

**PROJECT AGREEMENT
STATE HIGHWAY 360**

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

Dated February 28, 2014

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PROJECT AGREEMENT

STATE HIGHWAY 360

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 28th day of February, 2014 (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") and to extend those projects into adjacent counties, pursuant to Chapter 366 of the Texas Transportation Code (the "Code"), as amended (the "Regional Tollway Authority Act"); and

WHEREAS, Section 1 of State Highway 360 ("SH 360") is a planned toll road project located in Tarrant, Ellis and Johnson counties extending generally from Green Oaks Boulevard to US 287, an anticipated total length of approximately 9.7 miles (the "Project") as more fully described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, through its "Mobility 2035: The Metropolitan Transportation Plan" (the "Mobility 2035 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; and

WHEREAS, the Authority (1) has constructed and/or operates (a) the Dallas North Tollway (the "DNT"), which extends northerly approximately thirty-two (32) miles from the Dallas Central Business District to US 380 in Frisco, Texas, (b) the President George Bush Turnpike (the "PGBT"), which extends approximately forty (40) miles from West Belt Line Road in Irving, Texas, to IH 30 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. 14th 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, (e) the Sam Rayburn Tollway (the "SRT"), which extends approximately twenty-six (26) miles from Denton Tap Road in Denton County to US 75 in Collin County, (f) the Lewisville Lake Toll Bridge (the "LLTB"), which extends across Lewisville Lake and connects Swisher Road in Lake Dallas, Texas, to Garza Lane and Eldorado Parkway in Little Elm, Texas, in southeast Denton County, and (g) the Western Extension to the PGBT extending approximately eleven and a half (11.5) miles from SH 183 in Irving, Texas to IH 20 in Grand Prairie, Texas (the "PGBT WE") and (2) is constructing the Chisholm Trail Parkway, extending 27.6 miles from the Fort Worth Central Business District to US 67 in Cleburne, Texas (the "CTP"); the DNT, the PGBT, the

Tunnel, the MCLB, the LLTB, and the SRT collectively constitute the North Texas Tollway Authority System (the “NTTA System”), and the PGBT WE and the CTP collectively constitute the Special Projects System (the “SPS”); and

WHEREAS, the Project is located within the Authority Service Area or in counties adjacent to the Authority Service Area; and

WHEREAS, the Project is subject to the “primacy” provisions set forth in Chapter 373 of the Code; and

WHEREAS, the Authority and TxDOT (each a “Party” and together, the “Parties”) negotiated and finalized that certain Partnership Term Sheet dated January 25, 2013 regarding State Highway 360 (the “Term Sheet”), pursuant to which TxDOT and the Authority memorialized their agreement on terms and conditions for the development, financing, construction, and operation of the Project; and

WHEREAS, pursuant to (1) Resolution No. 13-09 passed on January 25, 2013 by the Board of Directors of the Authority (the “Board”), and (2) Minute Order 113485 approved on February 28, 2013, by the Texas Transportation Commission (the “Commission”), the Board and the Commission, respectively, approved the Term Sheet; and

WHEREAS, the Authority, RTC and TxDOT have been in ongoing discussions to further develop a funding and implementation strategy to expedite needed improvements for the Project and developed “SH 360 Regional Working Group Recommendations” as approved by (i) the RTC in a resolution on December 5, 2013, (ii) the Board in a resolution on December 18, 2013, and (iii) the Commission in a minute order on December 19, 2013; and

WHEREAS, Chapter 373 of the Code grants the Authority the first option (the “Option”) to develop, finance, construct and operate the Project; and

WHEREAS, Section 373.006(b) of the Code authorizes the Authority and TxDOT to agree in a toll project agreement to an alternative to the primacy determination process under Subchapter B of Chapter 373, including an alternative timeline for the development of toll project phases, and this Agreement constitutes such a toll project agreement; and

WHEREAS, pursuant to Resolution No. 13-178, passed on December 18, 2013, the Board, pursuant to Section 373.055(a) of the Code, elected to waive its first Option to develop, finance and construct the Project, but did not waive its first option to operate the Project; and

WHEREAS, pursuant to Minute Order No. 113802, approved on December 19, 2013, the Commission approved TxDOT’s determination to exercise its Option to develop, finance, and construct the Project; and

WHEREAS, pursuant to Section 373.101 of the Code, the Commission may remove a toll project from the state highway system and transfer it to a toll project entity; and

WHEREAS, the Parties intend that, subject to the conditions and requirements set forth in this Agreement, the Project, exclusive of frontage roads, shall be removed from the state

highway system, and the Project, exclusive of frontage roads, and certain Project right-of-way shall be transferred to the Authority as set forth in this Agreement; and

WHEREAS, pursuant to Resolution No. 14-15, approved on February 19, 2014 the NTTA Board authorized the execution of this Agreement; and

WHEREAS, pursuant to Minute Order No. 113861, approved on February 27, 2014, the Commission authorized the execution of this Agreement; and

WHEREAS, TxDOT and the Authority have received all authorizations, consents and approvals for and have otherwise complied with all applicable laws required to enter into and perform their obligations under this Agreement and to support the financing and construction of the Project by TxDOT, operation and maintenance of the Project by the Authority and the financial backstop by the RTC.

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. Defined Terms; Computation of Periods.

(a) Defined Terms. Capitalized terms used in this Agreement shall have the meanings set forth in Attachment 1 hereto.

(b) Computation of Periods. If the date to perform any act or give any notice specified in this Agreement (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day which is a Business Day. Notwithstanding the foregoing, requirements contained in this Agreement relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

2. Support for Turnpike. The Authority and TxDOT acknowledge their support for the financing, environmental planning, procurement, design and construction by TxDOT of the Initial Project as a toll project pursuant to Chapter 228 of the Code, the transfer of portions of the Initial Project and Property Interests to the Authority at the times set forth herein, the operation and maintenance by the Authority of the Project as a “turnpike project” pursuant to the Regional Tollway Authority Act, the payments to TxDOT pursuant to this Agreement and the payments, if any, pursuant to the Financial Backstop Agreement, and the use of Project Revenues as set forth in this Agreement. Without limiting the provisions of this Agreement, each Party will take all actions reasonably requested by the other Party that are consistent with this Agreement in furtherance of the purposes of this Agreement. During the term of this Agreement, neither the Authority nor TxDOT shall advance or support any alternative to or conflicting proposal for the development of the Project.

The Parties anticipate that the Initial Project will be planned, procured, designed and constructed by TxDOT through the design-build delivery model. Except as expressly set forth in this Agreement, TxDOT shall have no further obligations for the design, construction, operation or maintenance of the Project, including any capital improvements, after the Substantial Completion Date.

3. Transfer of Project; Transfer of Right-of-Way.

(a) It is the shared intent of TxDOT and the Authority that on or promptly after the Substantial Completion Date, the Project, including all fixtures, improvements, and personalty pertaining to the Project, but expressly excluding the underlying right of way and frontage roads, shall be removed from the state highway system and ownership thereof transferred to the Authority pursuant to Section 373.101 of the Code (or any successor provision authorizing the same, or if Section 373.101(b) is repealed and there is no successor provision authorizing the same, Section 228.151 of the Code or any successor provision authorizing the same). The frontage roads will not be removed from and shall remain on the state highway system. TxDOT shall take all actions necessary to accomplish the foregoing.

(b) In accordance with Section 373.101 of the Code (or any successor provision authorizing the same or, if Section 373.101(b) is repealed and there is no successor provision authorizing the same, Section 228.151 of the Code or any successor provision authorizing the same), and except as expressly provided in Section 4 and subject to approval by the Commission, the Property Interests shall be transferred by TxDOT to the Authority promptly after the Right of Way Transfer Date. The Property Interests shall not include the Retained Property. The Property Interests shall be transferred to the Authority by order of the Commission, subject to TxDOT's reverter interest under the conditions described in subsection 17(c). 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 and include any corrections reasonably determined by TxDOT. All costs of preparation and recordation, including TxDOT's costs to review, shall be paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). The Property Interests will be transferred "as is," without warranty of title, and subject to all matters of record. Prior to such transfer, the Authority shall be entitled to review and approve all documents, instruments and records evidencing or relating to the title to the Property Interests. During the term hereof, TxDOT shall not transfer the Property Interests or permit to exist any pledge, lien, charge or encumbrance thereon, other than to the Authority as provided herein. TxDOT shall assist the Authority in preventing any reversion, forfeiture, reconveyance, loss or diminution of any previously acquired or dedicated Property Interests, provided that TxDOT shall be reimbursed for all costs it incurs as a result of that assistance, from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b).

(c) At any time after the Substantial Completion Date, the Authority may provide written notice to TxDOT that the Authority desires to transfer the Project to the NTTA System. Any such transfer shall be subject to TxDOT's written approval, which shall not be unreasonably withheld, and shall comply with the following conditions and requirements: (i) the NTTA System net revenues shall be pledged to repay the Project Loan; (ii) the Project Loan shall

be deemed a “First Tier Bond” under the trust agreement for the NTTA System financing and shall be in all respects of equal dignity and on parity with any then outstanding first tier bonds; (iii) any amendments and modifications to the trust agreement for the NTTA System financing that adversely affect the Project Loan shall be subject to TxDOT’s approval; and (iv) the Authority shall enter into any agreements necessary to implement this subsection 3(c).

(d) The subsequent removal and transfer of the Project and the transfer of the Property Interests pursuant to this Section 3 neither adds to nor completes, nor is a prerequisite to, the Authority’s authorization to operate and maintain the Project as provided in this Agreement, but instead provides certain operational benefits to both TxDOT and the Authority. If for any reason one or more of the transfers described in this Section 3 fails to occur, the authorization provided in Chapter 228 and 373 of the Code and the Regional Tollway Authority Act, 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 operate and maintain the Project.

4. **The Retained Property.** Notwithstanding anything to the contrary contained in Section 3, TxDOT shall retain full jurisdiction to and shall not transfer to the Authority the Retained Property.

(a) Upon reasonable request by TxDOT, the Authority shall grant TxDOT suitable easement interests to permit the construction by TxDOT across the Project of future improvements on the state highway system and one or more utility bridges, which interest shall thereafter constitute a portion of the Retained Property; provided that TxDOT shall make reasonable efforts to avoid interfering with the activities of the Authority and any of its contractors, and provided further that the foregoing shall not permit TxDOT’s placement or undertaking on any Authority-owned property of a construction support activity, including, without limitation, a concrete batch plant, asphalt batch plant, equipment storage area, material storage yard, borrow area, or excavated material disposal area, whereby the affected area would qualify as a “project specific location” or “PSL.” Use by TxDOT of any Authority-owned property as a PSL or any Authority-owned property outside the Project Right-of-Way is subject to the prior written consent of the Authority, which shall not be unreasonably withheld. 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 paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). It is understood and agreed that the operation of all or a portion of the Project may by necessity be curtailed temporarily in the event of construction, rehabilitation or reconstruction of the Retained Property or damage to the Retained Property caused by acts of God, accidents, emergencies or calamities. TxDOT will, in that event, do everything reasonably possible to provide for rapid and timely construction, rehabilitation or reconstruction of the Retained Property or repairs to those portions of the Retained Property that are damaged, in order that the Authority may resume operation of the entire Project as soon as possible.

(b) Upon transfer of the Property Interests, TxDOT shall have no responsibility for the operation, maintenance, policing or regulation of the Property Interests. Except for the Authority's responsibilities in respect of frontage roads as set forth in Section 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, or construction of future improvements to, the Project materially interferes with or adversely affects the operation or use of the Retained Property (exclusive of the Project frontage roads) or (ii) the Authority determines that TxDOT's operation of, or construction of future improvements to, the Retained Property (exclusive of the Project frontage roads) 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 as agreed by the Parties.

5. Delivery of Materials.

(a) Authority Materials. To assist TxDOT in its design and construction of the Initial Project and, specifically, to reduce the cost of completing the Initial Project, the Authority will, to the extent legally capable and upon compliance with all procedures legally required therefor, promptly after the Effective Date, (i) allow TxDOT access to the Authority Materials and (ii) allow TxDOT to make copies of such Authority Materials as TxDOT reasonably desires to retain for its own files. Without limiting the foregoing, the Authority will provide to TxDOT original counterparts or, if originals are unavailable copies of the Authority Materials identified on Exhibit B attached hereto and made a part hereof. All reasonable costs the Authority or TxDOT incurs as a result of the foregoing shall be Eligible Costs of the Project Loan.

