

**PROJECT AGREEMENT  
STATE HIGHWAY 161**

**Between  
Texas Department of Transportation  
and  
North Texas Tollway Authority**

**Dated July 30, 2009**

## TABLE OF CONTENTS

	<u>PAGE</u>
1. Support for Turnpike.....	5
2. Transfer of Right-of-Way and Interests.....	6
3. The Retained Property .....	6
4. Delivery of Materials .....	7
5. Assignment of Rights.....	8
6. Project Right of Way .....	8
7. Design and Construction Obligations of TxDOT for TxDOT Structures.....	8
8. Design and Construction of the Remainder of the Project .....	10
9. Responsibility for Design .....	12
10. Environmental Permits, Issues, Commitments and Studies.....	15
11. Bidding Procedures; Insurance; BOPP .....	15
12. Project Schedule.....	16
13. Operation, Maintenance and Regulation of the Project.....	17
14. Frontage Roads .....	19
15. Maintenance of Records .....	20
16. Reports and Plans to TxDOT .....	21
17. The Financing .....	21
18. Upfront Payment.....	21
19. Net Revenue and Capital Improvement Sharing .....	22
20. Tolls .....	25
21. Tolling Operations if Agreement Terminated.....	26
22. TxDOT Segment.....	26
23. Reimbursement for Authority Expenditures .....	26
24. Compliance with Applicable Laws .....	27
25. Termination of this Agreement.....	27
26. Defaults and Remedies .....	28
27. Successors and Assigns.....	30
28. Circulation of the Agreement.....	30
29. Severability .....	30
30. Written Amendments .....	30
31. Notices .....	30
32. Limitations .....	31
33. Sole Benefit.....	31
34. Relationship of the Parties .....	31
35. Authorization .....	31
36. Interpretation.....	32
37. Effective Date; Execution and Delivery .....	32
38. Conflicts.....	32

**TABLE OF CONTENTS**  
**(Continued)**

<b>Exhibit A -</b>	Description of the Project
<b>Exhibit B -</b>	Delivered Materials
<b>Exhibit C -</b>	TxDOT Structures
<b>Exhibit D -</b>	Capacity Improvements
<b>Exhibit E -</b>	Approved Schematic
<b>Exhibit F -</b>	Contracts Relating to Warranted Improvements
<b>Exhibit G -</b>	Operations and Maintenance Standards and Performance Requirements
<b>Exhibit H -</b>	Authority Structures
<b>Exhibit I -</b>	Authority/TxDOT Maintenance Limits
<b>Exhibit J -</b>	Toll Regulations
<b>Exhibit K -</b>	Traffic Control
<b>Exhibit L -</b>	Terms and Provisions of Project Oversight Agreement
<b>Exhibit M -</b>	Existing Authority Contracts Related to Project

## PROJECT AGREEMENT

### STATE HIGHWAY 161

THIS PROJECT AGREEMENT (this "Agreement"), by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission ("TxDOT"), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas (the "Authority"), is executed to be effective the 30<sup>th</sup> day of July, 2009 (the "Effective Date").

### WITNESSETH

**WHEREAS**, the Authority is authorized to study, evaluate, design, acquire, construct, maintain, repair, and operate turnpike projects within the Counties of Collin, Dallas, Denton and Tarrant (the "Authority Service Area"), pursuant to Chapter 366 of the Texas Transportation Code, as amended (the "Regional Tollway Authority Act"); and

**WHEREAS**, there has been an increasingly critical need for a continuous express lane facility within the SH 161 corridor extending from SH 183 south to IH 20 along the western boundary of Dallas County, a total length of approximately eleven and one-half (11.5) miles (the "Project"), being built in four (4) designated "Phases" (each individually referred to as a "Phase") as more fully described in Exhibit A attached hereto and made a part hereof, in order to better serve the traveling public, relieve unacceptable levels of traffic congestion on the existing state highway system, and improve mobility in a rapidly developing portion of Dallas County; and

**WHEREAS**, through its "Mobility 2030: The Metropolitan Transportation Plan" (the "Mobility 2030 Plan"), the Regional Transportation Council (the "RTC") of the North Central Texas Council of Governments, the metropolitan planning organization for North Central Texas (the "NCTCOG"), identified the Project as an integral element of its regional transportation plan for the Dallas County area; and

**WHEREAS**, the Authority (1) has constructed and/or operates (a) the Dallas North Tollway (the "DNT"), which extends northerly approximately thirty one (31) miles from the Dallas Central Business District to US 380 in Frisco, Texas, (b) the President George Bush Turnpike (the "PGBT"), which extends approximately thirty (30) miles from West Belt Line Road in Irving, Texas, to SH 78 in Garland, Texas, (c) the Addison Airport Toll Tunnel (the "Tunnel"), which connects and extends Keller Springs Road from Addison Road on the east to Midway Road on the west in Addison, Texas, (d) the Mountain Creek Lake Bridge (the "MCLB"), which extends approximately two (2) miles from the intersection of SH Spur 303 and S.E. 14<sup>th</sup> Street in Grand Prairie, Texas, east across Mountain Creek Lake to an intersection with SH Spur 303 (Kiest Boulevard) and Mountain Creek Parkway in Dallas, Texas, and (e) Segments 1 and 2 of the State Highway 121 Tollway Project (the "121 Tollway"), which Segments are the southwesterly and mid-western portions of the 121 Tollway, extending approximately sixteen (16) miles from Denton Tap Road in Denton County to the east side of Hillcrest Road in Collin County, and (2) is constructing (a) the Lewisville Lake Toll Bridge (the



“LLTB”), which will extend across Lewisville Lake connecting Swisher Road in Lake Dallas, Texas, to Garza Lane and Eldorado Parkway in Little Elm, Texas, in southeast Denton County, (b) Segments 3-5 of the 121 Tollway extending the 121 Tollway approximately ten (10) miles from the east side of Hillcrest Road to US 75 in Collin County, and (c) an extension of the PGBT extending approximately ten (10) miles from a northern terminus of SH 78 to a southern terminus of IH 30 in Garland, Texas (the “PGBT EE”); and the DNT, the PGBT, the Tunnel, the MCLB, the LLTB, the PGBT EE, and the 121 Tollway collectively constitute the North Texas Tollway Authority System (the “NTTA System”); and

**WHEREAS**, the Project is located within the Authority Service Area; and

**WHEREAS**, the Project is subject to the “market valuation” provisions set forth in Section 228.0111 of the Transportation Code (the “Code”) that were enacted by Senate Bill 792 passed in the 80<sup>th</sup> Legislative Session (“SB 792”); and

**WHEREAS**, on January 25, 2008, the Authority and TxDOT entered into that certain Memorandum of Understanding Regarding the Terms and Conditions and Market Valuation for State Highway 161 (the “MOU”), pursuant to which TxDOT and the Authority memorialized their agreement on terms and conditions for the development, construction, and operation of the Project; and

**WHEREAS**, Section 228.0111(f-1) of the Code authorizes the Authority and TxDOT to waive the requirements to develop a market valuation; and

**WHEREAS**, the Authority and TxDOT are parties to that certain Agreement Regarding a Negotiated Value for State Highway 161 dated April 19, 2008 (the “Negotiated Value Agreement”), pursuant to which TxDOT and the Authority agreed (1) to waive the requirements under Section 228.0111 of the Code to develop a market valuation for the Project, (2) to develop, construct, and operate the Project as per the agreed terms and conditions in the MOU, except as modified in the Negotiated Value Agreement, (3) that the Authority will make an upfront payment to TxDOT in the amount of \$458 million, as adjusted pursuant to this Agreement (the “Upfront Payment”), and (4) that, beginning in the 53rd year following the execution of this Agreement, the Authority and TxDOT will share equally in all net revenues from, and all capital improvements costs pertaining to, the Project, under the conditions set out in this Agreement; and

**WHEREAS**, Section 228.0111(g) of the Code granted the Authority the first option (the “Option”) to develop, finance, construct and operate the Project, and gave the Authority six months after the date the negotiated value for the Project was mutually approved to decide whether to exercise the Option; and

**WHEREAS**, the Authority and TxDOT negotiated that certain Final Term Sheet For TxDOT Toll Equity Loan for SH 161 Project, NTTA Project Delivery, And Disposition of Southwest Parkway and Chisholm Trail (the “Term Sheet”) by which the Authority and TxDOT agreed that the Authority will own, design, construct, operate, maintain, and finance development of the Project in accordance with the Negotiated Value Agreement, except as modified by the Term Sheet, and that TxDOT will support the Authority’s efforts to develop the

Project by committing a toll equity loan to, among other things, strengthen the credit rating for the financing of the Project; and

**WHEREAS**, pursuant to Resolution No. 08-404 passed on October 15, 2008, the Board of Directors of the Authority (the "Board") accepted the Term Sheet and elected to exercise the Option pursuant to the Negotiated Value Agreement, as modified by the Term Sheet; and

**WHEREAS**, on February 29, 2008, the Federal Highway Administration ("FHWA") approved the Supplemental Final Environmental Impact Statement Re-evaluation for the Project; and

**WHEREAS**, under Section 228.0111(g) of the Code, the Authority, after exercising the Option and within two years after the date on which all environmental requirements necessary for the development of the Project are secured and all legal challenges to development are concluded (the "Commitment Deadline"), must (1) enter into a contract for the construction of the Project, which shall be evidenced by the Authority's delivery to TxDOT of an executed contract for the construction of Phase 4, and (2) commit to make the Upfront Payment to TxDOT, which shall be evidenced by written notice by the Authority to TxDOT that the Authority has made such commitment (the fulfillment of the requirements under both clauses (1) and (2) being the "Commitment," and the date of the Commitment being the "Commitment Date"); and

**WHEREAS**, Section 228.0111(i) of the Code gives TxDOT the option to develop, finance, construct and operate the Project under the terms and conditions in the MOU, except as modified in the Negotiated Value Agreement or this Agreement, if the Authority does not enter into a contract for the construction of the Project and commit to make the Upfront Payment by the Commitment Deadline; and

**WHEREAS**, TxDOT, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code, is authorized to participate, through the expenditure of money from any source, in the acquisition, construction, maintenance, or operation of a toll facility of a public entity, and has adopted rules at Title 43, Texas Administrative Code § 27.50, et seq. (the "Financial Assistance Rules") setting forth the policies and procedures by which it will participate in the financing of a toll facility that is not under its jurisdiction; and

**WHEREAS**, pursuant to Section 228.151 of the Texas Transportation Code, the Commission may remove a segment of the state highway system and transfer it to a governmental entity that has the authority to operate a tolled highway; and

**WHEREAS**, TxDOT and the Authority intend that, subject to (1) completion of the required public hearings pertaining to the transfer and approval of the Commission and the Governor and (2) satisfaction of the other conditions and requirements set forth in this Agreement, the main-lane portion of the Project (that is, exclusive of the portion required for Project frontage roads) shall be removed from the state highway system and transferred to the Authority; and

**WHEREAS**, on October 21, 2008, the Authority, pursuant to the Term Sheet and the Financial Assistance Rules, submitted a Request For Financial Assistance For Toll Facilities in connection with the acquisition, construction, maintenance, and operation of the Project; and

**WHEREAS**, pursuant to the Term Sheet, the parties have entered into negotiations regarding the terms and provisions under which TxDOT would provide financial assistance in connection with the Authority's acquisition, construction, maintenance, and operation of the Project; and

**WHEREAS**, in Minute Order No. 111557 approved on October 30, 2008, the Texas Transportation Commission (the "Commission"), pursuant to its constitutional and statutory authority and the Financial Assistance Rules, gave preliminary approval to TxDOT's providing of financial assistance in the form of a loan to facilitate the Authority's acquisition, construction, maintenance and operation of the Project, and the Authority and TxDOT intend to enter into a financial assistance agreement relating to the Project (the "Toll Equity Loan Agreement"); and

**WHEREAS**, pursuant to Resolution No. 09-60 passed on February 18, 2009, the Board authorized the Authority's Executive Director to execute this Agreement, which contains the relevant provisions regarding TxDOT's and the Authority's rights and obligations pertaining to the Project; and

**WHEREAS**, on February 26, 2009, the Commission passed Minute Order 111704, authorizing the executive director of TxDOT to enter into this Agreement for the development, financing, design, construction, operation and maintenance of the Project, subject to the Commission approving the Authority's construction of improvements to the state highway system; and

**WHEREAS**, on February 24, 2009, the Authority submitted a request, pursuant to the Commission's rules at 43 T.A.C. §27.44, to make improvements to the state highway system; and

**WHEREAS**, on March 26, 2009, the Commission passed Minute Order 111742, approving, pursuant to Section 201.113 of the Code and 43 T.A.C. §27.44, the Authority's construction of improvements to the state highway system as part of the Project, and authorizing the executive director of TxDOT to enter into a project agreement with the Authority that provides for such improvements; and

**WHEREAS**, TxDOT and the Authority have received all authorizations, consents and approvals for (1) the Project's connections to the state highway system and (2) the Authority to make improvements to the state highway system and to operate the Project as a turnpike project under the Regional Tollway Authority Act prior to the transfer of the applicable Phase as described herein, and have otherwise complied with all applicable laws required to enter into and perform their obligations under this Agreement and to support the construction and operation by the Authority of the Project.

## AGREEMENT

**NOW, THEREFORE**, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, TxDOT and the Authority agree as follows:

1. **Support for Turnpike.** TxDOT acknowledges its approval of and support for the financing, design, construction, operation and maintenance by the Authority of the Project as a turnpike project pursuant to the Regional Tollway Authority Act. Without limiting the provisions of this Agreement, TxDOT and the Commission will take all actions reasonably requested by the Authority that are consistent with this Agreement in furtherance of the purposes of this Agreement. Unless and until the Authority elects to abandon its efforts to construct and operate the Project, TxDOT shall not advance any alternative to or conflicting proposal for the development of the Project. Further, in its construction, operation and maintenance of the Retained Property (as hereinafter defined) or its consideration of any project that might affect the Project, TxDOT shall make best efforts to minimize or avoid any adverse impact on the Project or its operation.

Nothing contained in the previous paragraph or elsewhere in this Agreement in any manner constrains the ability of TxDOT or any other party (a) to perform any work or improvements on highway projects necessary for improved safety, maintenance or operational purposes or (b) to construct and operate any portions of IH 20, IH 30, IH 35E, IH 635, SH 183, SH 360, the DFW Regional Outer Loop or the President George Bush Turnpike or the highway projects included in any of the following long-range transportation plans and programs:

- (i) 2006-2008 Statewide Transportation Improvement Program (STIP);
- (ii) Unified Transportation Program (UTP) (2006):
  - (A) 2006 Statewide Preservation Program (SPP); or
  - (B) 2006 Statewide Mobility Program (SMP);
- (iii) Mobility 2025: The Metropolitan Transportation Plan, 2005 Update adopted by the RTC;
- (iv) Mobility 2030 Plan; or
- (v) Mobility 2030 Plan updated anticipated to be adopted by RTC in early 2009.

Pursuant to Sections 228.002, 228.003, 366.033(g), 366.033(k) and 366.169 of Texas Transportation Code and all other applicable law, TxDOT hereby fully authorizes the Authority to acquire, design, finance, construct, operate and maintain the Project. The Project shall constitute a turnpike project for all purposes under the Authority's enabling legislation – that is, a highway facility owned or operated by the Authority – and the Authority intends to initially operate the Project as a stand-alone project separate and apart from the NTTA System for financing and all other purposes. With respect to its improvement of any portion of the state highway system pursuant to this Agreement, the Authority shall be governed by the provisions of the Regional Tollway Authority Act applicable to the performance of the same function for a turnpike project under that Act and the rules and procedures adopted by the Authority thereunder, in lieu of the laws, rules, or procedures applicable to TxDOT for the performance of the same function.

2. **Transfer of Right-of-Way and Interests.** It is the shared intent of TxDOT and the Authority that, after compliance with the applicable requirements of Subchapter D of Chapter 228 of the Texas Transportation Code ("Subchapter D") and 43 TAC §§ 27.11-27.16, the Project's main lanes and associated right-of-way shall be removed from the state highway system and transferred to the Authority as more specifically set forth in the following paragraph and pursuant to an agreement for the lease, sale, or conveyance of a toll project or system under Subchapter D (the "Transfer Agreement"). The frontage roads will not be transferred and shall remain on the state highway system.

Except as expressly provided in Section 3 below and subject to (a) complete execution of the Transfer Agreement, (b) completion of the required public hearings, (c) approval by the Commission and (d) approval by the Governor, all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind, whether now or hereafter acquired by purchase, condemnation, dedication or any other means by TxDOT (or otherwise held by TxDOT) for the purpose of constructing and operating the main lanes of each Phase of the Project (the "Property Interests") shall be removed from the state highway system and transferred by TxDOT to the Authority on the occurrence of substantial completion of the work required to be performed by TxDOT or the Authority, as applicable, on such Phase, but in no event prior to the Commitment Date. The Property Interests shall be transferred to the Authority pursuant to the Transfer Agreement by order of the Commission reasonably acceptable to the Authority. To further evidence that transfer, one or more deed(s) without warranty shall be prepared and recorded, utilizing the legal descriptions attached to the applicable Minute Order, which legal descriptions shall be prepared by the Authority at its cost and expense and include any corrections reasonably determined by TxDOT. All costs of recordation shall be the responsibility of the Authority. The Property Interests are transferred "as is," without warranty of title, and subject to all matters of record. TxDOT shall assist the Authority in preventing any reversion, forfeiture, reconveyance, loss or diminution of any previously acquired or dedicated Property Interests, provided that the Authority shall reimburse TxDOT for all costs it incurs as a result of that assistance. The foregoing transfer of the Property Interests shall include all structures and improvements of any kind now or hereafter situated thereon, together with all stored materials and any items specially fabricated for the Project, if any.

Subject to the Commitment, the subsequent removal and transfer of a Phase of the Project pursuant to this Section 2 neither adds to nor completes the Authority's authorization to construct and operate the Project provided in Section 1 above or elsewhere in this Agreement, but instead provides certain operational benefits to both TxDOT and the Authority, as well as tracks the successful approach used by those parties on previously partnered projects. If for any reason one or more of the transfers described in this Section 2 fails to occur, the authorization provided in Section 1 or elsewhere in this Agreement, together with all rights conferred on the Authority pursuant to this Agreement, shall not be affected in any respect, including, without limitation, the rights of the Authority to acquire, design, finance, construct, operate and maintain the Project. Further, in no event shall this Agreement be deemed or construed as a Transfer Agreement.

3. **The Retained Property.** Notwithstanding anything to the contrary contained in Section 2 above, TxDOT shall retain full jurisdiction to and shall not transfer to the Authority the following structures and improvements and the land on which they are or will be constructed,

*save and except* any portion of said structures and improvements constituting the main lanes of the Project over which the Authority has jurisdiction and any land on or above which said lanes are or will be constructed for which the Authority does hereby receive sufficient rights to use from TxDOT pursuant to Section 2 above:

- (a) IH 20 Interchange;
- (b) IH 30 Interchange;
- (c) Spur 303;
- (d) SH 180; and
- (e) SH 183 Interchange.

The structures and property described under subsections (a) through (e) above constitute the “Retained Property.” Additionally, upon reasonable request by TxDOT, the Authority shall grant TxDOT suitable easement interests to permit the construction by TxDOT across the main lanes of one or more utility bridges, which interest shall thereafter constitute a portion of the Retained Property. Notwithstanding any provision of this Agreement to the contrary, TxDOT and the Authority shall consult and cooperate with one another to ensure that the Retained Property is not modified, operated or maintained in any manner that interferes with access to and egress from, or with the safe and efficient operation of, the Project. TxDOT and the Authority jointly shall consult and approve the design of suitable signage and other structures on the Retained Property that are necessary or desirable for the proper operation of the Project (exclusive of the Retained Property), provided that said structures and their installation shall conform to all applicable safety codes and standards (including, without limitation, TMUTCD, as hereinafter defined) and shall not conflict with the operation of the Retained Property. The costs of installing and maintaining such signage and other structures shall be borne solely by the Authority. It is understood and agreed that the operation of the main lanes of the Project may by necessity be curtailed temporarily in the event of damage to the Retained Property caused by flood, accidents, emergencies, or calamities. TxDOT will, in that event, do everything reasonably possible to provide for rapid and timely repairs to those portions of the Retained Property under its control that are damaged, in order that the Authority may resume operation of the Project as soon as possible.

TxDOT shall have no responsibility for the operation, maintenance, policing or regulation of the Property Interests. Except as otherwise provided in Sections 13 and 14, the Authority shall have no responsibility for the operation, maintenance, policing or regulation of the Retained Property. If (i) TxDOT determines that the Authority’s operation of the Project materially interferes with or adversely affects the operation or use of the Retained Property or (ii) the Authority determines that TxDOT’s operation of the Retained Property materially interferes with or adversely affects the operation or use of the Project, TxDOT and the Authority shall consult with each other, and such modifications or remedial actions acceptable to both parties will be accomplished, and all resulting costs shall be allocated between TxDOT and the Authority as they reasonably determine.

4. **Delivery of Materials.** To assist the Authority in its design and construction of the Project and, specifically, to reduce the cost of completing the Project, TxDOT will, to the extent legally capable and upon compliance with all procedures legally required therefor, promptly after the Commitment Date, provide the Authority with all original counterparts or, if originals are

unavailable, copies of all materials prepared by or for TxDOT (or otherwise held by TxDOT) in connection with the Project, together with any and all other items or information in the possession of TxDOT and useful to or necessary for the Authority's completion or operation of the Project (the "Delivered Materials"). Without limiting the foregoing, the Authority has identified certain items comprising part of the Delivered Materials that it requires, which items are identified on Exhibit B attached hereto and made a part hereof. In addition, prior to the Commitment Date, TxDOT will, to the extent legally capable and upon compliance with all procedures legally required therefor, provide the Authority with access to or copies of the Delivered Materials.

5. **Assignment of Rights.** After reviewing the Delivered Materials provided by TxDOT pursuant to Section 4 above, the Authority, from time to time, may request that TxDOT either (a) assign, in writing, to the Authority and/or its consultants all of TxDOT's right, title and interest in any permit, agreement, contract, conveyancing instrument, plan or other Delivered Material or (b) provide the Authority with a royalty-free license to use any such Delivered Material, if in the reasonable determination of the Authority such assignment or license will result in a cost savings or otherwise benefit the development or operation of the Project; the Authority shall reimburse TxDOT for all costs it incurs as a result of the foregoing assignment or license. TxDOT shall assist the Authority in obtaining any consents required to assign or license the foregoing items to the Authority so that, to the extent that TxDOT assigns its rights and interests to the Authority, the Authority shall have, to the greatest extent possible, the same rights under and interests in the assigned Delivered Materials as TxDOT held prior to that assignment; the Authority shall reimburse TxDOT for all reasonable costs it incurs as a result of that assistance. The foregoing assignment rights shall not apply to pending lawsuits, actions, condemnation and other proceedings related to the Project and involving TxDOT, if any.

6. **Project Right of Way.** TxDOT has completed, or shall undertake and complete at its own cost and expense, the acquisition of Project Right of Way (as defined below), in accordance with its customary practices but without the expenditure of any federal funds. TxDOT commits to proceed through the conclusion of all appeals to a final judgment in any eminent domain action, and to satisfy all resulting costs, awards, and settlements. "Project Right of Way" means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines established by the NEPA Approval to delineate the outside limits of the Project, as such limits may be adjusted from time to time, and specifically includes all air space, surface rights and subsurface rights within the limits of the Project Right of Way. "NEPA Approval" means each decision document issued by the FHWA, TxDOT, the Authority, or other authorized party for the Project or a portion of the Project under the National Environmental Policy Act, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

7. **Design and Construction Obligations of TxDOT for TxDOT Structures.**

(a) TxDOT Structures. TxDOT, at its sole cost, shall be responsible for the timely development of the plans, specifications and estimate and construction of those portions of the Project specifically described on Exhibit C attached hereto and made a part hereof, including all required construction management and construction materials testing services, and all required and remaining utility relocation and/or adjustment (being collectively defined as the "TxDOT

Structures”). If the Authority and TxDOT hereafter agree that the UPR Bridge (as defined in Exhibit A) will not be constructed by TxDOT but instead will be constructed by the Authority as part of Phase 4, TxDOT shall provide the Authority with final design plans and specifications for the UPR Bridge, as approved in writing by Union Pacific Railroad, and shall, to the extent legally capable and upon compliance with all procedures legally required therefor, assign, in writing, to the Authority all of TxDOT’s right, title and interest in any errors or omission coverage related to such plans and specifications. Contingent upon the execution and delivery by TxDOT, the Authority, the City of Grand Prairie and the Union Pacific Railroad Company of a Highway Underpass and New At-Grade Crossing Railroad License and Force Account Agreement relating to the UPR Bridge by March 1, 2010, the Authority’s award of a design-build contract for Phase 4 that includes the UPR Bridge shall be deemed an agreement by the parties for the Authority to build the UPR Bridge. TxDOT shall use its best efforts to construct and complete the TxDOT Structures by the completion dates therefor in Exhibit C, subject only to delays caused by Force Majeure events (as defined herein). TxDOT has reviewed and approved the design and construction schedule and the completion dates for the TxDOT Structures and agrees that they are reasonable and achievable. TxDOT’s construction obligations for the main lanes, ramps, frontage roads and cross streets shall include all major items such as pavement, bridges and walls, as well as all columns; supports; curbs; headwalls; wingwalls; aprons; right-of-way fencing; guardrail and fencing; impact attenuators and other safety devices; junction boxes, inlets, manholes, culverts, channels, piping, containment and mitigation systems, conduits and other drainage structures; illumination devices; signage; pavement markings and other delineation devices; and other typical and necessary appurtenances that are not specifically identified as the responsibility of the Authority as provided in this Agreement. TxDOT shall permit the Authority to review, at mutually acceptable review intervals, any designs, plans, specifications, and construction records pertaining to TxDOT’s construction obligations under this Section 7 in order to ensure that said work is accomplished in a manner and to standards that, in the reasonable opinion of both TxDOT and the Authority, are consistent with the overall aesthetic guidelines, design and construction of the Project.

