



Texas Department of Transportation

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February 17, 2006

RECEIVED ON

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TEXAS DIVISION
FHWA

Mr. Robert Callan
Acting Division Administrator
Federal Highway Administration
Austin, Texas

RE: Request for SEP-15 Approval, Procurement Approach for the I-69/TTC Project

Dear Mr. Callan:

This letter constitutes an application for SEP-15 approval of the Texas Department of Transportation's (TxDOT) plan to enter into a Comprehensive Development Agreement (CDA) for development of the I-69/TTC High Priority Trans-Texas Corridor Project (the Project) through a public-private partnership. The proposed corridor includes tolled truck and vehicle lanes, high speed passenger rail, commuter rail, freight rail and utility infrastructure, and may also include intermodal facilities.

The planned procurement for the CDA is similar to the approach that has been approved by the Federal Highway Administration (FHWA) for the TTC-35 Project. The procurement will proceed pursuant to enabling legislation, which was revised earlier this year by the Texas legislature. Based on our current schedule, the request for qualifications will be issued in March 2006.

As described in the enclosed work plan, TxDOT has carefully structured a contracting and procurement process to undertake development of facilities within the Project, with the goals of integrating private sector ideas and innovations into the environmental and permitting approval process, allowing the NEPA analysis to proceed efficiently and effectively, and ensuring transparency in the overall process. We believe that use of a CDA as described in the work plan will markedly reduce the time required to complete the corridor, have a positive impact on the environmental review process, facilitate use of innovative financing, encourage innovation in design and construction of the corridor, and enhance the quality of service provided to the public.

TxDOT expects to coordinate closely with the FHWA throughout the implementation of the work plan for the Project. As with the TTC-35 project, we look forward to FHWA observation of and participation in the evaluation and selection processes, and will provide the draft request for detailed proposals and other documents to the FHWA for a determination whether it is "satisfactory for further processing" prior to issuance.

Mr. Robert Callan

- 2 -

February 17, 2006

Time is of the essence in obtaining the approvals requested by this letter, in order for TxDOT to proceed as planned with the corridor. We would greatly appreciate your earliest consideration of our application.

If you wish to discuss or would like us to provide any clarifications or further explanations to this application, please feel free to contact Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, at (512) 936-0903. We would be happy to meet and talk with you and your staff at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "M.W. Behrens". The signature is written in black ink and is positioned above the typed name.

Michael W. Behrens, P.E.
Executive Director

Enclosures

WORK PLAN FOR THE TRANS-TEXAS CORRIDOR I-69 HIGH PRIORITY CORRIDOR

(Texas Department of Transportation
Application for SEP-15 Approval)

A. INTRODUCTION

This work plan is submitted by the Texas Department of Transportation ("TxDOT") for review and approval by FHWA under Special Experimental Project No. 15 (SEP-15), with respect to development of the TTC-69 High Priority Trans Texas Corridor Project (the "Project") through a public-private partnership pursuant to a Comprehensive Development Agreement ("CDA"). The Project includes the I-69 High Priority Corridor (the "Corridor") which is comprised of individual facilities and will be further defined by a tiered NEPA process, as well as other facilities that are within the Corridor Study Area that serve a connectivity or financing purpose for the Corridor. Please refer to Exhibit A for a description of the Project as currently planned. Please refer to Exhibit B for relevant excerpts from the Texas Transportation Code (the "Code") and TxDOT rules (the "Rules") forming the basis for the planned procurement approach for the Project (collectively, the "Enabling Legislation").

TxDOT intends to issue a Request for Qualifications in March and subsequently to issue a Request for Detailed Proposals ("RFDP") to the short-listed firms. The RFDP will solicit proposals for pre-development services and potentially for financing, design, construction, maintenance and/or operations of one or more Project facilities.

The work is expected to proceed in phases, each of which may be governed by a separate agreement. The initial phase will include pre-development services pending completion of the environmental process. The second phase (if it proceeds) will include financing, design, construction and other development work for one or more facilities. A third phase may include operations and maintenance.