(b) Assignment of Rights to Authority Materials. After reviewing the Authority Materials provided by the Authority pursuant to subsection 5(a), TxDOT, from time to time, may request that the Authority assign, in writing, to TxDOT and/or its consultants, all of the Authority's right, title and interest in any of the Authority Materials, and the Authority will, to the extent legally capable and upon compliance with all procedures legally required therefor, promptly make such assignment to TxDOT. All reasonable costs the Authority or TxDOT incurs as a result of the foregoing assignment shall be paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). The Authority shall assist TxDOT in obtaining any consents required to assign 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. All reasonable costs the Authority or TxDOT incurs as a result of that assistance or in obtaining such consents shall be paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). The foregoing assignment rights shall not apply to pending lawsuits, actions, condemnation and other proceedings related to the Project and involving the Authority, if any.

(c) TxDOT Materials. To assist the Authority in its ownership and operation of the Project and, specifically, to reduce the cost of operating the Initial Project, TxDOT will, to the extent legally capable and upon compliance with all procedures legally required therefor, promptly after the Substantial Completion Date, (i) allow the Authority access to the TxDOT

Materials, and (ii) allow the Authority to make copies of such TxDOT Materials as the Authority reasonably desires to retain in its own files. Without limiting the foregoing, in the event the Authority commences the performance of O&M Services in accordance with subsection 13(a)(ii) or undertakes the design or construction of the Capacity Improvements, if requested by the Authority, TxDOT will provide to the Authority original counterparts or, if originals are unavailable, copies of the TxDOT Materials identified on Exhibit C. All reasonable costs the Authority or TxDOT incurs as a result of the foregoing shall be reimbursed from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b).

(d) Assignment of Rights to TxDOT Materials. After reviewing the TxDOT Materials provided by TxDOT pursuant to subsection 5(c), the Authority, from time to time, may request that TxDOT assign, in writing, to the Authority and/or its consultants, all of TxDOT's right, title and interest in any of the TxDOT Materials, and TxDOT will, to the extent legally capable and upon compliance with all procedures legally required therefor, promptly make such assignment to the Authority. All reasonable costs the Authority or TxDOT incurs as a result of the foregoing assignment shall be paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). TxDOT shall assist the Authority in obtaining any consents required to assign 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 TxDOT Materials as TxDOT held prior to that assignment. All reasonable costs the Authority or TxDOT incurs as a result of that assistance in obtaining such consents shall be paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). 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. Leadership Team.

(a) Purpose. The Authority and TxDOT shall establish a team comprised of Authority, RTC and TxDOT employees (the "Leadership Team") that will work together to resolve issues relating to the Parties' responsibilities under this Agreement that arise during the procurement for the design-build agreement, design and construction of the Project and operations and maintenance of the Project and are not resolved between TxDOT's project manager and the Authority's dedicated staff. The Leadership Team will meet regularly to discuss project status, resolve such issues, and make the determinations and approvals delegated to the Leadership Team in accordance with this Agreement.

(b) Appointment. Each of TxDOT and the Authority shall designate three (3) staff members and RTC shall designate one (1) staff member to serve as members of the Leadership Team. TxDOT's representatives on the Leadership Team shall include TxDOT's Fort Worth District Engineer, an individual from TxDOT's Strategic Projects Division, and an individual from TxDOT's Strategic Project Office for the region. The Authority's representatives on the Leadership Team shall include the Assistant Executive Director – Infrastructure, the Assistant Executive Director – Operations and the Chief Financial Officer. The RTC's representative on the Leadership Team shall be the RTC Staff Director. TxDOT, the Authority and RTC, by written notice to the others, may, from time to time, replace one or more

of its designated representatives that serve on the Leadership Team with its designated employees meeting the criteria in this subsection 6(b).

(c) Expeditious Resolution; TxDOT's Rights to Proceed. The Parties acknowledge and agree that, during the procurement, design and construction phases of the Initial Project, decisions affecting the Initial Project will need to be made expeditiously, and the Parties will bring all unresolved matters to the Leadership Team for expeditious resolution. Notwithstanding the foregoing, TxDOT shall have the right to proceed based on its own determination regarding any unresolved matter at any time after the period the Authority is provided in this Agreement to review such matter, pending resolution of the matter by the Leadership Team and, if invoked by the Authority, through the dispute resolution procedures set forth in subsection 24(g). Furthermore, TxDOT shall not be required to accept any Authority comments that would materially increase the cost of funding, design, construction, operations or maintenance of the Initial Project.

7. **Project Right-of-Way.** TxDOT has completed, or shall undertake and complete, the acquisition of Project Right-of-Way, in accordance with its customary practices. TxDOT commits to proceed through the conclusion of all appeals to a final judgment in any eminent domain action involving Project Right-of-Way necessary for the construction of the Initial Project, and to satisfy all resulting costs, awards, and settlements. If it is later determined that some portion of the Project Right-of-Way necessary for the construction of the Initial Project was not fully and finally acquired by TxDOT, TxDOT shall promptly commence and diligently advance such acquisition. Additionally, after the Effective Date, TxDOT will allow the Authority full access to its files for the Project Right-of-Way and permit the Authority to make copies of such documentation as the Authority reasonably desires to retain in its own files. After the earliest to occur of (a) the Right of Way Transfer Date, (b) the date the Authority assumes responsibility for the performance of O&M Services in accordance with subsection 13(i)(i), or (c) the date the Authority undertakes the design or construction of the Capacity Improvements, TxDOT shall provide the Authority with original counterparts or copies of any materials reasonably requested by the Authority that are prepared by or for TxDOT (or otherwise held by TxDOT) in connection with the Project Right-of-Way. Any costs incurred by TxDOT in connection with its obligations under the previous sentence shall be reimbursed from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b).

8. **Design and Construction of the Initial Project.**

(a) TxDOT Responsibilities for Design and Construction. Except as hereinafter provided in this Section 8, TxDOT shall be responsible for the environmental planning, procurement, design and construction of the Initial Project consistent with the standards TxDOT utilizes on other design-build projects, as supplemented by the Authority's standards to the extent set forth in Exhibit F, including all required utility relocations and/or adjustments, unless otherwise agreed to by the Parties. To the extent of any conflict between TxDOT's standards and the Authority's standards and equipment specifications set forth in Exhibit F, the Authority's standards set forth in Exhibit F shall control. TxDOT 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. TxDOT also will be responsible for securing construction oversight and inspection, as well as materials testing. TxDOT's engineering consultant for the Initial Project shall provide an independent engineering firm that has expertise in retaining walls to review the design and construction of all retaining walls and certify that all walls have been designed and constructed to engineering standards appropriate to the site conditions. Except as hereinafter provided, TxDOT shall have sole authority and responsibility for (A) the design of the Initial Project and all features thereof, (B) the selection of 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 design or construction of the Initial 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, (E) the negotiation, bidding, letting and management of contracts, including the design-build agreement for the Initial Project, and (F) the resolution of disputes under such contracts.

(b) Authority Responsibilities for Design and Construction. Commencing on the effective date of the design-build agreement for the Initial Project, the Authority shall provide a staff member to participate in TxDOT's review of design questions, requests for information, requests for changes and other technical questions from the design-build contractor. TxDOT shall provide office space for such Authority representative. In addition, the Authority shall provide a staff member to provide construction oversight support to TxDOT, who shall be permitted to review all change orders, design and construction deviations, noncompliance reports and notices of design change. The Authority shall provide comments to such documents within ten (10) days and will not delay or hamper the Project schedule. TxDOT will provide office space for such Authority representative in the field office. During the construction of the Initial Project, the Authority shall have the right to inspect the construction work to ensure that the work is accomplished in a manner and to standards that, in the reasonable opinion of both the Authority and TxDOT, are consistent with the overall aesthetic guidelines, design and construction of the Project.

(c) Leadership Team Responsibilities for Design and Construction. During any design and construction of the Project, the Leadership Team will meet as needed to discuss and resolve issues between the Parties including (i) progress and schedule impacts (ii) claims and requests for change orders by the design-build contractor in excess of 10% of the design-build agreement lump sum price, and (ii) necessary or desirable changes to Initial Project design that will be evidenced through a TxDOT-initiated change order but subject to the maximum amount of funds available for disbursements of the Project Loan.

(d) Plans and Specifications. TxDOT will require the design-build contractor to provide for the timely preparation of the plans, specifications and estimate for all portions of the Initial Project (the "PS&E") in the following manner. A schematic design has been prepared for the Project by the Authority in connection with the NEPA Approval. Any changes to the schematic design proposed by TxDOT that in TxDOT's reasonable determination may result in a major adverse impact to the project completion schedule or project costs, or that may require

further environmental review, shall be subject to the Authority's reasonable review and comment within ten (10) days following its receipt of the information and shall be subject to subsection 6(c). Any changes to such schematic design proposed by the Authority shall be subject to reasonable review and concurrence by TxDOT.

(e) Joint/Concurrent Review of PS&E. Due to the expedited delivery schedule for the Initial Project and in order to maximize the benefit of the Initial Project to North Central Texas, the Authority and TxDOT shall implement and adhere to a fully joint and concurrent design review process by which all materials subject to review by the Parties will be concurrently distributed to and reviewed by both the Authority and TxDOT. Without limiting the foregoing, the Authority and TxDOT 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 its receipt of the information; provided however, for materials that require FHWA review, TxDOT shall have such additional review time as is necessary for FHWA's review. Additionally, the Authority and TxDOT 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 Initial Project delivery process.

(f) FHWA Oversight. TxDOT and the Authority acknowledge the funds used for design and construction of the Initial Project may include federal funds. TxDOT and the Authority agree to comply with federal requirements in the development of the Initial Project regardless of the sources of funds for the Initial Project.

(g) Project Completion. Within two (2) Business Days after TxDOT receives notice from the design-build contractor of the date it expects to achieve substantial completion of the Initial Project (but not less than twenty (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 work for substantial compliance with the plans, standards and specifications in the design-build agreement and for identification of patent defects and preparation of a punch list. TxDOT shall cause punch list items, including patent defects identified by the Parties, to be diligently completed following substantial completion of Initial Project. 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 the Initial Project. For the avoidance of doubt, any out-of-pocket costs incurred by TxDOT to cause punch list items to be completed or patent defects to be rectified shall constitute disbursements of the Project Loan.

(h) Capacity Improvements. The Authority shall, from Project Net Revenues or financing secured by Project Net Revenues, make the Capacity Improvements to the Project as and when the Leadership Team determines that the Capacity Improvements are warranted, legally permitted to be constructed, included in the region's mobility plans, and financeable through Project Net Revenues. In no event shall Capacity Improvements be considered financeable through Project Net Revenues (i) during the Capitalized Interest Period or (ii) if the debt service coverage ratio, determined in accordance with cost and revenue projections based on the Project's cost and revenue experience, in respect of the Project Loan and Additional Project Debt is less than 1.0:1.0. All the provisions of Sections 8, 9, 10 and 11 (except for this

subsection (h)) shall apply to Capacity Improvements, with only minor modifications as are necessary in points of detail, provided that the Authority's rights and obligations thereunder shall be construed to be TxDOT's rights and obligations with respect to the Capacity Improvements, and TxDOT's rights and obligations thereunder shall be construed to be the Authority's rights and obligations with respect to the Capacity Improvements. All plans for construction sequencing and traffic management shall be subject to TxDOT's reasonable prior review and concurrence.

(i) Renewal Work. The Party responsible for performing O&M Services shall perform renewal work as and when necessary to maintain compliance with the performance requirements set forth in Exhibit D, as such performance requirements may be modified by the Leadership Team in accordance with subsection 16(c)(v).