(b) Progress of TxDOT Structures. The Authority has utilized and relied upon the design and construction schedule for the TxDOT Structures and the completion dates set forth in Exhibit C in structuring the Financing, as hereinafter defined. If during the construction of the TxDOT Structures, TxDOT has reason to believe that any of the completion dates set forth in Exhibit C may be exceeded, TxDOT shall promptly notify the Authority and, working collaboratively, the parties shall evaluate all feasible alternatives for accelerating the progress of work on the TxDOT Structures. TxDOT and the Authority shall utilize to the maximum practical degree the expedited and fully joint/concurrent design review process described and defined in Section 8 to track progress of the contractor(s) toward completing the TxDOT Structures to prevent that progress from falling behind the completion dates set forth in Exhibit C. TxDOT shall forward to the Authority its monthly construction reports for the TxDOT Structures, which the Authority may distribute to its underwriters and other interested parties.

(c) Compensation Event. If TxDOT fails to substantially complete any of the TxDOT Structures by the completion dates therefor in Exhibit C, as extended by any delay directly related to any Force Majeure event or act or omission of the Authority (a “TxDOT Delay”), and the Authority anticipates that such TxDOT Delay will materially and adversely



impact the Authority's cost to complete the Project and/or the anticipated revenue from the Project, the Authority shall notify TxDOT of the Authority's current estimate of the cost impacts attributable to such TxDOT Delay and/or the anticipated impact on the revenues of the Project attributable to such TxDOT Delay. Upon receipt of such notice, TxDOT and the Authority shall commence good faith negotiations to determine the compensation amount to which the Authority is entitled. If, following issuance of any notice of a TxDOT Delay and during the period of analysis and negotiation, the Authority receives or becomes aware of any further information relating to the TxDOT Delay and/or the actual or anticipated adverse impacts thereof, it shall submit such further information to TxDOT as soon as possible. TxDOT may request from the Authority any further information that TxDOT may reasonably require, and the Authority shall supply the same within a reasonable period after such request.

If TxDOT and the Authority are unable to agree on the compensation amount within 30 days after commencing good faith negotiations, TxDOT shall prepare a good faith estimate of the compensation amount, and shall pay the full undisputed portion of the compensation amount to the bond trustee for the Financing (as defined herein) secured by Project revenue within 30 days or in accordance with any other arrangement mutually agreed upon within such 30-day period. Any dispute regarding occurrence of a TxDOT Delay or determination of the compensation amount shall be resolved according to the dispute resolution procedures set forth in subsection 25(g). Within 30 days following a determination of the compensation amount by mutual agreement or the dispute resolution procedures, TxDOT shall pay such compensation amount through (a) a lump sum payment of the compensation amount; or (b) alternate terms reasonably acceptable to TxDOT and the Authority. If TxDOT does not make any lump sum payment within such 30-day period or does not make any periodic payment of the compensation amount when due, it shall thereafter bear interest, at a floating rate equal to the LIBOR (as defined herein) in effect from time to time plus 200 basis points, until the date the amount due is paid.

## **8. Design and Construction of the Remainder of the Project.**

(a) Design and Construction. Except as provided in Section 7 above with respect to the TxDOT Structures and as hereinafter provided in this Section 8, the Authority, at its sole cost, shall be responsible for the design and construction of the Project, including all required and remaining utility relocations and/or adjustments. The Authority shall be fully responsible for (i) ensuring that all environmental permits, issues, and commitments are addressed in its project design, (ii) addressing field changes for potential environmental impacts and obtaining any necessary environmental permits, issues, and commitments for such field changes, and (iii) ensuring that all construction plans are signed, sealed and dated by a professional engineer licensed in the State of Texas. The Authority also will be responsible for securing construction oversight and inspection, and materials testing and inspection. Except as provided in Section 7 or as hereinafter provided, the Authority shall have sole authority and responsibility for (A) the design of the Project and all features thereof, (B) the selection of underwriters, investment bankers, financial advisors, legal counsel, consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, sureties, and other parties retained in connection with the financing, design, construction, maintenance or operation of the Project, (C) the commencement, sequencing and timing of design and construction

activities and other work, (D) the acceptance or rejection of work or other deliverables, and (E) the negotiation, bidding, and letting of contracts. TxDOT hereby grants and confirms all rights of entry, access and use in and to the Project Right of Way as may be necessary or desirable for the Authority to undertake and complete its construction and other obligations under this Agreement, which shall remain in full force and effect throughout the term of this Agreement irrespective of whether the relevant Phase of the Project was or will be transferred to the Authority pursuant to Section 2. Pursuant to the requirements of Title 43, Texas Administrative Code, Chapter 27, and in accordance with the requirements of the Project Oversight Agreement (as defined in Section 8(d)), TxDOT and, as required under the Project Oversight Agreement, FHWA, shall review and approve the design for the Project in the manner described in the remainder of this Section 8. In addition, FHWA shall review and approve the request for proposals for the design-build contract and concur in the award of the design-build contract. TxDOT shall review and comment on the design-build contract, and shall approve provisions in the design-build contract relating to (A) completion commitments, (B) cure periods, (C) liquidated damages, and (D) guarantees of the contractor's obligations under the design-build contract. The Authority shall be solely responsible for the costs of any design and construction work that exceeds the standards required under the Negotiated Value Agreement, as modified by the Term Sheet.

(b) Plans and Specifications. Except with respect to the TxDOT Structures, the Authority will provide for the preparation of the plans, specifications and estimate for all portions of the Project (the "PS&E") in the following manner. The schematic design prepared for the Project has been approved by TxDOT and is attached hereto as Exhibit E and made a part hereof, provided that any subsequent changes proposed by the Authority shall be reviewed by TxDOT until, in the reasonable opinion of TxDOT, it is approved (the "Approved Schematic"), and the PS&E shall conform to the Approved Schematic. Except for the TxDOT Structures, which will be designed and reviewed in accordance with Section 7 hereof, the PS&E for the Project and all connections and ramps to or from the Project to road facilities maintained by TxDOT shall be developed by the Authority consistent with the latest edition and revisions of TxDOT's standards as of the Effective Date, including the American Association of State Highway and Transportation Officials' ("AASHTO") Standard Specifications for Highway Bridges, including applicable interim specifications, TxDOT's Roadway Design Manual, TxDOT's Standard Specifications for Construction of Highways, Streets and Bridges, TxDOT's Foundation Exploration Manual, TxDOT's Bridge Design Guide, and The Texas Manual on Uniform Traffic Control Devices ("TMUTCD"). For all items not discussed in the above-referenced documents, AASHTO's A Policy On Geometric Design of Highways and Streets shall be referenced for guidance. TxDOT shall review the PS&E as set forth in subsection 8(c) below. Notwithstanding anything herein to the contrary, TxDOT and the Authority agree that eight (8)-lane bridge structures may be constructed by the Authority as part of the initial construction of the Project.

(c) Joint/Concurrent Review. Due to the expedited delivery schedule for the Project and in order to maximize the benefit of the Project to North Central Texas, TxDOT and the Authority shall implement and adhere to a fully joint and concurrent design review process by which all materials subject to review by the parties, and regardless of whether they pertain to the TxDOT Structures or any other design feature of the Project, will be concurrently distributed to and reviewed by both TxDOT and the Authority. This joint/concurrent review has been

intentionally selected by TxDOT and the Authority for the Project in lieu of the independent/serial review the parties have typically utilized on other partnered projects. Consequently, TxDOT and the Authority intend that the review periods afforded under previous project agreements will be significantly reduced for the Project. Without limiting the foregoing, TxDOT and the Authority shall use all reasonable efforts to maximize a teaming approach to complete their respective reviews of all materials concurrently. Each party shall complete its review of materials within ten (10) days following their receipt by that party's designated recipient, except that TxDOT shall have seven (7) weeks to complete its review if such material also requires a "Letter of Authority" to be issued by FHWA. Additionally, TxDOT and the Authority may agree to form and utilize a technical work group, similar to the process used on their other partnered projects, for one or more elements of the Project delivery process.

(d) FHWA Oversight. The Authority agrees to cooperate with TxDOT and the FHWA and to be subject to all of the requirements, terms and conditions set forth in a Project Oversight Agreement to be entered into by TxDOT and the FHWA for the Project (the "Project Oversight Agreement"), the requirements, terms and conditions of which shall be substantially similar to those set forth in Exhibit L attached hereto and made part hereof.

(e) Capacity Improvements. The Authority shall make capacity improvements to the Project as and when provided in Exhibit D attached hereto and made a part hereof. Except as provided in Exhibit D, all the provisions of this Agreement shall apply to capacity improvements, with only minor modifications as are necessary in points of detail. Any capacity improvement provided in Exhibit D that is made on or after the 52nd anniversary of the Effective Date shall be made at the Authority's sole cost and expense.

(f) Renewal Work. The Authority shall perform renewal work as and when necessary to maintain compliance with the performance requirements set forth in Exhibit G attached hereto and made a part hereof.

(g) Traffic Control. During construction of IH 20, IH 30, Spur 303, SH 180 and SH 161 frontage roads, the Authority will control traffic on the Project in conformance with the requirements set forth in Exhibit K attached hereto and made a part hereof.

(h) Highway Reference Marker Signage. The Authority and TxDOT jointly shall consult and approve the installation of a highway reference marker signage system for the main lanes and frontage roads in conformity with TxDOT's standards for reference marker signage for the state highway system. TxDOT shall be responsible for the cost and installation of such signage on Phases 1, 2 and 3 and the Authority shall be responsible for the cost and installation of such signage on Phase 4.

## **9. Responsibility for Design.**

(a) Responsibility. Except as otherwise provided in the following sentence or in subsection 9(c) or Section 14 below, the Authority acknowledges and fully accepts its responsibility for the design, construction, maintenance, regulation, signage, illumination and overall operation of the Project, and hereby accepts said responsibility, and releases TxDOT from responsibility therefor, in any litigation. Nothing, however, contained in this Agreement or

elsewhere shall impose any liability on the Authority for or with respect to (i) the operation of the Retained Property or (ii) without limiting the foregoing, the design and construction of the TxDOT Structures or the design of the Authority Structures that were designed by TxDOT. Neither TxDOT nor the Authority waives, relinquishes, limits or conditions its governmental immunity or any other right to avoid liability that it otherwise might have to third parties. Nothing in this Agreement shall be construed as creating any liability in favor of any third party or parties against either TxDOT or the Authority, nor shall it ever be construed as relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the Authority, but, except as provided below, the Authority shall become fully subrogated to TxDOT and shall be entitled to maintain an action over and against any third party or parties (but not TxDOT) legally liable for having caused the Authority or TxDOT to pay or disburse any sum of money in connection with any previously completed portion of the Project. Notwithstanding the foregoing, TxDOT shall maintain such rights against third parties as may be necessary to defend itself against any action brought by such third parties.

(b) Exceptions. TxDOT will work with the Authority to adjust, modify or reconfigure design elements that were on the previously approved schematic in order to meet current design parameters. If design exceptions are required, TxDOT will work with the Authority to process needed design exceptions. The Authority may implement the Authority's "System-wide Design Guidelines" for landscaping and aesthetics, which the Authority shall review with the cities through which the Project extends (the "Project Cities") and TxDOT. In addition, any future design exceptions proposed by the Authority shall be subject to the consent of TxDOT, which consent shall not be unreasonably withheld or delayed.

(c) Warranted Improvements. Notwithstanding anything to the contrary in subsection 9(a) above, TxDOT hereby provides to the Authority a limited warranty of any and all portions of the Project that have been completed or are under construction by TxDOT's contractors (the "Warranted Improvements"). Such limited warranty is given on the following terms and conditions:

(i) TxDOT warrants that the Warranted 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 Warranted Improvements are or were constructed. A defect shall be considered latent only if it is not known or disclosed to the Authority as of the Effective Date and would not normally be discovered upon reasonable inspection and investigation in accordance with standard industry practice. This limited warranty does not apply to design or construction work performed by any utility owner on its own utilities.

(ii) This limited warranty is the sole warranty from TxDOT of the Warranted Improvements, and all other warranties, express or implied, are hereby disclaimed, including any warranty of suitability or fitness for a particular purpose.

(iii) 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 (the "Resulting

Uninsured Physical Loss”). TxDOT shall have no other obligation or liability to the Authority arising out of or relating to latent defects in the Warranted Improvements, including for loss of toll revenues and for third party damage, harm, injury, loss, cost or expense.

(iv) This limited warranty shall expire three (3) years after the date TxDOT issued or issues written acceptance of each portion of the Warranted Improvements under each contract pursuant to which a portion of the Warranted Improvements were or are constructed. TxDOT represents that Exhibit F attached hereto and made a part hereof accurately lists all such contracts and, if applicable, the date TxDOT accepted the work thereunder. For Warranted Improvements not yet accepted as of the Effective Date, TxDOT shall deliver to the Authority a copy of TxDOT’s written acceptance within ten (10) days after TxDOT issues it. No warranty is given for Warranted Improvements accepted more than three (3) years prior to the Effective Date.

(v) TxDOT shall have no liability under this limited warranty unless it receives from the Authority, prior to the applicable expiration date of the warranty, written notice asserting a warranty claim and setting forth the nature and location of the latent defect in reasonable detail.

(vi) If TxDOT receives any such written notice prior to the applicable expiration date of this limited warranty, then within thirty (30) days of receipt TxDOT and the Authority shall mutually agree when and how TxDOT shall correct such latent defect and the Resulting Uninsured Physical Loss; provided, however, that in case of an emergency or threat to safety requiring immediate corrective action, TxDOT shall implement such action as it deems necessary and shall notify the Authority in writing of the urgency of such action. TxDOT shall prepare and furnish to the Authority, with its recommendation for corrective action, data and reports applicable to any correction required, including revision and updating of all affected documentation. Where Resulting Uninsured Physical Loss consists only of the cost of corrective work under a deductible or self-insured retention, TxDOT may elect to pay such cost to the Authority in lieu of performing the corrective work itself.

(vii) If TxDOT does not use diligent efforts to proceed to correct the latent defect and Resulting Uninsured Physical Loss within the agreed time, or should TxDOT and the Authority fail to reach agreement within such 30-day period (or immediately in the case of emergency or unsafe conditions), the Authority, after written notice to TxDOT, shall have the right to perform or have performed by third parties the necessary corrective work, and TxDOT shall bear the reasonable costs thereof.

(viii) All work, supplies and parts furnished to correct the latent defect and Resulting Uninsured Physical Loss, and any services performed, shall comply with all applicable TxDOT standards required under this Agreement.

(ix) In correcting latent defects and Resulting Uninsured Physical Loss under this warranty, TxDOT shall coordinate and schedule activities to minimize interference with operation of the Project.

Within two business days after TxDOT receives notice from a contractor of the date it expects to achieve substantial completion of a portion of the Warranted Improvements (but not less than 20 days prior to such date), TxDOT shall provide the Authority with written notification of such date. After such notice, TxDOT and the Authority shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's and the Authority's orderly, timely inspection and review of such Warranted Improvements for substantial compliance with the plans, standards and specifications in the relevant construction contracts and for identification of patent defects and preparation of a punch list. TxDOT at its expense shall cause punch list items, including patent defects identified by the parties, to be diligently completed following substantial completion of such Warranted Improvements. If any patent defect is not eligible for treatment as a punch list item, TxDOT shall cause it to be rectified as a condition to achieving substantial completion of such Warranted Improvements.

(d) TxDOT Cooperation. In addition to the foregoing, TxDOT shall reasonably assist the Authority in the Authority's pursuit of any breach of contract, negligence or other claim against any of TxDOT's contractors, which assistance may include TxDOT's assignment of its rights to the Authority, sharing of documentation, providing access to its employees and consultants, or, if necessary, joinder in any legal action, provided that the Authority shall promptly reimburse TxDOT for all costs it incurs as a result.

10. **Environmental Permits, Issues, Commitments and Studies.** For the purposes of this Agreement, environmental permits, issues and commitments ("EPIC") shall include any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of the Project, including, but not limited to, sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archaeological permits, and any mitigation or other commitment associated with any of those issues.

Except as provided in this Section 10, the Authority assumes all liability and responsibility for existing and future EPIC with respect to the Project on and after the Commitment Date. Notwithstanding the foregoing, (a) prior to the Commitment Date, TxDOT shall retain all liability and responsibility for existing and future EPIC with respect to the Project, save and except for any EPIC pertaining to the Authority's construction activities on the Project, which shall be the responsibility of the Authority at the Authority's sole cost and expense, and (b) after the Commitment Date, TxDOT shall retain all liability and responsibility for existing and future EPIC with respect to each TxDOT Structure until such time that TxDOT has accepted the work related to such TxDOT Structure. TxDOT shall fully cooperate with and support the efficient transitioning of its environmental responsibilities to the Authority. The parties acknowledge and agree that TxDOT has received the environmental clearance for the Project and has satisfied its obligations under this Section 10, and, except as provided in this Section 10, any further action that may be required with respect to the environmental clearance is the responsibility of the Authority.

## 11. **Bidding Procedures; Insurance; BOPP**

(a) Bidding Procedures. The Authority shall use its bidding and procurement procedures with respect to all aspects of the Project that it is obligated to design and construct

pursuant to this Agreement and shall comply with the requirements of the Project Oversight Agreement.

(b) Encroachment. It is possible that the Authority's or TxDOT's construction activities may encroach periodically on property held or utilized by the other. The Authority and TxDOT shall address in a reasonable and cooperative manner any such encroachment and any consequences thereof.

(c) Additional Insureds. Additionally, either TxDOT or the Authority shall be entitled, after providing reasonable notice prior to bidding, to require that any construction contract of the other party bid after the Effective Date must obligate the applicable contractor to list the Authority, TxDOT, the State of Texas, the Texas Transportation Commission and their respective successors, assigns, officeholders, officers, directors, commissioners, consultants and employees as "additional insureds" with respect to any insurance for which the contractor must obtain an "additional insured" rider or amendment.

(d) BOPP. The Authority shall comply with its Business Opportunity Program and Policy so as to satisfy certain conditions to receiving federal financial assistance, including the creation of a Disadvantaged Business Enterprise Program, as well as the requirements in Section 366.184 of the Regional Tollway Authority Act.

12. **Project Schedule**. The Authority shall use its best efforts to construct and complete the portions of the Project that it is obligated to design and construct (the "Authority Structures") by the completion dates therefor in Exhibit H attached hereto and made a part hereof, as extended by any delay directly related to any Force Majeure event (as defined herein) or act or omission of TxDOT. The Authority is authorized to proceed with all work hereunder, in addition to the advance work (including surveying and site investigations, such as geotechnical, hazardous materials and utilities investigations) underway as of the Effective Date, which TxDOT hereby acknowledges and authorizes. TxDOT will cooperate with and not unduly restrict the Authority's construction of the permanent tolling system for Phases 2 and 3 in order to meet their scheduled completion dates, provided the Authority's contractors cooperate with TxDOT's Phases 2 and 3 contractors, and they do not materially interfere with each other. The Authority is authorized to enter the Project Right of Way TxDOT owns in order to conduct surveys and site investigations, including geotechnical, hazardous materials and utilities investigations. For purposes of Section 7 and this Section 12, "Force Majeure" means actual delay or permanent or temporary inability to perform due to events beyond the Authority's or TxDOT's reasonable control, including fire, flood, earthquake, hurricane, inclement weather, epidemic or other unavoidable casualties or acts of God, freight embargo, strikes or general inability to obtain labor or materials, civil commotion, sabotage, terrorism or enemy action, and the Authority's or TxDOT's failure to timely construct and complete the Authority Structures or TxDOT Structures, as applicable, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by the Authority or TxDOT, as applicable; provided, however, that no delay shall be considered to be caused by Force Majeure unless the party claiming Force Majeure notifies the other party within 15 days after the claiming party learns that such event will cause the TxDOT Structures or the Authority Structures, as applicable, to be completed later than the dates required under this Agreement.

**13. Operation, Maintenance and Regulation of the Project.**

(a) Transition. TxDOT shall be responsible for operation and maintenance of all existing and operating portions of the Project until the Commitment Date. During the period TxDOT retains operation and maintenance responsibility for any portion of the Project, TxDOT shall maintain such portion in accordance with TxDOT's Maintenance Management Manual, Maintenance Operations Manual, and Roadside Vegetation Management Manual and conduct traffic management activities on such portion in accordance with TxDOT's standard traffic management practices and procedures. Upon the Commitment Date, the Authority shall assume full responsibility for the operation and maintenance of all then-existing and operating portions of the Project and all of the Project Right of Way, except for the maintenance on those portions of Project and Project Right of Way to be retained by TxDOT pursuant to Section 14. Within five business days of the Authority's assumption of the operation and maintenance of any portion on the Project, TxDOT and the Authority shall jointly inspect such portion for substantial compliance with TxDOT's current maintenance standards and prepare a punch list of noncompliant items. TxDOT at its expense shall promptly, but in no event more than three (3) months, cause such punch list items to be brought into compliance with TxDOT's current maintenance standards.

(b) Interim Operation and Maintenance. Notwithstanding subsection 13(a), for the period between the commencement of tolling of the main lanes in Phase 2 and earlier of (i) the Commitment Date or (ii) the termination of this Agreement, the Authority shall be responsible for toll collection, violation processing, revenue handling and accounting, and customer service and support for the Project, and shall be responsible for the operation and maintenance of all existing and operating portions of the Project; provided that TxDOT shall retain responsibility for the operation and maintenance of all TxDOT Structures in a Phase until such time that TxDOT, with Authority concurrence, has accepted the work related to all TxDOT Structures in such Phase. Any revenue received by the Authority in excess of its costs to operate and maintain the Project during this interim period will be promptly applied by the Authority to the Project, including, without limitation, paying development, operation and maintenance costs of the Project, paying interest or other costs related to the financing of the Project, or funding reserves for the Project. This revenue shall not be considered part of the Authority's \$400 million equity contribution to the Project and the Southwest Parkway/Chisholm Trail project.

(c) Standards, Inspections and Reporting. The Authority shall conduct its operations and maintenance of the Project in accordance with the minimum operations and maintenance standards set forth in Exhibit G attached hereto and made a part hereof. Within ninety (90) days after the fiftieth (50th) anniversary of the Effective Date, authorized representatives of TxDOT and the Authority shall meet to discuss changes to the minimum operations and maintenance standards beginning on the Net Revenue Share Commencement Date (as defined herein). If agreed to by the parties, the Authority shall conduct its operations and maintenance of the Project in accordance with the revised minimum operations and maintenance standards on and after the Net Revenue Share Commencement Date. The Authority shall carry out general inspections of the Project in accordance with the inspection program the Authority uses on the NTTA System, as modified by mutual agreement between the Authority and TxDOT, as described in Exhibit G.



(d) Toll Collections. Commencing on the Commitment Date, the Authority shall be responsible for toll collection, violation processing, revenue handling and accounting, and customer service and support for the Project.