The price for pre-development services will be negotiated with the selected proposer(s) based on their proposal(s). The price for design, construction and other services for each facility may be competitively procured or negotiated with the selected developer team prior to issuance of a notice to proceed with such services. TxDOT plans to use the same process approved by FHWA for the TTC-35 program to determine that the price is reasonable. Please refer to Exhibit C for a description of the process.

B. SUMMARY OF EXPERIMENTAL PROJECT FEATURES

TxDOT requests FHWA to approve the following experimental aspects of the Project:

1. Issuance of the Request for Detailed Proposals and entering into the CDA without having received final NEPA approval for the Project.

2. Negotiation of a price for development work following award of the CDA, subject to a price reasonableness determination as specified herein.
3. Adoption of an approach whereby project authorization under 23 CFR 635.112 would be provided on a facility-by-facility basis following issuance of the Tier Two NEPA approval.¹
4. Including a general warranty in individual facility agreements that exceeds the period specified in 23 CFR 635.413(e)(1)(i), and allowing the developer to undertake responsibility for routine maintenance services.

In addition, TxDOT requests FHWA concurrence with TxDOT's interpretation of federal rules and policies, as follows:

- Since this procurement concerns a public-private partnership, the only provision in 23 CFR Part 636 that applies to this procurement process is 23 CFR 636.119.
- The procurement process described herein constitutes a competitive process for purposes of 23 C.F.R. 636.119.
- It is permissible for the developer and/or a subconsultant on the developer's team to provide NEPA support services for the Project, with the understanding that (1) a consultant not affiliated with the developer will compile the NEPA documents, (2) all developer and consultant services will be subject to control and direction by TxDOT and FHWA, and (3) TxDOT and FHWA will be responsible for preparation of the NEPA documents and for determining the content and conclusions thereof.
- The CDA may include a contract provision indicating that the provisions of 23 CFR 635.116(d) have superseded the 30% self-performance requirements of Section VII in Form FHWA-1273.

C. SCHEDULE

TxDOT has established the following preliminary schedule for the Project (all future dates are subject to change):

RFQ issued

March 15, 2006

¹ The term "facility" is broadly defined by the Enabling Legislation, and includes "(A) a state highway; (B) a turnpike; (C) a freight or passenger railroad, including a commuter railroad, intercity railroad, and high-speed railroad; (D) a public utility facility; or (E) any structure that is reasonably necessary for the effective operation of a method of transportation, including an intermodal transfer or staging area, weigh station, inspection station, rest area, service station, restaurant, train or bus station, warehouse, freight interchange, switching yard, maintenance yard, and pipeline pumping station.

Issuance of Draft RFDP for industry review	Sept. 2006
Issuance of Final RFDP	February 2007
Proposal Due Date	June 2007
Selection of proposer(s) for negotiations	August 2007
Award/Negotiation/Execution of CDA	December 2007
Tier 1 NEPA Approval for Corridor	Fall 2007
Tier 2 NEPA Approval for initial facility(ies)	TBD

The process of determining a lump sum price for final design and construction for each facility would commence once design has reached an appropriate level, and would be finalized after the date of final NEPA approval for the facility. The notice to proceed with final design and construction would be issued after the lump sum price is determined and (for facilities that will be developed using federal-aid funds) after project authorization is received.

D. GOALS

The goals that TxDOT anticipates will be achieved by the CDA described herein are:

1. Accelerating delivery of necessary facilities;
2. Bringing on private partners as early as possible to assist in the planning and development of the facilities;
3. Achieving cost and schedule certainty early in the design phase of each facility;
4. Obtaining innovation in project financing, design, planning, construction, operation and maintenance;
5. Determining the most appropriate approach to design and construction of each facility, taking into account TxDOT's goals of promoting aesthetics and environmental sensitivity, obtaining high quality construction and reducing maintenance requirements while keeping construction costs within budget, minimizing congestion, enhancing safety, and avoiding unnecessary impacts to the traveling public;
6. Obtaining state-of-the art design solutions that respond to environmental concerns, streamlining the environmental and permitting approval process through early assessment of opportunities and constraints, encouraging

creative design solutions and integrating resource agency permitting into the NEPA process, and encouraging advance mitigation;

7. Maximizing eligibility for all available forms of financing, allowing a plan of finance to be developed involving a combination of private sector funds (potentially including revenue-based financing), federal, state and other public funds (including both loans and grants), and leveraging scarce public funds to the maximum extent possible; and
8. Enabling TxDOT to share financial risk with, and assign substantial project risk to, the party best able to manage that risk early in the project development process.