(j) Hazardous Materials. TxDOT or the design-build contractor for the Project shall be responsible for promptly and diligently addressing, through clean-up or other appropriate and lawful steps, based on a property use appropriate risk-based clean-up standard, any hazardous materials that exceed regulatory action levels for highway projects based on a risk-based cleanup standard and, consequently, requires special treatment or disposal ("Hazardous Materials") that are encountered within the Project Right-of-Way prior to the Substantial Completion Date by TxDOT or any contractors working on the Project. If soil excavated within the Project Right-of-Way in the course of TxDOT's construction of the Initial Project is identified as containing Hazardous Materials, TxDOT or its contractors shall accept delivery of the identified soil and handle it properly with resulting costs constituting disbursements of the Project Loan. The Party responsible for the performance of O&M Services shall be responsible for promptly and diligently addressing, through clean-up or other appropriate and lawful steps, based on a property use appropriate risk-based standard, any Hazardous Materials that are encountered within the Project Right-of-Way from and after the date such Party commences O&M Services with resulting costs constituting O&M Costs.

(k) Highway Reference Marker Signage. TxDOT and the Authority jointly shall consult and concur in the installation of a highway reference marker signage system for (i) the main lanes in conformity with the Authority's standards for reference marker signage for its tollway projects and (ii) frontage roads in conformity with TxDOT's standards for reference marker signage for the state highway system.

(l) Landscaping. TxDOT shall require the design-build contractor to install the minimum landscaping necessary for erosion control. Whether and to what extent there shall be additional landscaping on the Project shall be determined by the Leadership Team, at such time as the Leadership Team may determine additional landscaping is warranted and there are sufficient Project Revenues therefor after payment of all amounts having priority in accordance with subsection 18(b). The Leadership Team shall determine which Party shall be responsible for installing and maintaining any additional landscaping, which shall be paid from Project Revenues. The Parties acknowledge and agree that installation and maintenance of additional landscaping is not included in the current scope of O&M Services and is not subject to the cap on O&M Payments set forth in subsection 16(c). In no event shall either Party be responsible for increased costs due to additional landscaping.

9. Responsibility for Design.

(a) Responsibility. Except as otherwise provided in subsection 9(b), TxDOT acknowledges and fully accepts its responsibility for the design and construction of the Initial Project, and releases the Authority from responsibility therefor, in any litigation or otherwise. 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, TxDOT shall become fully subrogated to the Authority and shall be entitled to maintain an action over and against any third party or parties (but not the Authority) 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 Initial Project. Notwithstanding the foregoing, the Authority shall maintain such rights against third parties as may be necessary to defend itself against any action brought by such third parties.

(b) Warranties. The design-build agreement shall provide that (i) any and all express or implied warranties and representations in the nature of warranties by the design-build contractor, (ii) any warranty bonds or insurance provided pursuant to the design-build agreement, and (iii) any and all errors or omission coverage provided under the design-build agreement shall be jointly made to or for the benefit of both TxDOT and the Authority. The design-build agreement shall include a general warranty commencing on the Substantial Completion Date and ending one year after final acceptance. The Party responsible for performing the O&M Services shall be responsible for prosecuting any warranties under the design-build agreement, except that the Authority shall be responsible for prosecuting any warranties related to the ETCS.

(c) 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 TxDOT's design-build contractor, 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 TxDOT shall be promptly reimbursed for all costs it incurs as a result from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b).

10. Environmental Permits, Issues, Commitments and Studies. Except as provided in subsection 8(j) and this Section 10, TxDOT assumes all liability and responsibility for existing and future EPIC until the Substantial Completion Date; and the Authority assumes all liability and responsibility for existing and future EPIC after the Substantial Completion Date, the Authority's cost of which shall be paid from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). Notwithstanding the foregoing, the Authority shall fully cooperate with and support the efficient transitioning of its environmental work performed and documents prepared prior to the Effective Date to TxDOT, and TxDOT shall fully cooperate with and support the efficient transitioning of its environmental work performed and documents prepared after the Substantial Completion Date to the Authority. During any periods in which TxDOT is responsible for performing the O&M Services for the Project, TxDOT shall within a reasonable time period (i) provide the Authority with copies of all

notices, permits, correspondence, agreements, and other documentation relevant to the Authority's obligations for EPIC under this Section 10 and (ii) notify the Authority of any event, condition, or other circumstance regarding the Project about which TxDOT has information relevant to the Authority's obligations for EPIC.

11. Procurement Process; Insurance.

(a) Procurement Procedures. TxDOT shall use its procurement procedures under Chapter 223 of the Code with respect to all aspects of the Initial Project that it is obligated to design and construct pursuant to this Agreement. TxDOT shall be responsible for coordinating with FHWA in connection with the procurement process and obtaining any necessary FHWA approvals. The Authority shall designate one or more staff members who shall be permitted onsite access to the procurement documents at a location specified by TxDOT concurrently with the onsite access of TxDOT's staff members to the same, provided the Authority's staff members comply with TxDOT's protocol with respect to such access. The Authority shall have the opportunity to review and comment on the procurement documents and shall have the right to approve the warranties and representations in the nature of warranties in the design-build agreement during such onsite reviews. The Authority shall promptly provide any comments on the documents and in any event no later than the date specified by TxDOT for the provision of comments. In addition, the Authority shall be provided with copies of such procurement documents as and when TxDOT submits the same to proposers. The Authority shall designate one (1) staff member who will be provided the opportunity to participate in one-on-one meetings with shortlisted proposers during the procurement process. The Authority shall designate one or more staff member(s) who will be provided the opportunity to review and comment on proposals and participate in (without voting rights) the evaluation process of the technical subcommittees at TxDOT's designated location. All of the Authority's representatives participating in or observing the procurement and/or evaluation process shall sign confidentiality agreements prior to receiving access to any information regarding the Project. Furthermore, any Authority staff members participating in the evaluation process shall not be permitted to take any materials, including notes, out of the evaluation facility and shall otherwise comply with TxDOT's evaluation procedures.

(b) Leadership Team. The Leadership Team will meet regularly to discuss and resolve issues between the Parties.

(c) 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.

(d) Additional Insureds. TxDOT and the Authority shall be entitled, after providing reasonable notice to the other Party 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 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.

12. **Project Schedule.** TxDOT shall use good faith efforts to construct and complete the Initial Project within forty-two (42) months after the notice to proceed with construction is delivered under the design-build agreement. TxDOT shall notify the Authority of the projected Substantial Completion Date not less than forty-five (45) days prior to such date, and TxDOT shall permit the Authority to test and coordinate the backoffice integration, testing and commissioning of the Project's tolling system to ensure that the work related thereto is complete and operational by the Substantial Completion Date not less than fifteen (15) days prior to such date. TxDOT, working through the design-build contractor prior to the Substantial Completion Date, will address any design or construction issues reasonably identified by the Authority as necessary to effectuate the purposes of this Section 12 and subsection 13(d). On or before the Substantial Completion Date, the Authority shall provide written notification to TxDOT that the ETCS meets the equipment specifications set forth in Exhibit F, is good and working order and is accepted by the Authority, and thereafter TxDOT shall have no further responsibility or liability for the ETCS.

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

(a) Transition. TxDOT shall be responsible for operation and maintenance of the Project until the Substantial Completion Date. During such period, TxDOT shall maintain the Project in accordance with TxDOT's Maintenance Management Manual, Maintenance Operations Manual, and Roadside Vegetation Management Manual and conduct traffic management activities on the Project in accordance with TxDOT's standard traffic management practices and procedures. On the Substantial Completion Date, TxDOT shall ensure the main lanes of the Project meet the standards set forth in Exhibit D and the frontage roads meet the standards set forth in Section 14. Upon the Substantial Completion Date, the Authority shall assume full responsibility for the operation and maintenance of the Project and all of the Project Right-of-Way, except for the Retained Property and punchlist items, and all equipment under warranty and test periods, including coordinating with any and all vendors in connection with warranties. TxDOT shall be responsible, at its expense, for frontage road signals and lighting, including installation, repair, replacement and coordination with Project Cities.

(i) O&M Services after Substantial Completion. Without relinquishing its obligations to operate and maintain the Project from and after the Substantial Completion Date, the Authority hereby engages TxDOT to perform the O&M Services for the Project in accordance with the terms set forth herein.

(ii) TxDOT Election. TxDOT shall be responsible for performing the O&M Services in accordance with this Agreement and for the compensation set forth in subsection 13(i)(i) for a minimum period of five (5) years commencing on the Substantial Completion Date. TxDOT may, at any time after such initial five-year period, elect to transfer responsibility for the performance of the O&M Services to the Authority by providing the Authority written notice of such election. The written notice shall include the effective date of the transfer of responsibility for O&M Services which shall be no earlier than six(6) months after the date the notice is provided to the Authority.

(iii) TxDOT Offer. In connection with delivering the election notice provided for in subsection 13(a)(ii), TxDOT may make an irrevocable offer to the

Authority to provide the O&M Services for the five-year period commencing on the effective transfer date set forth in such notice for the payment amount set forth in such offer. If the TxDOT offer is accepted in accordance with subsection 13(i), TxDOT shall be responsible for performing the O&M Services in accordance with this Agreement and for the payment amount set forth in its offer for such five (5)-year period. Not later than six (6) months prior to the end of such five (5)-year period, or any subsequent five (5)-year period, TxDOT may make an irrevocable offer to provide O&M Services for the following five (5)-year period in the manner set forth in this subsection 13(a)(iii).

(iv) Emergencies and Public Safety. The Authority may notify TxDOT of an emergency or unsafe condition requiring the immediate provision of O&M Services to remedy such situation. If TxDOT does not immediately undertake diligent efforts to remedy such situation, the Authority, after e-mail notice to and response by TxDOT's Fort Worth District Engineer or his or her designee, shall have the right to perform or have performed the necessary O&M Services to remedy such situation. All costs incurred by the Authority for such O&M Services shall be reimbursed from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b).

(b) Comprehensive Maintenance Agreement. As part of the procurement for the design-build agreement, TxDOT will solicit proposals for a comprehensive maintenance agreement to be entered into between the selected design-build contractor and TxDOT, providing for the performance of the O&M Services in accordance with the standards set forth in this Agreement using a form utilized by TxDOT on other projects. The comprehensive maintenance agreement shall include three (3) successive five-year options for a maximum term of fifteen (15) years. TxDOT shall have the right in its sole discretion to exercise the options to require the design-build contractor to perform the comprehensive maintenance services in accordance with the comprehensive maintenance agreement, and shall be solely responsible for making payments to the design-build contractor as required by the comprehensive maintenance agreement. For the avoidance of doubt, the comprehensive maintenance agreement may provide for the termination of the comprehensive maintenance agreement if the initial five-year option is not exercised, as provided in maintenance agreements used by TxDOT on other projects. So as to anticipate the possibility of the Authority undertaking O&M Services in the future, TxDOT will provide in the comprehensive maintenance agreement that TxDOT may assign to the Authority all of TxDOT's right, title and interest in the comprehensive maintenance agreement. If TxDOT reasonably determines based on its communication with potential proposers that the assignment described in the preceding sentence will increase costs or discourage the submission of proposals, TxDOT may elect not to include such assignment. If the Authority becomes responsible for the performance of the O&M Services while the comprehensive maintenance agreement is in effect, TxDOT will, at the Authority's request and to the extent legally capable and upon compliance with all procedures legally required therefor, assign the comprehensive maintenance agreement to the Authority if the comprehensive maintenance agreement authorizes TxDOT to do so. Except as otherwise provided in subsection 13(a)(iii), the Annual O&M Payment Amounts set forth on Exhibit H hereto shall not be increased by any TxDOT elections under the comprehensive maintenance agreement.

(c) Standards, Inspections and Reporting. The Party responsible for the performance of O&M Services shall perform such services in respect of the main lanes of the Project in accordance at a minimum to the operations and maintenance standards set forth in Exhibit D and in respect of the frontage roads in accordance with the standards set forth in Section 14. During any periods in which TxDOT is responsible for the performance of O&M Services, TxDOT shall carry out general inspections of the Project in accordance with the inspection program TxDOT uses on its other projects, as modified by mutual agreement between the Authority and TxDOT, as described in Exhibit D. During any periods in which the Authority is responsible for the performance of O&M Services, 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 D. The Party responsible for the performance of the O&M Services shall also carry out all federally mandated inspections.