(e) Frontage Roads Access and Utility Permitting. Notwithstanding anything to the contrary in subsection 13(a) above, TxDOT shall at all times be solely responsible, at its expense, for handling requests and permitting for (i) adjacent property access to frontage roads of the Project and (ii) utility placement within the frontage roads. TxDOT will keep the Authority regularly informed of access and utility permit applications and will deliver to the Authority a copy of each issued access and utility permit, together with the plans related thereto, within ten (10) days after the permit is issued, and an as-built survey for utility work when available. TxDOT shall inspect all work done related to such permits for compliance with the plans for such work. The Authority at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain access improvements allowed under their access or utility permits, and the Authority may require each permit holder to comply with the Authority's lane closure policy. The Authority shall not have any liability with respect to any such improvements or utility placements. Notwithstanding the foregoing, the Authority shall be solely responsible, at its expense, for handling requests and permitting for utility placement that cross the main lanes of the Project.

(f) Speed Studies and Speed Limits.

(i) TxDOT at its expense shall conduct a speed study of the frontage roads and main lanes in each Phase between six (6) to eight (8) weeks after the Phase is opened for traffic (to allow time for traffic patterns to stabilize). TxDOT will conduct the speed study in accordance with applicable law and TxDOT's standards, procedures and methodology. TxDOT will work with local governments on ordinances enacting the appropriate posted speeds on the Project's frontage roads based on the study. TxDOT will keep the Authority informed of study schedules and provide the Authority a copy of the study results. Notwithstanding the foregoing, the Authority shall maintain complete responsibility and authority for the promulgation and enforcement of safety and operational standards for the Project's main lanes, including the determination and posting, but not enforcement, of speed limits.

(ii) Thereafter, in lieu of speed studies by TxDOT, the Authority shall have the right and obligation to conduct, at its expense, further speed studies of the frontage roads and main lanes of the Project. The Authority shall conduct such studies in accordance with TxDOT's standards at intervals mutually agreed with TxDOT, but not more frequently than at three-year intervals or as otherwise provided by applicable law. In addition, the Authority will have the right to conduct a speed study of frontage roads or main lanes at earlier intervals if the Authority in good faith believes that significant changes have occurred in the interim that will or may affect posted speed limits, but in no event sooner than eighteen (18) months after completion of the immediately preceding speed study for the same portion of frontage roads or main lanes unless otherwise requested by a Project City or other governmental entity. The speed studies performed for the frontage roads will be provided by the Authority to TxDOT for its review, approval and implementation by the Project Cities.

(g) ITS Operations. The Authority will provide TxDOT with viewing access to any vehicle detection systems placed on and data/video generated from the Project main lanes and frontage roads in accordance with the Regional Data and Video Communication System (RDVCS) of the North Texas Regional Comprehensive ITS Program.

14. **Frontage Roads.** As provided in Section 2, TxDOT and the Authority intend for that portion of each Phase of the Project required for the main lanes to be removed from the state highway system and transferred to the Authority. TxDOT shall retain that portion of the SH 161 alignment required for the Project frontage roads on the state highway system and they will remain designated as "SH 161." In all events, and regardless of whether the aforesaid transfers occur, the Authority shall maintain and otherwise be responsible for the operational and maintenance requirements for the Project frontage roads and areas outside the main lanes except as otherwise set forth below or in Section 13, such responsibility to include the repair and maintenance of pavement, bridges and other certain structures constructed as part of the Project, and, specifically, safety lighting structures and foundations therefor; storm water conduits and receivers; soundwalls, screen walls, retaining walls and similar structures related to the frontage roads; and guardrail, attenuators and fences. The Authority shall furnish, or provide for the furnishing of, all sweeping, flushing, and snow/ice control services on the frontage roads, and shall provide all mowing, landscaping maintenance and litter collection, as well as comply with all permits related to storm sewer and storm water drainage systems. Notwithstanding the foregoing, (a) TxDOT shall maintain and otherwise be responsible for the repair, maintenance and operation of (i) the traffic signal systems, including related safety lighting, on the Project frontage roads, (ii) the frontage roads and main lanes of IH 20, IH 30 and SH 183, and (iii) subject to the following paragraph, the pedestrian bridge located just north of SH 161 CL Station 375+00 (the "Pedestrian Bridge") and (b) the Authority shall have no responsibility for (i) the repair, maintenance and operation of any non traffic signal-mounted luminaires and other illumination structures and foundations therefor, other than safety lighting not related to the traffic signal systems, for the Project frontage roads for which Project Cities or other governmental entities have responsibility as of the Effective Date and (ii) providing any policing, fire, ambulance, hazardous materials, and other emergency response for the Project frontage roads for which Project Cities or other governmental entities have responsibility as of the Commitment Date.

TxDOT shall maintain the Pedestrian Bridge in good and fully operational condition. TxDOT shall have full access to the Pedestrian Bridge to make repairs and perform maintenance, but the Authority may place reasonable restrictions on time of day of any such repair or maintenance in order to minimize disruption of traffic on the Project. TxDOT shall notify the Authority of any repair or maintenance of the Pedestrian Bridge. The Authority shall notify TxDOT if and when it becomes aware of any repair or maintenance needed on the Pedestrian Bridge. The Authority shall reimburse TxDOT for fifty percent (50%) of its reasonable and verifiable costs to repair and maintain the Pedestrian Bridge, net of any insurance or other proceeds received by TxDOT relating to the Pedestrian Bridge. TxDOT and the Authority shall consult and cooperate with one another in pursuing any insurance or other claim relating to the Pedestrian Bridge. All casualty insurance proceeds received by the Authority relating to the Pedestrian Bridge shall first be used to reimburse TxDOT for any unreimbursed costs it has incurred in repairing the Pedestrian Bridge. Within sixty (60) days after the end of any repair or maintenance event, TxDOT shall prepare a written calculation of its costs to repair and maintain

the Pedestrian Bridge and shall deliver to the Authority a written request for payment of its share of such costs. The Authority shall pay its share of such costs within thirty (30) days after receipt of TxDOT's written request for payment. TxDOT shall deliver to the Authority such backup information as the NTTA may request regarding such costs.

The Authority shall maintain the frontage roads in good and fully operational condition. The Authority may assign any of its obligations under the first paragraph of this section to any other third party, provided that the Authority shall retain ultimate responsibility for the proper maintenance of the frontage roads. The Authority shall obtain TxDOT's prior written approval before entering into an agreement with a Project City or other governmental entity concerning the maintenance of the Project's frontage roads; TxDOT's approval shall not be unreasonably withheld.

Access management and utility permitting will be handled by TxDOT under standard TxDOT practice, as set forth in subsection 13(e).

The Authority shall be responsible for the maintenance requirements for both the Property Interests and the Retained Property areas except for the main lanes, frontage roads and other structures and areas for which TxDOT retains maintenance responsibility as depicted on Exhibit I attached hereto and made a part hereof, and except for any of the structures or other areas for which a Project City or other governmental or private entity will have maintenance responsibility as depicted on Exhibit I. To the extent of any conflict between the depiction of maintenance limits shown on Exhibit I and the terms of this Section 14, the latter shall control.

**15. Maintenance of Records.** All records and documents prepared by the Authority under this Agreement or otherwise relating to the financing, design, and construction of the Project (including, without limitation, those pertaining to the Authority's obligations under Section 18 to pay the Net Revenue Share Amount, as therein defined) will be made available to authorized representatives of TxDOT and FHWA for purposes of review and audit during normal work hours. All records and documents prepared under this Agreement relating to the financing, design, and construction of the Project must be maintained by the Authority for four (4) years from the date of the required annual audit, unless TxDOT notifies the Authority in writing to extend the retention period. All records and documents prepared under this Agreement relating to any Net Revenue Share Amount must be maintained by the Authority for three (3) years after payment of such Net Revenue Share Amount. Without limiting the foregoing, the Authority shall comply with all applicable federal laws pertaining to the retention of records and the provision of access thereto.

Additionally, all records and documents prepared by TxDOT under this Agreement or otherwise relating to its design and construction obligations regarding the Project (including, without limitation, those under Section 7 relating to the TxDOT Structures) will be made available to authorized representatives of the Authority during normal work hours for inspection and copying. All records and documents prepared under this Agreement and described in this paragraph must be maintained by TxDOT for three (3) years after final payment of construction costs incurred in connection with the TxDOT Structures.

16. **Reports and Plans to TxDOT.** The Authority shall deliver to TxDOT all semiannual progress reports for the Project and any capacity improvements thereto prepared by the Authority's consulting engineers, and shall deliver to TxDOT all contractor requisitions relating to the construction of the Project or any Capacity Improvements thereto on a monthly basis. If during the construction of the Project or any Capacity Improvements thereto, the Authority has reason to believe that any of the scheduled completion dates may be exceeded, the Authority shall promptly notify TxDOT and, working collaboratively, the parties shall evaluate all feasible alternatives for accelerating the progress of work on the Project or Capacity Improvements thereto, as applicable. At the earliest possible date following completion of construction of the Project or Capacity Improvements thereto, the Authority will deliver to TxDOT a final set of plans and specifications for the Project or Capacity Improvements thereto (to the extent designed and constructed by the Authority), signed, sealed and dated by a professional engineer, licensed in the State of Texas, certifying that the portion of the Project or Capacity Improvements thereto, as applicable, constructed by the Authority was constructed in accordance with the approved plans and specifications and approved contract revisions.

Additionally, TxDOT shall deliver to the Authority all progress reports for the TxDOT Structures prepared by TxDOT or its outside engineers. At the earliest possible date following completion of construction of the TxDOT Structures, TxDOT will deliver to the Authority a final set of plans and specifications for the TxDOT Structures, signed, sealed and dated by a professional engineer, licensed in the State of Texas, certifying that those improvements were constructed in accordance with the approved plans and specifications and approved contract revisions.

17. **The Financing.**

(a) Financing by the Authority. Except for TxDOT's financial assistance provided under the Toll Equity Loan Agreement, the Authority shall have the sole obligation and responsibility to provide the financings for the acquisition, construction, design, operation, and maintenance of the Project (each a "Financing"). TxDOT's rights and obligations regarding the provision of any Financing are limited to those in the Toll Equity Loan Agreement.

(b) Negotiation and Execution of Toll Equity Loan Agreement. TxDOT and the Authority shall negotiate in good faith the terms and conditions of the Toll Equity Loan Agreement consistent with the applicable provisions of the Term Sheet. The execution and delivery of a final Toll Equity Loan Agreement is anticipated to occur concurrently with the closing of the Financing that is secured by the Toll Equity Loan Agreement.

18. **Upfront Payment.**

(a) Upfront Payment. On or before the earlier of (i) February 28, 2010 or (ii) one business day after the closing of the Financing that is secured by the Toll Equity Loan Agreement and/or Project revenues, the Authority shall pay the Upfront Payment in immediately available funds to TxDOT. The Upfront Payment shall be subject to adjustment as described in Sections 18(d) and (e). If the Authority is unable to close on such Financing by February 28, 2010, the Authority may extend the date for the payment of the Upfront Payment by delivering written notice to TxDOT reconfirming its commitment to develop the Project and pay the

Upfront Payment and setting forth its then current schedule to close on such Financing; provided, however, that such payment date may not be extended for more than ninety (90) days. If the Authority does not pay the Upfront Payment by February 28, 2010, the Upfront Payment shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, until the date the Upfront Payment is paid.

(b) Payment of Phase 2 and 3 Draw Requests. After the Commitment Date and before the date the Upfront Payment is paid to TxDOT, the Authority will pay on behalf of TxDOT all properly submitted construction draw requests for Phases 2 and 3 (up to the amount of the Upfront Payment). In lieu of making such payments, the Authority may elect to have TxDOT pay such draw requests, in which case the Upfront Payment will be increased as provided in Section 18(e).

(c) Payment of Union Pacific Railroad Bridge. After the Commitment Date, unless the parties agree that the UPR Bridge will be built by the Authority as part of Phase 4, the Authority will pay on behalf of TxDOT all properly submitted construction draw requests for the UPR Bridge, up to a maximum amount of \$22,622,544. To the extent the costs of the Union Pacific Railroad Bridge exceed \$22,622,544 (the "Excess Costs"), TxDOT shall have sole responsibility to pay the Excess Costs. In lieu of making such payments, the Authority may elect to have TxDOT pay such draw requests, in which case the Upfront Payment will be increased as provided in Section 18(e). If the parties agree that the UPR Bridge will be built by the Authority as part of Phase 4, TxDOT shall have the responsibility to pay to the Authority the Excess Costs, except to the extent the Excess Costs are attributable to changes to the plans and specifications prepared by TxDOT and delivered to the Authority, provided that such changes were not necessitated by flaws in such plans and specifications.

(d) Reduction for Payment of Phase 2 and 3 Draw Requests. The amount of the Upfront Payment will be decreased by the amount of any construction draw requests for Phases 2 and 3 that are paid by the Authority on behalf of TxDOT, whether through direct payment to the contractor or reimbursement to TxDOT for payment to the contractor.

(e) Increase for TxDOT Funding of Draw Requests. If prior to the payment of the Upfront Payment TxDOT funds any construction draw requests for Phases 2 and 3 (up to the amount of the Upfront Payment) or the UPR Bridge (to the extent the Authority is responsible for such payment), the amount of the Upfront Payment will be increased by (i) the interest that would have accrued on those funds paid by TxDOT (assuming those funds had remained in the project subaccount in Fund 6) from the date TxDOT funds the draw requests out of Fund 6 to the earliest of (A) the date the Authority reimburses TxDOT for funding such draw request, (B) the date the Upfront Payment is paid to TxDOT or (C) February 28, 2010, and (ii) the amount of any such construction draws for the UPR Bridge (to the extent the Authority is responsible for such payment). TxDOT shall calculate the adjustment amount and shall provide documentation to the Authority detailing how such adjustment amount was calculated.

## **19. Net Revenue and Capital Improvement Sharing.**

(a) Net Revenue and Capital Improvement Sharing. Commencing on the 52<sup>nd</sup> anniversary of the Effective Date (the "Net Revenue Share Commencement Date"), (i) the

Authority shall pay to TxDOT fifty percent (50%) of the Net Revenue from the Project (the “Net Revenue Share Amount”) and (ii) TxDOT and the Authority will equally share (50%/50%) and promptly discharge all Capital Improvement Costs pertaining to the Project (the “Capital Improvement Share Amount”).

(b) Definitions. For purposes of this Agreement:

(i) “Net Revenue” means, for any period, all toll revenues received from the Project during such period, less all Operating Expenses accrued during such Period.

(ii) Operating Expenses means, for any period, all reasonable and necessary accrued expenses of maintaining, repairing and operating the Project during such period, including, without limitation, all reasonable and necessary expenses of maintenance and repair, insurance, bridge painting, all operating, policing and administrative and engineering expenses, all payments and deductions as provided in the laws pertaining to the State Retirement System, fees and expenses of any bond trustee, legal and accounting fees and expenses and any other expenses or obligations required to be paid by the Authority under this Agreement, any bond indenture related to the Project, or by law, but excluding any Capital Improvement Costs, the costs of any capacity improvements made as and when required under Section 8(e) and Exhibit D, or any payments of interest on or principal of any indebtedness incurred by the Authority.

(iii) “Capital Improvement Costs” means, for any period, all capital improvement costs incurred with respect to the Project during such period, including, without limitation, all costs for rehabilitation, reconstruction, capacity improvements, and similar capital costs, but excluding non-rehabilitation resurfacing costs (friction courses, thin bonded overlay, etc.), which shall be deemed Operating Expenses, but excluding capacity improvements made as and when required under Section 8(e) and Exhibit D.

(c) Calculation of Net Revenue Share Amount and Capital Improvement Share Amount and Payment Procedures. The Net Revenue Share Amount and Capital Improvement Share Amount shall be payable to TxDOT or the Authority, as applicable, according to the following procedures.

(i) Within fifteen (15) days after the end of each calendar year or partial calendar year after the Net Revenue Share Commencement Date, the Authority shall prepare a written preliminary calculation of the Net Revenue Share Amount and Capital Improvement Share Amount, using the cost allocation methodology mutually approved by the parties to perform the calculation, and shall deliver to TxDOT (A) such written preliminary calculation of the Net Revenue Share Amount and Capital Improvement Share Amount and (B) full payment of the Net Revenue Share Amount less the Capital Improvement Share Amount (the “Net Share Amount”) if such amount is a positive number as so calculated or a written request for payment of the Net Share Amount if the Net Share Amount is a negative number as so calculated.

(ii) Within ten (10) days after completion of its annual Project audit for a calendar year, the Authority shall deliver to TxDOT (A) a written final calculation of the

Net Revenue Share Amount and Capital Improvement Share Amount, (B) an audited financial statement prepared by a reputable independent certified public accounting firm according to GAAP, consistently applied, setting forth the total toll revenues for the Project for the subject calendar year and the total Operating Expenses and Capital Improvement Costs for the subject calendar year, itemized according to major categories of expenditures, and (C) either payment of any additional Net Share Amount or a written request for payment of any reduced Net Share Amount for the subject calendar year, as so calculated.

(iii) TxDOT shall have up to one hundred twenty (120) days after receipt of the items set forth in subsection 19(c)(ii) to dispute the Authority's calculation of the Net Share Amount or to request further reasonable clarification or amendment to the calculation. The Authority shall deliver to TxDOT such reasonable clarification or amendment within thirty (30) days after receipt of TxDOT's written request therefor. If TxDOT does not agree with the calculation of the Net Share Amount, the disagreement shall be resolved according to the dispute resolution procedures set forth in subsection 26(g).

(iv) Upon final determination of the Net Share Amount, to the extent the result indicates an underpayment to, or an overpayment by, TxDOT, the Authority shall immediately pay or refund to TxDOT the additional amount owing, together with interest thereon, commencing (A) ninety (90) days after the end of the calendar year or partial calendar year for which it was due with respect to an underpayment and (B) on the date the overpayment was made by TxDOT with respect to an overpayment, in each case until the date paid, at a floating rate equal to the LIBOR in effect from time to time. "LIBOR" means the offered rate per annum (rounded up to the nearest one one-thousandth of one percent (0.001%) for deposits in U.S. dollars for a one-month period that appears on the Telerate Page 3750 at approximately 11:00 a.m., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market.

(v) Upon final determination of the Net Revenue Share Amount, to the extent the result indicates an overpayment to, or an underpayment by, TxDOT, TxDOT shall immediately pay or refund the additional amount owing to the Authority, together with interest thereon, commencing thirty (30) days after TxDOT receives the written final calculation and audited financial statement pursuant to subsection 19(c)(ii) until the date paid, at a floating rate equal to the LIBOR in effect from time to time.

(d) Conversion to Gross Revenue Share Amount. Not less than two years, but not more than five years, prior to the Net Revenue Share Commencement Date, authorized representatives of TxDOT and the Authority shall meet to discuss converting the Net Revenue Share Amount to a percentage of gross revenues that would be expected to yield the same amount to TxDOT as the Net Revenue Share Amount. The Authority shall be responsible for calling such meeting and establishing a mutually acceptable time and place for such meeting.

(e) Reserve Account. If the Authority defaults in the payment to TxDOT of the Net Share Amount, then, in addition to curing such default, the Authority shall set up a separate reserve account to be used to pay the Net Share Amount. The Authority shall make monthly deposits into such account equal to one-twelfth of the Authority's projected Net Share Amount for the applicable calendar year. The Authority may stop making payments into such reserve account if the Authority has not defaulted with respect to the payment of the Net Share Amount for the prior two (2) calendar years.

(f) Compliance with Minimum Operations and Maintenance Standards. Within two years of the Net Revenue Share Commencement Date, TxDOT and the Authority shall jointly inspect the Project for substantial compliance with the minimum operations and maintenance standards set forth in Exhibit G, and prepare a list of noncompliant items. The Authority at its expense shall, by the Net Revenue Share Commencement Date, cause such list items to be brought into compliance with the operations and maintenance standards set forth in Exhibit G. The Authority may use Project revenue for the purpose of bringing such list items into compliance with those standards if such revenue is available.

## 20. **Tolls**

### (a) Authorization to Toll

(i) As provided in Chapter 366, Texas Transportation Code, the Authority shall have the exclusive right to (A) impose tolls upon the users of the main lanes of each Phase of the Project, (B) establish, modify and adjust the rate of such tolls, and (C) enforce and collect tolls from the users of the main lanes of the Project. To the extent permitted by law, such right shall be exercised with respect to the Project in accordance with and subject to the terms and conditions contained in this Agreement, including those set forth in this Section 20 and in Exhibit J attached hereto and made a part hereof.

(ii) The foregoing authorization includes the right to fix, charge, enforce and collect incidental charges with respect to electronic tolling accounts and video transaction toll premiums in accordance with the Authority's system-wide policy for such items.

### (b) Toll Rates.

(i) Except as provided in subsection 20(b)(ii), the toll rates in any year of the term of this Agreement shall not exceed the maximum rates for each user classification for such year determined according to the toll rate policy, schedule and methodology set forth in Exhibit J.

(ii) The toll rates in any year may not exceed the maximum rates for each user classification for such year determined according to the toll rate policy, schedule and methodology set forth in Exhibit J unless the Authority, after consulting with the RTC, determines that it is necessary to (A) preserve the financial condition of the Project (or if the Project is later made part of the NTTA System, the NTTA System), (B) comply with the provisions of any bonds, notes, trust agreements or other financial instruments or agreements secured by the revenues of the Project (or if the Project is later made part of the NTTA System, the NTTA System), or (C) comply with law.



(c) Peak Period Pricing Study. Under the project agreement for the 121 Tollway, a peak period pricing study was envisioned for the Project, the results of which were assumed to guide the implementation of peak period pricing on the 121 Tollway. The Authority anticipates that peak period pricing on the 121 Tollway will commence January 1, 2012. Therefore, a peak period pricing study could be conducted on the 121 Tollway sooner than on the Project. The Authority agrees to reasonably cooperate with TxDOT and the RTC in conducting a peak period pricing study on the 121 Tollway upon terms and conditions acceptable to the parties. TxDOT and/or the RTC shall bear the cost of any such study, and TxDOT and/or the RTC shall make the Authority whole with respect to any lost toll revenues incurred by the Authority in connection with such study. TxDOT, the Authority and the RTC desire for such study to be completed before December 31, 2012.

21. **Tolling Operations if Agreement Terminated.** If this Agreement is terminated, the Authority and TxDOT shall enter into a mutually agreeable tolling services agreement pursuant to which the Authority will (a) provide certain toll collection, enforcement and interoperability functions and services for the Project and (b) receive compensation in an amount necessary to cover its costs and expenses, plus a reasonable and mutually acceptable return, in providing such functions and services.

22. **TxDOT Segment.**

(a) Maintenance and Improvements. TxDOT owns and operates an approximate three mile segment of roadway that connects the southern terminus of the PGBT to the northern terminus of the Project (the "TxDOT Segment") TxDOT acknowledges and agrees that it is critical to the operation of the PGBT and the Project that the TxDOT Segment have the same number of main lanes throughout such segment as the PGBT and the Project have at such connection points. Accordingly, TxDOT shall, at its cost and expense, make capacity improvements to the TxDOT Segment as and when set forth in the Mobility 2030 Plan.

(b) Easement. Upon request by the Authority, TxDOT shall grant the Authority easement interests on the TxDOT Segment to the extent necessary to permit the Authority to connect its ITS equipment on the PGBT with its ITS equipment on the Project, including the laying of fiber optic cable across the TxDOT Segment; provided the Authority shares its excess fiber capacity with TxDOT.

23. **Reimbursement for Authority Expenditures.** If this Agreement is terminated pursuant to Sections 25(b) or (c), TxDOT shall reimburse the Authority for all of its reasonable and verifiable development costs, other than internal soft costs (i.e., costs attributable to the services performed by the Authority's employees), relating to the Authority Structures. Notwithstanding the foregoing, the Authority hereby agrees that, without the prior written consent of TxDOT, the Authority shall not incur any reimbursable development costs for Phase 4 other than (i) up to \$20,000,000 for engineering and design work for Phase 4 (excluding the UPR Bridge) and (ii) if TxDOT and the Authority agree that the Authority will construct the UPR Bridge, the development costs for the UPR Bridge. Except for any work, services, or materials under the contracts listed in Exhibit M attached hereto and made a part hereof, the Authority shall provide TxDOT for its prior review and approval the proposed scope and pricing for any work, services, or materials to be reimbursed under this Section 23. Such reimbursement shall be made within

thirty (30) days after termination of this Agreement. The Authority shall provide to TxDOT all items, documents and information reasonably required by TxDOT to evidence that the work or services for which reimbursement is sought has been performed substantially in accordance with the PS&Es delivered to TxDOT for the Authority Structures as well as all information related to the cost and pricing of such work.