E. DISCUSSION OF PROPOSED PROCUREMENT, EXPERIMENTAL PROJECT FEATURES AND RELEVANT CDA TERMS

1. Proposed Procurement Approach

The proposed procurement approach for the TTC-69 Project is comparable to that approved by FHWA for the Texas Department of Transportation's TTC-35 project, in that (a) final NEPA approvals will not be obtained until after the CDA is awarded, (b) the contract will initially be limited to pre-development services and (c) price for development of facilities will be negotiated after award and thus will not be a factor in evaluation of the proposals.

The proposer will be selected using a best value evaluation process, based on considerations that include public need, technical and financial feasibility, transportation efficiency, cost effectiveness, and acceleration of project delivery. The CDA procurement anticipates including a shortlisting step. In addition, TxDOT recognizes the benefits associated with conducting an industry review process, and will invite shortlisted firms to attend workshops and/or one-on-one meetings to obtain information about the Corridor and CDA. TxDOT plans to issue the draft RFDP to shortlisted firms (including CDA terms) concurrently with delivery of the draft documents to FHWA for review. All pre-RFDP communications with industry representatives will conform to applicable State law.

The proposals will be evaluated in accordance with the process and evaluation factors described in the Enabling Legislation and RFDP. TxDOT will determine the value to the public of delivery of the Project as promised in the proposal, as well as evaluating the likelihood that the proposer will be able to successfully deliver the Project. The latter evaluation will include a review of the proposer's qualifications and experience, development plan and financing plan. TxDOT may request clarifications and supplemental information from proposers as TxDOT deems appropriate to allow a best value determination to be made.

TxDOT may authorize, at its option, competitive negotiations with multiple proposers as a means of selecting among proposals for the Project. This process would entail discussions and requests for revised proposals generally in accordance

with the procedures applicable to traditional design-build contracts under the design-build rule.

Upon conclusion of the evaluation process, TxDOT may proceed with one-on-one negotiations with one or more of the proposers, prior to award, for the purpose of determining the terms and conditions of the CDA. Negotiations could include the incorporation of unsuccessful proposers' ideas, and could address any other matters allowed by State law and deemed advisable by TxDOT. TxDOT would have the right to proceed with negotiations with the next highest rated proposer if negotiations with the apparent best value proposer fail. TxDOT may reject any and all proposals at any time.

FHWA will have the opportunity to observe and/or participate in the evaluation, selection and negotiation processes. The request for FHWA's concurrence in the award of the CDA will be accompanied by a timetable showing the major steps in the procurement process, a summary of the rationale for the selection, and a description of any material changes made to the CDA terms during the negotiations. Following receipt of FHWA concurrence, the CDA would be awarded, executed and delivered in accordance with the RFDP. TxDOT anticipates issuing a notice to proceed with the initial phase of the Project shortly after execution of the CDA.

2. Relevant CDA Terms

(a) Possible NEPA Support by Developer. One of the reasons that TxDOT wishes to award a CDA prior to NEPA approval is to obtain developer support for the NEPA process with regard to the Corridor and individual facilities. Accordingly, the scope of services to be provided by the developer under the CDA may include provision of engineering studies and technical information for the NEPA analysis. The CDA will include provisions ensuring that these efforts will be subject to management and control by TxDOT and FHWA, which will exercise independent review and retain discretion over all of the information in the NEPA document. The CDA will include terms and conditions applicable to preliminary design efforts for the Corridor and facilities and due diligence activities (such as site conditions and utility investigations) to be undertaken by the Developer prior to final NEPA approval.