(d) Tolling Services. The Authority shall be responsible for the Tolling Services for the Project. The Authority shall perform such services on a non-discriminatory basis in accordance with the Authority's business rules and standards set forth in Exhibit J, as such business and rules and standards may be adjusted in accordance with Exhibit J.

(e) Frontage Roads Access and Utility Permitting. Notwithstanding anything to the contrary in subsection 13(a), TxDOT shall 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 provide the Authority with access to the issued access and utility permits, together with the plans related thereto, and as-built surveys for utility work at such times as is mutually agreed to by the Parties. TxDOT will inspect all work done related to such permits for compliance with the plans for such work. The Authority 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 for handling requests and permitting for utility placement that cross the main lanes of the Project. All out-of-pocket costs incurred by the Authority for handling such requests and permitting shall be reimbursed from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). TxDOT may contract with Project Cities to provide for handling requests and permitting for adjacent property access to frontage roads of the Project.

(f) Speed Studies and Speed Limits.

(i) TxDOT is responsible for installing any speed limit signage that is required prior to or as a result of the initial speed studies for the Initial Project. TxDOT shall conduct a speed study of the frontage roads and main lanes between six (6) to eight (8) weeks after the Initial Project 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. The Authority shall maintain complete responsibility and authority for the enforcement of safety and operational standards for the Project's main lanes, including, the enforcement of speed limits.

(ii) After payment in full of the Project Loan, the Authority shall have the right and obligation to conduct further speed studies of the frontage roads and main lanes of the Project, the costs of which shall be reimbursable as Tolling Services Expenses. The speed studies performed for the frontage roads will be provided by the Authority to TxDOT.

(g) ITS Operations. The Authority will perform all ITS/traffic management and safety operations and maintenance of equipment for these operations for the Project to include: (i) police service (payment for police services), (ii) wrecker services, (iii) Traffic Accident Investigation and RCS/Wrecker Staging, (iv) Travel Time AVI Readers deployed, each in a manner consistent with the NTTA System, the cost of which shall be reimbursable as Tolling Services Expenses of the Project. 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, when and if implemented.

(h) Insurance. The Authority shall maintain such types and amounts of insurance coverages as the Parties mutually agree is necessary to protect the interests of the Parties in the Project and Project Revenues, which shall in no event provide less protection than is afforded by the insurance coverages maintained by the Authority on the NTTA System. The costs of insurance for the Project shall be reimbursed from Project Revenues on parity with Routine Maintenance Costs in the flow of funds described in subsection 18(b). The Authority shall apply insurance proceeds received in connection with the Project for their intended purpose. Without limiting the foregoing, in respect of insurance proceeds received in connection with any casualty to the Project, the Authority shall use such proceeds to restore the Project as nearly as practicable to its condition immediately prior to such casualty. If proceeds remain after use of the insurance proceeds for their intended purpose, then such remaining proceeds shall be deposited in the SH 360 Custodial Account as Project Revenues.

(i) O&M Payments.

(i) The Party responsible for performance of the O&M Services, shall be paid from Project Revenues, by the 5th day of each month in a given Year, 1/12 of the applicable Annual O&M Payment Amount for such Year set forth on Exhibit H hereto, as such Exhibit H may be adjusted in accordance with this subsection 13(i). (Each such monthly payment shall constitute an "O&M Payment".) In the event TxDOT elects in its sole discretion to transfer responsibility for the performance of the O&M Services to the Authority in accordance with subsection 13(a)(ii), the Authority shall obtain, prior to the effective date of the transfer, as such date may be extended by agreement of the Parties, private sector bids for the performance of O&M Services. From and after the effective

date of the transfer of the O&M Services, the Annual O&M Payment Amounts shall be the lower of (A) the amounts set forth in the TxDOT offer made in accordance with subsection 13(a)(iii), if any, or (B) the amounts set forth in the lowest responsible bid, and the Parties shall amend Exhibit H to reflect such amounts. If the amounts set forth in the TxDOT offer are lower than the amounts set forth in the lowest responsible bid, the Authority shall engage TxDOT to perform the O&M Services. If the amounts set forth in the TxDOT offer are equal to or higher than the amounts set forth in the lowest responsible bid, the Authority shall have the option in its sole discretion to either engage TxDOT or the lowest responsible bidder to perform the O&M Services or to perform the O&M Services itself or in some other manner, provided that the O&M Payments in each Year shall in no event exceed the applicable Annual O&M Payment Amount on the amended Exhibit H. Notwithstanding anything to contrary contained herein, during any period in which the Authority is exercising its step-in rights to perform O&M Services under subsection 24(f)(iii), the Authority shall not be required to accept any offer from TxDOT to perform O&M Services, and the amounts set forth in any such offer shall not be considered in determining the Annual O&M Payment Amount. Notwithstanding anything to the contrary herein, in no event shall Project Revenues be used to pay or reimburse the Party responsible for the performance of the O&M Services for any O&M Costs that exceed the applicable Annual O&M Payment Amount.

(ii) The Annual O&M Payment Amounts set forth on Exhibit H are based on an agreed amount of \$30,000 per lane mile per Year, commencing on the Substantial Completion Date for the sixty-eight (68) lane miles of the Initial Project, including main lanes and frontage roads. Such amounts shall be adjusted annually on each anniversary of the Substantial Completion Date in accordance with Exhibit H based on fluctuations in the Highway Cost Index published by TxDOT. In the event the Authority constructs any Capacity Improvements that result in additional total Project lane miles, the Annual O&M Payment Amounts shall be adjusted to reflect such additional lane miles commencing in the Year such Capacity Improvements are opened to traffic; provided that the amounts per lane mile set forth in this subsection 13(i)(ii) shall not be modified. Furthermore, in the event that additional landscaping or other improvements are constructed or installed on the Project, the Annual O&M Payment Amount shall be increased to reflect the increased costs to maintain such additional landscaping or other improvements.

(j) Tolling Services Payments.

(i) During the period commencing on the date of the commencement of revenue service on the Project and ending on the fifth anniversary of the Substantial Completion Date, the Authority shall be entitled to reimbursement from Project Revenues of its documented Tolling Services Expenses incurred each Year, payable on a monthly basis, up to the applicable Annual Tolling Services Amount for such year set forth in Exhibit I. (Each such monthly payment shall constitute a "Tolling Services Payment".)

(ii) During the first five years after the Substantial Completion Date a financial cost model ("Cost Model") to be utilized by the Leadership Team for the establishment of Annual Tolling Services Amounts after such five-year period shall be

developed and approved in accordance with this subsection 13(j)(ii). No later than the third anniversary of the Substantial Completion Date, the Authority shall develop and submit to the Leadership Team for the Leadership Team's review and approval a Cost Model that identifies the Authority's Tolling Services Expenses. The Cost Model shall identify direct and indirect costs, appropriate cost allocation methods and costs that vary with fluctuations in traffic volume or inflation. The Leadership Team may approve or make adjustments to the Cost Model, including without limitation, adjustments to refine service levels (up or down) to lower the risk of draws under the Financial Backstop Agreement, and the Parties shall use good faith efforts to work with the Leadership Team in a collaborative manner until the Leadership Team approves a final Cost Model with the goal of Leadership approval of the Cost Model on or before the fourth anniversary of the Substantial Completion Date. The purpose of the Cost Model is to manage the overall Tolling Services Expenses and not to direct the Authority's management practices.

(iii) The Annual Tolling Services Amount shall not be increased after the fifth anniversary of the Substantial Completion Date until the Leadership Team approves the Cost Model. Provided the Leadership Team has approved in writing the Cost Model, after the fifth anniversary of the commencement of revenue service on the Project, the Annual Tolling Services Amount shall be the approved budgeted amount for Tolling Services for such Year determined in accordance with subsection 16(c). The Authority may utilize Project Revenues to reimburse the Authority for Tolling Services Expenses incurred each year up to the applicable Annual Tolling Services Amount payable on a monthly basis.

(iv) Except as set forth in this subsection 13(j)(iv), in no event shall Project Revenues be used to pay or reimburse the Authority for any Tolling Services Expenses that exceed the applicable Annual Tolling Services Amount, as such amount may be adjusted in accordance with this subsection 13(j). The Authority shall have the right to make expenditures for Tolling Services Expenses from Project Revenues without any consent or approval right of TxDOT if such costs do not exceed 102.5% of the applicable Annual Tolling Services Amount. Project Revenues shall not be used to pay or reimburse the Authority for any expenditures in excess of 102.5% of the applicable Annual Tolling Services Amount without the written approval of the Leadership Team.

14. **Frontage Roads.** As provided in Section 2, TxDOT and the Authority intend for the Project but expressly excluding the frontage roads, to be removed from the state highway system. TxDOT shall retain that portion of the SH 360 alignment required for the Project frontage roads on the state highway system and they will remain designated as "SH 360." In all events, and regardless of whether the aforesaid transfers occur, commencing on the Substantial Completion Date, the Party responsible for the performance of the O&M Services for the Project 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. Such Party 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, at its expense, shall maintain and otherwise be responsible for the repair, maintenance and operation of the traffic signal systems, including related safety lighting, on the Project frontage roads, 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 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 Substantial Completion Date.

The Party responsible for the performance of O&M Services for the Project shall maintain the frontage roads in good and fully operational condition. 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.

The Party responsible for the performance of O&M Services for the Project shall be responsible for the maintenance requirements for the Property Interests and those portions of the Retained Property as depicted on Exhibit E, including tie-ins, direct connectors and frontage road connections, except for the main lanes and other structures and areas for which TxDOT retains maintenance responsibility as depicted on Exhibit E 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 E. To the extent of any conflict between the depiction of maintenance limits shown on Exhibit E and the terms of this Section 14, the latter shall control.

15. Maintenance of Records. All records and documents prepared by TxDOT under this Agreement or otherwise relating to the financing, design, and construction of the Initial Project will be made available to authorized representatives of the Authority and FHWA for purposes of inspection, copying and audit during normal work hours. All records and documents prepared under this Agreement and described in this paragraph must be maintained by TxDOT as follows: (i) for records and documents relating to the Project Loan, for the period beginning on the date funds are first advanced and ending three (3) years after the date the Project Loan is repaid, and (ii) for records and documents relating to the design and construction of the Initial Project, for four (4) years after final payment of the construction costs incurred in connection with the Initial Project.

All records and documents prepared by the Authority under this Agreement or otherwise relating to its design, construction, operations and maintenance obligations regarding the Project, including documents relating to additional landscaping and other improvements, shall be made available to authorized representatives of TxDOT and FHWA for purposes of inspection, copying and audit during normal work hours. Additionally, TxDOT shall have the right to monitor and audit any processes, controls and information, including toll collection system collection processes, controls, and information, as may be required by the State Auditor's Office

or TxDOT's auditors. All records and documents prepared under this Agreement and described in this paragraph must be maintained by the Authority as follows: (i) for records and documents relating to the design and construction of the Capacity Improvements, for four (4) years after final payment of the construction costs incurred in connection with such Capacity Improvements, and (ii) for records and documents relating to Project Revenues, the Project Loan or the financing of the Capacity Improvements, or evidencing operations and maintenance costs, or related to the ETCS for the period beginning on the issue date of the obligations and ending three (3) years after the date the obligations are retired.

Without limiting the foregoing, the Authority and TxDOT shall comply with all applicable federal laws pertaining to the retention of records and the provision of access thereto.

16. Reports and Plans; Operations and Maintenance Budgets.

(a) Reports and Plans to TxDOT. The Authority shall deliver to TxDOT monthly progress reports during the design and construction of any Capacity Improvements prepared by the Authority's consulting engineers, and shall deliver to TxDOT all contractor requisitions relating to the construction of the Capacity Improvements thereto on a monthly basis. At the earliest possible date following completion of construction of the Capacity Improvements, the Authority will deliver to TxDOT a final set of plans and specifications for the Capacity Improvements (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 Capacity Improvements constructed by the Authority was constructed in accordance with the approved plans and specifications and approved contract revisions.

(b) Reports and Plans to the Authority. TxDOT shall deliver to the Authority monthly progress reports during the design and construction of the Initial Project prepared by TxDOT's design-build contractor. In addition, TxDOT shall deliver the TxDOT Materials to the Authority in accordance with subsection 5(c).

(c) Operating Budgets.