Upon payment of the reimbursement amount, the Authority will promptly provide TxDOT with all original counterparts or, if originals are unavailable, copies of all materials prepared by or for the Authority (or otherwise held by the Authority) in connection with the Authority Structures, together with any and all other items or information in the possession of the Authority and useful to or necessary for TxDOT's completion or operation of the Project (the "Authority Materials"). After reviewing the Authority Materials, TxDOT, at any time, may request that the Authority either (a) assign, in writing, to TxDOT and/or its consultants all of the Authority's right, title and interest in any permit, agreement, contract, conveyancing instrument, plan or other Authority Material or (b) provide TxDOT with a royalty-free license to use any such Authority Material, if in the reasonable determination of TxDOT such assignment or license will result in a cost savings or otherwise benefit the development or operation of the Project; TxDOT shall reimburse the Authority for all costs it incurs as a result of the foregoing assignment or license. The Authority shall assist TxDOT in obtaining any consents required to assign or license the foregoing items to TxDOT so that, to the extent that the Authority assigns its rights and interests to TxDOT, TxDOT shall have, to the greatest extent possible, the same rights under and interests in the assigned Authority Materials as the Authority held prior to that assignment. TxDOT shall reimburse the Authority for all reasonable costs it incurs as a result of that assistance.

This Section 23 shall survive the termination of this Agreement.

24. **Compliance with Applicable Laws.** The Authority and TxDOT shall comply with all federal, state and local laws applicable to them with respect to this Agreement.

25. **Termination of this Agreement.**

(a) Mutual Termination. Except as provided in subsections 25(b) and (c), this Agreement may be terminated only by written mutual agreement and consent of the parties hereto.

(b) Commitment. Either party may terminate this Agreement by written notice to the other party if the Commitment has not occurred on or before the Commitment Deadline.

(c) Upfront Payment. Either party may terminate this Agreement by written notice to the other party if the Upfront Payment has not been paid by February 28, 2010, or such later date if the date for payment of the Upfront Payment has been extended in accordance with Section 18(a).

26. **Defaults and Remedies.**

(a) Authority Defaults. The Authority shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each an “Authority Default”):

(i) The Authority fails to make any payment due TxDOT under this Agreement when due, including the Upfront Payment and any interest thereon; or

(ii) The Authority fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by the Authority under this Agreement.

(b) Authority Cure Periods. For the purpose of TxDOT’s exercise of remedies, the Authority shall have the following cure periods with respect to the following Authority Defaults:

(i) Respecting an Authority Default under subsection 26(a)(i), a period of thirty (30) days after TxDOT delivers to the Authority written notice of the Authority Default.

(ii) Respecting an Authority Default under subsection 26(a)(ii), a period of thirty (30) days after TxDOT delivers to the Authority written notice of the Authority Default; provided that if the Authority Default is of such a nature that the cure cannot with diligence be completed within such time period and the Authority has commenced meaningful steps to cure promptly after receiving the default notice, the Authority shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to diligently effect cure.

(c) TxDOT Remedies for Authority Defaults.

(i) TxDOT shall be entitled on account of the occurrence of an Authority Default involving any payment due TxDOT under this Agreement to recover from the Authority said unpaid amounts, plus interest thereon at the floating rate equal to the LIBOR in effect from time to time plus 200 basis points from and after the date such payment becomes due to TxDOT until paid. The Authority shall owe any such interest that accrues after the occurrence of such Authority Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the Authority Default is subsequently cured.

(ii) TxDOT shall be entitled to seek an action in mandamus against the Authority on account of the occurrence of an Authority Default.

(d) TxDOT Defaults. TxDOT shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a “TxDOT Default”):

(i) TxDOT fails to make any payment due the Authority under this Agreement when due; or

(ii) TxDOT fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by TxDOT under this Agreement.

(e) TxDOT Cure Periods. For the purpose of the Authority's exercise of remedies, TxDOT shall have the following cure periods with respect to the following TxDOT Defaults:

(i) Respecting a TxDOT Default under subsection 26(d)(i), a period of thirty (30) days after the Authority delivers to TxDOT written notice of the TxDOT Default.

(ii) Respecting a TxDOT Default under subsection 26(d)(ii), a period of thirty (30) days after the Authority delivers to TxDOT written notice of the TxDOT Default; provided that if the TxDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and TxDOT has commenced meaningful steps to cure immediately after receiving the default notice, TxDOT shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to diligently effect cure.

(f) Authority Remedies for TxDOT Defaults.

(i) The Authority shall be entitled on account of the occurrence of a TxDOT Default involving any payment due the Authority under this Agreement to recover from TxDOT said unpaid amounts, plus interest thereon at the floating rate equal to the LIBOR in effect from time to time plus 200 basis points from and after the date such payment becomes due to the Authority until paid. TxDOT shall owe any such interest that accrues after the occurrence of such TxDOT Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the TxDOT Default is subsequently cured.

(ii) The Authority shall be entitled to seek an action in mandamus against the TxDOT on account of the occurrence of a TxDOT Default.

(g) Dispute Resolution Procedures. The Authority and TxDOT will set up a formalized process to resolve any issues that arise in connection with this Agreement, including with respect to all payments of the Net Revenue Share Amount and the Capital Improvement Costs. The process will include an issues resolution ladder to resolve questions at the appropriate organizational levels. Any questions that cannot be resolved by use of the issues resolution ladder will be referred to the Authority's Executive Director or his/her designee and TxDOT's Executive Director or his/her designee to resolve. If a dispute is processed under the issues resolution ladder and not resolved, the parties agree to use the procedures in the next following sentences. The party making a claim may advance it in accordance with the statutes and administrative rules applicable on the Effective Date, including all statutory provisions that effect a waiver, in whole or part, of sovereign immunity to suit for the purpose of adjudicating a claim for a breach under this Agreement, including Tex. Loc. Gov't. Code Chapter 271, Subchapter I. The parties agree to use any alternative dispute resolution procedure that is a part of the applicable claim procedure. The parties shall satisfy the requirement for alternative dispute resolution by participating in non-binding arbitration, unless otherwise agreed to by the

parties. During the resolution of an issue the Authority and TxDOT will not hinder work under the Agreement and such work will proceed.

(h) **Self-Help Rights.** If in the good faith judgment of TxDOT an unforeseen event affects the frontage roads of the Project that causes or could reasonably be expected to cause a material threat to public safety, and if, after reasonable notice, the Authority is not then diligently taking steps to rectify or deal with such threat, TxDOT shall have the right to take or cause to be taken such action as may be reasonably necessary to rectify such threat, in which event the Authority shall bear the reasonable costs thereof.

27. **Successors and Assigns.** This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including without limitation any successor public agency to TxDOT or the Authority. The Authority shall provide TxDOT with the opportunity to review and comment on any proposed procurement documents relating to the granting of a concession for the Project, and any proposed concession agreement. Any concession that includes a term that extends past the 52nd anniversary of the Effective Date is subject to the payment to TxDOT of the Net Revenue Share Amount. Other than as provided in the preceding sentences, neither TxDOT nor the Authority shall assign its interest in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

28. **Circulation of the Agreement.** Copies of this Agreement will be provided to, reviewed and relied upon by underwriters, investment bankers, rating agencies, credit enhancers and similar parties in connection with the provision of the Financing.

29. **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

30. **Written Amendments.** Any changes in the character, agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the Authority and TxDOT.

31. **Notices.** All notices to either party by the other required under this Agreement shall be delivered personally, sent by facsimile transmission, or sent by Certified or Registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

If to the Authority:

Delivered personally:

North Texas Tollway Authority  
5900 W. Plano Parkway, Suite 100  
Plano, Texas 75093  
Attention: Executive Director

Delivered by mail:

North Texas Tollway Authority  
P.O. Box 260729  
Plano, Texas 75026  
Attention: Executive Director

If to TxDOT:

Texas Department of Transportation  
Dallas District Office  
4777 East Highway 80  
Mesquite, Texas 75150  
Attention: District Engineer

All personally delivered notices shall be deemed given on the date so delivered. Notice by facsimile shall be deemed given on the date indicated by written confirmation of transmission to, in the case of the Authority, (214) 528-4826 or, in the case of TxDOT, (214) 320-6117. All mailed notices shall be deemed given three (3) days after being deposited in the mail. Either party hereto may change the above address or facsimile number by sending written notice of such change to the other in the manner provided for above.

32. **Limitations.** All covenants and obligations of TxDOT and the Authority under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of TxDOT or the Authority shall have any personal obligations or liability hereunder.

33. **Sole Benefit.** This Agreement is entered into for the sole benefit of TxDOT and the Authority and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

34. **Relationship of the Parties.** Nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent between TxDOT and the Authority, nor any joint enterprise.

35. **Authorization.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder and that no waiver, consent, approval, or authorization from any third party is required to be obtained or

made in connection with the execution, delivery, or performance of this Agreement in accordance with its terms, other than those that have been obtained.

36. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.


37. **Effective Date; Execution and Delivery.** The Effective Date shall be the date on which the last party to execute this Agreement does so. Under no circumstances shall this Agreement be deemed executed and delivered for any purpose prior to its complete execution by both TxDOT and the Authority.

38. **Conflicts.** If any conflict or inconsistency exists between this Agreement and the Negotiated Value Agreement or Term Sheet, this Agreement shall govern.

[Remainder of Page Intentionally Left Blank]

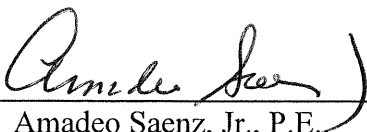
IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by six (6) multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY  
AUTHORITY**

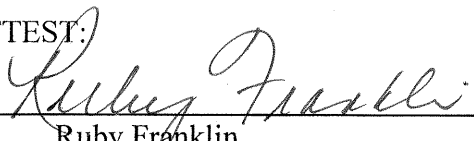
By:   
Allen Clemson  
Executive Director

Date: 7/28/2009

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

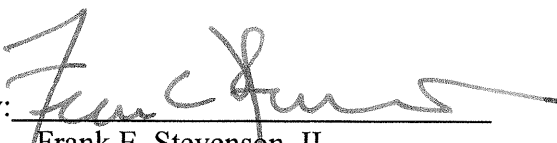
By:   
Amadeo Saenz, Jr., P.E.,  
Executive Director

Date: 7/30/09

ATTEST:  
  
Ruby Franklin,  
Secretary

APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL LLP  
General Counsel to the Authority

By:   
Frank E. Stevenson, II



## Exhibit A

### Description of the Project (Recitals and Section 7)

#### The Project

The Project consists of those portions of SH 161 extending from SH 183 in Dallas County south to IH 20 in Dallas County. Certain portions of the Project have already been completed or are currently under construction by TxDOT. The Authority will have the obligation to design and construct certain additional improvements identified in the Agreement as the Authority Structures, including Phase 4, substantially consistent with the preliminary design prepared by TxDOT. In addition, upon completion of required work in each Phase, the Authority will be obligated to place into operation and maintain such Phase, and the main lanes of such Phase shall be removed from the state highway system and transferred to the Authority as provided in Section 2 of this Agreement. Maintenance and operations will include all frontage roads, tolled main lanes and entrance and exit ramps, and all Project Right of Way:

(a) Phase 1: All frontage roads from IH 20 to Carrier Parkway (North of IH 30), SH 161 CL Station 100+00 to Station 426+00. SH 183/SH 161 Interchange Phase II south to Conflans Road. SH 161 CL Station 665+00 to Station 712+00. TxDOT is required to perform all work for Phase 1 and the Authority is not required to perform any work for Phase 1.

(b) Phase 2: Two main lanes in each direction (the ultimate northbound main lanes) from SH 183 to just north of IH 30 (Carrier Parkway), northbound main lane bridge over Bear Creek and Trinity Railway Express, northbound main lane bridge over the Trinity River, frontage roads from Rock Island Road to Oakdale Road, and frontage roads from Lower Tarrant Road to Carrier Parkway. SH 161 CL Station 450+00 to Station 672+20. TxDOT is required to perform all work for Phase 2, except that the Authority is required to design and construct the permanent tolling system on the main lanes. The opening of Phase 2 that includes a portion to Conflans Road cannot occur unless tolling is also in effect for the two ramps for Conflans Road.

(c) Phase 3: Three main lanes in each direction from SH 183 to just north of IH 30 (Carrier Parkway) and temporary ramps between Egyptian Way and Carrier Parkway. SH 161 CL Station 441+00 to Station 672+20. TxDOT is required to perform all work for Phase 3, except that the Authority is required to design and construct the permanent tolling system.

(d) Phase 4: All main lanes from IH 20 to north of IH 30 (Carrier Parkway), full direct connection interchange at IH 30, direct connections at IH 20, Union Pacific Railroad bridge, underpass and other related improvements (collectively, the "UPR Bridge"), SH 180 bridges over the main lanes and electronic toll collection and ITS equipment. The Authority is required to perform all work for Phase 4, except that TxDOT shall design and construct the UPR Bridge unless the Authority and TxDOT hereafter agree that the UPR Bridge will be constructed by the Authority. If the Authority and TxDOT hereafter agree that the UPR Bridge will be constructed by the Authority rather than TxDOT, TxDOT shall provide the Authority with 100% design plans for the UPR Bridge and shall obtain the necessary agreement and easements from Union Pacific Railroad to accomplish the work required for the UPR Bridge, which shall be

assigned to the Authority on but not before the date required for the Authority to commence construction of the UPR Bridge.

## **Exhibit B**

### **Delivered Materials (Section 4)**

1. All materials prepared by or for TxDOT or in TxDOT's possession relating to the Project, including, without limitation, utility permits and relocations, construction contracts, right of way mapping, surveys and parcel sketches, title policies and legal instruments.
2. All reference information documents provided developers in connection with the proposed procurement of the SH-161 Toll Project through a Comprehensive Development Agreement.
3. Electronic files of all PS&E for the Project.
4. As-built plans for the TxDOT Structures when available.

### **Exhibit C**

#### **TxDOT Structures (Section 7)**

<b>Limits</b>	<b>Structure</b>	<b>Completion Date</b>
Phase 1	Frontage roads from IH 20 to Carrier Parkway (North of IH 30)	January 29, 2009
Phase 1	SH 183/SH 161 Interchange South to Conflans Road	January 11, 2008
Phase 2	Two main lanes in each direction (the ultimate northbound main lanes) from SH 183 to just north of IH 30 (Carrier Parkway)	October 17, 2009
Phase 2	Northbound main lane bridge over Bear Creek and Trinity Railway Express	October 17, 2009
Phase 2	Northbound main lane bridge over the Trinity River	October 17, 2009
Phase 2	Frontage roads from Rock Island Road to Oakdale Road	January 19, 2011
Phase 2	Frontage roads from Lower Tarrant Road to Carrier Parkway	January 19, 2011
Phase 3	Three main lanes in each direction from SH 183 to just north of IH 30 (Carrier Parkway)	January 19, 2011
Phase 3	Temporary ramps between Egyptian Way and Carrier Parkway	January 19, 2011
Phase 4	UPR Bridge	October 1, 2011*
Phase 4	UPR Bridge utility relocations	October 1, 2011

\*Unless the parties agree that the UPR Bridge will be constructed by the Authority pursuant to Section 7.

## **Exhibit D**

### **Capacity Improvements (Section 8(e))**

1. **First Widening.** Addition of one main lane each direction from IH 20 to IH 30 (6 main lanes full corridor) by January 1, 2020.
2. **Second Widening.** Addition of one main lane each direction (8 main lanes full corridor) by January 1, 2031.
3. **Exceptions.** The Authority shall have no obligation to undertake a capacity improvement if the same is subject to obtaining a separate record of decision or other separate action thereon under the National Environmental Policy Act or other environmental policy substantially similar to or incorporating the provisions thereof and a no action alternative is selected. The Authority shall have no obligation to undertake a capacity improvement beyond the addition of surface limited access lanes in each direction within the boundaries of the then-existing Project Right of Way. (The parties anticipate that a total of eight surface limited access lanes, with the potential of auxiliary limited access lanes in some locations, can be accommodated within such boundaries. For the avoidance of doubt, the Authority shall have no obligation to expand frontage roads, but may have to modify frontage roads to accommodate mandatory capacity improvements.) The Authority shall have no obligation to undertake a capacity improvement if the same has not been included in the RTC's mobility plans for the region. The Authority and TxDOT agree to support all efforts to include all schedule capacity improvements in future mobility plans of the RTC. The Authority shall have no obligation to undertake a capacity improvement until the capacity improvement trigger in Section 4 below is met.
4. **Capacity Improvement Trigger.** Whenever over the course of three consecutive months more than 10% of hourly speeds over any five-mile section in one direction, for each included calendar month are more than ten mph below the lesser of the free flow speed or the posted speed limit, this shall be the trigger event for a capacity improvement. For the avoidance of doubt, for the purpose of determining the capacity improvement trigger, hourly speeds affected by non-routine traffic management, occurrence of incidents, weather conditions or occurrence of events that temporarily increase flows shall be excluded.
5. **Costs.** Capacity improvements required under this Exhibit D shall be at the Authority's sole cost and expense.
6. **Consultation with RTC.** The Authority will consult with the RTC concerning the capacity improvement trigger, and the scope and timing of any capacity improvements to the Project.

**Exhibit E**

Approved Schematic  
(Section 8(b))

[See Attached Schematic]

This engineering drawing illustrates the proposed interchange between Interstate 20 (I-20) and Interstate 30 (I-30). The drawing is divided into several key sections:

- Plan View (Top):** Shows the interchange layout, including the mainline of I-20, the I-30 overpass, and various ramps. Key features include:
  - Match Line I-20 STA 27+00** on the left and **Match Line** on the right.
  - Vineyard Street** crossing I-20.
  - Mayfield Road** crossing I-30.
  - Future Crossland Boulevard** and **Future Warrior Trail** shown as future developments.
  - Scale 1" = 200'** and a north arrow.
- Typical Freeway Section (Center):** A cross-section of the freeway showing lane widths, shoulders, and vertical clearance. Labeled **TYPICAL FREEWAY SECTION I.H. 20 TO I.H. 30**.
- Profile View (Bottom):** A vertical alignment diagram showing the elevation of the roadway and existing ground. Key features include:
  - Stationing:** Ranges from STA 100+00 to STA 140+00.
  - Elevations:** Vertical axis from 400 to 600 feet.
  - SB Entrance Ramp STA 145** and **NB Exit Ramp STA 144**.
  - SB Exit Ramp STA 176** and **NB Entrance Ramp STA 179**.
  - Mayfield Rd** and **Warrior Trail** shown as future developments.
  - Future Crossland Blvd.** and **Future Warrior Trail** shown as future developments.
  - Stationing Cross-Section Lines** at the bottom.
- Future Cross-Section Diagrams:** Located between the plan and profile views, showing cross-sections for **Future Crossland Boulevard**, **Mayfield Road**, and **Future Warrior Trail**. These diagrams include lane widths, shoulders, and existing ground lines.

The drawing is a technical representation of a proposed highway interchange, detailing its geometry, vertical alignment, and future development plans.

EXHIBIT E





SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

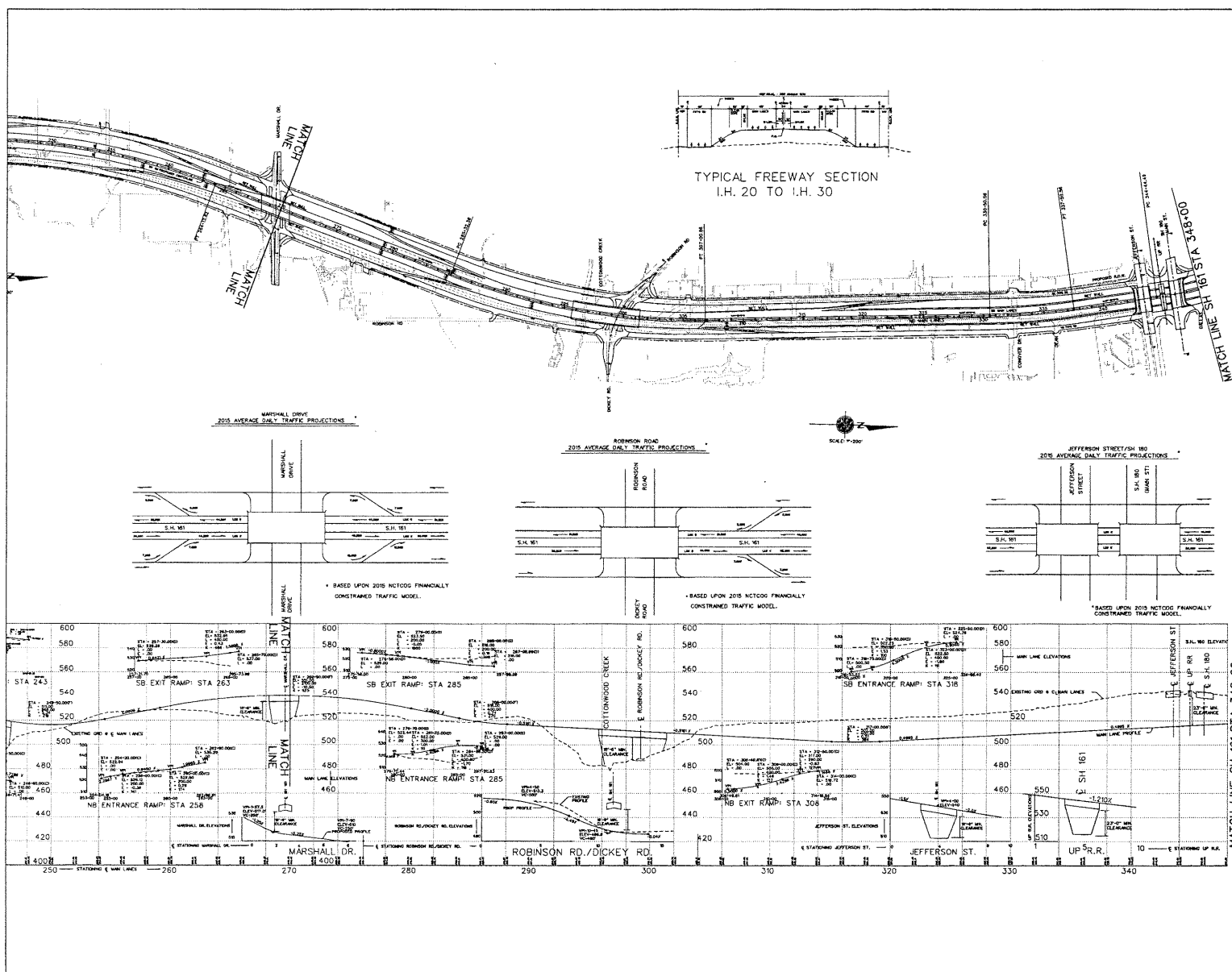
NOT A BIDDING DOCUMENT  
SEAL NONE P.E.  
THIS "DESIGNATION" IS NOT  
A SEAL

TADD SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
SEAL & SIGNATURE, S.E.P.E.  
THIS "DESIGNATION" IS NOT  
A SEAL

