetics elements to be identified in the Aesthetics and Landscaping Plan prepared by the Developer in accordance with Section 15.2.2 of the Technical Provisions. Although the actual cost may vary depending upon the final design, all parties shall work toward developing an Aesthetics and Landscaping Plan that meets the allocated Aesthetics Budget. Any capital cost that the Developer will incur in connection with landscaping and aesthetics elements shall be considered part of the Aesthetics Budget so that the amounts that the Developer is required to incur in connection with landscaping and aesthetics elements will never exceed $10 million."	1. Addendum #6 is expected to clarify that Section A.2 applies solely to the extent that TxDOT has issued NTP3. 2. Developer shall provide Aesthetic and Landscaping concepts in its Proposal that will be used to develop an Aesthetics and Landscaping Plan. It is Developer's responsibility to manage the costs of implementing the Aesthetics and Landscaping Plan.	4/10/08
828.	CDA Exhibit 7 3.3	"Notwithstanding anything to the contrary in this Part C, Developer shall have the option, in accordance with this Section 3.3, to defer any amounts otherwise owing to TxDOT under this Part C during the first 10 years after the Service Commencement Date upon advance written notice to TxDOT of Developer's election to defer payment of any such amounts in accordance with this Section 3.3. Any amounts deferred under this Section 3.3 shall be due no later than the date that is 10 years after the Service Commencement Date with interest at a floating rate	See Question 834(1).	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		equal to the LIBOR in effect from time to time, provided that upon termination of the Agreement for any reason, any such amounts plus interest shall be due on the date of termination. Developer shall provide TxDOT with a written statement in form and substance substantially similar to Attachment [__] attached hereto acceptable to TxDOT on December 31 of any year that Developer has deferred payment of any amounts under this Section 3.3 of each amount deferred and the amount of interest owing thereon." It would be better to agree to the form of letter upfront and include it as an attachment.		
829.	CDA Exhibit 7 Part D	General Comment: Please consider eliminating the use of the word "sharing".	Addendum #6 is expected to change "share" to "portion" (three times) in Section D.2.	4/4/08
830.	CDA Exhibit 7 5.7 and Part F	Within ~~60~~15 days after TxDOT receives all reports, TxDOT shall pay Developer the total undisputed amount. A 60 day period is a very long period for the payment of an undisputed amount. We would also like clearer understanding as to what type of disputes are referenced in this provision. Additionally, this Section also states that "TxDOT reserves the right to adjust any payments for errors in previous payments." A mechanism by which TxDOT calculates any potential errors, as well as a mechanism by which the Developer can review and dispute such adjustments to payments need to be incorporated in the document.	Addendum #1 is expected to change 60 days to 30 days. An example of potential errors is if there are discrepancies in the data provided. If Developer disagrees with any adjustments to payments, it could make use of the dispute resolution provisions in the CDA.	10/19/07
831.	CDA Exhibit 7	Please change all references to "Revenue Share" to "Revenue Payment". Further, please replace reference to TxDOT's "right to share in/of Toll Revenues" with "payment". With respect to Proposal Form T, we would like to refer you to the attachment to this list. In Part A, the Developer should have the option of making the Concession Payment to the trustee under the Project Trust Agreement, rather than to TxDOT directly. (See Section 2.02(a) of the Project Trust Agreement attached as Exhibit K to the ITP). In Part C, please make clear that the portion of Toll Revenues payable to TxDOT shall be paid only from Toll Revenues earned in excess of the level required to reach the relevant IRR. In Part D 1., TxDOT should only share 50% of the Refinancing Gain derived from a refinancing using TIFIA and/or PABs and not 75%. In line three of part F. there is a reference to the total "undisputed" amounts of the HOV discount. What is the process	See Question 78. Proposal Form T. No change. Part A. Addendum #1 is expected to make the requested change. Part C. No change. The revenue sharing bands will be determined using the base case IRR for the entire term of the CDA. But see other changes expected as part of Addendum #1. Part D. No change. TxDOT wants any TIFIA and PABs to be included in the base case. Part F. See Question 830. Attachment 2. No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		of disputing these amounts? In any event, please confirm that the outcome of such disputes will not serve as a basis to deny the Developer its reimbursement. In the Certificate attached to Attachment 2, Exhibit 7, please delete paragraph 4, as the Work in respect of which payment will be made will have been completed, and therefore the existence of a default under the Design Build Contract will not be relevant to payment for such completed Work.		
832.	CDA Exhibit 7	Some of the conditions may be difficult to obtain from third party contractors (i.e., the certificates and releases in Section 11(a) and (e)) and thus should be eliminated while others should be limited as customary (reps and warranties correct in all material respects).	No change.	10/19/07
833.	CDA Exhibit 7	1. Please clarify whether the equity IRR referred to in Form T of the ITP is the return to equity at any particular point in time during the Term, or the equity IRR over the full Term, by adding the underlined words: "Toll Revenues (X%) means the level of toll revenues to date which is representative of a blended, nominal, after tax internal rate of return [to date] [or: over the full Term] of X% for equity, as calculated in Developer's Base Case Financial Model." If the IRR to which TxDOT refers is the IRR over the full term, we reiterate our view that given the traffic risk associated with a Managed Lanes project, Developer should only share revenue with TxDOT once cumulative revenue levels consistent with threshold IRRs being actually achieved are reached (rather than when cumulative revenue levels consistent with an expectation of threshold IRRs being reached in the future are reached). 2. We suggest that the threshold be the IRR as set forth in the Base Case Model plus 500 basis points. 3. In Part C., Sections 3.1.2-3.2.5, both TxDOT and Developer are required to pay interest on any Revenue Payment amounts which exceed or underestimate the initial payment made 15 days after each calendar year. Assuming Developer uses the full 90 days available to it to prepare audited financial statements and prepared the final revenue share calculation, TxDOT effectively has 30 more 'interest - free' days relative to the Developer. Please explain the rationale in the difference of treatment. 4. Further, the following words should be added at the end of the last sentence of Part C. Section 2.1 in order to avoid double counting of Revenue Payment Amounts payable to TxDOT as a result of the definition of Bands by reference to cumulative Toll Revenues across calendar years:	1. Addendum #3 is expected to be revised to clarify that the IRR is over the full term (excluding potential extensions). See Question 831, Part C. TxDOT will not base the provision on IRR actually achieved. 2. No change. 3. No change is necessary. This is entirely within Developer's control. Developer can keep accurate books and records to minimize the likelihood of interim overpayments and underpayments. Developer can deliver the information earlier than the full 90 days available to it. 4. Addendum #3 is expected to reflect the cumulative nature by adding "the following minus all Revenue Payment amounts paid in previous calendar years pursuant to this Section 2.1" after "the sum of." 5. Addendum #3 is expected to make the requested change. 6. The Public Funds can only be used for design-build costs. Addendum #3 is expected to conform the terminology in Form U. 7. Addendum #3 is expected to revise the language to say "in a standardized form acceptable to TxDOT". There is no intention to be approving a form every month. The intention is to reach agreement on one reporting form for use each month. Note that TxDOT's acceptance is subject to a reasonableness standard under CDA Section 6.3.4. 8. No change. The existence of a default is relevant to TxDOT for a number of reasons, including defaults related to the completed work and making required payments to subcontractors.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		"(each reference below to the "portion of the cumulative Toll Revenues to date" shall be determined without giving effect to any portion of the cumulative Toll Revenues with respect to which a Revenue Payment Amount was made in any prior year)." 5. Finally, please delete Section 2.1.6 since there is no Band 6 in Form T. 6. In Part E., the CDA seems to suggest that Public Funds can only be used for the payment of the DB Cost (in particular Attachment 2 to Exhibit 7). Please confirm whether the use of proceeds of such Public Funds is restricted to such use by law. If not, and as money is fungible, please revise Part E and Attachment 2 to give Developer the flexibility to also use Public Funds to pay for costs other than DB Cost (e.g. financing cost). Further, please clarify that the term "Project D-B Costs" is equivalent to the term "Total Development Cost" in Table U-1 of Form U. 7. In Part G, clause 2, please delete "in form acceptable". Such form should be agreed upfront and not be subject to approval by TxDOT each month as a means to circumvent payment of such amounts. 8. In the Certificate attached to Attachment 2, Exhibit 7, please delete paragraph 6, as the Work in respect of which payment will be made will have been completed, and therefore the existence of a default under the Design Build Contract will not be relevant to payment for such completed Work.		