(i) Not less than sixty (60) days and not more than ninety (90) days before the commencement of each budget period, the Authority shall deliver to TxDOT and RTC for their review and approval a preliminary Tolling Services Expenses budget for such period, which may at the Authority's discretion cover no less than a one (1) year period and no more than a five (5) year period. During the first five years after the Substantial Completion Date, the total budgeted amount for the Tolling Services Expenses for the period shall not exceed the Annual Tolling Services Amount(s) for such period, except as permitted under the Financial Backstop Agreement. For budget periods after the fifth anniversary of the Substantial Completion Date, the total budgeted amount for the Tolling Services Expenses shall be calculated utilizing the Cost Model approved by the Leadership Team in accordance with subsection 13(j)(ii). Each Tolling Services Expenses budget shall specify in detail all projected Tolling Services Expenses and any projected advances under the Financial Backstop Agreement for the applicable period. TxDOT and RTC shall provide to the Authority any comments to such preliminary Tolling Services Expenses budget within twenty (20) days following its receipt. The

Authority shall address any such comments and resubmit the revised operating budget within fifteen (15) days following receipt of any comments and the Leadership Team shall approve or submit comment to any revised operating budget within fifteen (15) days following its receipt. This process shall continue until a budget is approved in writing by the Leadership Team. The budgeted amount for Tolling Services Expenses for each year during the budget period set forth in the approved budget shall be the Annual Tolling Services Amount for such year.

(ii) The Authority shall deliver to TxDOT and RTC by the 15th day of each month, the following information for the previous month: monthly expenditures for Tolling Services to date compared to Annual Tolling Services Amount for each period, monthly reports regarding Project operating and maintenance expenditures, completed preventative maintenance activities performed by the Authority, transaction reports, revenues collected and toll collection rates.

(iii) If any operating budget indicates there will be insufficient Project Revenues on deposit in the SH 360 Custodial Account to fully and timely pay a Scheduled Loan Payment, or if actual Project Revenues on deposit in the SH 360 Custodial Account in any year are insufficient to fully and timely pay a Scheduled Loan Payment, the Authority shall cooperate with TxDOT and the RTC to develop efficiencies in the Tolling Services and TxDOT or the Authority may, by written notice to the other Party, trigger a review of (A) toll rates in accordance with subsection 19(b) and the Financial Backstop Agreement or (B) the operation and maintenance standards set forth in this Agreement. TxDOT and the Authority will mutually agree upon a revision to such standards to those necessary to permit the Scheduled Loan Payments to be fully paid by Project Revenues on deposit, or scheduled to be deposited, in the SH 360 Custodial Account.

17. The Project Loan.

(a) Project Loan by TxDOT. TxDOT has allocated funds in the amount of \$300 million for the Initial Project and estimates its internal soft costs will be \$6 million. Accordingly, TxDOT will use funds to pay for Eligible Costs up to a maximum of \$294 million ("Project Loan") for the development, design and construction of the Initial Project subject to repayment by the Authority in accordance with the terms set forth in Exhibit G. The Project Loan shall be a thirty-five (35) year fixed payment loan from the date of Substantial Completion. Within ninety (90) days of the Substantial Completion Date, TxDOT shall determine (i) the total amount of Eligible Costs paid as of the Substantial Completion Date, which shall constitute the original principal balance of the Project Loan, (ii) provide the Authority with any supporting documentation reasonably requested by the Authority as to the Eligible Costs so paid, and (iii) and prepare for the Authority's review a Project Loan Payment Schedule reflecting such original principal balance and the terms of the Project Loan set forth in Exhibit G. The Project Loan Payment Schedule shall thereafter be subject to adjustment from time to time in accordance with Exhibit G.

(b) Authority Payments. The Authority shall make payments from Project Revenues to TxDOT for principal and interest in accordance with the Project Loan Payment Schedule, as it may be revised from time to time in accordance with this Agreement.

(c) Financial Backstop Agreement. The Authority, TxDOT and the RTC have entered into the SH 360 Financial Backstop Agreement, dated February 28, 2014 (the "Financial Backstop Agreement"), that provides for a draw under the Financial Backstop Agreement in lieu of payment to TxDOT in the amount of any shortfall in a required payment under the Project Loan Payment Schedule due to the insufficiency of Project Revenues. Any draws under the Financial Backstop Agreement shall be applied in the same manner as if received from the Authority.

(i) If for any reason the obligations of the RTC or a successor to RTC are determined to be inoperative or RTC or any successor fails to perform its obligations under the Financial Backstop Agreement for any other reason, and TxDOT's right thereunder to self-effectuate a cure of any potential default under the Financial Backstop (as defined therein) from UTP Funds is determined to be unenforceable, or if TxDOT's right thereunder to self-effectuate a cure is determined for any other reason to be unavailable, then effective on the date of such determination or failure:

(A) If Project Revenues on deposit in the SH 360 Custodial Account on the applicable Payment Date are insufficient to make a full Scheduled Loan Payment, the Authority shall transfer all such Project Revenues on deposit to TxDOT; and if the Project Revenues in the SH 360 Custodial Account on such Payment Date are less than fifty (50) percent of the Scheduled Loan Payment amount, the Authority shall transfer to TxDOT the difference between fifty (50) percent of the Scheduled Loan Payment amount and the amount of Project Revenues transferred in accordance with this subsection 17(c)(i)(A)) from other sources available to the Authority, and any such amounts transferred by the Authority from Authority funds other than Project Revenues shall accrue interest at the rate set forth in Exhibit G, and shall be repaid, along with any accrued interest, through Project Revenues in accordance with subsection 18(b); and

(B) Any shortfall in a Scheduled Loan Payment to TxDOT permitted in accordance with subsection 17(c)(i)(A) shall be added to the Project Loan balance on the Payment Date and accrue interest in accordance with Exhibit G; for each instance of a shortfall, the Project Loan Payment Schedule shall be updated to reflect outstanding payments and interest owed thereon, and the Authority shall pay such shortfall to TxDOT, along with interest calculated in accordance with Exhibit G, on or before the Payment Date occurring earlier of five (5) years after the original Payment Date or the Final Maturity Date, and any such amounts transferred by the Authority from Authority funds other than Project Revenues shall accrue interest at the rate set forth in Exhibit G, and shall

be repaid, along with any accrued interest, through Project Revenues in accordance with subsection 18(b).

(ii) In the event that the Authority (A) fails to timely make a payment required under subsection 17(c)(i)(A) or (B), or (B) fails to pay TxDOT the full amount of the Project Loan, including all outstanding principal and interest, by the Final Maturity Date, the Authority shall have ninety (90) days after written notice by TxDOT to make the applicable Payment. Notwithstanding anything to the contrary in this Agreement, if the Authority does not pay TxDOT in full the amount of the applicable payment within the 90-day cure period, this Agreement and all of the Authority's rights under this Agreement shall terminate automatically and without any further notice, documentation or action of any kind or by any party, and title to the Project, including all improvements, systems and Project Revenues shall be deemed to have reverted and been transferred to TxDOT, at no charge to TxDOT. Without limiting the foregoing, TxDOT may require the Authority to execute and deliver upon or after such termination date such forms of deed without warranty or quitclaim instruments, certificates or similar documents as TxDOT reasonably desires, including documents for transferring all rights to Project Revenues to TxDOT. The rights and obligations of the Parties set forth in the previous sentence shall survive termination of this Agreement.

18. Revenues.

(a) Not later than sixty (60) days prior to the Substantial Completion Date, TxDOT, the Authority and Wells Fargo Bank, N.A., as custodian, will enter into a Joinder Agreement under the certain Master Custodial Account Agreement (the "NTTA Master Custody Agreement") dated as of April 1, 2011 between the Authority and Wells Fargo Bank, N.A. (the "NTTA Custodian"), which Joinder Agreement shall be in a form agreed by the Parties and shall include TxDOT's right to direct the Custodian's payments and transfers in accordance with this subsection 18(a). TxDOT shall have the sole right to direct the Custodian's payments and transfers of Project Revenues under the NTTA Master Custody Agreement (i) upon a third party arbiter's determination in non-binding arbitration conducted pursuant to the dispute resolution procedures set forth in subsection 24(g) that an Authority Default under subsection 24(a)(i) has occurred and was not cured within the applicable cure period or (ii) during any period in which TxDOT exercises step-in rights in accordance with Section 24. The Authority will exercise all reasonable efforts to cause Wells Fargo Bank, N.A. to enter into the Joinder Agreement. Pursuant to the terms of the Master Custodial Account Agreement, the Project Revenues will be deposited and held, free and clear of any claim, lien, charge, security interest or encumbrance in favor of any creditor of the Authority, pending distribution thereof to the Authority, the RTC and TxDOT in accordance with this Agreement. The Authority will at all times abide by the terms and provisions of such Master Custodial Account Agreement and Joinder Agreement (as the same relate to or affect the Project), to assure the protection and proper disposition of all Project Revenues from the Project. Among other things, the Authority shall, pursuant to Section 2.06 of the NTTA Master Custody Agreement, direct and cause the NTTA Custodian to establish and maintain a separate custodial account (the "SH 360 Custodial Account") to receive daily deposits from the Revenue Consolidation Account under the NTTA Master Custody Agreement of all Project Revenues. Pursuant to the NTTA Master Custody Agreement and Joinder Agreement, all Project Revenues collected by the Authority will be transferred on a daily basis from the

Revenue Consolidation Account under the NTTA Master Custody Agreement into the SH 360 Custodial Account. The Authority shall deposit or cause to be deposited all Project Revenues into the SH 360 Custodial Account. The Authority shall take whatever actions are necessary to ensure the Project Revenues will be free and clear of any pledge, lien, charge or encumbrance thereon, pending distribution as provided herein.

(b) Transfers from SH 360 Custodial Account. The Authority shall provide instructions to the NTTA Custodian of amounts that are to be disbursed and the date such amounts are to be disbursed from the SH 360 Custodial Account which shall be in accordance with the dates and terms set forth in this Agreement. Transfers from the SH 360 Custodial Account shall be made in the following order of priority:

(i) To the Authority, for payment of the Tolling Services Payment; to the Party responsible for O&M Services, for the portion of the O&M Payment allocable to Routine Maintenance Costs; and to the applicable Party, for the reimbursement of expenses on parity with Routine Maintenance Costs, all in accordance with this Agreement, and if amounts on deposit in the SH 360 Custodial Account are insufficient to make all such payments in full, such payments shall be made on a pro rata basis to the extent of such amounts on deposit;

(ii) To the Party responsible for O&M Services, for payment of the O&M Payment allocable to Capital Maintenance Costs in accordance with this Agreement;

(iii) To TxDOT, for payment of Scheduled Loan Payments in accordance with the Project Loan Payment Schedule;

(iv) To the RTC, for repayment of any funds disbursed pursuant to the Financial Backstop Agreement, including any interest thereon;

(v) To the lender or bond trustee, for payment of scheduled debt service on any Additional Project Debt;

(vi) To the Authority, for payment of costs of the Capacity Improvements or additional landscaping, if any, approved in advance by the Leadership Team;

(vii) To TxDOT, for prepayments on the Project Loan to the extent determined by the Leadership Team;

(viii) To the Authority, for amounts paid to TxDOT by the Authority (from sources other than Project Revenues) in accordance with subsections 17(c)(i)(A) and (B), provided that no such transfers shall be made to the Authority until the Project Loan, including all outstanding principal and interest, is paid in full;

(ix) To the lender or bond trustee, for prepayment of debt service on any Additional Project Debt to the extent determined by the Leadership Team, provided

that no such prepayments on any Additional Project Debt shall be made until the Project Loan, including all outstanding principal and interest is paid in full; and

(x) To the Authority and TxDOT or as otherwise agreed in accordance with subsection 18(c).

If there is insufficient money in the SH 360 Custodial Account to pay Operating Expenses, Capital Improvements Costs or a Scheduled Loan Payment in accordance with the Project Loan Payment Schedule, then the Authority shall submit an expense advance request or loan payment advance in accordance with the Financial Backstop Agreement in the amount necessary to make such payment.