(b) Planning and Preliminary Design Phase. After execution of the CDA, an initial planning and preliminary design phase will commence. During this period, the developer will work with TxDOT to complete a Master Development Plan for the Corridor. The master plan will describe facilities within the Corridor having independent utility and with logical termini and will establish a proposed program for development of the facilities. The developer will provide a project-specific finance plan for each facility included in the program, as well as an implementation plan indicating: (i) whether the facility will be delivered using design-bid-build, design-build, design-build-operate-maintain, concession or some other approach, (ii) whether the developer, an affiliate and/or third parties will be responsible for design and construction of the facility, and (iii) the proposed procurement approach for the contract(s) for design and construction of the facility (i.e., negotiated terms and conditions, award based on a best value selection process, competitive bidding or a different approach). The developer's

services during this period will also include provision of design services in support of the NEPA process and development of preliminary design as appropriate for the proposed delivery methodology.

Upon completion of the Tier Two NEPA document by TxDOT and development of the preliminary design of a Corridor facility by the developer to a level allowing determination of a lump sum price, the arrangements for design and construction of the facility would be implemented. A number of different options are available, as described in Exhibit D hereto. If the implementation plan involves negotiated pricing of construction work, an "open book" approach will be used, as described in Section F below, allowing an analysis to be performed to confirm that the price is reasonable.

If, upon completion of the Tier Two NEPA document for a Corridor facility, a "no-build" alternative is selected, or TxDOT otherwise decides not to develop the facility, the CDA and any facility agreement will be terminated with respect to such facility. The RFDP will state TxDOT's intentions regarding compensation (if any) payable to the developer if a termination occurs, and the executed CDA and any facility agreements will contain the final terms and conditions associated with such a termination.

As with other federal-aid contracts, any major revisions to the CDA will be subject to a determination that the document is satisfactory for further processing or approval (as appropriate) by FHWA.

(c) Other CDA Terms and Conditions. The terms and conditions of the CDA (i) will be subject to review and concurrence by FHWA, (ii) will incorporate applicable federal-aid contract requirements, and (iii) will contain terms and conditions relating to performance of work as deemed appropriate by TxDOT.

3. Proposed Experimental Features

Please note that all of the proposed experimental features have previously been approved for the TTC-35 program.

Experimental Feature # 1 - Issuance of RFDP and execution of CDA prior to final NEPA approval. As discussed in more detail in Section F below, the NEPA approvals for the Corridor will not be obtained until after the CDA has been signed. The CDA will include provisions addressing possible changes in the scope of the Corridor or a facility arising after award of the CDA, including a provision for termination or partial termination of the CDA if a "no-build" alternative or other alternative inconsistent with the selected developer's approach is selected.

Purpose: This approach provides the flexibility to involve the private sector in project development activities prior to completion of the NEPA process.

Deviation from FHWA Requirements: Although 23 U.S.C. 112(b)(3) provides that procurement documents may be issued and contracts awarded prior to final NEPA approval, FHWA has not yet adopted implementing rules in accordance with SAFETEA-LU. Therefore, this step of the process deviates from the requirements of FHWA's

existing design-build rule since the RFDP would be issued, and the CDA executed and delivered, before receipt of NEPA approval for the Projects.

Experimental Feature # 2 - Negotiation of a price for development work following award of the CDA, subject to a price reasonableness determination as specified herein, without a requirement for the developer to follow federal-aid procurement requirements in award of its contracts. As discussed in more detail in Section F below, the CDA will provide for pricing of development work to be negotiated on a facility-by-facility basis. The CDA will contain provisions enabling TxDOT and FHWA to determine price reasonableness in the event that the plan of finance for a facility contemplates state or federal funding.

Purpose: This approach allows the negotiation of price after a sufficient level of project design and pre-development work, including receipt of NEPA approvals, has been completed to enable determination of a lump sum price.