834.	CDA Exhibit 7	1. In Part C, Section 2, please provide that Revenue Payments shall not commence until the date that is 10 years after the last Service Commencement Date (this has the effect that total cumulative revenues over the first 10 years would be taken into account in determining the revenue payments to be made in respect of those years, and thereby achieving the "true up" discussed in our one-on-one meeting.) 2. Further, in Section 3.1.5, please amend the text so that TxDOT has to pay interest 90 days after the end of the calendar year (same as the Developer). 3. Finally, in Section 3.3, please change references to "first Service Commencement Date" to "last Service Commencement Date". 4. Part E, Section 2.1 states that the Developer shall not submit the first draft Payment Request earlier than three months following NTP2. Please revise this Section to reflect the definition of "Payment Activity" in Exhibit 1 to the CDA which	1. Addendum #6 is expected to take into effect the total cumulative revenues over the first three years. 2. No change. Overpayment is in Developer's control, and interest from TxDOT could have the effect of reducing TxDOT's share in real terms because such interest may result in negative arbitrage to TxDOT on overpayments. See Question 833(3). 3. See clause (1) above. 4. No change. Exhibit 7, Section E.2.1 requires that the first draft Payment Request not be submitted earlier than three months following NTP2. Developer is not entitled to invoice for any amount, including mobilization, earlier than that date. In Addendum 4, Box B is on page 7 of 14 of Part A of Form P and is mobilization. 5. See Question 832. 6. No change.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		states that 25% of the mobilization costs are payable upon commencement of the Construction Work. In Section 2.4, the formula refers to Box B in Proposal Form P. There does not seem to be a Box B. 5. With respect to the Conditions for Payment Requests in Attachment 2, some of the conditions may be difficult to obtain from third party contractors (i.e., the certificates and releases in Section 11(a) and (e)) and thus should be eliminated while others should be limited as customary (reps and warranties correct in all material respects). Therefore, please add the text "in all material respects" after the text "true and correct" in the second line of Section 5 of Attachment 2. 6. Also, please add the text ", to the extent known to Developer," before the text "or event under" in the first line of Section 6 of Attachment 2. Additionally, please add the text ", to the extent known to Developer," before the text "the Design-Build Contractor" in the first line of Section 8 of Attachment 2. Further, please add the text ", to the best knowledge of Developer," before the text "the Design-Build Contractor" in the first line of Section 8 of Attachment 2. Also, please add the text "to the best knowledge of Developer" after the text ", or the Design-Build Contractor," in the third line of Section 9 of Attachment 2. Finally, please add the text ", to the best knowledge of Developer," after the text "and all subcontractors" in the third line of Section 9 of Attachment 2. 7. Finally, please add the text ", to the extent possible using commercially reasonable efforts," before the text "each subcontractor" in the first lines of Sections 11(a) and 11(c) of Attachment 2 both time it occurs.	7. No change.	
835.	CDA Exhibit 7 3.1.3	Please add to the end of the provision: "TxDOT and Developer agree that the Revenue Payment Amount will be allocated as follows: (i) [__]% will be deemed to be a contingent rent payment under the lease and (ii) [__]% will be deemed to be a payment for the franchise rights granted to Developer under the CDA, the other CDA Documents and Principal Project Documents." We request the revised language for tax reasons.	Addendum #6 is expected to add a provision similar to Section A.4 of Exhibit 7 and a corresponding provision to the ITP.	4/4/08
836.	CDA Exhibit 7 3.1.3	Please add to the end of the provision: "TxDOT and Developer agree that the Revenue Payment Amount will be allocated as follows: (i) [__]% will be deemed to be a contingent rent payment under the lease and (ii) [__]% will be deemed to be a payment for the franchise rights granted to Developer under the CDA, the other CDA Documents and	See Question 835.	5/9/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Principal Project Documents." We request the revised language for tax reasons.		
837.	CDA Exhibit 7 Compensation Terms	In Part E 1., please add the word "approval" after the word "environmental reevaluation" in the sixth line. Further, in Part. E. 2.4, please advise when the missing dollar amounts in the formula will be provided and how they will be determined.	Addendum #6 is expected to make the requested change and include the missing dollar amounts.	5/9/08
838.	CDA Exhibit 9 Milestone Schedule	Please revise the Deadline for Commencement of Construction Work and Operating Commencement Date of the IH 635 Section by inserting the words "60 days after" and the word "approval" as indicated below. The same change should be made to the deadlines for the IH 35E Section and the IH 635/IH 35E Interchange (3 instances in total): "60 days after the date TxDOT issues NTP2 or, if Developer's Proposal includes an alternative technical concept approved by TxDOT and described in Exhibit 2 that requires an environmental reevaluation affecting the IH 635 Section, 60 days after the date that TxDOT obtains the environmental reevaluation approval (if later)".	Addendum #6 is expected to make the requested changes.	5/9/08
839.	CDA Exhibit 9	The Milestone Schedule should be modified because no Commencement of Construction Work for any Section can occur until after NTP2, and NTP2 itself will not occur until after the environmental reevaluation necessary in connection with an alternative technical concept approved by TxDOT is obtained and Financial Close has occurred. As currently drafted, the Milestone Schedule implies that construction must take place on a Section if such environmental reevaluation does not affect that Section. Most potential lenders will be unable to fund until after all environmental approvals are obtained.	No change. See Question 173.	5/29/08
840.	CDA Exhibit 11 Section A.3 CDA 7.9 and 8.1.3	Please decrease allowance to $3,000,000. TxDOT should reimburse 80% up to $6,000,000 and 100% above $6,000,000. Clause 10 needs to be clarified so as to ensure that the Developer's postterm obligations to manage remediation activities can only survive in the event that such remediation is ongoing at the time the Term expires (as per the terms of the CDA), the remediation is the Developer's responsibility under the CDA and such remediation can be completed within six months after termination of the CDA. Further, Sections 7.9 and 8.1.3 of the CDA need to be amended to clarify that Developer's obligation under such Section end in accordance with Clause 10 of Exhibit 11 as amended per the previous sentence.	No change. Clause 10. Addendum #1 is expected to revise Clause 10.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
841.	Exhibit 11, Section A.2	"If there occurs any release of Hazardous Materials in, on or under a Section during the course of TxDOT's operation and maintenance thereof pursuant to Section 8.3 of the Agreement or any other TxDOT Release of Hazardous Material whether occurring before or after the commencement of the Term, then TxDOT at its own expense shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals." TxDOT should be responsible for TxDOT Releases of Hazardous Materials whether or not arising out of TxDOT's operation of a Section. This does not change the allocation of responsibility for Pre-existing Hazardous Materials, which are excluded from the definition of TxDOT Releases of Hazardous Materials.	No change. TxDOT Release(s) of Hazardous Materials are addressed in Section A.9.	4/4/08
842.	Exhibit 11, Section A.5	"Within 90 days following any month in which Developer encounters any ~~p~~Pre-existing Hazardous Materials…" Cleanup edits.	Addendum #6 is expected to make the requested change.	4/4/08
843.	Exhibit 11, Section A.5	"Within 90 days following any month in which Developer encounters any ~~p~~Pre-existing Hazardous Materials…" Cleanup edits. TxDOT's response in the Q&A Matrix indicated that these change would be made in the subsequent draft of the CDA. Please confirm this is correct.	See Question 842.	5/9/08
844.	CDA Exhibit 11 Section A.3 CDA 7.9 and 8.1.3	1. Please decrease allowance to $3,000,000. TxDOT should reimburse 80% from $3,000,000 up to $6,000,000 and 100% above $6,000,000. 2. Further, Sections 7.9 and 8.1.3 of the CDA need to be amended to clarify that Developer's obligation under such Section end in accordance with Clause 10 of Exhibit 11 as amended per the previous sentence.	1. No change. TxDOT has determined that the allowance is appropriate. 2. Addendum #3 is expected to clarify that Clause 10 of Exhibit 11 will apply notwithstanding any other provision of the Agreement.	1/25/08
845.	CDA Exhibit 11 CDA 7.9 and 8.1.3	Please add the word "arranger" in A6. of Exhibit 11.	Addendum #6 is expected to make the requested change.	4/4/08