(c) Available Remaining Revenue Sharing. After (i) the completion of any Capacity Improvements authorized by the Leadership Team, (ii) payment in full of the outstanding balance of the Project Loan, (iii) payment in full of the outstanding balance of any Additional Project Debt, (iv) payment in full of any amounts owed to RTC under the Financial Backstop Agreement, and (v) payment in full of any amounts owed to the Authority described in subsections 18(b)(vi) and (viii), the Authority and TxDOT will equally share (50%/50%) all Available Remaining Revenue. Within ninety (90) days after the end of each year, commencing at the end of the first year immediately following the date on which the latest of (i)-(v) has been achieved, the Authority shall determine the Available Remaining Revenue, and shall deliver or cause to be delivered to each of the Authority and TxDOT its 50% share of the Available Remaining Revenue. Notwithstanding the foregoing, the Authority and TxDOT may agree to leave all or a portion of the Available Remaining Revenue in the SH 360 Custodial Account as a reserve for additional improvements to the Project according to a schedule agreed to by the Parties. The Authority may use its share of Available Remaining Revenue as directed by the Board. TxDOT will use its share of Available Remaining Revenue on projects in the region as agreed by RTC and TxDOT.

19. Tolls.

(a) As provided in the Regional Tollway Authority Act, and subject to subsection 17(c), the Authority shall have the exclusive right to (i) impose tolls upon the users of the main lanes of the Project, (ii) establish, modify and adjust the rate of such tolls, and (iii) enforce and collect tolls from the users of the main lanes of the Project. The foregoing authorization includes the right to fix, charge and enforce and collect incidental charges and video transaction toll premiums in accordance with the Authority's system-wide policy for such items. 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 and the Financial Backstop Agreement.

(b) Toll Rate Covenant. The Authority covenants to keep in effect a schedule of tolls, fees or charges to be collected for the use of the main lanes of Project, including any scheduled future increases or decreases (the "Toll Rate Schedule"), that will produce Project Revenues such that the SH 360 Custodial Account will have sufficient funds to pay Scheduled Loan Payments after the payment of any costs and expenses that have priority in accordance with Section 18 during each Year. The Authority and TxDOT acknowledge and agree that the Toll

Rate Schedule may be higher than the regional toll policy or the Authority's toll policy. If (i) the current operating budget for any year indicates that there will not be sufficient funds to pay Scheduled Loan Payments during such period, or (ii) if the SH 360 Custodial Account does not have sufficient funds to pay in full a Scheduled Loan Payment on the Payment Date, the Authority shall: (A) promptly engage a traffic engineer, reasonably acceptable to TxDOT, to within ninety (90) days after such event review and analyze the Toll Rate Schedule then in effect and recommend revisions to the Toll Rate Schedule to increase the Project Revenues in a manner that will enable the SH 360 Custodial Account to have sufficient funds to pay Scheduled Loan Payments at the earliest feasible time, but in no event later than the end of the Year following the year in which the traffic engineer was engaged or, if Project Revenues under any Toll Rate Schedule will not be sufficient to enable the SH 360 Custodial Account to have sufficient funds to pay Scheduled Loan Payments, to maximize Project Revenues, and (B) within sixty (60) days of receipt of the traffic engineer's written recommendations, either implement the traffic engineer's recommendations or undertake an alternative plan which in the reasonable opinion of the Authority is likely to generate equivalent or greater Project Revenues than the traffic engineer's recommended actions; provided that if the Authority undertakes such an alternative plan and there is not sufficient funds to pay Scheduled Loan Payments in accordance with this Agreement by the end of the next Year, TxDOT may institute and prosecute in a court of competent jurisdiction an appropriate action to compel the Authority to comply with its covenants in this subsection 19(b).

(c) Traffic Engineer Safe Harbor. Notwithstanding anything in this Agreement to the contrary, if the Authority implements the traffic engineer's recommended revisions to the Toll Rate Schedule, it shall not constitute a breach of subsection 19(b) if Project Revenues are insufficient to pay any Scheduled Loan Payments unless such failure results from an event or condition constituting an Authority Default under subsection 24(a). If, two (2) years after the implementation of the traffic engineer's recommended revisions to the Toll Rate Schedule, Project Revenues remain insufficient to pay all Scheduled Loan Payments, then, at TxDOT's request, the Authority shall re-engage a traffic engineer, reasonably acceptable to TxDOT, to perform the services requested of the traffic engineer in subsection 19(b)

20. **Additional SH 360 Project Debt for Future Capital Improvements.** The Authority may pledge as security for any Additional Project Debt authorized by the Leadership Team for Capacity Improvements in accordance with subsection 8(h), rights to transfers and distributions of Project Revenues from the SH 360 Custodial Account at the priorities set forth in subsections 18(b)(v) and (viii), behind transfers and distributions required for Tolling Services Costs, O&M Costs, Scheduled Loan Payments, and amounts owed to the RTC under the Financial Backstop Agreement ("Project Net Revenues"). For clarity, the Project Loan shall be senior to and payments thereto of Project Revenues shall take priority over any Additional Project Debt. The lenders shall be required to enter into a subordination and inter creditor agreement acceptable to TxDOT as a condition to issuing the Additional Project Debt.

21. **Reliance.**

(a) The Authority acknowledges and agrees that in connection with the Project Loan and its agreements and undertakings under this Agreement, TxDOT will rely on (i) the Authority's waiver of the Option and acceptance of the Option by TxDOT for the purposes of

funding, designing and constructing the Initial Project, (ii) the Authority's exercise of the Option for the purpose of operating and maintaining the Project from and after the Substantial Completion Date, and (iii) the rights and obligations of the Parties under this Agreement. Accordingly, the Authority hereby covenants and agrees that the Authority shall not seek to (A) terminate this Agreement except in accordance with Section 23, (B) revoke the Authority's waiver of the Option for the purposes of funding, designing and constructing the Initial Project, or (C) seek or support legislation that would adversely affect the Project Loan repayment or terms, expedite the transfer of the Property Interests in accordance with Section 3 or otherwise have an adverse impact on the intent of this Agreement. The provisions of this subsection 21(a) shall survive termination of this Agreement.

(b) TxDOT acknowledges and agrees that in connection with the Authority's waiver of the Option to develop, finance and construct the Project and its agreements and undertakings under this Agreement, the Authority will rely on (i) TxDOT's exercise of the Option for the purposes of funding, designing and constructing the Initial Project and (ii) the rights and obligations of the Parties under this Agreement. Accordingly, TxDOT hereby covenants and agrees that TxDOT shall not seek to (A) terminate this Agreement except in accordance with Section 23, (B) revoke TxDOT's exercise of the Option for the purposes of funding, designing and constructing the Initial Project, or (C) seek or support legislation that would have an adverse impact on the intent of this Agreement. The provisions of this subsection 21(b) shall survive termination of this Agreement.

22. **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. The Authority and TxDOT acknowledge and agree that references to Chapters 228, 366 and 373 are to Chapters 228, 366 and 373 as they were in effect on December 31, 2013. If amendments to Chapters 228, 366 or 373 become effective at any time after the Effective Date, that affect a Party's rights and obligations hereunder, the Authority and TxDOT agree to promptly make such amendments to this Agreement as are required to preserve, to the greatest extent possible and legally permissible, the intent of this Agreement, as well as the interests of each Party in this Agreement, as such intent and interests existed without such amendments.

23. **Termination of this Agreement.**

(a) Mutual Termination. Except as provided in subsection 23(b), this Agreement may be terminated only by written mutual agreement and consent of the Parties hereto. The provisions of this Agreement relating to the use of Project Revenues shall survive the termination of this Agreement in accordance with this subsection 23(a).

(b) Automatic Termination. This Agreement shall be automatically terminated under the circumstances provided in subsection 17(c)(ii).

(c) Provisions Terminating upon Payment of Project Loan. Upon the payment in full of the Project Loan, (i) subsection 3(c), Sections 12, 17, and Exhibit G shall automatically terminate and be of no further force or effect.

24. 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 required transfer of funds (other than transfers required to be made to the Authority) in accordance with subsection 18(b) or make any other payment due TxDOT (other than a Scheduled Loan Payment) under this Agreement when due; 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 (other than a Scheduled Loan Payment).

(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 24(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 24(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 unless this Agreement expressly provides for a different rate of interest for such Authority Default. 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.

(iii) If the Authority fails to perform or fails to meet the standards required hereunder for any of the Tolling Services it is required to perform under subsection 13(d) for a period of ten (10) days after written notice from TxDOT, upon notice to the Authority but without waiving or releasing the Authority from its obligation to perform the Tolling Services, TxDOT shall have the right but not the obligation to step-in and undertake the Tolling Services in accordance with the performance standards of this Agreement using any and all reasonable means necessary to perform such Tolling Services, to establish a custodial arrangement under the Master Lockbox and Custodial Account Agreement between TxDOT and The Bank of New York Mellon Trust Company, N.A., successor to The Bank of New York Trust Company, N.A., dated as of November 9, 2007 for the deposit of Project Revenues, and to direct the custodian under such Master Custodial Agreement to pay or reimburse TxDOT for the costs thereof out of Project Revenues and application thereof in accordance with subsection 18(b) (except that amounts payable to the Authority for Tolling Services in accordance with subsection 18(b) shall instead be payable to TxDOT); provided that, if TxDOT exercises its right to step-in and undertakes the performance of any such Tolling Services, the Authority shall have the right to resume performing such Tolling Services in compliance with the requirements of this Agreement and TxDOT shall cease performing such Tolling Services not earlier than two (2) years after the date TxDOT exercises its right to step-in and undertakes the Tolling Services and only following the submittal to TxDOT in writing of a remedial plan that (A) demonstrates to TxDOT's reasonable satisfaction that the Authority is ready, willing and able to perform such Tolling Services, and (B) sets forth the specific steps the Authority intends to take as well as the schedule to resume performing such Tolling Services in compliance with the requirements of this Agreement. Costs incurred by TxDOT in connection with the exercise of TxDOT's step-in rights shall be reimbursed by the Authority as a Tolling Services Expense within thirty (30) days after written demand therefor by TxDOT. The Authority agrees to enter into any agreements necessary to implement this subsection 24(c)(iii).

(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 24(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 24(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.

(iii) If TxDOT fails to perform or fails to meet the standards required hereunder for any of the O&M Services it is required to perform under Section 13 for a period of ten (10) days after written notice from the Authority, upon notice to TxDOT but without waiving or releasing TxDOT from its obligation to perform the O&M Services, the Authority shall have the right but not the obligation to step-in and undertake the O&M Services using any and all reasonable means necessary to perform such O&M Services in accordance with the requirements of this Agreement and to pay or reimburse the Authority for the costs thereof out of Project Revenues and application thereof in accordance with subsection 18(b) (except that amounts payable to TxDOT for O&M Services in accordance with subsection 18(b) shall instead be payable to the Authority). If the Authority exercises its right to step-in and undertakes the performance of any such O&M Services, TxDOT shall have the right to submit a bid in accordance with subsection 13(i) to resume performing such O&M Services in compliance with the requirements of this Agreement and the Authority shall engage TxDOT to perform the O&M Services if TxDOT's bid is less than the lowest responsible bid obtained in accordance with subsection 13(i). Notwithstanding the foregoing, TxDOT shall not have the right to submit a bid earlier than two (2) years after the date the Authority exercises its right to step-in and undertakes the O&M Services and TxDOT shall have the right to submit a bid only following the submittal to the Authority in writing of a remedial plan that (A) demonstrates to the Authority's reasonable satisfaction that TxDOT is ready, willing and able to perform such O&M Services, and (B) sets forth the specific steps TxDOT intends to take as well as the schedule to resume performing such O&M in compliance with the requirements of this Agreement. Promptly following its exercise of step-in rights, the Authority shall commence the lowest responsible bid process set forth in subsection 13(i) to determine the applicable Annual O&M Payment Amount.

(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 the operating budget, operations and maintenance requirements and payments of Available Remaining Revenue. 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 this Agreement and such work will proceed. Each Party shall bear its own costs and attorneys fees incurred in connection with dispute resolution under this Agreement and such costs shall not be payable from Project Revenues.