Deviation from FHWA Requirements: 23 CFR 636.119 provides for the possibility that a developer may be treated as the agent of the awarding agency under certain circumstances, subject to the requirement to follow Federal-aid procurement requirements in selection of its subcontractors. TxDOT believes that it would be appropriate for the characterization of the TxDOT/developer relationship under 23 CFR 636.119(b) to be determined on a facility-by-facility basis, after the implementation plan and plan of finance have been established for each facility. Once that occurs, a separate facility agreement will be signed, that will contain "price and an assignment of risk" under 23 CFR 636.119(b)(1). Although TxDOT may, under certain circumstances, wish to place restrictions on the process to be followed for subcontractor selection, TxDOT would prefer to have flexibility to determine appropriate restrictions on a case-by-case basis.

TxDOT will include provisions in the CDA and federally funded facility agreements to ensure that an appropriate approach is taken to subcontracting, and will submit the documents to FHWA in advance of execution for review and a determination that it is satisfactory for further processing. FHWA would therefore have substantive input into the subcontracting requirements included in the CDA and federally funded facility agreements.

Experimental Feature #3 – Use of a bifurcated procedure for Project authorization on a facility-by-facility basis. In lieu of obtaining project authorization through FHWA's approval of the RFDP as contemplated by the design-build rule, TxDOT proposes that an alternative procedure for project authorization be established, based on the process approved for the TTC-35 Program.

FHWA would review the procurement and contract documents associated with the CDA, as well as the implementation and financing plans for the facility, and determine that such documents are satisfactory for further processing. Such review and determination would be considered a preliminary action by FHWA for NEPA purposes.

Project authorization for each facility would be requested following completion of the NEPA analysis for the facility.

Purpose: This approach provides the flexibility to involve the private sector in project development activities prior to completion of the NEPA process.

Deviation from FHWA Requirements: FHWA has not yet modified its regulations to reflect recent revisions to 23 U.S.C. 112(b)(3) allowing procurement packages for design-build projects to be issued prior to final NEPA approval. The existing rule contemplates issuance of project authorization prior to issuance of the procurement documents. As a result of the plan to award the CDA prior to final NEPA approval, an alternative methodology for project authorization is necessary. The methodology proposed is identical to that approved by FHWA for the TTC-35 project.

Experimental Feature #4 – Including a general warranty in individual facility agreements that exceeds the period specified in 23 CFR 635.413(e)(1)(i), and allowing the developer to undertake responsibility for routine maintenance services. TxDOT wishes to have the flexibility to obtain a general warranty for longer than two years. In addition, this application requests that FHWA waive the prohibition on use of federal funds for routine maintenance, due to the possibility that a long-term warranty may involve routine maintenance work as well as preventive maintenance, and to difficulties in such case of separating the costs of routine maintenance from the costs of preventive maintenance.

Purpose: A long-term warranty will be critical for the facility agreements in order to ensure quality in design and construction of the facility. In addition, extended warranties could be a significant factor in determining whether TxDOT is getting the best value for the facility and could help reduce life cycle costs and reduce TxDOT's risk.

Deviation from FHWA Requirements: FHWA's design-build rule includes a limit for general warranties as set forth in 23 CFR 635.413. Also, routine maintenance is not eligible for federal-aid reimbursement. These approvals have been previously granted to other agencies, including TxDOT for the TTC-35 project.

F. DISCUSSION

1. Developer as a Long-Term Partner; Pricing Issues.

TxDOT anticipates that the Corridor developer will become a long-term partner with TxDOT in a joint effort to develop the Corridor and facilities on a multi-modal, multi-facility basis. Following award and execution of the CDA and issuance of a notice to proceed, the parties would work together to develop the Corridor facilities in accordance with the terms of the CDA. As specific facilities reach a level of design enabling the cost and schedule to be determined, the parties will be able to finalize the completion schedule and develop and implement a plan of finance (including determining whether public funding is required and establishing the nature and amount of such funding).

The CDA will provide several options for delivery of facilities, including the options identified in Exhibit D. Parameters for implementation of each of these options will be defined in the original CDA. The ability of the developer to self-perform work (including in the concept of "self-performance" the performance of such work by affiliated entities) is an important element in maximizing private sector interest in participating in the CDA procurement. The CDA will specifically address the requirements that must be met in order for the work to be self-performed.