846.	CDA Exhibit 12, Recitals	Please note that the 7th recital does not currently provide for the potential use of PABs.	No change is necessary. The language in the second set of brackets would capture potential use of PABs. "Collateral Agent" includes a trustee for Lenders, such as the indenture trustee for private activity bonds, and "Lender" includes any holder or beneficiary of Security Documents and their trustees, such as bond holders.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
847.	CDA Exhibit 12, CDA 2.4.1, 2.4.7	Our lenders have requested an additional cure period for failure to provide a remedial plan.	No change.	4/4/08
848.	CDA Exhibit 13	Please provide the initial draft of Exhibit 13 for our time to review and comment. We expect that the TxDOT TSA will be substantially the same as the NTTA TSA.	See Question 259.	4/4/08
849.	CDA Exhibit 13	Please provide the initial draft of Exhibit 13 for review and comment. We expect that the TxDOT TSA will be substantially the same as the NTTA TSA.	See Question 848.	5/9/08
850.	CDA Exhibit 20	In Section 8 (Professional Liability Insurance), the professional liability insurance should apply to Renewal Work or Upgrades having an estimated cost in excess of US Dollars $25,000,000 instead of $10,000,000. [This provision was accepted in SH 121].	See Question 872.	1/25/08
851.	CDA Exhibit 20.1(c)	To include a limit based on Probable Maximum Loss, with sublimits available in the marketplace and to have a sharing mechanism if the Loss Exceed that number. It is customary to have the Client sharing excess of losses over reasonable limits, and TxDOT is already providing this on Property Insurance.	No change. TxDOT is informed that there are no material premium savings using probable maximum loss vs. full replacement cost during construction, and that full replacement cost is commercially available.	10/19/07
852.	CDA Exhibit 20.1(c)	The limit of the policy should be based on an independent PML (Possible Maximum Loss) Scenario calculation.	See Question 851.	1/25/08
853.	CDA Exhibit 20.1(e)	Exclude coverage for damage resulting from design errors and/or omissions (v.) Coverage is usually included in engineer's E&O coverage rather then in a Builder's Risk policy.	No change. We agree that errors in design and/or omissions are covered under an engineers E&O policy. However, the wording in the CDA is standard for builders risk insurance in the US. The policy must respond to cover ensuing insured loss or damage resulting from a design error or omission but exclude the costs to rectify the faulty design.	10/19/07
854.	CDA Exhibit 20.1(f)	To change $ 1 Million per 2% of the event Policy deductibles should be market-based and a risk financing decision by Developer. $ 1 Million is not reflecting market conditions Developer should determine risk appetite and procure or cause to be procured coverage with market and risk financing considerations, not limited by TxDOT.	No change. TxDOT does not agree that deductibles are to be market based and strictly a Developer decision. Deductibles will have a direct effect upon the amount of compensation TxDOT might have to pay for a Compensation Event or termination event.	10/19/07
855.	CDA Exhibit 20.2(c)	1. To have a sharing mechanism if the Loss exceeds the Probable Maximum Loss. 2. Failure of TxDOT to comment prior to 90 days of policy expiration shall negate TxDOT's right to request changes until the next period.	1. No change. 2. No change. TxDOT's review and comment is subject to 14-day limit under CDA Section 6.3.2.1 3. No change. If the matter is a Compensation Event, then TxDOT	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		3. It is customary to have the Client sharing excess of losses over reasonable limits. They are providing this on Property Insurance. 4. Client should request insurance requirement changes in a timely manner.	will pay whatever compensation is required net of required insurance. If the matter is not a Compensation Event, adequacy of insurance is Developer's risk. See CDA Section 16.1.2.13. 4. See answer 3 above.	
856.	CDA Exhibit 20.2(d)	1. Delete requirement stating that TxDOT will be a Named Insured and Additional Loss Payee on the property policy. Developer shall be named insured on Property Policy – TxDOT shall be a Lessor. 2. Payments made under said policy shall be payable to the Developer, who maintains responsibility for the property throughout the Term of the lease.	1. Addendum #3 is expected to change TxDOT to an additional insured as its interest may appear. No change to loss payee provisions will be made. The existing provisions allow lenders to exercise the rights of primary loss payees and allow flexibility during most of the term for the Developer and its Lenders to establish provisions on use and disposition of property insurance proceeds. 2. No change. The provision so allows, as Developer or Lender may be loss payee, except in last five years.	10/19/07
857.	CDA Exhibit 20.2(f)	To change $ 1 Million per 2% of the event Deductibles shall be determined by the Developer in accordance with market conditions and risk financing decisions. $ 1 Million is not reflecting market conditions. Deductibles should be Developer risk financing decision.	See Question 854.	10/19/07
858.	CDA Exhibit 20.3(b)	To change one full year to six months.	No change.	10/19/07
859.	CDA Exhibit 20.3(d)	1. To change 15 days to 2 months 2. Delete TxDOT as a Named Insured on the policy. TxDOT would be a Lessor.	1. No change. 2. See Question 858.	10/19/07
860.	CDA Exhibit 20.4(b)	Illness may not be covered peril.	No change. Carriers generally agree to an endorsement that redefines bodily injury to include illness.	10/19/07
861.	CDA Exhibit 20.4(c)	Policy may be multi-year term, hence annual reinstatements may not be applicable.	No change. Developer should be required to evidence that limits are reinstated annually.	10/19/07
862.	CDA Exhibit 20.4(d)	1. TxDOT and Indemnified Parties will be named as Additional Insureds, not Named Insureds. The Developer will the Named Insured with TxDOT and the Indemnified Parties as Additional Insureds. 2. The coverage will not cover their operations – only the Developer's operations.	1. No change 2. Addendum #3 is expected to change the first sentence to: "Developer, TxDOT and the Indemnified Parties shall be the named insured, provided that the scope of coverage for TxDOT and the Indemnified Parties shall be limited to acts, omissions and activities relating to the Project, the CDA Documents and the Principal Project Documents."	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
863.	CDA Exhibit 20.4(e)	(i) $ 100,000 should be $ 500,000 (ii) $ 250,000 should be $ 500,000 (iii) $ 500,000 should be $ 1,000,000 Market conditions. Any deductibles should be market based and to the Developer's discretion.	No change. TxDOT believes these deductible choices are reasonable and available. See Question 854.	10/19/07
864.	CDA Exhibit 20.6(e)	Change deductible from "not exceeding $50,000 per occurrence" to "an amount acceptable to Developer in accordance with Developer's risk financing strategy." Deductibles should be left to the discretion and risk appetite of Developer.	No change. See Question 854.	10/19/07
865.	CDA Exhibit 20.7(a)	Delete "or by other activities that occur on the Project" in the last sentence. Pollution insurance should cover liability from the performance of the Work – Developer cannot be responsible for the liability caused by others outside the scope of Work.	No change. The issue is not a Developer responsibility. It is insuring against liability due to a pollution condition.	10/19/07
866.	CDA Exhibit 20.7(b)	Delete Indemnified Parties as Named Insureds on policy. Pollution Liability policy should cover Developer's liability only. Indemnified Parties can be added as Additional Insureds.	Addendum #6 is expected to change the Indemnified Parties to additional insureds as their respective interests appear.	10/19/07
867.	CDA Exhibit 20.7(b)	Delete last sentence - the requirement for deletion of Insured vs. Insured exclusion.	No change, but see Question 866.	10/19/07
868.	CDA Exhibit 20.7(d)	To change $250.000 per $500.000 or other amount acceptable to Developer in accordance with Developer's risk financing strategy. Market conditions. Any deductibles should be market based and to the Developer's discretion.	No change. See Question 854.	10/19/07
869.	CDA Exhibit 20.7(d)	Delete (d) – the requirement for a specified deductible. Deductible will be dependent on market conditions and risk appetite of Developer.	No change. See Question 854.	10/19/07
870.	CDA Exhibit 20.8	Policy period should end at Final Acceptance of the Design-Build Contractor's Work, not 5 years after end of professional services or expiration of statute of limitations. Entities providing professional liability insurance are able to purchase extended reporting periods, dependent on market conditions (2-3 years in today's market).	No change. The provision does not require a five year extended reporting period. The five year period may be covered through purchase of new, or renewal of existing, claims made policies in each of the five years.	10/19/07
871.	CDA Exhibit 20.8	Delete (c) – the requirement for a specified deductible. Deductible will be dependent on market conditions and risk appetite of Developer.	No change. See Question 854.	10/19/07
872.	CDA	In Section 8 (Professional Liability Insurance), the professional	No change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	Exhibit 20	liability insurance should apply to Renewal Work or Upgrades having an estimated cost in excess of US Dollars $25,000,000 instead of $10,000,000. (This provision was accepted in SH 121).		