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 3 OF 15

EXHIBIT E



SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

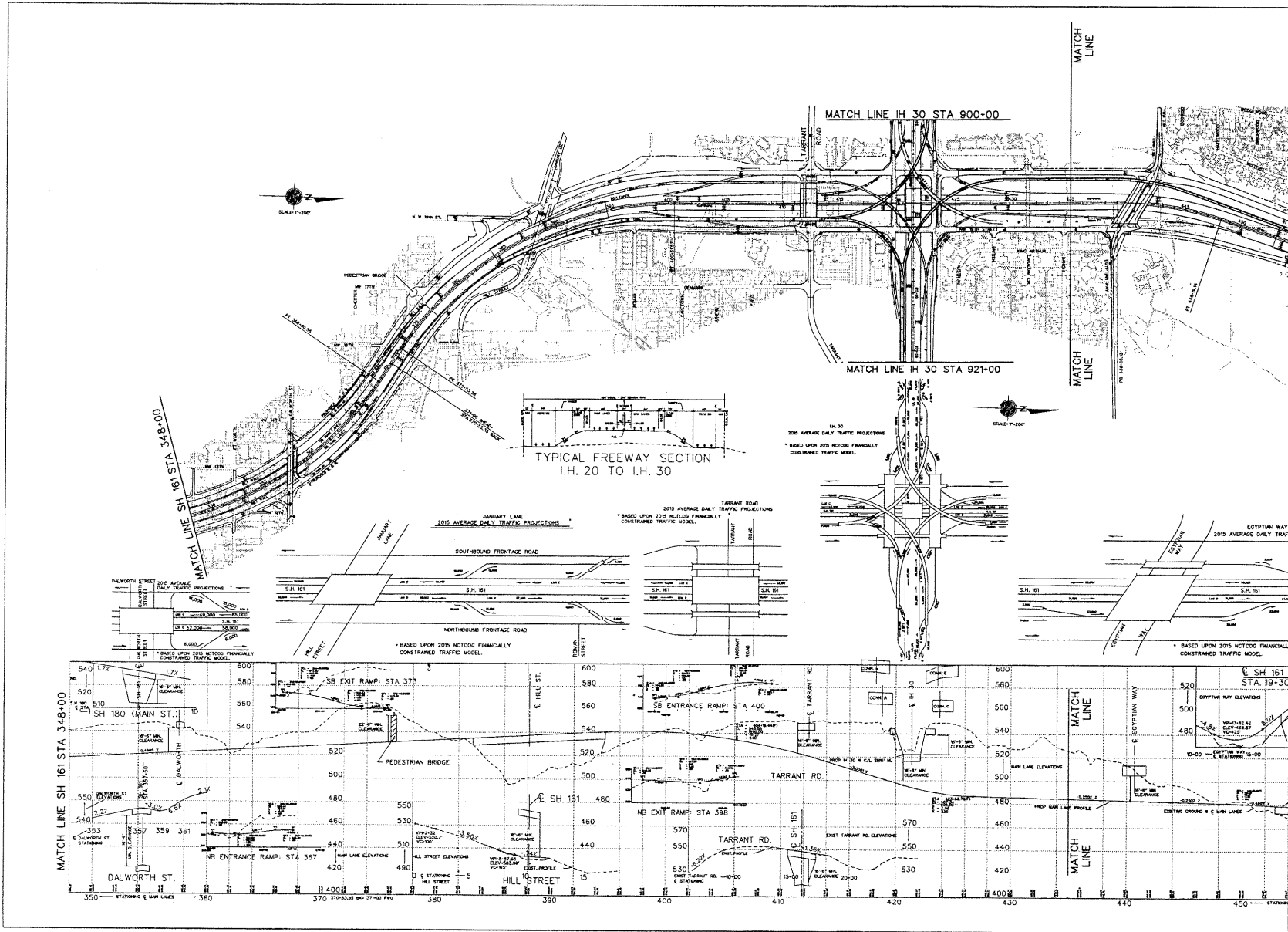
NOT A BIDDING DOCUMENT  
SEAL FORM P.S.  
THIS DOCUMENT IS NOT  
FOR CONSTRUCTION PURPOSES  
DATE

TWO SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMP EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
SEAL FORM P.S.  
THIS DOCUMENT IS NOT  
FOR CONSTRUCTION PURPOSES  
DATE

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 4 OF 15

EXHIBIT E



SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

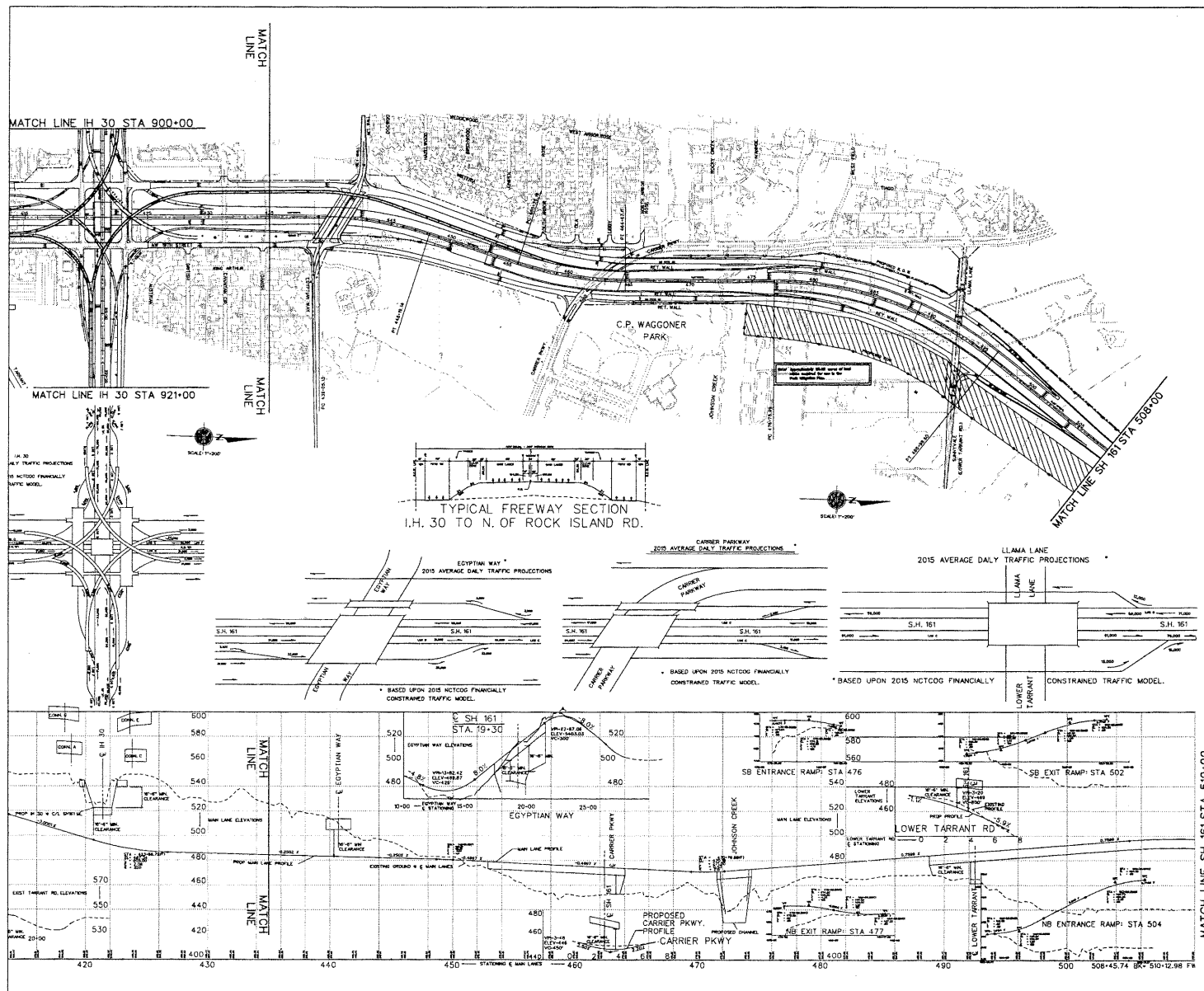
NOT A BIDDING DOCUMENT  
DESIGN FIRM: J.A.  
DATE: 02/19/94  
BY: J.M.H.

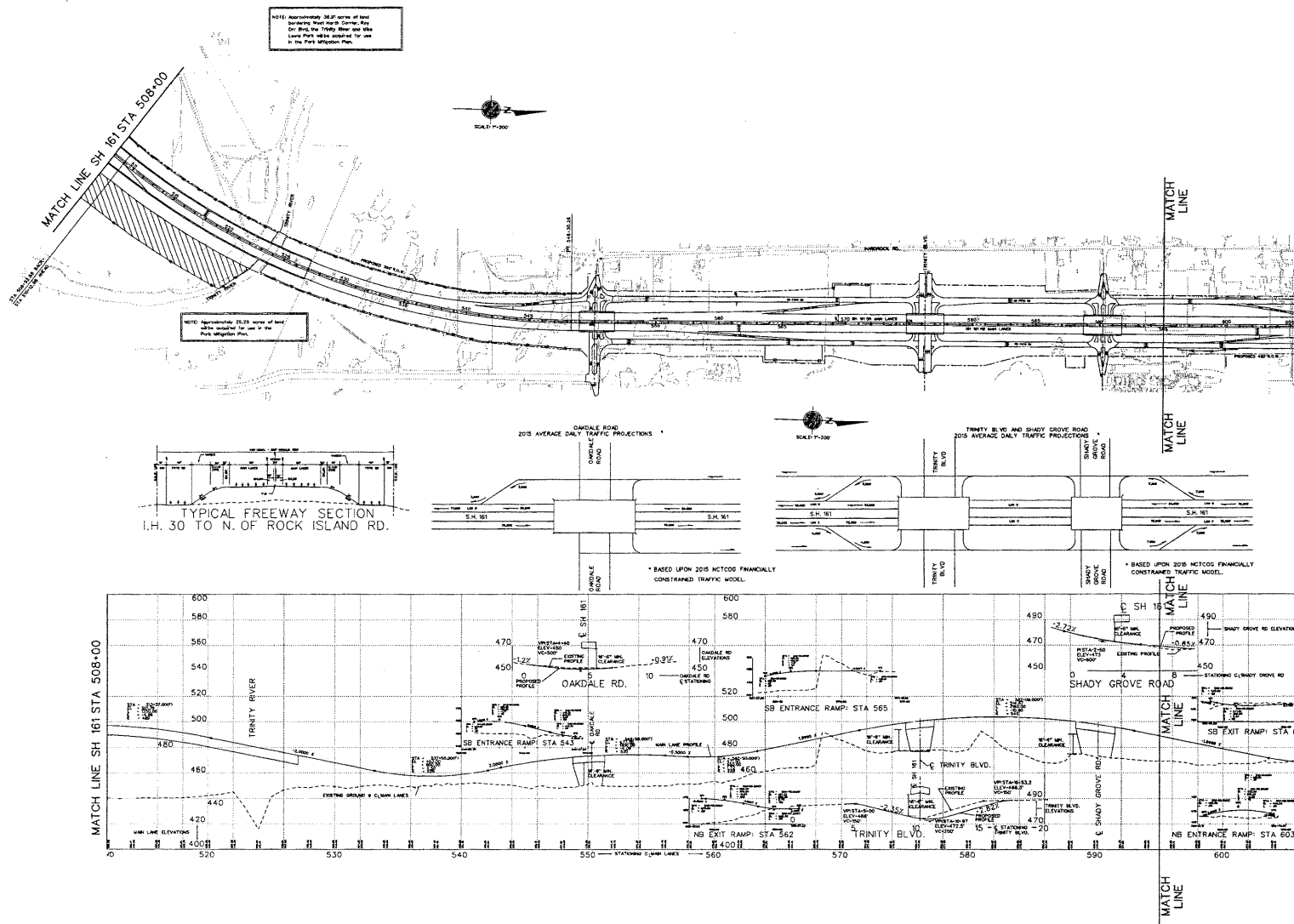
TxDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMP EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
DESIGN FIRM: J.A.  
DATE: 02/19/94  
BY: J.M.H.

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 5 OF 15

EXHIBIT E





SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

NOT A BIDDING DOCUMENT  
DESIGN PERMITS  
YOUR REPRESENTATIVE  
SCALE

TXDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
DESIGN PERMITS  
YOUR REPRESENTATIVE  
SCALE

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 6 OF 15

EXHIBIT E

SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

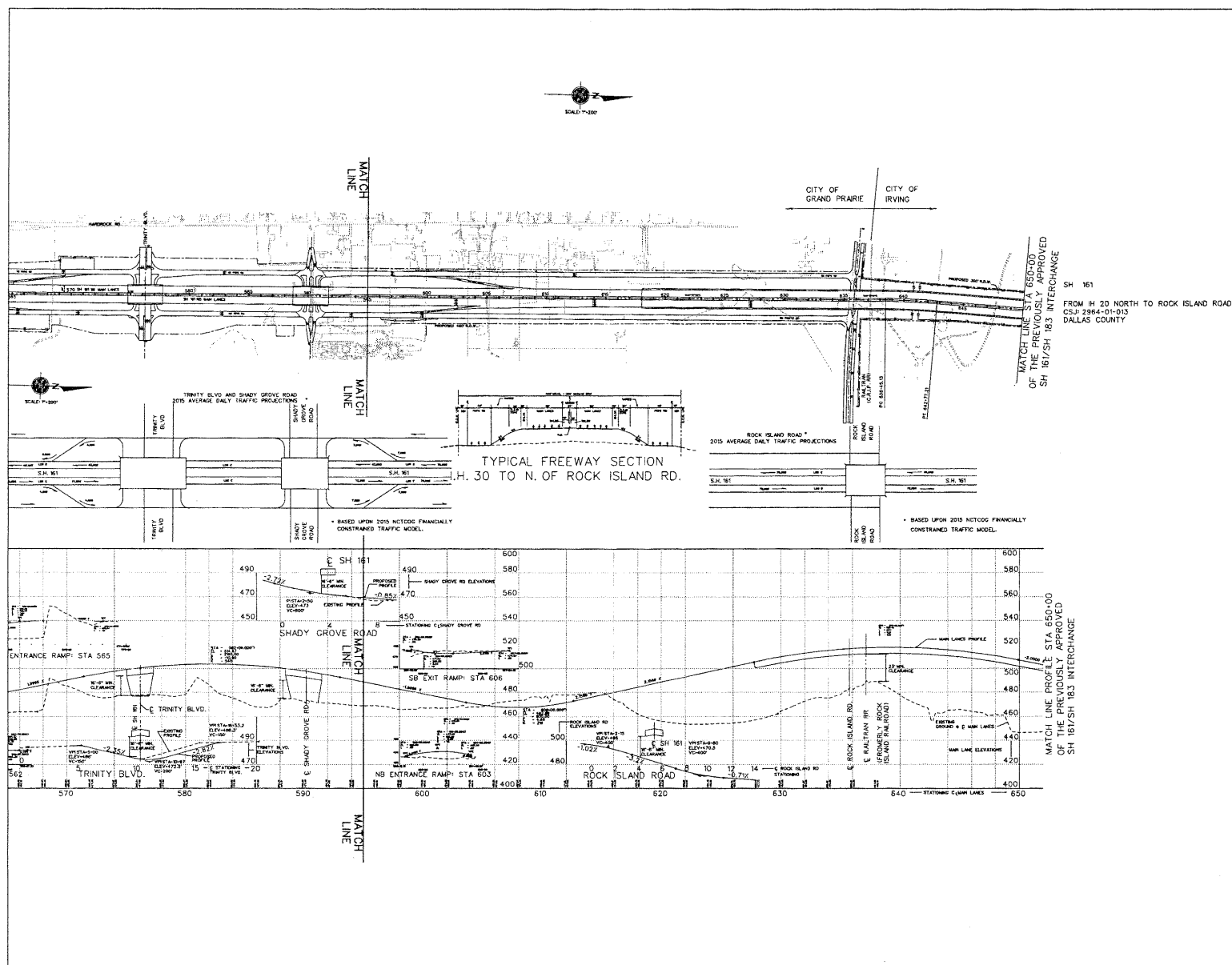
NOT A BIDDING DOCUMENT  
SEAL HERE  
THIS DOCUMENT REMAINS  
VALID

TxDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMP EXCEPT AT IH 20 AND IH 30.

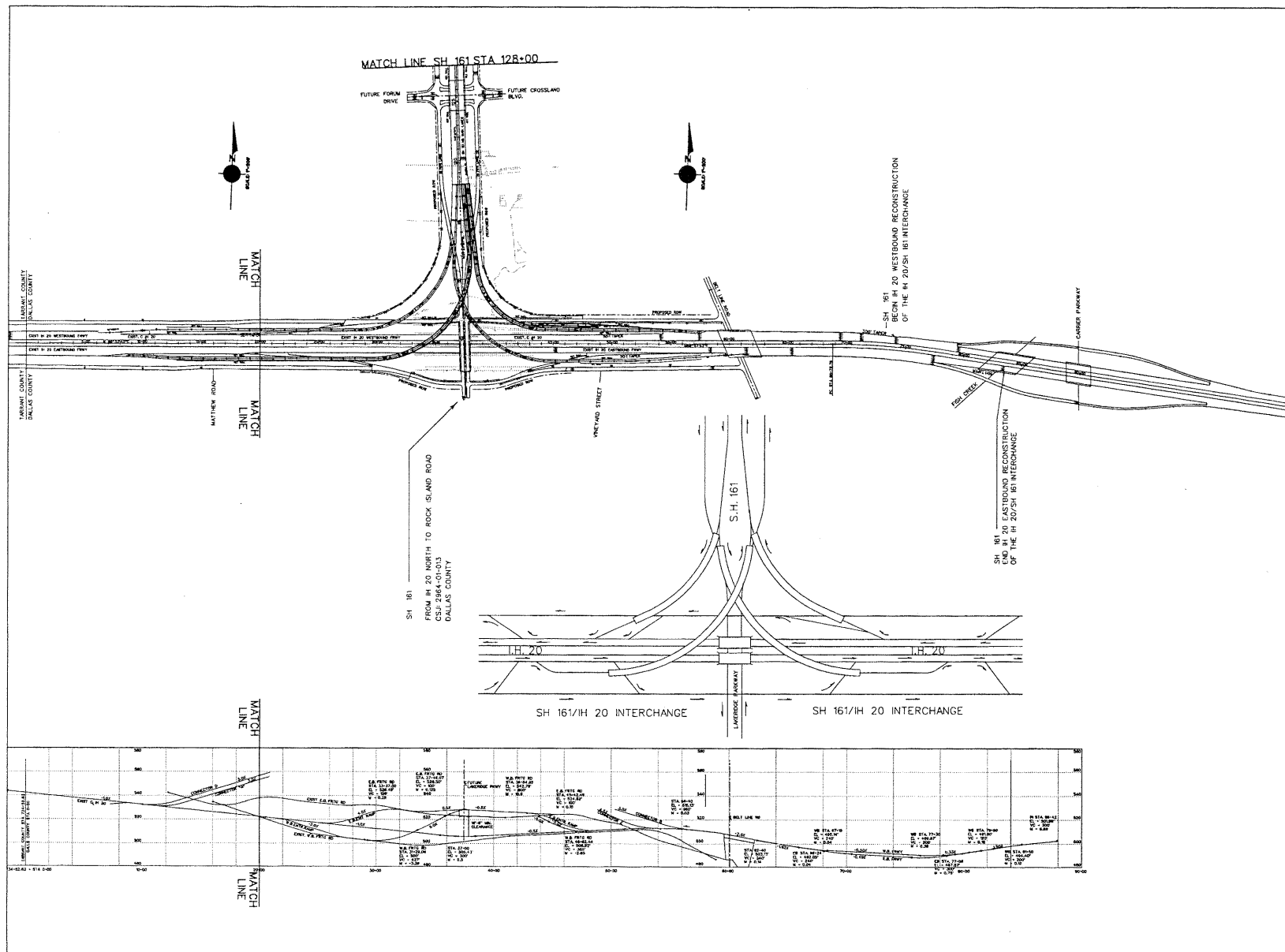
NOT A BIDDING DOCUMENT  
SEAL HERE  
THIS DOCUMENT REMAINS  
VALID

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 7 OF 15

EXHIBIT E







SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

NOT A BIDDING DOCUMENT  
DATE: 1994  
BY: J.M.H.  
CHECKED: J.M.H.  
APPROVED: J.M.H.

TO: DOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
DATE: 1994  
BY: J.M.H.  
CHECKED: J.M.H.  
APPROVED: J.M.H.

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 9 OF 15

EXHIBIT E

SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

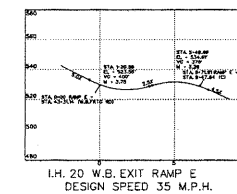
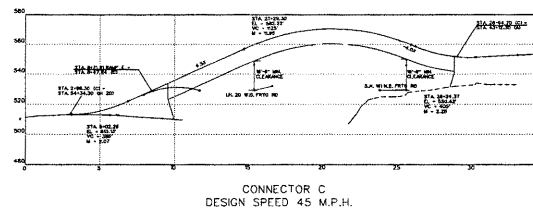
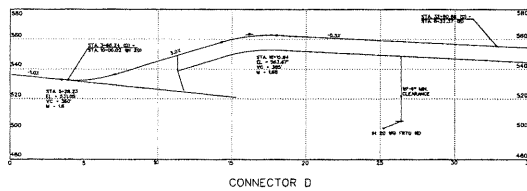
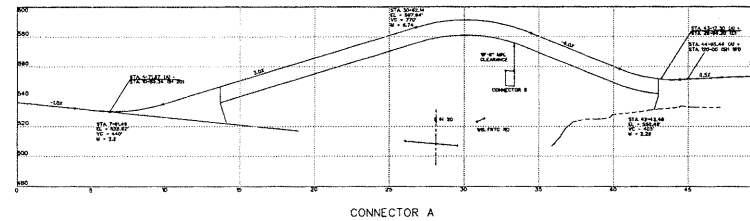
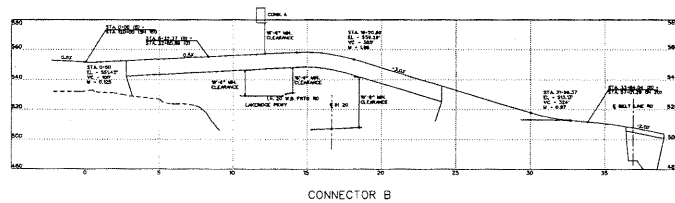
NOT A BIDDING DOCUMENT  
DESIGN FOLDER  
DESIGN  
DESIGN  
DESIGN

TXDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
DESIGN FOLDER  
DESIGN  
DESIGN  
DESIGN

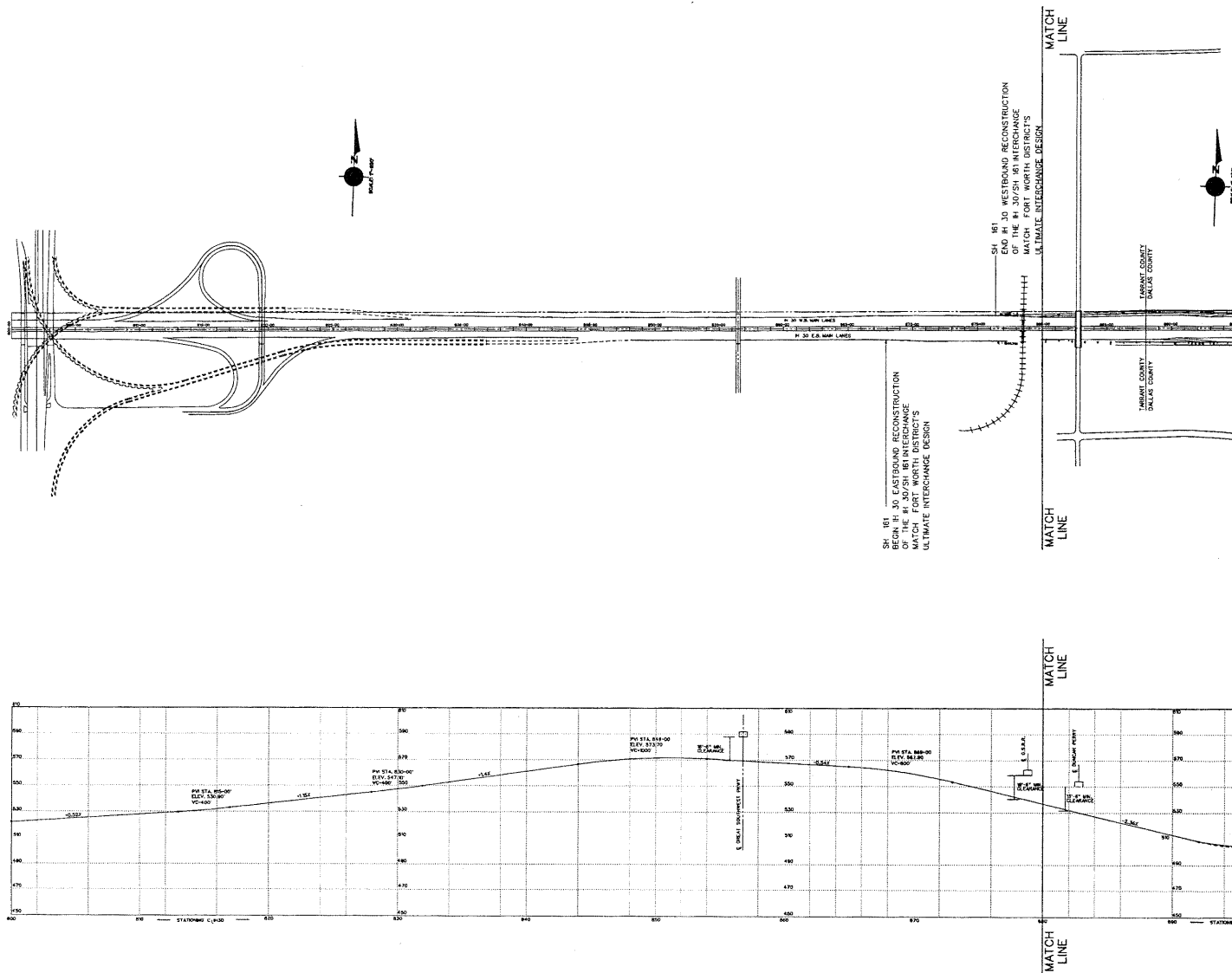
SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 10 OF 15