The CDA will address the manner in which the price payable by TxDOT for each facility will be determined. Certain Project facilities may be developed using a competitive procurement process. If, however, TxDOT and the developer agree the developer will perform work with its own forces or through negotiated subcontracts, an alternative means of determining price reasonability will be necessary. Exhibit C describes the price reasonableness analysis that will be conducted by TxDOT in the event TxDOT elects to allow the developer to "self-perform" the final design and construction of a facility and the lump sum price is negotiated. This approach is necessary in order to obtain the benefits of bringing the developer into the Corridor planning process. A similar approach was approved for the TTC-35 project. TxDOT also anticipates exploring the use of (a) facility revenue sharing with the developer and/or other third parties; and (b) franchises and concessions where Corridor facilities may be leased to (and operated by) the developer or a third party on a short or long-term basis.

2. NEPA Compliance

TxDOT anticipates engaging one or more consultants to assist with the NEPA analysis. Any NEPA consultant engaged directly by TxDOT will not be permitted to participate on a developer team for the same Project without TxDOT's prior written approval. Any decision to allow such participation would be made in conformance with federal requirements relating to organizational conflicts of interest (including 23 CFR Section 636.116) as well as applicable state law.

TxDOT anticipates that the developer will provide support to TxDOT during the NEPA process, which may include providing preliminary engineering, tests, studies, data, analyses and reports, supplementing the services provided by TxDOT's NEPA consultant. The ability to obtain NEPA support from the developer provides a number of advantages, including (a) a quick turnaround time in obtaining technical information, (b) enhancing the ability of TxDOT representatives to evaluate the impact of proposed alternatives on the design, construction, operations and maintenance of the Corridor and facilities, and (c) allowing TxDOT to obtain innovative ideas from the developer regarding mitigation of impacts. This would also allow TxDOT to factor the developer's plans into the environmental analysis, thus avoiding the need to undertake additional reviews during the project development phase to determine whether proposed design concepts result in additional impacts requiring mitigation. In addition, the developer's familiarity with the environmental "drivers" affecting the project and with mitigation requirements would give the developer a better understanding of the environmental solutions, and should result in greater sensitivity by the developer to the concerns of the

environmental community during construction than is typically seen for construction contractors or design-builders selected after the NEPA process is completed. Safeguards will be implemented to ensure that services provided by the developer and its affiliates will not prejudice NEPA outcome.

TxDOT has not yet determined to what extent the successful proposer will be compensated if the NEPA analysis results in a "no-build" determination or in any other decision that is incompatible with the developer's plan for the Corridor or a facility, or other circumstances precluding the Corridor or a particular facility from going forward. TxDOT is considering various approaches, which may include a stipend or cost sharing if the Corridor or a facility does not proceed and/or payment for work product produced by the developer during the environmental review phase. The RFDP will include provisions addressing compensation payable upon such a termination. The CDA will indicate that the "no build" option may be selected, and will clearly set forth how the risks associated with the "no build" alternative (or any other alternative that is not consistent with the developer's planned approach to the Project and facilities) are allocated between the developer and TxDOT.

TxDOT and FHWA will at all times direct and control the NEPA process, in accordance with applicable requirements of NEPA (including requirements relating to organizational conflicts of interest) and the guidelines set forth in FHWA's guidance letter relating to the I-81 project in Virginia.

G. EVALUATION OF PROCUREMENT AND DEVELOPMENT PROCESS

The Project procurement and development process, with its innovative features, will be evaluated on a range of factors, including:

Time Savings. TxDOT will (1) compare the actual schedule for delivery of the Project with the estimated schedule based on a traditional procurement process, (2) evaluate the effect of the CDA process on delivery of the Project, and (3) attempt to quantify the value of early completion.

Innovation in Project Development. TxDOT will analyze the type and nature of the Project facilities and the procurement approaches described in this application and compare them with TxDOT's other projects.