873.	CDA Exhibit 20.1(c)	The limit of the policy should be based on an independent PML (Possible Maximum Loss) Scenario calculation.	See Question 851.	10/19/07
874.	CDA Exhibit 20 1(f), 2(f), 4(e), 6(d), 7(d), 8(c)	No maximum deductibles should be required as the Developer has enough financial strength to establish deductibles depending on the market time and premium level.	No change. See Question 854.	10/19/07
875.	CDA Exhibit 20 1(f), 2(f), 4(e), 6(d), 7(d), 8(c)	No maximum deductibles should be required as the Developer has enough financial strength to establish deductibles depending on the market time and premium level.	See Question 874.	1/25/08
876.	CDA Exhibit 21	1. Sections 2.1 and 2.2: In order to ensure an improved transition from construction to operation, we propose the following treatment of points accumulated during the construction period. A situation where noncompliance points accumulated prior to transition from construction to operations is removed from the 'accumulation list' would significantly improve the transition management. However, we identify there is still a need to make sure that the Developer will cure those that at the time of transition are still uncured. For such points we still see the necessity to associate liquidated damages until cure. At the time of transition, if the Developer has accumulated cured and/or uncured points, the 'accumulation' list goes back to zero. At the same time, the Developer is still responsible to cure those outstanding uncured points at the cost of defined liquidated damages. 2. In Section 2.4, it is our understanding that this Section provides the Developer with a 'grace period' before having to pay liquidated damages on single and uncured noncompliance points. For example, prior to Service Commencement Data, the Developer will start paying liquidated damages on each single and uncured noncompliance point once the limit of 50 points is surpassed. Prior to that, the Developer will only accumulate with no associated payment. If this is not the intention of Section 2.4, please clarify. If this is the case, we would like to recommend such system, where a balance of noncompliance points is maintained and a limit to that balance is defined where surpassing such limit becomes the trigger to start paying liquidated damages for those noncompliance points incurred over the balance limit.	1. No change. The CDA already differentiates between the periods before Service Commencement and after Service Commencement by providing for higher trigger points before Service Commencement. 2. Section 2.4 addresses the payment of liquidated damages in respect of "Uncured" Noncompliance Points. Such liquidated damages commence upon the accumulation of specified minimum amounts. Noncompliance Points, on the other hand, are immediately payable upon assessment, and are addressed elsewhere. 3. See Question 229.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		This is a fair system to account for a period of adjustment at the beginning of the Project and the uncertainties and extraordinary conditions that can be found in a project of this nature. This system would aid the non-compliance dispute resolution process. The point limits discussed in this Section 2.4 is a fair limit for such system. 3. In Section 3.5, we believe that 50% of the tolls collected is the appropriate rebate amount.		
877.	CDA Exhibit 21 List of Non-compliance Items Table	In an extraordinary situation, e.g. a year when Dallas hosts an Olympic event and the LBJ corridor is directly impacted by the operations of the event, e.g. due to extraordinary traffic levels, the chance of incurring in more the usual noncompliance points increases dramatically. If this situation occurs and the Developer has to address not a single noncompliance occurrence, but an unusual large amount of noncompliance points, the given cure periods may become too stringent at a realistic level. To account for such a potential case, where the Developer has to face an unusual amount of noncompliance points, a relaxation of the cure periods may be solution to improve operations and remove an extraordinary possibility for termination due to events outside Developer's control. We do not consider such change would eliminate the incentive the Developer faces to cure noncompliance points since the liquidated damages would still apply as defined in CDA. Our proposed relaxation of cure periods should be looked at in a per-item basis, but in general terms we would recommend increasing the cure periods found in this table by 50%. In case the previous request is rejected we propose the following specific changes to the table to address those items that initially seem unreasonable. Cure period Changes: Item 7 : change to 3 days Item 9 : change to 30 days Item 24 : change to 3 days Item 33 : change to 12 hours Item 38 : change to 6 hours Assessment Category Changes: Item 1: change to A (this requirement is too general to have liquidated damages as soon as noncompliance is informed. We suggest this requirement to be removed, further defined or changed to require liquidated damages after a cure period);	It is appropriate for the contract requirements to apply. To the extent an extraordinary situation constitutes a Relief Event, Developer will have relief.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Item 21: change to A (this requirement is too general to have liquidated damages as soon as noncompliance is informed. We suggest this requirement to be removed, further defined or changed to require liquidated damages after a cure period); Item 53: remove or specify further; Item 70 : change to A (some defects may occur due to circumstances completely out of the Developer's control. We suggest this item to be considered as Category A to give Developer opportunity to address); Item 71: change to A (some defects may occur due to circumstances completely out of the Developer's control. We suggest this item to be considered as Category A to give Developer opportunity to address); Item 72: change to A (this requirement is too general to have liquidated damages as soon as noncompliance is informed. We suggest this requirement to be removed, further defined or changed to require liquidated damages after a cure period); Item 77: change to A (this requirement is too general to have liquidated damages as soon as noncompliance is informed. We suggest this requirement to be removed, further defined or changed to require liquidated damages after a cure period).		
878.	CDA Exhibit 21	General Comment: Overall the amount of liquidated damages seem high. Please see our comments above relating to Liquidated Damages for Noncompliance Points and Liquidated Damages for Average Speed Below 50 mph.	See Question 229.	10/19/07
879.	CDA Exhibit 21 Section 3.1(c)	Please delete the last two sentences. The division of the same Project into Toll Segments should not lead to the (potential) assessment of twice as many liquidated damages.	No change. TxDOT has determined that the liquidated damages are appropriate (before the change the amount understated TxDOT's damages).	4/4/08
880.	CDA Exhibit 21 Section 3.4	No Lane Rental Charges should apply if lane closures are due to Compensation Events, Relief Events or any other event beyond Developer's control. We would also like understand what "unscheduled occurrences" include, since Lane Rental Charges can apply to "*both scheduled and unscheduled occurrences*."	See Question 437.	10/19/07
881.	CDA Exhibit 21	See Question 220.	See Question 486.	10/19/07
882.	CDA Exhibit 21 Attachment 1	Noncompliance Points 111-113: the Developer should be excused for all Relief Events and any other events contemplated by Exhibit 4	Addendum #6 is expected to revise 111-113 (renumbered as 113-116).	4/4/08
883.	CDA Exhibit 21	"For a given Toll Segment, maintain an average vehicle speed of 50 miles per hour in the Managed Lanes except where a Relief	See Question 882.	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	Attachment 1	Event applies or such obligations is excused pursuant to ~~in accordance with~~ Exhibit 4 of the Agreement; In the Noncompliance Point chart, the Noncompliance Points for failure to maintain average speeds of 50 mph should also specify that such points will not be assessed if Developer is excused from its obligations pursuant to Section G.4 or G.5 of Exhibit 4. As currently drafted, Noncompliance Points are only not assessed for Relief Events, however, the scenarios described in Exhibit 4 that excuse compliance with the 50 mph average speed requirement do not necessarily fall within the definition of Relief Event.		