EXHIBIT E



DIRECT CONNECTOR  
DESIGN SPEED = 50 M.P.H.  
UNLESS NOTED





SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

NOT A BIDDING DOCUMENT  
DESIGN FIRM: P.E.  
DESIGNATION NUMBER: 2964-01-013  
DATE: 2/94

TxDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
DESIGN FIRM: P.E.  
DESIGNATION NUMBER: 2964-01-013  
DATE: 2/94

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 11 OF 15

EXHIBIT E



SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

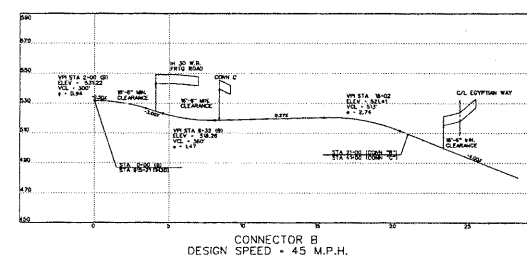
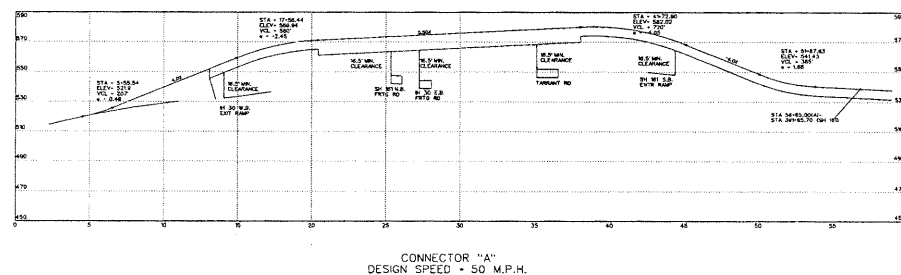
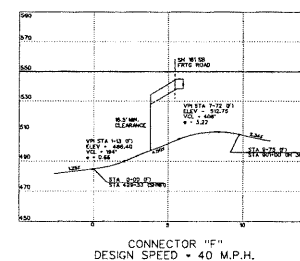
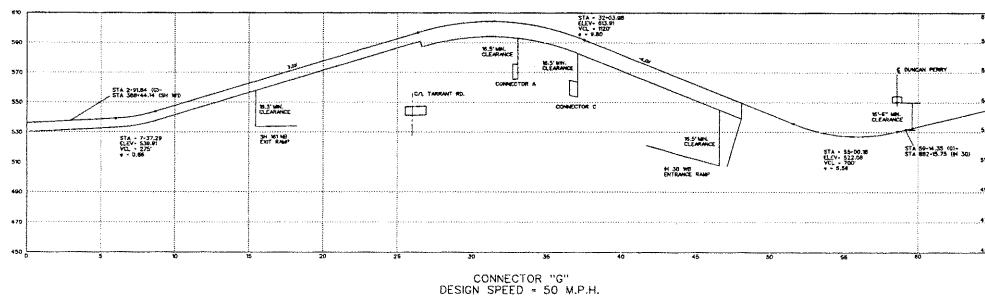
NOT A BIDDING DOCUMENT  
DESIGN FIRM  
YOUR REPRESENTATIVE  
SCALE

TXDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS,  
CONTINUOUS THREE-LANE FRONTAGE ROADS,  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

NOT A BIDDING DOCUMENT  
DESIGN FIRM  
YOUR REPRESENTATIVE  
SCALE

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 13 OF 15

EXHIBIT E



SH 161  
FROM: IH 20  
TO: N. OF ROCK ISLAND RD.  
(1.2 MILES SOUTH OF SH 183)

PRELIMINARY DESIGN SCHEMATIC  
CONTROL: 2964-01-013  
DALLAS COUNTY  
FEBRUARY 1994

DALLAS DISTRICT  
JAMES M. HUFFMAN  
DISTRICT ENGINEER

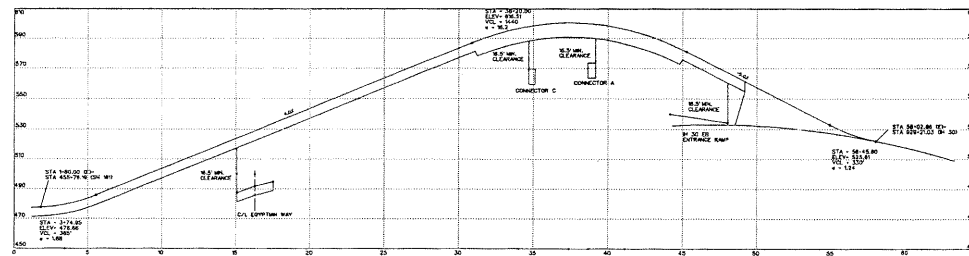
NOT A BIDDING DOCUMENT  
DESIGN FIRM  
YOUR REGISTRATION NUMBER  
SCALE

TxDOT SH 161 DESIGN REVISIONS:  
EIGHT AND TEN-LANE FREEWAY SECTIONS.  
CONTINUOUS THREE-LANE FRONTAGE ROADS.  
ALL RAMPS EXCEPT AT IH 20 AND IH 30.

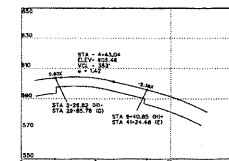
NOT A BIDDING DOCUMENT  
DESIGN FIRM  
YOUR REGISTRATION NUMBER  
SCALE

SCALE  
HORIZONTAL: 1"=800'  
VERTICAL: 1"=80'  
SHEET 14 OF 15

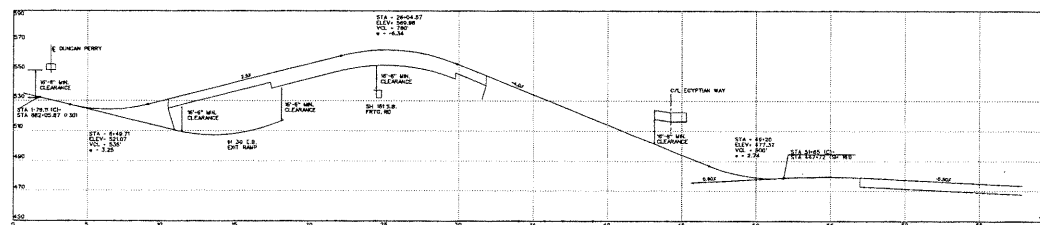
EXHIBIT E



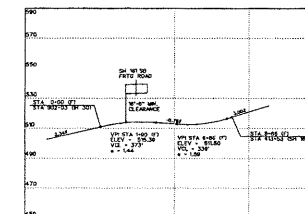
CONNECTOR "E"  
DESIGN SPEED - 50 M.P.H.



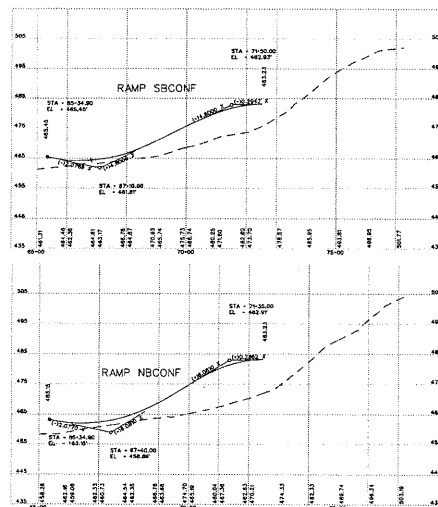
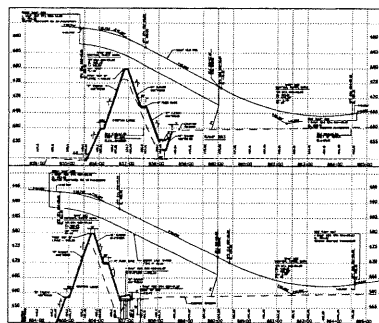
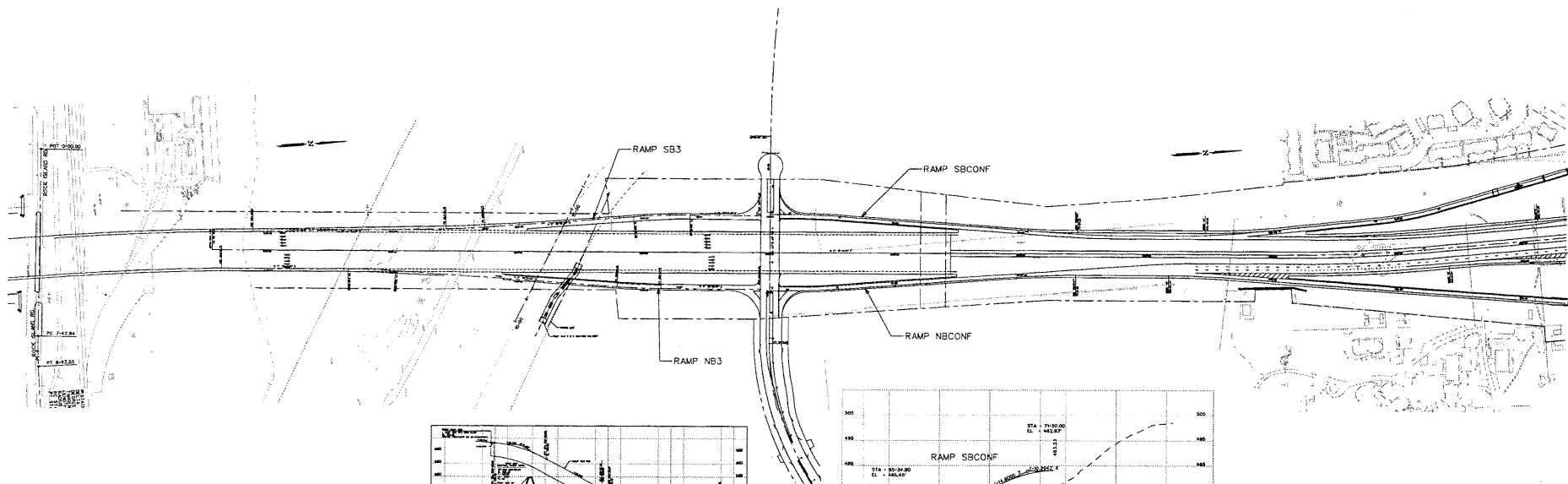
CONNECTOR H



CONNECTOR "C"  
DESIGN SPEED - 45 M.P.H.



CONNECTOR "D"  
DESIGN SPEED - 45 M.P.H.



CONFLANS

NOT TO SCALE  
SHEET 15 OF 15

EXHIBIT E  
(Conflans)

### **Exhibit F**

#### **Contracts Relating to Warranted Improvements (Section 9(c))**

The Warranted Improvements described within the plan sets provided to the Authority and constructed under the contracts listed in the table below were or will be completed less than three years prior to the Effective Date and therefore are included in the three year warranty.

<b>Contract Number</b>	<b>Limits</b>	<b>Scope of Work</b>	<b>Acceptance Date</b>
2964-01-024	SH 161 at SH 183	Construct interchange (Phase 1)	January 11, 2008
2964-01-029	From North of IH 20 to Spur 303	Construct frontage roads (Phase 1)	January 29, 2009
2964-01-030*	From Spur 303 to South of IH 30	Construct frontage roads (Phase 1)	Not yet accepted
1068-04-115*	IH 30 at SH 161	Construct frontage roads in 5 level interchange (Phase 1)	Not yet accepted
2964-01-031*	From North of IH 30 to North of Conflans Road	Construct mainlanes and frontage roads (Phases 2 and 3))	Not yet accepted

\*Denotes contracts for which the work thereunder has not yet been accepted by TxDOT.

## **Exhibit G**

### **Operations and Maintenance Standards and Performance Requirements (Sections 8(f) and 13(c))**

#### **OPERATIONS AND MAINTENANCE STANDARDS**

##### **Vegetated Areas – Except landscaped areas**

Vegetation is maintained so that:

Height of grass and weeds is kept within the limits described for urban and rural areas. Mowing begins before vegetation reaches the maximum height.

Spot mowing at intersections, ramps or other areas maintains visibility of appurtenances and sight distance.

Grass or vegetation does not encroach into or on paved shoulders, main lanes, sidewalks, islands, riprap, traffic barrier or curbs.

A full width mowing cycle is completed after the first frost.

Wildflowers are preserved utilizing the guidelines in the mowing specifications and *TXDOT Roadside Vegetation Manual*.

##### **Measurement:**

Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 18 in. No occurrences of vegetation encroachment in each auditable section.

##### **Herbicide:**

A herbicide program is undertaken in accordance with the TxDOT Herbicide Manual to control noxious weeds and to eliminate grass in pavement or concrete.

##### **Measurement:**

Adherence to vegetation management manuals.

##### **Litter Pickup:**

Keep the right of way in a neat condition, remove litter regularly.

Pick up large litter items before mowing operations.

Dispose of all litter and debris collected at an approved solid waste site.

##### **Measurement:**

No more than 20 pieces of litter per roadside mile shall be visible when traveling at highway speed.

##### **Landscape Areas:**

All landscaped areas are maintained to their originally constructed condition. Landscaped areas are as designated in the plans.

Mowing, litter pickup, irrigation system maintenance and operation, plant maintenance, pruning, insect, disease and pest control, fertilization, mulching, bed maintenance, watering is

undertaken as per a facility management plan prepared by the Authority and approved by TxDOT.

Damaged or dead vegetation is replaced.

Trees, brush and ornamentals on the right of way, except in established no mow areas, are trimmed in accordance with TxDOT standards.

Trees, brush and ornamentals are trimmed to insure they do not interfere with vehicles or sight distance, or inhibit the visibility of signs.

Dead trees, brush, ornamentals and branches are removed. Potentially dangerous trees or limbs are removed.

All undesirable trees and vegetation are removed. Diseased trees or limbs are treated or removed by licensed contractors.

Measurement:

The height of grass and weeds is kept between 2" and 8".

Mowing begins before vegetation reaches 8".

**Sweeping & Debris Removal**

Keep all channels, hard shoulders, gore areas, ramps, intersections, islands and frontage roads swept clean.

Clear and remove debris from traffic lanes, hard shoulders, verges and central reservations.

Remove all sweepings without stockpiling in the right of way and dispose of at approved tip, provided temporary storage is permitted prior to final disposal.

Measurement:

Buildup of dirt, ice rock, debris, etc. on roadways and bridges not to accumulate greater than 24 in. wide or ½ in. deep

**Graffiti:**

Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces.

Measurement:

All graffiti is considered a Category 1 defect (24 Hour Removal).

**Guardrails and Safety Barriers**

All guardrails, safety barriers, concrete barriers, etc. are maintained free of Defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.

Measurement:

Hazard Mitigation - 24 Hours

Permanent Remedy – 28 Days

Permanent Repair – 6 Months



### **Impact attenuators**

All impact attenuators are appropriately placed and correctly installed.

#### **Measurement:**

Hazard Mitigation - 24 Hours

Permanent Remedy – 7 Days

Permanent Repair – 6 Months

### **Traffic Signs**

Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects.

Identification markers are provided, correctly located, visible, clean and legible.

Sign mounting posts are vertical, structurally sound and rust free.

All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights.

Obsolete and redundant signs are removed or replaced as appropriate.

Visibility distances meet the stated requirements.

Sign information is of the correct size, location, type and wording to meet its intended purpose and any statutory requirements.

All structures and elements of the signing system are kept clean and free from debris and have clear access provided.

All replacement and repair materials and equipment are in accordance with the requirements of the TMUTCD.

Dynamic message signs are in an operational condition.

#### **Measurement:**

Retroreflectivity: Number of signs with reflectivity below the requirements of TxDOT's TMUTCD – Nil

Face damage: Number of signs with face damage greater than 5% of area - Nil

Placement: Signs are placed in accordance with TxDOT's Sign Crew Field Book including not twisted or leaning – 100%

Number of obsolete signs per TMUTCD implementation requirements – Nil

### **General – Safety critical signs**

Requirements as Above, Plus: "Stop," "Yield," "Do Not Enter," "One Way" and "Wrong Way" signs are clean, legible and undamaged.

#### **Measurement:**

Hazard Mitigation - 2 Hours

Permanent Remedy – 1 week

Permanent Repair – 6 Months

### **Snow and Ice Control**

Use reasonable efforts to maintain travel way free from snow and ice.

Weather forecast information is obtained and assessed and appropriate precautionary treatment is carried out to minimize ice forming on the travel way.

Operate snow and ice clearance plans to maintain traffic flows during and after snowfall and restore the travel way to a clear condition as soon as possible.

Measurement:

For forecasted snow and ice events, spreading vehicles will be loaded prior to a designated activation time, and will be promptly manned and dispatched on or before the occurrence of a snow or ice event.

For unexpected snow and ice events, spreading vehicles will be promptly manned, loaded and dispatched.

**Drainage Maintenance**

**Pipes and Channels:**

Each element of the drainage system is maintained in its proper function by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.

Drainage treatment devices: Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.

Travel Way: The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.

Discharge systems: Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.

Measurement:

Length with less than 90% of cross section clear -- Nil

Devices functioning correctly with means of operation displayed - 100% Instances of hazardous water build-up – Nil

**Roadway Lighting - General**

All lighting is free from defects and provides acceptable uniform lighting quality.

Lanterns are clean and correctly positioned.

Lighting units are free from accidental damage or vandalism.

Columns are upright, correctly founded, visually acceptable and structurally sound.

All high mast luminaries functioning on each pole .

All obstruction lights are present and working (if required).

Compartment door is secure with all bolts in place .

All winch and safety equipment is correctly functioning and maintained without rusting or corrosion (for structural requirements refer to Element Category 3)..

Measurement:

Number of sections with less than 90% of lights functioning correctly at all times – Nil

Instances of more than two consecutive lights out of action – Nil

Instances of two or more lamps not working per high mast pole – Nil

## **PERFORMANCE REQUIREMENTS**

### **Pavement Condition Rating System**

Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with the Authority's Pavement Management Rating System. Measurements and inspections necessary to derive Pavement Condition Score.

#### **Measurement:**

Pavement Condition Score for 80% of Auditable Sections exceeding:

Mainlanes and ramps – CRS = 7.5 - 100%

Frontage roads – CRS = 6.8 - 100%

Pavement Condition Score for each Auditable Section exceeding:

Mainlanes and ramps – CRS = 6.8 - 100%

Frontage roads – CRS = 6.6 - 100%

### **Pavement Ruts – Mainlanes, Shoulders & Ramps**

Depth as measured using an automated device in compliance with TxDOT Standards.

10ft straight edge used to measure rut depth for localized areas.

#### **Measurement:**

Percentage of wheel path length with ruts greater than ¼" in depth in each Auditable Section:

Mainlanes, shoulders and ramps – 3% - Nil

Frontage roads – 10% - Nil

Depth of rut at any location greater than 0.5" – Nil

### **Pavement Ride Quality**

Measurement of International Roughness Index ("IRI") according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles.

To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance.

Renewal Work and new construction subject to construction quality standards.

#### **Measurement:**

For 80% of all Auditable Sections measured, IRI throughout 98% of each Auditable Section is less than or equal to:

Mainlanes, ramps – 95\*\* inches per mile

Frontage roads – 120\*\* inches per mile

IRI measured throughout 98% of Auditable Section of less than or equal to:

Mainlanes, ramps 120\*\* inches per mile

Frontage roads – 150\*\* inches per mile

Mainlanes, ramps, 0.1 mile average – 150\*\* inches per mile

Frontage roads, 0.1 mile average – 180\*\* inches per mile

IRI measured throughout 98% of each lane containing a bridge deck in any Auditable Section, 0.1 mile average – 200\*\* inches per mile

Individual discontinuities greater than 0.75" – Nil

**\*\*To allow for measurement bias, an adjustment of -10 (minus 10) is made to IRI measurements for concrete payments before assessing threshold compliance.**

### **Pavement Failures**

Instances of failures exceeding the failure criteria set forth in the Authority's Pavement Management Rating System, including potholes, base failures, punchouts and jointed concrete pavement failures.

#### **Measurement:**

Occurrence of any failure - Nil

Hazard Mitigation - 24 Hours

Permanent Remedy – 28 days

Permanent Repair – 6 Months

### **Edge drop-offs**

Physical measurement of edge drop-off level compared to adjacent surface.

#### **Measurement:**

Instances of edge drop-off greater than 2" (Number) – Nil

### **Skid Resistance**

ASTM E 274 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E 524.

#### **Measurement:**

Mainlanes, shoulders and ramps – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5 mile section of mainlanes, shoulders and ramps are in excess of 30 – 100%

Frontage roads – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5 mile section of frontage roads is in excess of 30 – 100%

When the Skid Number is below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk, the Authority shall perform a site investigation and perform required corrective action – 100%

### **Joints in Concrete**

Joints in concrete paving are sealed and watertight.

Longitudinal joint separation.

#### **Measurement:**

Length unsealed joints greater than 1/4" – Nil

Joint width more than 1" or faulting more than 1/4" – Nil

### **Curbs**

Curbs are free of defects.

Measurement:

Length out of alignment – Nil

Structures

Inspection and assessment in accordance with the requirements of Federal National Bridge

Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration's Bridge Inspector's Reference Manual. This inspection to be performed biennially by TxDOT and reports of the inspections to be provided to the Authority.

Substructures and superstructures are free of:

- graffiti
- undesirable vegetation
- debris and bird droppings
- blocked drains, weep pipes manholes and chambers
- blocked drainage holes in structural components
- defects in joint sealants
- defects in pedestrian protection measure
- scour damage
- corrosion of rebar
- paint system failures
- impact damage

Expansion joints are free of:

- dirt debris and vegetation
- defects in drainage systems
- loose nuts and bolts
- defects in gaskets

The deck drainage system is free of all and operates as intended.

Parapets are free of:

- loose nuts or bolts
- blockages of hollow section drain holes
- graffiti
- vegetation
- accident damage

Bearings and bearing shelves are clean.

Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the Structure Maintenance Manual is followed. Special finishes are clean and perform to the appropriate standards.

All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's recommendations and certification of lifting devices is maintained.

Sign signal gantries, high masts are structurally sound and free of:

- loose nuts and bolts
- defects in surface protection systems

Measurement:

Occurrences of condition rating below seven for any deck, superstructure or substructure – Nil

### **Pavement Markings**

Pavement markings are:

- clean and visible during the day and at night
- whole and complete and of the correct color, type, width and length
- placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets

Markings – General Portable retroreflectometer, which uses 30 meter geometry meeting the requirements described in ASTM E 1710.

### **Measurement:**

Length meeting the minimum retroreflectivity 175 mcd/sqm/lx for white - 100%

Length meeting the minimum retroreflectivity 125 mcd/sqm/lx for yellow - 100%

Physical measurement Length with more than 5% loss of area of material at any point – Nil

### **Raised reflective markers**

Raised reflective pavement markers, object markers and delineators are:

- clean and clearly visible
- of the correct color and type
- reflective or retroreflective as TxDOT standard
- correctly located, aligned and at the correct level
- firmly fixed
- in a condition that will ensure that they remain at the correct level.

### **Measurement:**

Number of markers associated with road markings that are ineffective in any 10 consecutive markers (Ineffective includes missing, damaged, settled or sunk) – Nil

A minimum of four markers should be visible at 80' spacing when viewed under low beam headlights – 98%

Uniformity (replacement rpms having equivalent physical and performance characteristics to adjacent markers).

## **REPORTING REQUIREMENTS**

The Authority maintains the NTTA System, and will maintain the Project, through an asset management approach that involves extensive, frequent evaluation of the condition of its assets and the appropriate responses to any deficiencies identified. The evaluations take the form of various inspections, testing and evaluations. The following is a description of those activities.

1. Maintenance Rating Program (MRP). The MRP requires monthly inspection of 10% of the system selected on a random sample basis. This is done by both the Authority's internal Maintenance Department and the Total Routine Maintenance Contractor. The Authority will continue to file the results of these inspections and to have those applicable to the Project readily available to TxDOT for review/auditing at any time. Information relative to the specified standards to be provided to the Authority by TxDOT per this Exhibit G that are not already included or are more stringent will be added to this MRP.