25. **The Authority's Consultants.** Any of the Authority's consultants who provide material services in connection with the Authority's rights and obligations set forth in Section 11, the Authority's General Engineering Consultant, Program Management Consultant and Maintenance Management Consultant, and their subconsultants, may not participate on a design-build proposer team or on a developer team for the Initial Project. Further, the Authority's financial advisors, legal counsel or other consultants shall not act as consultants to TxDOT in connection with the Initial Project without the express consent of the Authority.

26. **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. Neither Party shall enter into a concession agreement for the Project without the other Party's consent. 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.

27. **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.

28. **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.

29. **Notices.** All notices to either Party by the other required under this Agreement shall be delivered personally, sent by e-mail followed by deposit in the U.S. Mail, 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
Fort Worth District Office
2501 S W Loop 820
Fort Worth, Texas 76133
Attention: District Engineer

With a copy to:

Texas Department of Transportation
Strategic Projects Division
125 East 11th Street
Austin, TX 78701
Attention: Director

All personally delivered notices shall be deemed given on the date so delivered. Notice by e-mail shall be deemed given on the date of confirmation of receipt of the e-mail, provided such notice is also deposited in the U.S. Mail. 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.

30. **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.

31. **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.

32. **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.

33. **Authorization.** Each Party 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.

34. **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. This Agreement constitutes a "toll project agreement" entered into pursuant to Section 373.006(b) of the Code, provided that neither Party waives any of its rights under Chapter 373 of the Code except to the extent set forth herein.

35. **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.

36. **Conflicts.** If any conflict or inconsistency exists between this Agreement and the Term Sheet or the "SH 360 Regional Working Group Recommendations," this Agreement shall govern.

37. **References.** All references in this Agreement to designated "Sections," "subsections" and "Exhibits" are to the designated Sections and subsections of, and Exhibits to, this Agreement unless stated otherwise.

38. **Non-Recourse Provisions.**

(a) Subject to the Authority's compliance with subsection 18(b), the obligations of the Authority under this Agreement shall be subject to the availability of Project Revenues to perform such obligations. Subject to subsections 17(c)(ii) and 23(b) and notwithstanding any other provision to the contrary in this Agreement, the recourse of TxDOT and RTC to the Authority under or in connection with any obligations under this Agreement or the Financial Backstop Agreement shall be limited to the Project Revenues. If, after complete liquidation and distribution of the Project Revenues in accordance with this Agreement, including subsection 18(b), any obligation under this Agreement or the Financial Backstop Agreement remains outstanding by the Authority to either of TxDOT or RTC, neither of them shall sue or otherwise seek to recover that amount from the Authority or its employees, agents,

directors or officers. Notwithstanding the provisions of this subsection 38(a) to the contrary, the Authority (but not any of the Authority's employees, agents, directors or officers) shall be personally liable to the extent Project Revenues are wrongfully or improperly held or transferred by the Authority.

(b) Subject to TxDOT's compliance with its obligations to make disbursements of the Project Loan up to the maximum amount thereof in accordance with this Agreement, the obligations of TxDOT under this Agreement prior to the Substantial Completion Date shall be subject to the availability of Project Loan proceeds to perform such obligations. Except for TxDOT's obligations with respect to traffic signals, safety lighting, property access and utility placement and permitting on the frontage roads, the obligations of TxDOT under this Agreement after the Substantial Completion Date shall be subject to the availability of Project Revenues to perform such obligations. Notwithstanding any other provision to the contrary in this Agreement, the recourse of the Authority and RTC to TxDOT under or in connection with any obligations under this Agreement or the Financial Backstop Agreement after the Substantial Completion Date shall be limited to the Project Revenues. If, after complete liquidation and distribution of the Project Revenues in accordance with this Agreement, including subsection 18(b), any obligation under this Agreement or the Financial Backstop Agreement remains outstanding by TxDOT to either of the Authority or RTC, neither of them shall sue or otherwise seek to recover that amount from TxDOT or its employees, agents, directors or officers. Notwithstanding the provisions of this subsection 38(b) to the contrary, TxDOT (but not any of TxDOT's employees, agents, directors or officers) shall be personally liable to the extent Project Revenues are wrongfully or improperly held or transferred by TxDOT.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by four (4) multiple counterparts on the dates shown herein below, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY
AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Gerry Carrigan
Executive Director

By: James M Bass
James Bass
Interim Executive Director

Date: _____

Date: 2/28/14

ATTEST:

Lorelei Griffith,
Secretary

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by four (4) multiple counterparts on the dates shown herein below, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY
AUTHORITY**

By: 
Gerry Carrigan
Executive Director
Date: 2-28-14

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
James Bass
Interim Executive Director
Date: _____

ATTEST:


Baren Madison Ponds,
Asst. Secretary

Attachment 1

DEFINED TERMS

Unless otherwise specified, wherever the following abbreviations or terms are used in the Agreement, including the exhibits thereto, they shall have the meanings set forth below:

Additional Project Debt shall mean debt issued by lenders to the Authority for the purpose of the Authority's development, design and construction of the Capacity Improvements.

Agreement shall mean this Project Agreement, including all exhibits attached hereto, as such agreement or any such exhibits may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms hereof.

Annual O&M Payment Amount shall mean each annual amount set forth in Exhibit H, as it may be adjusted in accordance with subsection 13(i).

Annual Tolling Services Amount shall mean for a given Year, (i) the amount set forth in Exhibit I or (ii) the amount approved by the Leadership Team in accordance with subsection 16(c) (which was included in a Cost Model applicable for that Year developed and approved in accordance with subsection 13(j)), as applicable.

Authority shall mean the North Texas Tollway Authority.

Authority Default shall have the meaning set forth in Section 24 of the Agreement.

Authority Materials shall mean all original counterparts or, if originals are unavailable, copies of all materials prepared by or for the Authority and in the possession of the Authority (or otherwise held by the Authority) in connection with the Project, together with any and all other items or information in the possession of the Authority and useful to or necessary for TxDOT's completion of the Initial Project.

Authority Service Area shall mean the Counties of Collin, Dallas, Denton and Tarrant.

Available Remaining Revenue means, as of any determination date, all cash funds on deposit in the SH 360 Custodial Account after (i) the completion of any Capacity Improvements authorized by the Leadership Team, (ii) payment in full of the outstanding balance of the Project Loan, (iii) payment in full of the outstanding balance of any Additional Project Debt, (iv) payment in full of any amounts owed to RTC under the Financial Backstop Agreement, and (v) payment in full of any amounts owed to the Authority described in subsections 18(b)(vi) and (viii).

Board shall mean the Board of Directors of the Authority.

Business Day shall mean any day other than a Saturday, Sunday, federal holiday or State of Texas holiday.

BRINSAP shall mean the Bridge Inspection and Appraisal Program.

CAMIR shall mean Capital Asset Management and Inspection Report.

Capacity Improvements shall have the meaning set forth in Exhibit A.

Capital Asset Management and Inspection Report shall have the meaning set forth in Exhibit D.

Capital Maintenance Costs means all reasonable and documented amounts properly capitalized on the books and records of the Authority in accordance with generally accepted accounting principles for the cost of non-routine maintenance of Project improvements, including designing, rehabilitating and reconstructing improvements, and periodic roadway resurfacing and repair, but excluding Tolling Services Expenses.

Capitalized Interest Period shall mean the period commencing on the Substantial Completion Date and ending on the 5th anniversary of the Substantial Completion Date.

Code shall mean the Texas Transportation Code, as amended.

Cost Model shall have the meaning set forth in subsection 13(j)(ii).

Commission shall mean the Texas Transportation Commission.

CTP shall have the meaning set forth in the Recitals.

DNT shall have the meaning set forth in the Recitals.

Eligible Costs shall mean the following costs paid to third parties (i) permitting and environmental planning costs, (ii) acquisition of any additional Project Right-of-Way required for the Project after the Effective Date, (iii) consultant costs, including preliminary engineering, procurement, design and construction oversight, and operations and maintenance prior to Substantial Completion of the Project, (iv) payments for work product to proposers in the procurement for the design-build agreement and comprehensive maintenance agreement, and (v) required payments to the design-build contractor for the Initial Project, including without limitation due change orders.

Effective Date shall have the meaning set forth in the preamble to this Agreement.

EPIC shall mean environmental permits, issues and commitments, which 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.

ETCS shall mean the electronic toll collection system.

FHWA shall mean the Federal Highway Administration, an agency within the U.S. Department of Transportation.

Financial Backstop Agreement shall have the meaning set forth in Section 17.

Final Maturity Date shall mean the date that is thirty-five (35) years after the Substantial Completion Date.

Hazardous Materials shall have the meaning set forth in subsection 8(j).

High Mast Illumination Pole Inspection and Treatment Report shall have the meaning set forth in Exhibit D.

Initial Project shall have the meaning set forth in Section 2.

Leadership Team shall have the meaning set forth in Section 5.

LLTB shall have the meaning set forth in the Recitals.

Maintenance Rating Program shall have the meaning set forth in Exhibit D.

MCLB shall have the meaning set forth in the Recitals.

Mobility 2035 Plan shall mean the RTC's "Mobility 2035: The Metropolitan Transportation Plan."

MRP shall mean Maintenance Rating Program.

NEPA Approval shall mean the decision document issued by the FHWA, TxDOT, the Authority, or other authorized party for the Project under the National Environmental Policy Act, and all approved supplements and reevaluations pertaining to the Project as of the Substantial Completion Date.

NTTA System shall have the meaning set forth in the Recitals.

NCTCOG shall mean the North Central Texas Council of Governments.

O&M Costs shall mean Routine Maintenance Costs and Capital Maintenance Costs.

O&M Payments shall have the meaning set forth in subsection 13(i) of the Agreement.

O&M Services shall mean all routine (including mowing, litter pickup, trimming, etc.) and capital maintenance required for the Project, including all required renewal work, bridge repair and rehabilitation, sound wall repair and rehabilitation, pavement repair and rehabilitation, concrete traffic barrier (CTB) repair and rehabilitation, sign/striping repair, replacement and rehabilitation, any required repairs due to damage to the Project, including damage due to inclement weather, acts of God or third parties, and any other maintenance services required by this Agreement. Specifically excluded from this definition is frontage road signal and lighting, including installation, repair, replacement and coordination with Cities.

Option shall have the meaning set forth in the Recitals.

Overhead Sign Inspection Report shall have the meaning set forth in Exhibit D.

Party shall mean Authority or TxDOT, as the context may require, and “**Parties**” shall mean Authority and TxDOT, collectively.

Pavement Management Report shall have the meaning set forth in Exhibit D.

Payment Date shall mean the date of each anniversary of the Substantial Completion Date following the Capitalized Interest Period.

PGBT shall have the meaning set forth in the Recitals.

PGBT WE shall have the meaning set forth in the Recitals.

Project shall mean Section 1 of SH 360, as more fully described in Exhibit A.

Project Cities shall mean the cities through which the Project extends.

Project Loan shall have the meaning set forth in Section 17.

Project Loan Payment Schedule shall have the meaning set forth in Exhibit G.

Project Net Revenues shall have the meaning set forth in Section 20.

Project Revenues shall mean all revenues of the Authority received or owing in connection with the Project, including without limitation (i) all revenues received from users of the Project, including without limitation, toll revenue receipts from the Authority’s tag holders, incidental charges, video transaction toll revenues, video toll premiums, penalties, fines and fees, and toll revenues received from transponder issuers other than the Authority, (ii) interest earned on accounts and other revenues received by the Authority in connection with the Project, (iii) proceeds from any business interruption insurance and any proceeds deposited in the SH 360 Custodial Account in accordance with subsection 13(h), and (iv) receipts otherwise arising or derived from or paid or payable in respect of the Project.

Property Interests shall mean 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 Project, but excluding frontage roads.

Project Right-of-Way shall mean 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 as necessary for the design and construction of the Initial Project, and specifically includes all air space, surface rights and subsurface rights within the limits of the Project Right-of-Way.

PS&E shall have the meaning set forth in Section 8.

Regional Tollway Authority Act shall mean Chapter 366 of the Code, as amended.

Retained Property shall mean (a) the frontage roads of the Project and (b) the US 287 structures and improvements and the land on which they are or will be constructed as depicted on Exhibit E, *save and except* any portion of said structures and improvements constituting the main lanes of the Project and any future direct connectors to the Project over which the Authority has jurisdiction and any land on or above which said lanes, road or connectors are or will be constructed for which the Authority does hereby receive sufficient rights to use from TxDOT pursuant to Section 3.