884.	CDA Exhibit 21 Attachment 1	"For a given Toll Segment, maintain an average vehicle speed of 50 miles per hour in the Managed Lanes except where a Relief Event applies or such obligations is excused pursuant to ~~in accordance with~~ Exhibit 4 of the Agreement; In the Noncompliance Point chart, the Noncompliance Points for failure to maintain average speeds of 50 mph should also specify that such points will not be assessed if Developer is excused from its obligations pursuant to Section G.4 or G.5 of Exhibit 4. As currently drafted, Noncompliance Points are only not assessed for Relief Events, however, the scenarios described in Exhibit 4 that excuse compliance with the 50 mph average speed requirement do not necessarily fall within the definition of Relief Event. TxDOT's response in the Q&A Matrix indicated that the next draft of the CDA will revise 111-113. Please confirm this is correct.	See Question 882.	5/9/08
885.	CDA Exhibit 22	Please change all references to Section 17.8 of the CDA to references to Section 17.8.4 of the CDA (the Disputes Board provision in the CDA).	Addendum #3 is expected to make the requested change.	10/19/07
886.	CDA Exhibit 22	Please add "(the "Agreement")" at the end of Recital A.	Addendum #1 is expected to make the requested change.	10/19/07
887.	CDA Exhibit 22	Please define the term "Disputes Board Member" and use such capitalized term throughout the Disputes Board Agreement instead of the current "Disputes Board member."	No change. The meaning of Disputes Board member should be clear.	10/19/07
888.	CDA Exhibit 22	Please define the term "Disputes Board Member" and use such capitalized term throughout the Disputes Board Agreement instead of the current "Disputes Board member."	See Question 783.	1/25/08
889.	CDA Exhibit 22 Section 3.2.3	In the second sentence, please delete "all" between "disapprove" and "subsequently proposed candidates."	Addendum #1 is expected to make the requested change.	10/19/07
890.	CDA	Please clarify whether the reference to Section 17.8 is intended	See Question 891.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
	Exhibit 22 Section 3.2.5	to include a reference to the Informal Resolution Procedures.		
891.	CDA Exhibit 22 Section 3.2.5	Please clarify whether the reference to Section 17.8 is intended to include a reference to the Informal Resolution Procedures.	Addendum #3 is expected to clarify that the Dispute Resolution Procedures include the Informal Resolution Procedures.	10/19/07
892.	CDA Exhibit 22 Section 3.3.2	Please clarify whether the reference to Section 17.8 is intended to include a reference to the Informal Resolution Procedures. Further, please explain what the result will be if it is decided that the termination "For Cause" was unjustified.	Addendum #3 is expected to clarify that the Dispute Resolution Procedures include the Informal Resolution Procedures, and to clarify that if the termination was unjustified, it is not effective.	10/19/07
893.	CDA Exhibit 22 Section 3.3.2	Please clarify whether the reference to Section 17.8 is intended to include a reference to the Informal Resolution Procedures. Further, please explain what the result will be if it is decided that the termination "For Cause" was unjustified.	See Question 892.	1/25/08
894.	CDA Exhibit 22 Section 3.3.3	Please specify what happens if the removal is contested pursuant to Section 3.3.2.	See Question 892.	10/19/07
895.	CDA Exhibit 22 Section 3.3.3	Please specify what happens if the removal is contested pursuant to Section 3.3.2.	See Question 892.	1/25/08
896.	CDA Exhibit 22 Section 4.1	With respect to the preferences listed in the second sentence, it should be clarified whether the other Party can disapprove a proposed Disputes Board Member for failure to meet the preference.	Addendum #3 is expected to clarify that the other Party cannot disapprove solely due to lack of preferences if the Candidate's List includes a specified number of other candidates who meet one of the preferences.	10/19/07
897.	CDA Exhibit 22 Section 4.1	With respect to the preferences listed in the second sentence, it should be clarified whether the other Party can disapprove a proposed Disputes Board Member for failure to meet the preference.	See Question 896.	1/25/08
898.	CDA Exhibit 22 Section 5.2	In the first sentence, please replace the text "its authority" by the text "the Disputes Board's authority."	Addendum #1 is expected to make the requested change.	10/19/07
899.	CDA Exhibit 22 Section 5.3.1	Please change the first sentence to: "The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including any time periods listed therein for actions by the Disputes Board."	Addendum #1 is expected to make the requested change.	10/19/07
900.	CDA Exhibit 22 Section 5.3.2	Please explain the purpose of this provision and what type of scenario is envisioned. Further, please change the text "any circumstances has or is likely to arise" to the text "any circumstance has arisen or is likely to arise."	Events beyond the control of the Parties or Disputes Board could cause unexpected delay. E.g. Death or illness of a Disputes Board member or a litigant or witness. Regarding the second paragraph, Addendum #1 is expected to make the requested change.	10/19/07
901.	CDA Exhibit 22 Section 5.4	In the second sentence, please add the words "that this" before the text "is inappropriate."	Addendum #1 is expected to make the requested change.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
902.	CDA Exhibit 22 Section 5.5	In the third sentence, please change the text "an dispute" to the text "a dispute."	Addendum #1 is expected to make the requested change.	10/19/07
903.	CDA Exhibit 22 Section 5.6	Please clarify the meaning of the language in the third sentence "the Disputes Board Chair receives written notice of issuance of a final, nonappealable order on a Dispute that was the subject of a Disputes Board Decision"? What type of order is envisioned?	By a court, as contemplated by CDA Section 17.8.6.	10/19/07
904.	CDA Exhibit 22 Section 6	This section appears unnecessary as there are no subsequent proceedings envisioned in Section 17.8, except for appeals etc. against the Disputes Board Decision. In any event, this provision should be part of the CDA and not this Exhibit. Please delete.	Addendum #3 is expected to make the requested change.	10/19/07
905.	CDA Exhibit 22 Section 6	This section appears unnecessary as there are no subsequent proceedings envisioned in Section 17.8, except for appeals etc. against the Disputes Board Decision. In any event, this provision should be part of the CDA and not this Exhibit. Please delete.	See Question 907.	1/25/08
906.	CDA Exhibit 22 Section 7.3.1	Please change the text "at the time require for payment" to the text "at the time required for payment" in the second sentence.	Addendum #1 is expected to make the requested change.	10/19/07
907.	CDA Exhibit 22 Section 9.2	Please clarify here that pursuant to Section 9.3, the Disputes Board Members should specify in their invoices that the Party to which the invoice is addressed is responsible only for ½ of the invoiced amount.	Addendum #3 is expected to make the requested change.	10/19/07
908.	CDA Exhibit 22 Section 9.2	Please clarify here that pursuant to Section 9.3, the Disputes Board Members should specify in their invoices that the Party to which the invoice is addressed is responsible only for ½ of the invoiced amount.	See Question 907.	1/25/08
909.	CDA Exhibit 22 Section 9.3	While it is fine to share between the Parties the cost of any witnesses, and any proof, produced at the direct request of the Disputes Board, these costs would ordinarily not be billed to the Disputes Board Members and would therefore not form part of the Disputes Board Members' invoices. This issue should be dealt with in a separate provision. In addition, it should be clarified that the provision is only applicable to witnesses produced at the direct request of the Disputes Board (as Section 9.5 of the Disputes Board Agreement deals with witnesses produced by a party on its own initiative).	Addendum #3 is expected to clarify the language.	10/19/07
910.	CDA Exhibit 22 Section 9.3	While it is fine to share between the Parties the cost of any witnesses, and any proof, produced at the direct request of the Disputes Board, these costs would ordinarily not be billed to the Disputes Board Members and would therefore not form part of the Disputes Board Members' invoices. This issue should be dealt with in a separate provision. In addition, it should be clarified that the provision is only applicable to witnesses	See Question 909.	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		produced at the direct request of the Disputes Board (as Section 9.5 of the Disputes Board Agreement deals with witnesses produced by a party on its own initiative).		