Innovation in Financing. TxDOT will analyze the financing structures and methods developed in connection with the Project and how those structures and methods compare to TxDOT's historical project financing structures and methods. As part of this analysis and comparison, TxDOT will particularly focus upon the levels of financing and project risk shifted to the private sector and strategies employed to minimize State and TxDOT risk.

Innovation in Design and Construction. TxDOT will analyze innovative design and construction ideas and concepts used by the developer team and other contractors designing and constructing facilities, which evolve as a byproduct of the CDA process.

Quality and Warranty. A key component of the Project will be the ultimate quality of the work and the strength of any warranties provided.

Responsiveness to Local Concerns. Because the multimodal nature of the Corridor is unprecedented, the developer will be required to work closely with the communities through which such facilities pass. TxDOT will evaluate the success of the process in responding to concerns.

H. REPORTING

TxDOT anticipates filing an initial report, periodic updates, a number of interim reports, including post-acceptance reports for each facility, and a Corridor acceptance report, as described below. TxDOT may provide separate reports for separate facilities, or may provide consolidated reports regarding multiple facilities.

- Initial Report: The initial report will be filed within 120 days after the execution of the CDA and will include a preliminary analysis of the procurement. This report will:
 - Describe the process used to select the developer team;
 - Identify any reaction by the industry to use of the CDA concept;
 - Document major innovations contained in the proposals received; and
 - Discuss any major problems or issues that have occurred and how they were resolved.
- Updates: During the period following submittal of the initial report and prior to submittal of the final report, periodic updates will be submitted as appropriate. TxDOT anticipates that updates will be provided semi-annually during the initial phase of the CDA, describing the progress of the environmental analysis as well as the developer's activities relating to the Project(s).
- Interim Reports: Interim reports will not be prepared on a regular schedule but will be prepared as significant developments occur, describing (a) the progress of the development of the program/project as of such date, (b) problems encountered and how they have been addressed, (c) how any changes in the Project resulting from the NEPA analysis and other permitting processes have been addressed in the CDA, and (d) how the time and cost needed to complete the initial development as of the date of the report compares to past experience under design-bid-build procurement procedures. Reports will be provided upon occurrence of the following milestones, among others:

- Issuance of the final Tier One NEPA approval and the final Tier Two approvals (this will involve multiple reports).
- Establishment of a defined scope and price with guaranteed completion deadlines for design and construction of Corridor facilities.
- Completion of Corridor facilities (separate reports will be provided for separate facilities within the Project).
- Corridor Acceptance Report: A Corridor acceptance report will be submitted within 180 days following TxDOT's determination that the development work under the CDA is complete. This report will:
 - Provide an overall evaluation of the procurement and development processes;
 - Evaluate the completed Project against the same factors described in Section G above;
 - Describe lessons learned, pitfalls to avoid and suggestions for improvements on future innovative procurements;
 - Document contract complications encountered and claims made during construction;
 - Indicate and evaluate innovations in design or construction; and
 - Emphasize and focus upon the quality and timeliness and how they were affected by the CDA concept.
- Post-Acceptance Reports: A post-acceptance report will be submitted at the end of the first two years of any long-term O&M or concession term, and at appropriate intervals thereafter. This report will:
 - Evaluate the overall quality and performance of the facility;
 - Identify and evaluate warranties and document complications encountered during the period;
 - Identify any cost- or time-intensive maintenance items and evaluate the manner and effectiveness of their resolution;
 - Evaluate the overall safety and operation of the facility;
 - Evaluate design requirements in the completed facility and document any design adjustments that could improve quality; and

- Evaluate the private sector's responsiveness as operator, maintenance provider and/or concessionaire, as applicable.

I. **CONCLUSION**

TxDOT believes the procedures described herein will result in the successful development of the Corridor. We look forward to working with FHWA as the development progresses, and to providing you and others with the benefits of our experience.