2. Bondholders' Letter. This is an annual communication from the Authority's General Engineering Consultant to the bondholders that provides an overview of the condition of the Authority assets. This letter is based upon the results of the Capital Asset Management and Inspection Report (CAMIR) which is described in paragraph 3. The assets will be scored on a Governmental Account Standards Board rating scale, or equivalent scale, and the scores will be included in the bondholders' letter. The Authority will provide TxDOT with a copy of this letter each year. The contents of this letter pertaining to the Project will be adjusted to include any information about the Project that is required by this Exhibit G.
3. Capital Asset Management and Inspection Report (CAMIR). This is an annual report of the inspections performed on the Authority's assets during the previous year. The Authority will submit a copy of this report annually to TxDOT. The contents of this report pertaining to the Project will be adjusted to include any information about the Project that is required by this Exhibit G.
4. Pavement Management Report. This report provides the result of any pavement evaluation conducted during the previous year. It includes information about the International Roughness Index (IRI) and the Authority's condition rating system (CRS) as well as skid test results. The report includes a ten-year plan for pavement maintenance and rehabilitation. The Authority will provide a copy of this report annually to TxDOT. The contents of this report pertaining to the Project will be modified to include any information about the Project that is required by this Exhibit G.
5. Overhead Sign Inspection Report. This report provides the results of the inspections of overhead sign structures conducted during the previous year. The Authority inspects every sign structure every five years, inspecting a portion of the structures each year. The inspection will be expanded to include the Project structures. Adjustments and minor repairs are made during inspections. The Authority will have this report available for review by TxDOT.
6. High Mast Illumination Pole Inspection and Treatment Report. This report provides the results of inspections, repairs and ultrasonic impact treatment (UIT) to restore the structural soundness of all poles. The Authority will have this report available for review by TxDOT. An initial inspection of the Project poles will be conducted in the first year of this Agreement and the failing poles will be restored within two (2) years. Once all poles have been brought up to standard, the cycle for re inspection will be four (4) years per the Authority's current procedure. New poles added to the Project system will be treated in a similar manner.
7. BRINSAP Reports. The Bridge Inspection and Appraisal Program (BRINSAP) reports are received biannually from TxDOT for each bridge. The bridge inspection results are included in CAMIR (see item 3 above).
8. Other Reports. These are reports of special inspections that are conducted in response to assets exhibiting signs of abnormal wear or fatigue. Environmental studies are also conducted when required to comply with various issues, such as the MS4 program. The Authority will notify TxDOT of the studies and provide a copy of the reports if requested by TxDOT.

**Exhibit H**

Authority Structures  
(Section 12)

<b>Limits</b>	<b>Structure</b>	<b>Completion Date</b>
Phase 2	Toll gantries and ETC equipment	October 17, 2009
Phase 3	Toll gantries and ETC equipment	January 19, 2011
Phase 4	Main lanes, toll gantries and ETC and ITS equipment	September 1, 2012*

\*The parties are studying the revenue and cost effects of extending the completion date for the low volume direct connectors in Phase 4 for a period of six months. The completion date for such direct connectors will be extended for a period of six months if the parties so agree after the study of such effects. The Authority will keep the Project Cities comprised of any such extension.

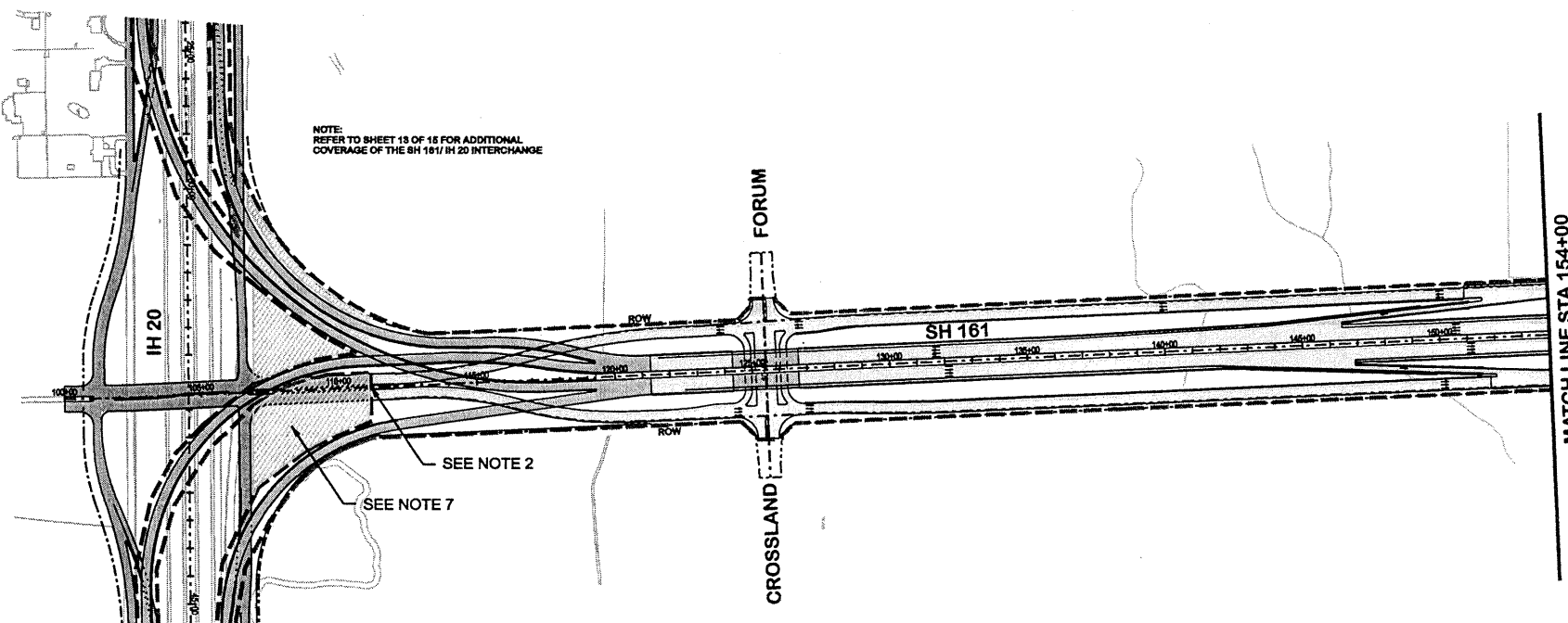


## **Exhibit I**

### Authority/TxDOT Maintenance Limits (Section 14)

Except as otherwise noted in the Project Agreement or the attached maintenance limit drawings, the Authority maintenance limits are generally along SH 161 from outside right of way to outside right of way.

[See Attached Drawings]




- SEE NOTE 7

TXDOT MAINTENANCE INCLUDES:  
5. IH 20 MAINLANES  
6. IH 20 FRONTAGE ROADS  
7. GREEN HATCHED AND GRAY SHADED AREAS, INCLUDING FISH CREEK BRIDGE

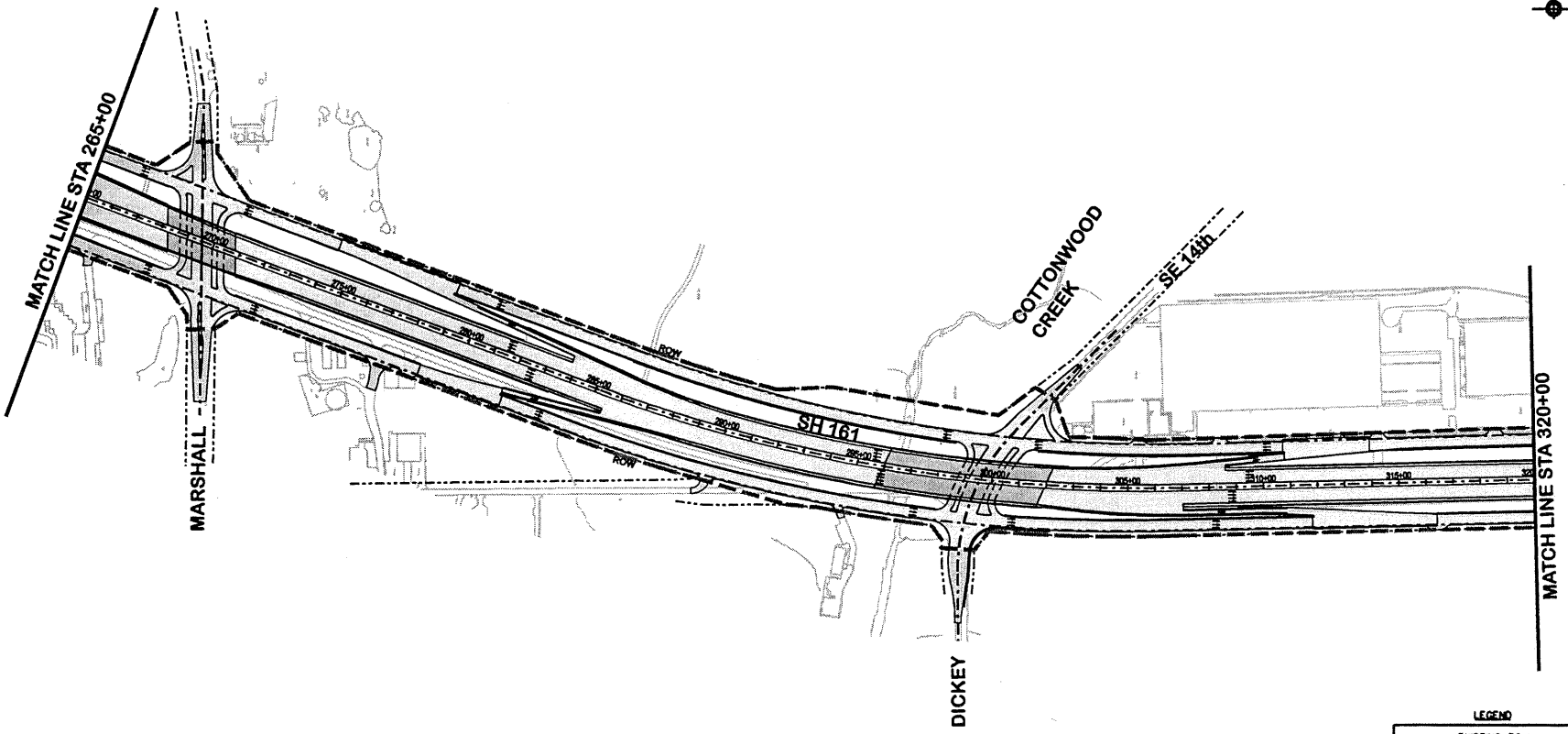
-----EXISTING ROW

DRAINAGE EROSION = NITA MAINTENANCE LIMIT

NO. DATE		REVISION		APPROVAL	
STATE HIGHWAY 161					
					
SH 161 MAINTENANCE LIMITS					
SHEET 1 OF 15					
DRAWN BY: <b>MMC</b> CHECKED BY: <b>MMC</b>		DATE: <b>01-20-2009</b> DATE: <b>02-20-2009</b>		DESIGNED BY: SCALE: <b>1"=100'</b>	
CONTRACT NO.		SHEET		OF	







LEGEND

- EXISTING ROW
- ===== NTTA MAINTENANCE LIMIT

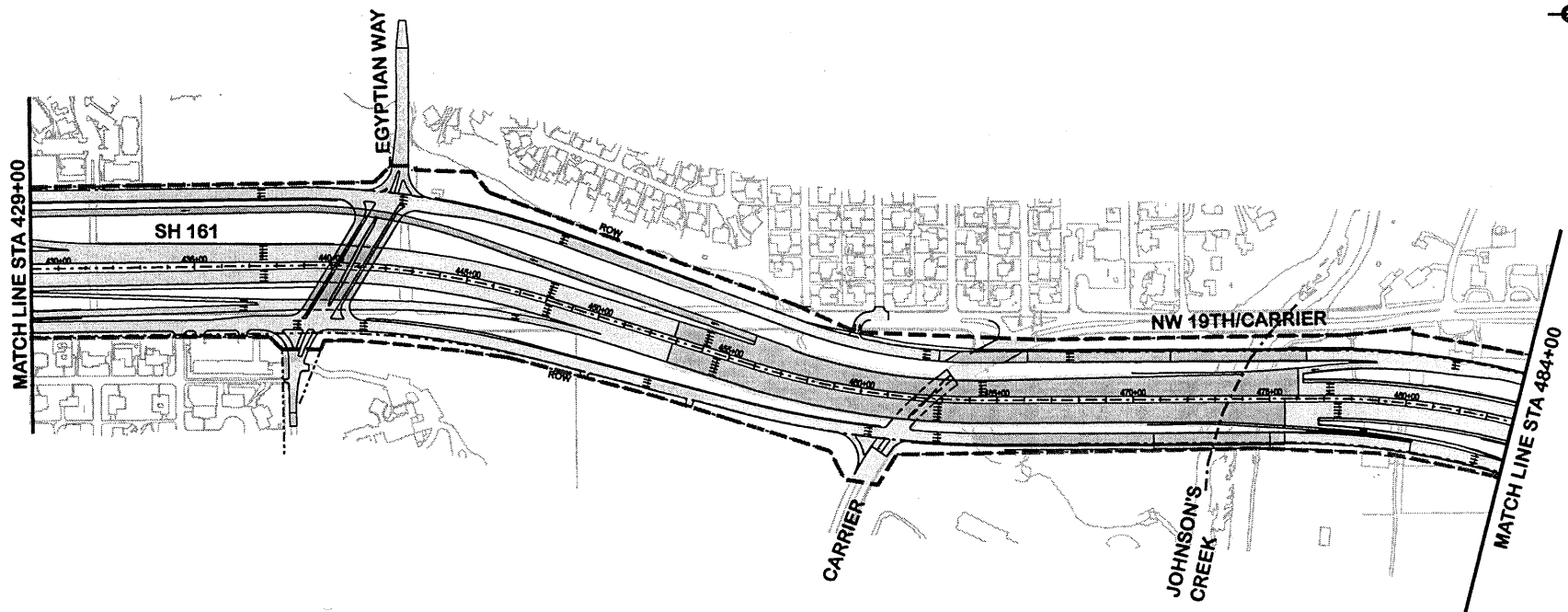
NTTA MAINTENANCE LIMITS ARE GENERALLY ALONG SH 161 FROM OUTSIDE ROW TO OUTSIDE ROW AND INCLUDES:

1. SH 161 MAINLANES
2. SH 161 FRONTAGE ROADS
3. CROSS STREETS TO CORNER CLIPS
4. NTTA MAINTENANCE DOES NOT INCLUDE SB SERVICE ROAD LIGHTING BETWEEN SE 14TH AND JEFFERSON.

NO.	DATE	REVISION	APPROV.
STATE HIGHWAY 161			
 NORTH TEXAS TOLLWAY AUTHORITY			
SH 161 MAINTENANCE LIMITS			
SHEET 4 OF 15			
DESIGNED BY	DATE	DESIGNED DATE	SCALE
MAC	01-2009		1"=400'
CHECKED BY	DATE	CHECKED DATE	
MAC	02-2009		
CONTRACT NO.		SHEET OF	







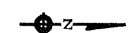
LEGEND

---	EXISTING ROW
---	NTTA MAINTENANCE LIMIT

NO.	DATE	REVISION	APPROV.
STATE HIGHWAY 161			
<b>NTTA</b> NORTH TEXAS TOLLWAY AUTHORITY			
SH 161 MAINTENANCE LIMITS			
SHEET 7 OF 15			
DRAWN	MMAC	DATE	01-2009
CHECKED	MMAC	DATE	02-2009
CONTRACT NO.		SHEET 7 OF 15	

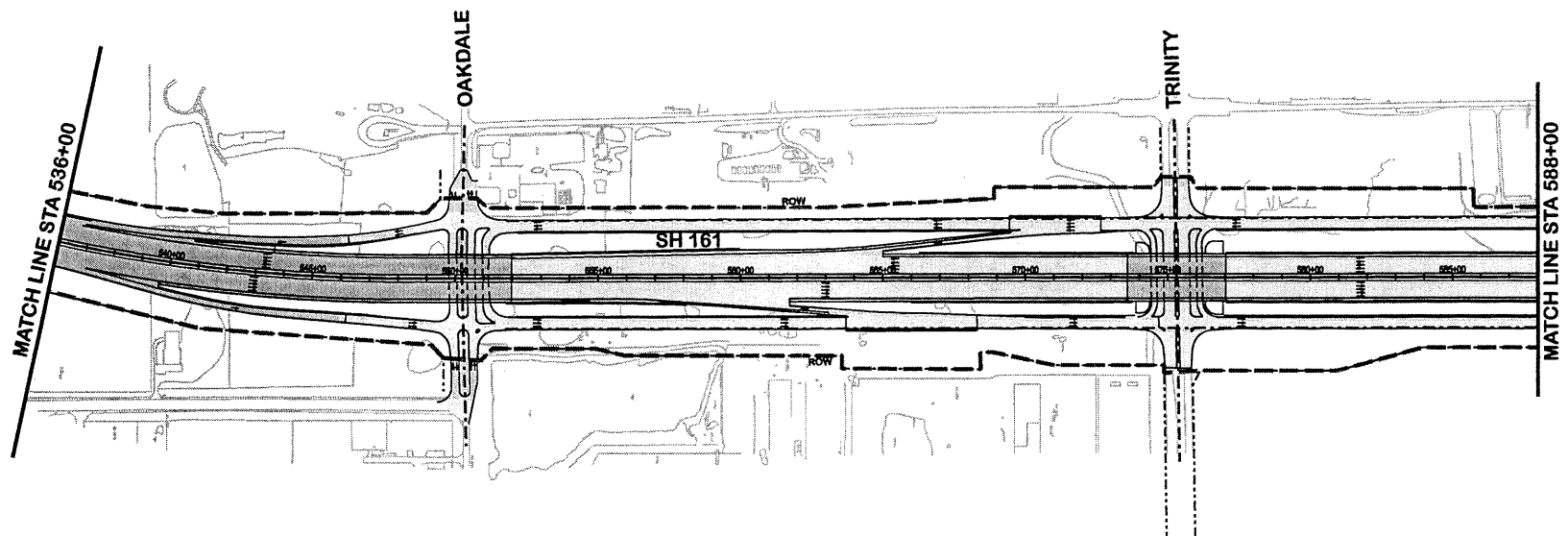
NTTA MAINTENANCE LIMITS ARE GENERALLY ALONG SH 161 FROM OUTSIDE ROW TO OUTSIDE ROW





MATCH LINE STA 536+00

\$\$\$\$\$SerTime\$\$\$\$\$

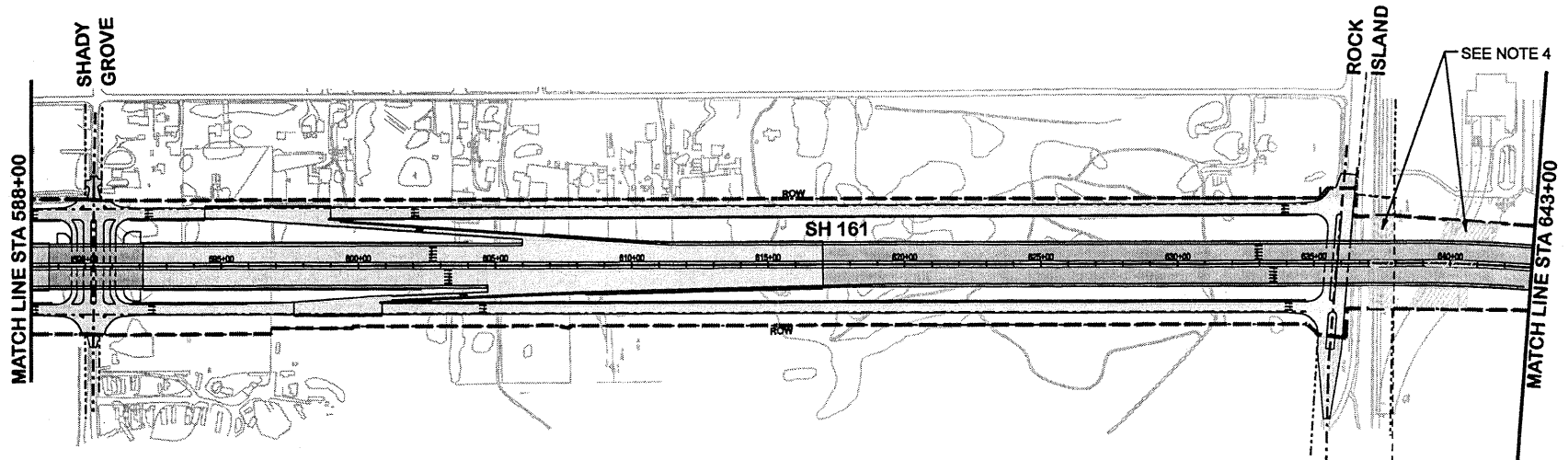


# LEGEND

-----EXISTING ROW  
 - - - - - NTTA MAINTENANCE LIMIT

NO.	DATE	REVISION	APPROVED
STATE HIGHWAY 161			
<b>NTTA</b> NORTH TEXAS TOLLWAY AUTHORITY			
SH 161 MAINTENANCE LIMITS			
SHEET 9 OF 15			
DESIGNED BY	DATE	CHECKED BY	DATE
MMG	01-2009	MMG	02-2009
SCALE		1"=100'	
CONTRACT NO.		SHEET 9 OF 15	

NTTA MAINTENANCE LIMITS ARE GENERALLY ALONG SH 161 FROM OUTSIDE ROW TO OUTSIDE ROW



LEGEND	
-----	EXISTING ROW
-----	NTTA MAINTENANCE LIMIT

NO.	DATE	REVISION	APPROVED
STATE HIGHWAY 161			
<b>NTTA</b> NORTH TEXAS TOLLWAY AUTHORITY			
SH 161 MAINTENANCE LIMITS			
SHEET 10 OF 15			
DESIGNED BY	DATE	REVIEWED BY	DATE
DESIGNED BY	DATE	REVIEWED BY	DATE
CONTRACT NO.	SHEET		OF

NTTA MAINTENANCE LIMITS ARE GENERALLY ALONG SH 161 FROM OUTSIDE ROW TO OUTSIDE ROW AND INCLUDES:

1. SH 161 MAINLANES
2. SH 161 FRONTAGE ROADS
3. CROSS STREETS TO CORNER CLIPS.

FT. WORTH TRANSPORTATION AUTHORITY MAINTENANCE INCLUDES:

4. GREEN HATCHED AREAS, INCLUDING TRACKS BELOW SH 161

MATCH LINE STA 643+00

CONFLANS

SH 161

MATCH LINE STA 696+00

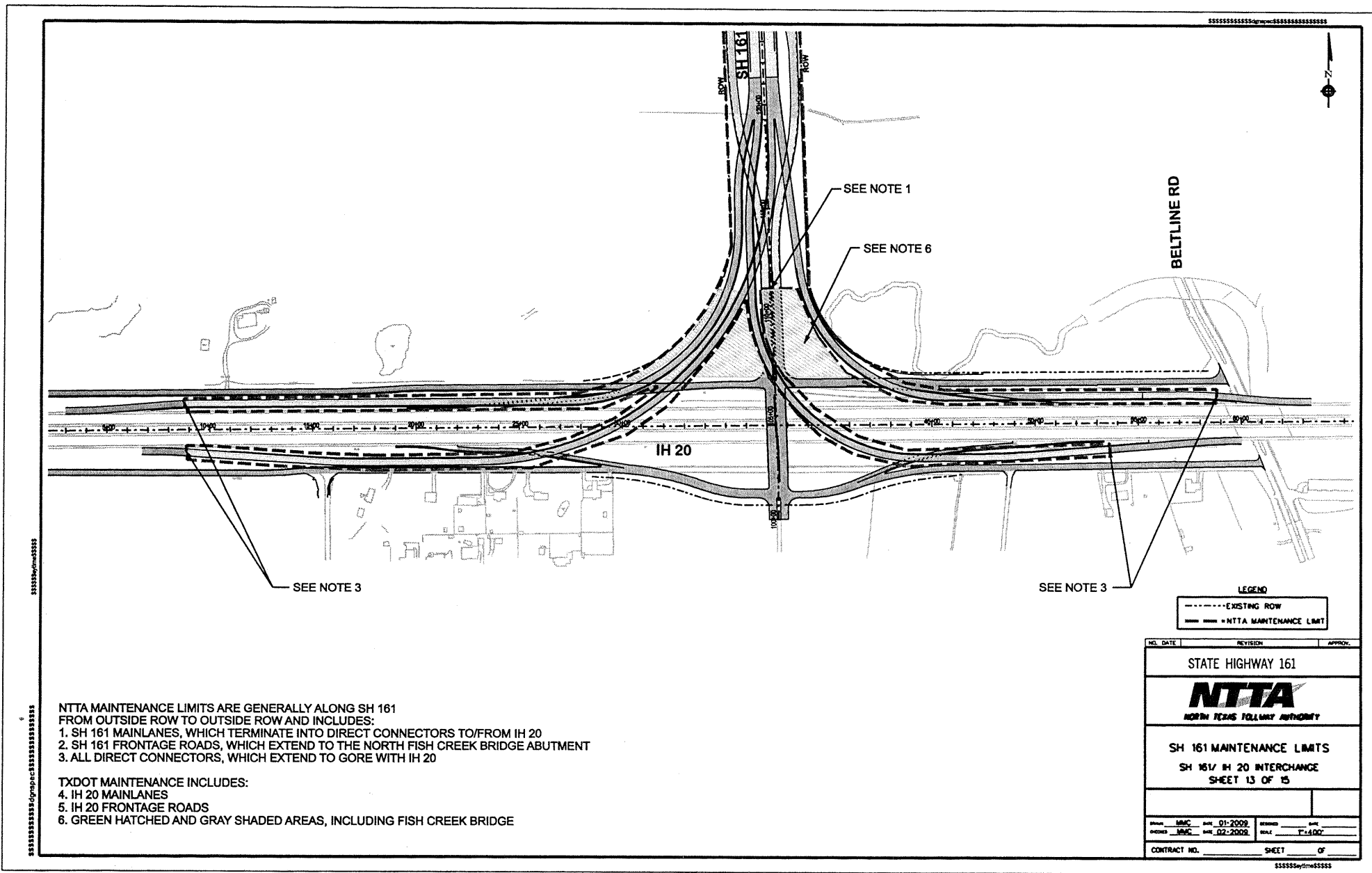
LEGEND

- EXISTING ROW
- ===== NTTA MAINTENANCE LIMIT

NO.	DATE	REVISION	APPROV.
STATE HIGHWAY 161			
<b>NTTA</b> NORTH TEXAS TOLLWAY AUTHORITY			
SH 161 MAINTENANCE LIMITS			
SHEET 11 OF 15			
DESIGN	DATE	BY	DATE
MMSC	01-2009	MMSC	02-2009
CONTRACT NO.	SHEET		OF

NTTA MAINTENANCE LIMITS ARE GENERALLY ALONG SH 161 FROM OUTSIDE ROW TO OUTSIDE ROW











## **Exhibit J**

### **Toll Regulations (Section 20)**

#### **A. User Classifications**

1. User classifications are defined by vehicle axle count, as set forth in Table B-1 below, plus the class of Special Vehicles. Trailers are used to determine axle count. "Special Vehicles" are vehicles (including combined motor vehicles and trailer(s)) meeting one or more of the following characteristics: (i) over eight and a half feet in width; (ii) over 14 feet in height; (iii) over 65 feet in combined length; (iv) over 80,000 pounds in combined weight; or (v) any vehicle otherwise required to obtain a permit for travel on State Highways under applicable law.
2. The Authority shall have no right to generally prohibit Special Vehicles from using the Project, but may prohibit any Special Vehicles that could damage the Project or cause a threat to public safety. The Authority may place reasonable restrictions on time of day, place and manner of usage by Special Vehicles in order to minimize disruption of traffic, safety risks and damage to the Project, consistent with the Authority's policies and regulations in effect from time to time concerning overweight/oversize vehicles.