911.	CDA Exhibit 22 Section 9.5	Please delete as Section 9 deals with Board Member's expenses.	No change.	10/19/07
912.	CDA Exhibit 22 Section 9.5	Please delete as Section 9 deals with Board Member's expenses.	See Question 909.	1/25/08
913.	CDA Exhibit 22 Attachment 1	Please change all references to Section 17.8 of the Agreement to Section 17.8.4 of the Agreement (which is the Disputes Board provision in the Agreement).	Addendum #3 is expected to make the requested change.	10/19/07
914.	CDA Exhibit 22 Attachment 1	Please change all references to Section 17.8 of the Agreement to Section 17.8.4 of the Agreement (which is the Disputes Board provision in the Agreement).	See Question 913.	1/25/08
915.	CDA Exhibit 22 Attachment 1 Section 2.2	Please clarify what is meant by the language "through issuance of a final, non-appealable order concerning the applicable Dispute".	See Question 902.	10/19/07
916.	CDA Exhibit 22 Attachment 1 Section 3.1	Please delete the words "under penalty of perjury" as they do not make sense in this context and should be deleted.	Addendum #1 is expected to make the requested change.	10/19/07
917.	CDA Exhibit 22 Attachment 2 R-17	Please delete the words "under penalty of perjury" as they are inappropriate here.	Addendum #1 is expected to make the requested change.	10/19/07
918.	CDA Exhibit 22 Attachment 2 R-24(a)	Please explain the reasoning behind this provision. Written evidence by witnesses is standard and there appears to be no reason to divert from that standard practice here.	No change. In order to ensure that the Disputes Board has all information needed to make an informed decision, the Disputes Board must be able to pose questions directly to witnesses.	10/19/07
919.	CDA Exhibit 22 Attachment 2 R-24(a)	Please explain the reasoning behind this provision. Written evidence by witnesses is standard and there appears to be no reason to divert from that standard practice here.	See Question 918.	1/25/08
920.	CDA Exhibit 22 Attachment 2 R-27	Please delete the third sentence because it is standard practice to have the hearing after the briefs are submitted (unless there are also posthearing briefs).	Addendum #1 is expected to revise the third sentence to read: "If posthearing briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of such briefs."	10/19/07
921.	CDA Exhibit 22 Attachment 2 R-31	Please conform the language "for the entry of judgment on any Disputes Board Decision made under these rules" to the language in Sections 17.8.5 and 17.8.6 in the CDA.	Addendum #1 is expected to delete "judgment on".	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
922.	CDA Exhibit 22 Attachment 2 R-41	Please delete the text "to resolve" at the end of such Rule.	Addendum #1 is expected to make the requested change.	10/19/07
923.	CDA Exhibit 22 Attachment 2 L-1	Please clarify the trigger date to which "[O]n the fourth Business Day" refers.	Addendum #3 is expected to clarify that it is the fourth Business Day after the date of the notice.	10/19/07
924.	CDA Exhibit 22 Attachment 2 L-1	Please clarify the trigger date to which "[O]n the fourth Business Day" refers.	See Question 923.	1/25/08
925.	CDA Exhibit 23	Please Note that this entire Exhibit is still subject to review. All provisions relating to Compensation for Termination for Convenience are also subject to review, pending finalization of the rules by TxDOT regarding implementation of SB792.	Noted.	10/19/07
926.	CDA Exhibit 23	All provisions relating to Compensation for Termination for Convenience are also subject to review, pending finalization of the rules by TxDOT regarding implementation of SB792. Additionally, it is not clear in language currently in CDA whether Senior Debt Termination Amount is covered under all circumstances. i.e.: • In the event that additional debt is drawn after financial close to fund shortfalls • In the event that total senior debt outstanding is increased due to refinancing Adding this clause will make it clearer for potential Lenders.	The Senior Debt Termination Amount is not covered under all circumstances. See the definition of Initial Senior Debt Termination Amount. See Question 931.	10/19/07
927.	CDA Exhibit 23	Termination Compensation prior to Service Commencement. Compensation language to reflect the following; *"the lesser of (a) costs and expenses that have actually been incurred by or on behalf of Developer directly in connection with the design, acquisition and construction of the Project, including amounts funded by Developer in connection with a Relief Event, excluding (i) amounts payable by TXDOT as Milestone Payments or compensation due to a Relief Event, (ii) interest and other financing costs, professional and advisory fees, and (iii) Developer overhead or administrative expenses, or (b) the amount of such costs as shown in the Proposal including amounts funded by Developer in connection with a Relief Event and corresponding to the Work to be completed as of the Early*	Addendum #1 is expected to provide for Termination Compensation as follows: 2. Upon a Default Termination Event where the Developer Default that is the basis thereof occurs, and is the subject of a Warning Notice delivered, prior to the Service Commencement Date, subject to Section D.5 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of: (a) 80% of the Senior Debt Termination Amount minus 80% of all Borrowed Cash and Credit Balances (if any); (b) 80% of the Initial Senior Debt Termination Amount, plus 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Senior Project	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Termination Date; minus "any amount standing to the credit of any bank account held by or on behalf of Developer that has not been applied to the costs of performing the Work if and to the extent such amounts are available to pay such costs;" For a project of this complexity, it is essential that the Developer be entitled to compensation for defaults that occur during construction. This will be a critical issue for Lenders due to the complex nature of the traffic management works, exposing the Developer to greater risk prior to Service Commencement than on a typical project.	Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered, minus 80% of all Borrowed Cash and Credit Balances (if any); or (c) Total Project D-B Costs (Proposal Form P, Box A) minus TxDOT's estimated cost to complete the Project minus the amount of the Public Funds Amount paid.	
928.	CDA Exhibit 23	1. The Lenders have requested that compensation for termination should always and in all instances cover all outstanding debt and as such should not be subject to a discount. 2. Part B (Termination for Convenience): TxDOT should provide an agreed worked example. 3. Part B.1 (Termination for Court Ruling): Please delete the text "under clause (a) of Section 19.12.1 that occurs after Financial Close and is due solely to illegality of contract terms" in the 3rd and 4th line. 4. Further, please revise so that Part B also applies to "Delayed NTP". If TxDOT fails to provide NTP, such occurrence should result in the same compensation payment as afforded in respect of Termination for Court Ruling. 5. In Part B.3(b)(ii), please revise so that the equity contemplated in the compensation calculation is recognized from the date of commitment, not contribution. Equity that will not be contributed on or prior to financial close will be irrevocably committed to be so contributed and hence is the factual equivalent thereof. 6. Part C (Force Majeure): The equity investors should receive a return on their equity equal to their weighted average cost of capital for the time between notice is given and the Termination Compensation is received from TxDOT. 7. Part E (Termination due to Court Ruling, Delayed NTP or Lack of NEPA Finality): Please revise so that Part E shall not apply to "Termination due to Court Ruling" and "Delayed NTP" as this should be completely	1. No change. 2. TxDOT would prefer to clarify the existing contractual language to the extent the existing language is unclear, and invites your clarifications. Upon request, TxDOT will provide its comments to the proposer's examples during one-on-one meetings. Such examples should assume that no amounts are in dispute. 3. Addendum #3 is expected to revise the Termination for Court Ruling provisions to provide that, for purposes of measurement of compensation, a termination that involves a breach of TxDOT's warranties only will be treated as a TxDOT Default, a termination that involves a breach of Developer's warranties only will be treated as a Developer Default, and a termination that involves a breach of both parties' warranties will be treated as a Termination by Court Ruling. 4. Addendum #3 is expected to reflect that if at the time of termination a condition exists that is or could ripen into a Termination for Force Majeure Event, Court Ruling or Lack of NEPA Finality, then compensation will be paid as if termination resulted from such event; otherwise termination will be paid as a Termination for TxDOT Default. 5. Addendum #3 is expected to revise the definition of Equity IRR so that the equity is recognized from the date of commitment (after the Effective Date), provided (a) there is a binding, written, unconditional commitment of the equity, available on demand, (b) the committed amount is set aside in a separate account specifically identified for the project, or a letter of credit, parent guarantee or other good security in like amount is provided to back the binding commitment, (c) the start date for interest be the date (a) and (b) are both in place and (d) the compensation is reduced by earnings on the funds in the account, or if a letter of credit or other security is provided, the compensation is reduced by imputed	1/25/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		covered by Part B. Further, please delete the text in paragraph 1, clause (a) starting with "lesser of (i) the sum" up to and including ", if any, or (ii) the". 8. Please provide that TxDOT may not offset against its Termination Compensation any amount owed by Developer. It is essential for the lenders to ensure that the senior debt will be repaid under all termination scenarios. 9. In Part G.1 the reference to Section B.3 is incorrect and should be to Sections B 1. Otherwise timing in case of B.2 payments is unclear. 10. Parts G.4(a) (Termination for Developer Default) and G.5(a) (Termination by Court Ruling) seem to suggest that TxDOT can refuse to pay for an indefinite period as long as they pay LIBOR pus 200 basis points interest. This is unacceptable. Please insert a definite by which TxDOT must pay the amount owed. 11. Further, in Part G.1(b) and (c) seem to suggest that TxDOT would be the unilateral arbiter to determine Fair Market Value. Please revise the language and confirm that also under G (b) and (c), Fair Market Value is determined by the independent appraiser.	earnings at LIBOR between the "commitment" date and the date of actual funding (or termination). If these conditions aren't met, then the start date for contributed equity would be the date of actual equity funding. 6. No additional changes. See Question 930. 7. See items 3 and 4. No change regarding the requested deletion. 8. No change. See Question 931. 9. Addendum #3 is expected to revise the reference. 10. No change is necessary. The provisions set forth definite due dates. They recognize that if TxDOT is delinquent, it will owe interest. The contractual provision of interest on delinquent amounts, however, does not preclude other remedies. 11. No change is necessary. Sections G.1(b) and (c) (under Option A) do not contemplate that TxDOT would be the unilateral arbiter of Fair Market Value. The appraiser renders an opinion on Fair Market Value. It is not final or binding. Either party may contest the amount of Fair Market Value. See Section B.4(j).	