EXHIBIT A PROJECT DESCRIPTION

I-69/Trans-Texas Corridor

Description:

I-69/Trans-Texas Corridor is a planned multi-mode transportation facility extending from northeast Texas to the border with Mexico at Laredo and the Rio Grande Valley with a possible connection to the Gulf Coast. The project is the marriage of I-69 (a nationally-designated Interstate highway corridor) and Trans-Texas Corridor, a high-capacity, high-speed multi-mode corridor in Texas.

I-69 was originally designated in ISTEA (1991) with subsequent amendments and modifications. The national corridor extends from the Canadian border at Port Huron, Michigan to the border with Mexico in south Texas. The southern terminus is not designated but the study of both Laredo and the Rio Grande Valley is required.

The initial study area for I-69 was determined in the FHWA's Corridor 18 and Corridor 20 studies. I-69 enters Texas at a yet-to-be determined point southwest of Shreveport, Louisiana, serves the Houston area and continues south to the border. A branch corridor from the vicinity of Carthage, Texas proceeds north to I-30 near Texarkana, Texas. In south Texas, three corridors are to be studied. One is generally parallel to U.S. 59 to Laredo, one parallels US 77 from Victoria to Brownsville (Rio Grande Valley), and the third parallels U.S. 281 from the vicinity of George West to McAllen (Rio Grande Valley).

Trans-Texas Corridor is a long-range plan for multi-mode transportation facilities serving important trade and travel corridors throughout the state. The overall plan is described in "Texas at the Crossroads" published by the State of Texas in 2002. The ultimate corridor configuration consists of 6-lanes of highway for automobiles, 4-lanes of highway dedicated to heavy truck traffic, three double track railways, one each for high-speed passenger, conventional commuter passenger, and freight, plus a 200-foot wide reservation for utility transmission. Long term phasing of construction is anticipated.

Eleven corridors were described in the "Crossroads" plan, with four of these being designated as high-priority. These corridors generally parallel the exiting I-35, I-10 and I-45 routes plus the designated I-69 service area.

To make best use of state and federal resources, I-69 and Trans-Texas Corridor projects in east Texas were merged into the I-69/TTC.

Financials:

With the passage of SAFETEA-LU in 2005, no federal highway funds have been earmarked for construction of I-69 (or I-69/TTC) in Texas. The State of Texas plans to

use a Comprehensive Development Agreement (CDA) to construct and operate the I-69/TTC corridor. Under the CDA, a private-sector developer provides financing for construction of the facility and recovers the investment through the use of tolls and other user fees. The corridor is operated as a for-profit business by the developer. The developer is granted a concession to operate the facility for a fixed period, not to exceed 50 years. At the end of the concession, all facilities revert to the state.

The 2002 "Crossroads" study estimated the cost of construction at \$33 million per mile plus right of way cost. No further construction estimates have been prepared.

Project Readiness:

I-69/TTC is following a two Tier environmental clearance process. The project is currently midpoint in Tier One, with the work having started in November 2003. The draft Tier One Environmental Impact Statement is slated for availability in Fall 2006 with a signed DEIS in Fall 2007. Work on Tier Two documents for portions of the corridor could immediately follow.

The goal of Tier One is to identify a final study area for use in Tier Two. Tier Two performs detailed alignment level studies. While the Tier One document is an Environmental Impact Statement for the entire length of I-69/TTC, it is expected that multiple Tier Two documents will be prepared as portions of the corridor are ready for development. Depending on the circumstance and location, Tier Two documents may range from Categorical Exclusions to full Environmental Impact Statements.

The final study area identified by Tier One will be a corridor nominally four-miles wide. Because of the screening method used, the corridor will range from as narrow as ½-mile in environmentally-constrained areas to over 6-miles wide at non-critical locations. The emphasis of Tier One is to avoid major environmental constraints to the greatest extent possible.

Important Risk Factors:

While major public outreach was performed in 2005, analyses on suggested corridors for basic Purpose and Need suitability are still being conducted. If major new corridors are adopted into the Tier One process, significant delay could occur.

Some corridors are located in rapidly urbanizing areas. Once Tier One approval has been received, the state can pursue corridor preservation strategies. Exercising these options at an early date may be critical at some locations.