#### **B. Maximum Base Toll Rate Schedule**

For each toll transaction, whether recorded as a transponder transaction or video transaction, the Authority shall have the right to charge and collect maximum base toll rates on the terms and conditions provided below.

1. The "Maximum Base Toll Rate" applicable for each user classification and for each two year toll rate period ending June 30, 2009 and June 30, 2011 shall be as shown in Table B below. Commencing July 1, 2011, and on each July 1 of an odd numbered year thereafter, the Maximum Base Toll Rate shall be increased by an annual compounded rate of 2.75%. For ease of reference, the Maximum Base Toll Rates for each two year period through June 30, 2059 are also shown in Table B. Maximum Base Toll Rates are stated in cents per mile.

**Table B****Maximum Base Toll Rate Schedule**

<b>Toll Rate Period</b>		<b>User Classification</b>				
<b>Starting Date July 1</b>	<b>Ending Date June 30</b>	<b>2 Axle</b>	<b>3-Axle</b>	<b>4-Axle</b>	<b>5-Axle</b>	<b>6-Axle</b>
2007	2009	\$0.139	\$0.278	\$0.417	\$0.556	\$0.695
2009	2011	\$0.145	\$0.290	\$0.435	\$0.580	\$0.725
2011	2013	\$0.153	\$0.306	\$0.459	\$0.612	\$0.765
2013	2015	\$0.162	\$0.324	\$0.486	\$0.648	\$0.810
2015	2017	\$0.171	\$0.342	\$0.513	\$0.684	\$0.855
2017	2019	\$0.180	\$0.360	\$0.540	\$0.720	\$0.900
2019	2021	\$0.190	\$0.380	\$0.570	\$0.760	\$0.950
2021	2023	\$0.201	\$0.402	\$0.603	\$0.804	\$1.005
2023	2025	\$0.212	\$0.424	\$0.636	\$0.848	\$1.060
2025	2027	\$0.224	\$0.448	\$0.672	\$0.896	\$1.120
2027	2029	\$0.236	\$0.472	\$0.708	\$0.944	\$1.180
2029	2031	\$0.249	\$0.498	\$0.747	\$0.996	\$1.245
2031	2033	\$0.263	\$0.526	\$0.789	\$1.052	\$1.315
2033	2035	\$0.278	\$0.556	\$0.834	\$1.112	\$1.390
2035	2037	\$0.294	\$0.588	\$0.882	\$1.176	\$1.470
2037	2039	\$0.310	\$0.620	\$0.930	\$1.240	\$1.550
2039	2041	\$0.327	\$0.654	\$0.981	\$1.308	\$1.635
2041	2043	\$0.345	\$0.690	\$1.035	\$1.380	\$1.725
2043	2045	\$0.365	\$0.730	\$1.095	\$1.460	\$1.825
2045	2047	\$0.385	\$0.770	\$1.155	\$1.540	\$1.925
2047	2049	\$0.407	\$0.814	\$1.221	\$1.628	\$2.035
2049	2051	\$0.429	\$0.858	\$1.287	\$1.716	\$2.145
2051	2053	\$0.453	\$0.906	\$1.359	\$1.812	\$2.265
2053	2055	\$0.478	\$0.956	\$1.434	\$1.912	\$2.390
2055	2057	\$0.505	\$1.010	\$1.515	\$2.020	\$2.525
2057	2059	\$0.533	\$1.066	\$1.599	\$2.132	\$2.665

2. The resulting Maximum Base Toll Rate for each user classification set forth in Table B will be rounded to the nearest tenth of a cent (\$0.001).
3. The Authority shall have the right to change toll rates for each user classification set forth in Table B at any time or times, provided that (a) each toll rate charged does not exceed the applicable Maximum Base Toll Rate except as set out in Section B.5 and (b) the toll rates charged are rounded to the nearest tenth of a cent (\$0.001), in each case subject to Section 20(b)(ii) of this Agreement.
4. Each toll charge that can be levied on the user will be determined by the possible distance traveled in the tolled section for screen-line configurations, subject to the per-mile toll rate set forth in Table B, and calculated in accordance with the other provisions of this Exhibit J. Each toll charged to the user will be rounded to the nearest penny, but within the Maximum Base Toll Rate, Maximum Peak Period Toll Rate or Maximum Low Volume Period Toll Rate, as applicable.
5. The Authority shall have the right to implement a traffic management pricing regime for high volume periods and low volume periods for the user classifications set forth in Table B as follows. The Authority will consult with the RTC as to the timing and scope of any traffic management pricing regime.
  - a. The Authority will have the right to charge a Maximum Peak Period Toll Rate up to 1.3 times the applicable Maximum Base Toll Rate for each user classification. The Authority may implement such a charge for any one or more of the user classifications set forth in Table B. The Maximum Peak Period Toll Rate under this Section B.5 will be applied in each direction of travel for the six hours of lowest average speed of traffic on the Project ("Hourly Speeds"), determined separately for each direction of travel, per weekday (Monday through Friday), excluding national holidays and the day after Thanksgiving Day. The high volume period need not be consecutive.
  - b. If the Authority elects under Section B.5.a to charge during such hours a toll rate for a user classification set forth in Table B above the applicable Maximum Base Toll Rate, then the Authority also shall charge during low volume periods toll rates for the same user classification not exceeding a "Maximum Low Volume Period Toll Rate" equal to 0.8 times the applicable Maximum Base Toll Rate for such user classification. The Maximum Low Volume Period Toll Rate will be applied in each direction for the six hours of highest average Hourly Speeds, determined separately for each direction of travel, per weekday, excluding national holidays and the day after Thanksgiving. The low volume period need not be consecutive.
  - c. If the Authority elects under Section B.5.a to charge during such hours a toll rate for a user classification set forth in Table B above the applicable Maximum Base Toll Rate, then at all times of day during which toll rates are not governed by

Sections B.5.a and b the Authority shall charge toll rates for such user classification not exceeding the applicable Maximum Base Toll Rate set forth in Table B.

6. If the Authority has not implemented a traffic management pricing regime under Section B.5, and if (i) the RTC and/or TxDOT agree to bear the cost of a peak period pricing study, (ii) the RTC and/or TxDOT agree to make the Authority whole with respect to any lost toll revenues incurred by the Authority in connection with such study, and (iii) the terms and conditions of such study are acceptable to the Authority, then at the direction of the RTC, the Authority will conduct a peak period pricing study that implements a traffic management pricing regime for high volume periods and low volume periods for the user classifications set forth in Table B as set forth in Section B.5.

**C. Video Transaction Toll Premiums**

1. For each toll transaction that is a video transaction, the Authority shall have the right to charge and collect, in addition to the amount determined in Section B, a video transaction toll premium consistent with the Authority's toll policy, which is currently 45% of base tolls, but in no event less than \$0.20 (2010\$).

**D. Incidental Charges**

1. The Authority shall have the right to charge reasonable incidental charges to its customers consistent with the Authority's toll policy.

## **Exhibit K**

### **Traffic Control (Section 8(g))**

- o Traffic must be maintained to the number of lanes currently available on all controlled access facilities (main lanes of IH 20 and IH 30)
- o When temporary lane closures are required on the main lanes of IH 20 and IH 30, the following shall apply:
  - ☐ Multiple lanes may be closed on IH 20 and IH 30 only during the lowest volume hours: Monday-Friday from 10:00 PM through 6:00 AM, and Sundays from 12:00 AM through 12:00 PM.
  - ☐ Single lanes may be closed on IH 20 and IH 30 during the following off-peak hours: Monday-Friday from 9:00 AM through 3:30 PM, and from 7:00 PM through 10:00 PM and Saturdays from 12:00 AM through 12:00 PM.
  - ☐ Temporary lane closures shall not be allowed during major special events held at the Cowboys Stadium, Rangers Ballpark, Lone Star Park Race Track and other major special events as determined by TxDOT Area Office.
- o Other roadways will be allowed permanent closures of lanes within reason so long as all traffic patterns and accesses are maintained. Minimum lane widths during construction will be 11 feet.
- o For facilities currently having shoulders, shoulders may be eliminated during construction so long as safe harbors for disabled vehicles are incorporated into the traffic handling plan. A safe harbor is an area large enough to allow a vehicle to safely leave the travel lanes and upon ability return to the travel lanes or have space to allow a wrecker to remove the vehicle. Spacing, either by ramp or safe harbor, shall be no more than ½ mile.
- o A minimum one foot offset from portable concrete traffic barrier ("PTCB") to edge of travel lane shall be required.
- o Low profile barrier shall be used on low speed facilities (less than 45 miles per hour) to prevent site distance issues posed by standard PCTB. Additionally, ordinary arterial streets may be placed in an opposing traffic situation without positive barrier as long as safety of the traveling public may be maintained utilizing traffic control channelizing devices.
- o When it is determined that roadway closures are necessary, the safety of the traveling public and workers must be a primary consideration.
- o If reasonable mobility can be maintained, or exceptional circumstances exist, additional lanes may be closed during off peak or lowest volume times with the written permission

of TxDOT. Off peak times may be started earlier or extended later if reasonable mobility can be maintained.

- o If back-ups become unreasonable (> 10 min.), TxDOT and the Authority will jointly develop a plan to alleviate the congestion.
- o Inclement weather shall be considered when determining closures.
- o Notify the TxDOT area office a minimum of two calendar days in advance of actual planned temporary lane closures exclusive of safety hazards and/or incident response/management initiated closures.
- o Notify the TxDOT area office a minimum of seven calendar days in advance of actual planned roadway closures exclusive of safety hazards and/or incident response/management initiated closures.
- o Notify the traveling public by placing changeable message signs a minimum of seven calendar days in advance of actual planned roadway closures exclusive of safety hazards and/or incident response/management initiated closures.
- o Where available coordinate and utilize dynamic message signs on the regional ITS system.
- o Off duty uniformed Peace Officers will be required for expressway lane closures in a capacity to enhance roadway safety.
- o Any complete roadway closure will require a traffic control plan to be submitted and approved by TxDOT and stakeholders. Availability of frontage roads, ramp locations and detour distances shall be considered in the design. Complete expressway closure will only be allowed in lowest volume times.
- o Except due to incidents or emergencies, unless otherwise approved by TxDOT in writing, the Authority shall not allow or suffer lane closures on the main lanes during the following periods:
  - ☐ New Year's Eve and New Year's Day (December 31 through January 1)
  - ☐ Easter Holiday Weekend (Friday through Sunday)
  - ☐ Memorial Day Weekend (Friday through Monday)
  - ☐ Independence Day (July 3 through July 5th Noon)
  - ☐ Labor Day Weekend (Friday through Monday)
  - ☐ Thanksgiving Holiday (Wednesday through Sunday)
  - ☐ Christmas Holiday December 23 through 26
  - ☐ The above-described restrictions shall apply from 12 noon of the above described starting day through 10:00 pm on the ending day unless otherwise specified.

## **Exhibit L**

### **Terms and Provisions of Project Oversight Agreement (Section 8(d))**

#### **Federal Highway Administration Supplement to the Texas Division Office Stewardship/Oversight Agreement for the Oversight of the SH 161 Turnpike Project**

This oversight agreement serves as a supplement to the Texas Division Office Stewardship/Oversight Agreement for Design and Construction (effective October 13, 2006) with the Texas Department of Transportation (TxDOT). The stewardship and oversight agreement describes responsibilities for all phases of Federal-aid projects. The North Texas Tollway Authority (NTTA) turnpike project for the development, design, and construction of SH 161 has been identified as a full oversight project and has been assigned to a Federal Highway Administration (FHWA) Area Engineer and an Urban Programs Engineer.

This oversight agreement defines the relationship between the FHWA and TxDOT for the oversight of the SH 161 Turnpike Project. The SH 161 Turnpike Project will be developed using the Design-Build contracting procedures as described in 23 CFR 636, and will be the recipient of Federal and State monies. The NTTA has requested a \$436 million Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for this project. The planned toll project is estimated to cost approximately \$1,427 million in total.

Federal actions to date for this project include a Record of Decision through the National Environmental Policy Act (NEPA) process, approval of the Reevaluation of the Environmental Impact Statement, review of preliminary design schematics, and the processing of the TIFIA letter of interest. See Attachment A for Federal oversight responsibilities that will require approvals and other actions.

#### **FHWA Project Personnel and Resources for Oversight:**

The FHWA Urban Programs and Area Engineers will provide oversight for this project. The Urban Programs Engineer will be responsible for all project actions and approvals related to the NEPA process and the procurement process. The Area Engineer will be responsible for all project actions and approvals for design and construction, with assistance from the Urban Programs Engineer. Division Office management and specialists will be consulted, per established Division Office procedures, for project reviews and technical assistance in order to provide expeditious reviews and approvals of project actions. Specialists include a pavement and material engineer, environmental specialists, financial specialists, bridge engineers, research and technology transfer engineer, and others as needed. Oversight will be conducted through project inspections and design reviews, task teams, and various other means.

### Reporting Requirements:

The FHWA Area Engineer and the Urban Programs Engineer will be responsible for providing Division Office staff, the Headquarters TIFIA team, and the Headquarters Major Projects Team with periodic updates of the costs and schedules of the project. Briefings will also be provided to assist various agencies with tracking information. TxDOT will ensure that monthly updates at a minimum are provided by NTTA (and other available information) with respect to project cost and scheduling to assist with this task.

### Planning and Environment:

FHWA has ensured that the SH 161 Turnpike Project is included in a conforming Transportation Plan. FHWA has signed the Record of Decision for the Environmental Impact Statement, and has approved the Reevaluation of the Environmental Impact Statement. FHWA will continue to provide oversight of environmental responsibilities including possible reevaluations to the decision documents and implementation of mitigation plans in accordance with the Stewardship/Oversight Agreement, the FEIS, the Record of Decision, and provisions of the design-build contract. TxDOT will coordinate early in the process the need for reevaluations. Project mitigation and commitments will be closely monitored by TxDOT and FHWA.

### Procurement:

FHWA has reviewed the Request for Qualifications (RFQ) issued for this project. The FHWA will review and approve the Request for Proposals (RFP) prior to it being issued for this project, and must concur in the award by the NTTA of a design-build contract. FHWA's prior concurrence with or approval of any subsequent major addenda to the RFP will be required. Concurrence in award will occur following the review of the design-build contract documents with all related submittals from the design-build team that is recommended. FHWA and TxDOT will review and if needed comment on proposer submittals. FHWA and TxDOT representatives will observe the procurement process.

### Major Project and TIFIA Submittals:

SH 161 is considered a Major Project (as defined in section 1904(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub.L. 109-59, 119 Stat. 1144). Accordingly, prior to the execution of any proposed design-build contract, the NTTA and TxDOT shall obtain FHWA review and approval of the following elements (for further information see also: <http://www.fhwa.dot.gov/programadmin/mega/>):

- A Project Management Plan
- A Quality Management Plan, including the description of the QA/QC process proposed.
- A conceptual Financial Plan, recognizing that close of finance may occur post award.



#### Design:

FHWA will work with TxDOT and the NTTA in the implementation of the terms and conditions of the design-build contract. FHWA has reviewed the preliminary design schematic that went forward through public hearings and will continue to monitor, review, and approve all design schematics and Plans, Specifications, and Estimates as indicated in Attachment A in accordance with the design criteria established in the design-build contract and the Stewardship/Oversight Agreement. Design exceptions shall require FHWA review, comment, and approval (if appropriate) prior to implementation.

#### Right of Way:

Right of Way activities will be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, the Stewardship/Oversight Agreement and the requirements of the design-build contract. FHWA actions required are as described in Attachment A.

#### Construction:

FHWA will maintain, through our Area Engineer, on site construction oversight. This oversight will be by routine inspections throughout the life of the project, in accordance with the Stewardship/Oversight Agreement and the requirements of the design-build contract.

#### Laws and Standards:

Modification to technical requirements, documents, and provisions related to construction or design as a result of change orders, supplemental agreements, time extensions, claims, etc. shall be coordinated with FHWA by TxDOT and the NTTA prior to approval or final implementation.

#### Federal Requirements:

The requirements of Title 23, United States Code dealing with transportation planning, procurement of professional services, disadvantaged business enterprise, wage rates, advertising and award of bids, convict produced materials, Buy America provisions, and all other non procurement requirements of Title 23, United States Code apply to all Federal-aid projects. Deviations from these provisions will require a SEP 14.

#### TxDOT District Responsibility:

The local TxDOT District will provide a full time TxDOT engineer who will be assigned to oversee the design and construction of the SH 161 Turnpike Project. The TxDOT engineer will accompany and assist FHWA in the exercise of reviews, inspections, work order administration and approval, and other contract administration functions. This will include any provisions in the design-build contract. TxDOT will approve designs, schematic, variances from the design-build contract, final acceptance of the project, and the Materials Certificate. TxDOT shall

communicate to FHWA through monthly or quarterly reports summarizing activities/changes that have occurred in the project

TxDOT and the Texas Division enter into this agreement and agree to carry out their respective responsibilities in a true spirit of cooperation. Nothing in this plan is intended to preclude TxDOT from requesting assistance with respect to any portion of this project, regardless of the oversight status.

Approved by:

For TxDOT

For FHWA

---

Amadeo Saenz, Jr., P.E.  
Executive Director, TxDOT

---

Janice W. Brown, P.E.  
Division Administrator, FHWA

**Attachment A to the Supplement to the Texas Division Office  
Stewardship/Oversight Agreement  
For the Oversight of the SH 161 Turnpike Project**

Activities Requiring FHWA approval including, but not limited to:

- National Environmental Policy Act actions. Environmental Document review and approval, including re-evaluations and/or supplemental documents.
- The Request for Proposals document prior to its issuance, including any addenda that result in major changes to the Request for Proposals document.
- Concurrence in Award of the design-build contract.
- Variances to the executed design-build contract.
- Design and construction QC/QA Program and deviations there from.
- The Acceptance of Materials and Sampling and Testing Program.
- Design Schematics.
- Design Exceptions.
- Concurrence in Award for any additional contracts.
- Project Authorization for use of Federal funds for preliminary engineering and construction.
- Toll Agreement (Section 129(a))
- Construction Change Orders and Claims as per the CDA.
- Actions or approvals identified in the Texas Division Stewardship/Oversight Agreement not discussed herein.

FHWA will participate in the development of the processes and procedures for and will participate when possible in all:

- Reviews and evaluations of design-build contract proposals
- Informal over-the-shoulder reviews
- Design workshops
- Oversight visits
- Formal over-the-shoulder reviews
- Design & Construction QC/QA Program Reviews
- Corridor Structure Type Study and Report Submittals
- Preliminary Bridge Layouts
- Preliminary (30%) Design Submittals
- Intermediate (65%) Design Submittals
- Final (100%) Design Submittals
- Design Re-submittals
- "Accepted for Construction" Design Documents
- Proposed Design Changes

FHWA will attend the above meetings and complete the reviews listed above in accordance with the approved project schedules. In order to attend multiple, concurrent meetings and complete

multiple, concurrent design reviews, FHWA will allocate resources from the Division Office, Resource Center, or other means to assist the FHWA Area and Urban Programs Engineers. In the event that FHWA is not able to provide sufficient personnel resources to complete these tasks, then it is agreed that the Project will move forward with FHWA involvement in those activities to the extent practicable.

## Exhibit M

### Authority Contracts Related to Project (Section 23)

Item	Description	Contract	Vendor	Date	Amount
1	Aerial Photography Services	02016-NTT-00-PS-IT: WA08	Aero-Metric	July 2008	\$160,925
2	Phase 2 & 3 Toll Gantry Design	02443-SH161-00-PS-PM: WA01	Cobb, Fendley & Associates, Inc.	10/30/2008	\$819,917
3	Phase 2, 3 & 4 - Geotechnical design work	02444-SH161-01-PS-PM: WA01	Kleinfelder Central, Inc.	11/7/2008	\$1,283,294
4	Phase 2 Ramp Gantries – Steel Procurement	02623-SH161-00-GS-PM	AUI Contractors, L.P.	12/16/2008	\$551,500
5	Phase 2 – Steel Inspection	02056-NTT-00-PS-EN: WA63	KBR, Inc.	3/3/09	\$89,588
6	Phase 2 & 3 – Change Order to Williams Brothers Contract (conduit)		Williams Brothers	April 2009	\$214,000
7	Phase 2 & 3 – Toll Gantry Construction Management	02056-NTT-00-PS-EN: WA64	KBR, Inc.	April 2009	\$533,699
8	Phase 2 – Utility Adjustments (Power & Communication)			April 2009	~\$200,000
9	Phase 2 – Toll Gantry Construction	02664-SH161-01-CN-PM	Austin Bridge & Road	April 2009	\$4,030,968
10	Phase 2 – ETC Equipment			May 2009	~\$300,000
11	Phase 4 – Construction Management (UPRR)	02418-NTT-00-PS-PM: WA03	HDR Engineering, Inc.	June 2009	\$1,841,913
12	Phase 4 – Construction Management Support (UPRR)	02644-NTT-00-PS-PM: WA02	Raba-Kistner Infrastructure, Inc.	June 2009	\$325,585
13	Phase 2, 3, & 4 – Utility Coordination/Inspection	DNT-520: WA07 SH161	PBS&J, Inc.	January 2009	\$519,321