929.	CDA Exhibit 23 Part D.1(a)	Delete (a) in its entirety. It is unacceptable that the Developer receive no compensation for termination due to Developer Defaults prior to Service Commencement. This deal will not be financeable if at least a % of the Senior Debt is not paid.	See Question 927	10/19/07
930.	CDA Exhibit 23 Part C	Compensation to the Developer should be established. At a minimum, this compensation should cover the Senior Debt Termination Amount plus IRR on equity contributed prior to the date of termination, at a percentage to be determined.	Addendum #1 is expected to revise Part C.	10/19/07
931.	CDA Exhibit 23	Part B (Termination for Convenience): In undertaking a design, build, finance and operate project, the private sector assumes significant risks, most significantly construction and traffic & revenue risks. These risks are real and loss of investment can and does occur from time to time. The private sector creates significant value through the successful management of these risks. That value must be fully recognized in any scenario where a completed, operating project is compulsorily purchased from the private sector. In seeking to cap the compensation payable to the private sector on a termination for convenience by reference to a single, defined equity IRR (even an IRR adjusted upward from the base case equity IRR), TxDOT fails to recognize that value, which changes over time. We believe that	Part B. TxDOT intends to comply with SB 792 in a way that does not meaningfully cap Developer's upside. Addendum #1 is expected to apply an IRR on equity of 23%, which corresponds to the revenue sharing band of 75%. Part C. See Question 930. Part D1. See Question 927. Part D2. No change. Part E. Addendum #1 is expected to revise Part E. Offset. No change. See Question 478.	10/19/07

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		the maximum compensation payable should reflect either: (i) fair market value; or (ii) the Senior Debt Termination Amount plus the present value, at a risk free rate (that is, the benchmark taxable or tax exempt bond rate consistent with the financing contained in the Base Case Financial Model), of the remaining cashflows to equity as projected under the Base Case Financial Model. Fair market value can be deployed by defining an Adjusted IRR concept using an appropriate methodology as previously discussed. It is our opinion that these proposals are within the confines of S.B. No. 792. Part C (Force Majeure): The equity investors should receive all of their initial equity contributions back in addition to the contemplated compensation. Part D1.(a) (Termination for Developer Default prior to Service Commencement Date): Termination compensation should be payable even if the Developer Default giving rise to the termination occurs prior to the Service Commencement Date (especially in light of the tight cure period relating to NTP issuance). Termination compensation should be calculated by reference to the fair market value less any rectification costs. Fair market value may be calculated by determining the net present value of the expected cashflows from the Project, less the remaining construction cost to complete the Project. Part D2. (Termination for Developer Default post Service Commencement Date): Termination compensation should be for the fair market value. Part E (Termination due to Court Ruling, Delayed NTP or Lack of NEPA Finality). Please delete the text in paragraph 1, clause (a) starting with "lesser of (i) the sum" up to and including ", if any, or (ii) the". Please provide that TxDOT may not offset against its Termination Compensation any amount owed by Developer unless specifically provided for in Exhibit 23 (see Section 17.3.5)		
932.	CDA Exhibit 23	1. Definition of "Equity IRR": The newly added language should be removed here and equivalent language should be inserted into the definition of "Contributed Unreturned Equity". It has to be ensured that equity which is either contributed by the Sponsors, or irrevocably committed to be contributed to the Developer, from whatever sources and in whatever form, will constitute "Contributed Unreturned Equity".	1. No change. The newly added language only applies to the termination for convenience formula. 2. If TxDOT compensates Developer for future cost or revenue impacts that are not incurred because of an early termination, it is appropriate to subtract those amounts where those amounts are not otherwise reflected in the termination compensation (e.g., because the Senior Debt Termination Amount is applicable). It is	4/4/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		2. Please delete B.3(g) for the following reason: Where a Compensation Amount has been paid to Developer in respect of cost and revenue impacts attributable to a future period, such Compensation Amount reflects the change in the present market valuation of the Project as a result of the impact of the Compensation Event on the cashflows of the Project. It is equitable that such compensation should be distributed to debt and equity, the providers of capital to the Project, in the same proportion as their initial contributions. Under the revised definition of Fair Market Value (FMV), FMV will take into account the adverse cost and revenue impacts of a Compensation Event accruing after the Early Termination Date, where the Developer has previously received payment of a Compensation Amount for adverse cost and revenue impacts accruing from and after the Early Termination Date. In case of Section B.3, therefore, the value consequences of the Compensation Event will result in a reduction in the FMV of Developer's Interest which is determined according to B.3(a)(i). That reduction will fully reflect the payments to both equity and debt from the Compensation Amount. Section B.3(a) provides, however, that the Termination Compensation shall equal the greater of FMV and the Senior Debt Termination Amount. This reflects a policy decision on the part of TxDOT to provide to Senior Debt the protection of a "floor" on the Termination Compensation payable - that is, Senior Debt will be protected in the event that FMV is lower than the amount of Senior Debt. The Senior Debt Termination Amount (and therefore Termination Compensation) will reflect that portion of any Compensation Amount which was distributed to debt. If that portion was less than Senior Debt's proportional share of the Compensation based on its original contribution to the Project, it would be equitable to deduct from the compensation payable any part of Senior Debt's proportional share of the Compensation Amount which was not paid to it - but it is not equitable to deduct 100% of the Compensation Amount not paid to Senior Debt. The same arguments applies in relation to: Section C.2(f), Section D.2(a) and Section D.3(a). In relation to the following sections, no deduction should be	up to the Developer and its Lenders to determine how any compensation received from TxDOT should be allocated between them in light of this provision. 3. Addendum #6 is expected to make the requested change. 4A. No change. Regarding Termination by Court Ruling due to TxDOT breach of warranty, see Section E.4(b). 4B. No change. The requested change is contrary to law. 4C. See Question 782. 4D. No change is necessary. The definition of Senior Debt Termination Amount includes refinancings. 5. No change is necessary. See Section E.5(b). 6. No change. TxDOT believes it is appropriate for Part E to apply for the circumstances listed in Section E.2. No change is necessary regarding Termination by Court Ruling. It is not appropriate to extend this concept to a breach of an obligation. See Question 928(7). 7A. Addendum #6 is expected to change the reference to Section B.4 to Section B.1. 7B. See Question 928(10). 8. See Question 931.	

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		made to reflect any part of Senior Debt's proportional share of the Compensation Amount which was not paid to it - because such amount will be reflected in a reduced amount paid in respect of Contributed Unreturned Equity: Section C.3, E.1(f) and E.2(f). In relation to the following sections, we agree that a deduction should be made for the portion of any Compensation Amount which was not previously used to reduce Project Debt - because the calculation of the Adjusted Equity IRR Amount refers to the Base Case Financial Model, which does not take into account the cost and revenue impacts of the Compensation Events (and therefore reflect any portion of any Compensation Amount paid to equity): B.4(h). 3. In Part A. 4.(b) please add the text "/or" before the text ", if applicable" each time it occurs. 4. Part B.1 (Termination for Convenience/Delayed NTP): A. Please revise so that Part B applies to Terminations by Court Ruling to the extent that a court ruled that any obligation of TxDOT under the CDA Documents is void, unenforceable or impossible. Further, Part B should apply as well to all Terminations Due to Delayed NTP. B. In Part B.2, please replace the word "smaller" with "greater" in the third to last line. C. In Part B.4: As discussed in our meeting and the comment in this table in relation to the definition of Senior Debt Termination Amount, third party subordinated debt with a first subordinate lien on and pledge of the Developer's interest with an interest rate exceeding LIBOR plus 450 basis points should be treated as Senior Debt for the purposes of this section B.4 of Exhibit 23. This is currently not reflected in the drafting since such subordinated debt would not fall under the definition of "Senior Debt Termination Amount". Incidentally, such subordinated debt would not currently be treated and compensated as equity, either since it is not encapsulated by the following definitions used in Part B.4 to determine such compensation: Distributions, Equity IRR, Subordinate Debt and Subordinated Security Documents. D. Further, the amount payable under paragraph (a) of this Section must reflect any increase in the Initial Senior Debt Termination Amount attributable to a Refinancing of the Initial		

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Senior Project Debt that (A) was fully and specifically identified and taken into account in the Base Case Financing Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered. The value of any planned refinancing is reflected in the Proposer's bid for the project and in the Base Case Equity IRR. It is inequitable that any incremental debt amounts as a result of such planned refinancings are not taken into account in the circumstances of a Termination for Convenience. 5. Part D (Developer Default): This should apply to any Termination for Court Ruling to the extent a court ruled that an obligation of the Developer under the CDA Documents is void, unenforceable or impossible. In D.2(b) and D.3(b), the amount payable under these paragraphs should include the portion of any Refinancing Gain previously paid to TxDOT. 6. Part E (Termination due to Court Ruling, Delayed NTP or Lack of NEPA Finality): Please revise so that Part E shall not apply to Delayed NTP as this should be completely covered by Part B. With respect to Termination by Court Ruling, this should only be covered to the extent that such termination as determined by a court was not in relation to the unenforceability, void or impossibility of either a TxDOT or a Developer obligation. Part E.4. has to be fixed to reflect the various distinctions with respect to a Termination for Court Ruling (i.e. Termination for Convenience applies to a TxDOT breach of any of its obligations, not only for a breach of a representation; Termination for a Developer Default applies to a Developer breach of any of its obligations, not only for a breach of a representation; Termination for Court Ruling applies for all other terminations by a court ruling). Section 19.12 of the CDA has to be fixed as well. Further, please delete the text in paragraph 1, clause (a) as well as paragraph 2, clause (a) starting with "lesser of (i) the sum" up to and including ", if any, or (ii) the". 7A. In Part G 1.(a), please change reference from Section B.4 to Section B as this timing provision should capture all Termination Compensations due to Termination for Convenience. Otherwise, please explain when the payments under B.2 and B.3 are due.		

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		B. Parts G.4(a) (Termination for Developer Default) and G.5(a) (Termination by Court Ruling) provide that TxDOT can refuse to pay for an indefinite period as long as they pay LIBOR pus 200 basis points interest. This is unacceptable. Please insert a definite time by which TxDOT must pay the amount owed. 8. Please provide that TxDOT may not offset against its Termination Compensation any amount owed by the Developer. It is essential for the lenders to ensure that the Senior Debt will be repaid under all termination scenarios.		
933.	CDA Exhibit 23 Termination Compensation	In Part E. 1. of Exhibit 23, please add the word "approval" after the word "environmental reevaluation" in the fourth line. In Part G. 5. of Exhibit 23, please add the word "Approval" after the word "Environmental Reevaluation" in the header and add the word "approval" after the text "environmental reevaluation" the sixth line. With respect to Termination for Convenience, we refer to Question 927, part 4D. TxDOT's answer implies that the Senior Debt Termination Amount is payable on termination under Section B.4(a) of Exhibit 23. However, the current draft of Exhibit 23 says that the Initial Senior Debt Termination Amount will be payable in this circumstance. Please replace "Initial Senior Debt Termination Amount" with "Senior Debt Termination Amount". This is consistent with the requirements of SB 792. If "Initial Senior Debt Termination Amount" remains, then Section B.4(a) must be amended to include any increase in Initial Senior Debt Termination Amount attributable to a Refinancing of the Initial Senior Project Debt that (A) was fully and specifically taken into account in the Base Case Financing Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered.	Addendum #6 is expected to address the requested changes.	5/9/08
934.	CDA Exhibit 23 Section E.1	Subject to Sections E.4 and E.5 below, in the event of Termination by Court Ruling, termination due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement or ~~TxDOT's~~ either Party's election to terminate under Section 19.14 of the Agreement for failure to obtain an environmental reevaluation required in connection with an alternative technical concept approved by TxDOT and described in Exhibit 2 ~~under Section 19.14 of the Agreement~~, the Termination Compensation shall be an amount equal to the following: (a) Either (1) the ~~The~~ lesser of (i) the sum of (A) Initial Senior	Addendum #6 is expected to revise Section E.1.	5/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Debt Termination Amount plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Senior Project Debt that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to TxDOT, if any, ~~or~~ and (ii) the Senior Debt Termination Amount; or (2) in the event of a Termination for failure to obtain an environmental reevaluation required in connection with an alternative technical concept approved by TxDOT only, where the Initial Funding Agreements have not be entered into, all amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date, with respect to interim debt financing (whether secured or unsecured and including equity bridge financing) incurred in connection with the Project; plus . . ."		
935.	CDA Exhibit 23 Section G.5	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 ~~TxDOT's~~ either Party's election after ~~its~~ failure to obtain an environmental reevaluation as provided in Section 19.14 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. . . ."	Addendum #6 is expected to make the requested change.	5/29/08
936.	CDA Exhibit 26 Form of Joinder Agreement	Please revise Section 2 as follows: "TxDOT hereby designates Developer at "Beneficiary" under the Master Lockbox and Custodial Account Agreement with respect to the Project and toll revenues arising under the Project which are at any time held by the Custodian under the Master Lockbox and Custodial Account Agreement and which under the terms of Section 8.7.7 or 19.10.4 of the CDA TxDOT is obligated to direct to be paid to the Project Trustee, and the Custodian hereby acknowledges said designation, with the full rights, powers and benefits granted to a "Beneficiary" thereunder. Developer's rights as a Beneficiary shall cease and Developer shall deliver to the Custodian written notice of confirmation of termination of Developer's rights as a Beneficiary, only in accordance with the terms of Section 8.7.11 or Section 19.10.11 of the CDA, as applicable".	Change is not necessary. The approach taken in Secion 8.7.7 is to call for revisions to Section 2 as and when necessart due to execution of the TxDOT TSA rather than make these changes in the Exhibit. The actual executed Joinder Agreement should reflect only the applicable provision (either 8.7.7 or 19.10.4) under which it is entered into.	7/10/08
937.		The PAB Application you sent us did not include Attachment A.	Attachment A was sent via email and loaded on the ftp site on April	4/29/08

NO.	DOC SECTION	QUESTION/COMMENT	RESPONSE	DATE
		Could you please provide us that Attachment?	30, 2008.	
938.		We note that TxDOT did not identify any specific potential conduit issuers in its Application. Did USDOT express any concern with that? Has TxDOT since identified a potential issuer of PABs for the I-635 Managed Lanes Project?	TxDOT is in the process of forming a Transportation Corporation under Chapter 431 of the Texas Transportation Code to serve as conduit issuer.	4/29/08
939.		The TxDOT Application identified McCall Parkhurst & Horton LLP as Bond Counsel. There are many potential counsel roles in a transaction such as this. Would TxDOT be receptive to another qualified firm being Bond Counsel for PABs? Would TxDOT have preferred roles for Developer's legal counsel in addition to one of Developer's legal counsel serving as Borrower's Counsel?	McCall Parkhurst & Horton LLP will be TxDOT's Transportation Corporation's Bond Counsel. No, TxDOT is not receptive to another qualified firm being Bond Counsel for PABs. Borrower is free to choose its counsel, but other than being borrower's counsel there would be no preferred roles for Developer's attorneys.	4/29/08