Right of Way Transfer Date shall mean date on which the earliest of the following events occurs: (a) the Project Loan is paid in full, (b) TxDOT has timely received all payments required in accordance with Exhibit G for ten (10) consecutive years after the date of the first scheduled payment of principal and interest without the use of any funds drawn pursuant to the Financial Backstop Agreement, (c) TxDOT, the Authority and RTC mutually agree that the Financial Backstop Agreement is no longer necessary and should be terminated, or (d) the Project becomes part of the NTTA System and NTTA System net revenues are pledged to the repayment of the Project Loan in accordance with this Agreement.

Routine Maintenance Costs means all reasonable and documented costs and expenses incurred and paid or payable by NTTA for the routine maintenance and repair of the Project, including without limitation costs for non-capital maintenance and repair, consumables, payments pursuant to the agreements for the management and maintenance of the Project, taxes, premiums payable on any insurance, payments for oversight services, all administrative, engineering costs, costs for any security, legal and accounting expenses allocable to routine maintenance and subject to subsection 24(g), amounts paid in satisfaction of legal claims (other than claims by TxDOT), and any other reasonable cost or expense paid for or in connection with the maintenance of the Project, but excluding any Capital Maintenance Costs, Tolling Services Costs, the costs of any Capacity Improvements, payments on the Project Loan or Additional Project Debt, or payments under the Financial Backstop Agreement.

RTC shall mean the Regional Transportation Council of the North Central Texas Council of Governments.

SH 360 shall mean State Highway 360.

SPS shall have the meaning set forth in the Recitals.

SRT shall have the meaning set forth in the Recitals.

Scheduled Loan Payment shall mean 100% of the amount of principal of and interest on the Project Loan due and payable as of the applicable Payment Date as set forth on the Project Loan Payment Schedule, as such Project Loan Payment Schedule may be modified from time to time in accordance with Section 5 of Exhibit G.

Substantial Completion Date shall mean the date on which substantial completion of the Initial Project occurs in accordance with the design-build agreement.

Term Sheet shall have the meaning set forth in the Recitals.

TMUTCD shall mean the Texas Manual on Uniform Traffic Control Devices, as amended or revised.

Toll Rate Schedule shall have the meaning set forth in subsection 19(b) of the Agreement.

Tolling Services shall mean all toll collection, violation processing, revenue handling and accounting, policing and customer service and support for the Project, and all ITS/traffic management and safety operations and maintenance of equipment for these operations for the Project.

Tolling Services Expenses means all reasonable and documented costs and expenses incurred and paid or payable by the Authority for the performance of the Tolling Services, including costs for operation, maintenance, repair and replacement of toll collection, vehicle identification, toll integration and video enforcement equipment, payments pursuant to agreements for toll operations for the Project, taxes, payments for oversight services, policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of any trustee, paying agent, traffic engineer, consulting engineer, or insurance consultant, legal and accounting expenses allocable to the Tolling Services and subject to subsection 24(g), amounts paid in satisfaction of legal claims (other than claims by TxDOT), overhead to the extent set forth in Exhibit I for years 1-5 and as allowed by the Leadership Team in accordance with subsection 13(j)(iii) thereafter, and any other reasonable cost or expense paid for or in connection with the Tolling Services for the Project, but excluding any Capital Maintenance Costs, Routine Maintenance costs, the costs of any Capacity Improvements, payments on the Project Loan or Additional Project Debt, or payments under the Financial Backstop Agreement.

Tolling Services Payment shall have the meaning set forth in subsection 13(j).

Tunnel shall have the meaning set forth in the Recitals.

TxDOT shall mean the Texas Department of Transportation, any assignee and any other entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under this Agreement.

TxDOT Default shall have the meaning set forth in Section 24.

TxDOT Materials shall mean all original counterparts or, if originals are unavailable, copies of all materials prepared by or for TxDOT and in the possession of 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 ownership and operation of the Project or the construction of the Capacity Improvements.

UTP shall mean the Unified Transportation Program developed by TxDOT and approved by the Commission to guide transportation project development, or any successor or replacement program however named, or such other program as may be agreed to by the Parties for the allocation of transportation funds in the Dallas-Fort Worth, Texas area.

UTP Funds shall mean funds allocated to the Dallas-Fort Worth Region in the UTP, which are anticipated to come from Western Subregion Congestion Mitigation and Air Quality (CMAQ) Program or Surface-Transportation-Metropolitan Mobility (STP-MM) funds or other available funds allocated to the Dallas-Fort Region in the UTP.

Year shall mean each year of operations of the Project, commencing on the Substantial Completion Date or applicable anniversary thereof, as applicable, and ending on the date that is one day before the following anniversary of the Substantial Completion Date.

Exhibit A

Description of the Project (Recitals)

The Project

The Project is generally described as the construction of SH 360 from generally Green Oaks Boulevard to US 287.

The Initial Project Scope

The “Initial Project” is anticipated to consist of the following:

- Construct 4 main lanes from Sublett Road/Camp Wisdom Road to Broad Street
- Construct 2 main lanes from Broad Street to US 287 (Super 2 configuration)
- Construct Northbound frontage road from Heritage Parkway to US 287 including continuous NB and SB frontage road at UPRR.
- Repair and resurface existing frontage roads.

Portions of the Initial Project scope will be included in the bid documents as options that may be exercised by TxDOT with the goal of maximizing the Initial Project scope within the budget for the design-build agreement. Any portions of the anticipated Initial Project scope that are deferred shall be included in the scope of the Capacity Improvements.

TxDOT shall be responsible for installing prior to the Substantial Completion Date the minimum landscaping that is necessary to prevent erosion in TxDOT’s good faith determination. No additional landscaping shall be required for the Initial Project.

The Capacity Improvements Scope

The “Capacity Improvements,” which will be constructed by the Authority and financed from Project Revenues when feasible, will consist of the (i) build out of any deferred portions of the anticipated Initial Project scope, and (ii) the construction of the remaining main lanes as described in the environmental approvals and the construction of the US 287 interchange, and (iii) other Project improvements agreed by the Parties.

Exhibit B

Authority Materials (Section 5)

All materials, electronic or otherwise, prepared by or for the Authority or in the Authority's possession relating to the Initial Project that constitute:

- Engineering reports/studies
- Project environmental assessment
- Project schematic
- Traffic and revenue study for the corridor.

Exhibit C

TxDOT Materials (Section 5)

All materials, electronic or otherwise, prepared by or for TxDOT or in TxDOT's possession relating to the Project that constitute:

- As-built or record drawings of all release-for-construction plans
- Geotechnical reports
- Drainage studies
- Shop drawings
- Material and manufacturer's warranties
- Applicable maintenance and operations manuals for any installed equipment
- Spare parts required to be delivered with any installed equipment
- Noncompliance reports
- Independent wall engineer final reports

Exhibit D

Operations and Maintenance Standards and Performance Requirements (Sections 8(i) 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.

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 (applicable to the extent roadway lighting is installed)

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.

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 pavements 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 (if concrete pavement is placed)

Joints in concrete paving are sealed and watertight.

Longitudinal joint separation.

Measurement:

Length unsealed joints greater than ¼” – Nil

Joint width more than 1” or faulting more than ¼” – 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

A. Authority Reporting Requirements During Performance of O&M Services

The Authority maintains the NTTA System, and during any periods in which the Authority performs O&M Services, 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 D that are not already included or are more stringent will be added to this MRP.

2. 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 D.

3. 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 D.

4. 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.

5. 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.

6. 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).

7. 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.

B. TxDOT Reporting Requirements During Performance of O&M Services

During any periods in which TxDOT performs O&M Services, TxDOT will prepare the following reports which shall be provided by TxDOT for review by the Authority either through a link to an electronic version or, if no electronic version is available, as a hard copy. In the event the Project becomes part of the NTTA System, TxDOT will provide copies of such reports if requested by the Authority.

1. (TxTAP) Reports. Signing, striping and operational (TxTAP) reports will be prepared annually by TxDOT.

2. Pavement Management Information System (PMIS). Pavement management information system (PMIS) reports will be prepared annually by TxDOT.

3. Texas Maintenance Assessment Program (TxMAP) Reports. TxMAP reports will be prepared annually by TxDOT.

4. BRINSAP Reports. The Bridge Inspection and Appraisal Program (BRINSAP) reports are prepared biannually by TxDOT for each bridge.

5. Overhead Sign and Lighting Reports. If and to the extent overheads signs, continuous lighting or high mast lighting are installed on the Project, inspection reports will be prepared annually by TxDOT for such features.

Exhibit E

Authority/TxDOT Maintenance Limits (Sections 3 and 14)

Except as otherwise noted in this Agreement or the attached maintenance limit drawings, the Authority maintenance limits are generally along SH 360 from outside right-of-way to outside right-of-way.

[See Attached Drawings]

Exhibit F

Authority Standards and Equipment Specifications (Section 8(a))

NTTA standards to be used

Striping

- NTTA striping standard (MRK-001-2004, MRK-002-2004, MRK-003-2004, MRK-004-2004)

Rail

- Single Slope Concrete Barrier (SSCB(2)-10 (Mod)

Signage

- Bridge Mounted Clearance Sign Assembly (BCS-001-2007)
- Sign Details (SGN-005-2009, SGN-004-2008, SGN-004(2)-2011)
- Station Marker Details (SGN-003-2004)
- Typical Sign Requirements (TSR-08 MOD)

Bridges

- Bridge Approach Slab Supplement (BAS-201-2010)

Columns

- Aesthetic Bent Guidelines Multi-Column Bent (ABG-201-2009)

Walls

- Texture – Grande Flagstone
- MSE Wall Underdrains (MSE-202-2009)
- Retaining Wall Details (RWD-201-2010, RWD-202-2009, RWD-203-2009, RWD-204-2009, RWD-205-2009, RWD-207-2011)
- Retaining Wall Guidelines (RWG-201-2010)

Lighting

- Roadway Illumination Detail Steel Poles (RID-203-2011)
- Roadway Illumination Details- Underpass mounting (RID-204-2011)
- Bridge Lighting Details (BLD-201-2011)

Overhead Signs –

- Cantilever Overhead Sign Support (COS-001-2009, COS-002-2009, COS-003-2009)
- Overhead Sign Bridge (OSB-001-2009, OSB-002-2007, OSB-003-2007)

Drainage

- Miscellaneous Drainage Details (DRA-005-2007)

Riprap/Mowstrips –

- Concrete Riprap with Retaining Wall at Overpass Bridges (STR-001-2007)
- Underbridge Riprap Detail (URD-201-2009)
- Mowstrip (MSD-001-2007)

Gantries

- Mainlane Gantry (MLG-001-2009, MLG-002-2008, MLG-003-2009, MLG-004-2009)
- Ramp Gantry (RB-001-2009, RG-002-2008, RG-003-2009, RG-004-2009)
- Consider:
 - Mainlane Gantry Precast (MLG-002-2009)
 - Ramp Gantry Precast (RGP-002-2009)

Communication Infrastructure

- Electrical Service Center (ESC-001-2009, ESC-002-2009, ESC-003-2009, ESC-004-2009, ESC-005-2009, ESC-006-2009)
- Fiber Optic Cable (ITS-001-2009 and ITS-002-2009)
- Communication Hut (ITS-003-2009)
- CCTV Camera Pole Details (ITS-006-2009) or (ITS-008-2009)

Aesthetics

- Rail-Mounted Fence (RMF-201-2010)
- Recessed Logo Detail Retaining Wall Logo (LGO-201-2009)
- Recessed Logo Detail Column Logo (LGO-202-2009)
- Cross Street Identification Details (CSI-201-2009)

Rail

- Single Slope Transition SSB to SSTR (SST-210-2010)
- NTTA Standard for Delineation (LDS-201-2009)

Signage

- Sign Mounting Detail (SMD-001-2010)

Walls

- MSE Wall Design Requirements (MSE-201-2009)
- Retaining Wall Details (RWD-207-2011)
- Retaining Wall Rail (RWR-201-2009)

Drainage

- MSE Wall Inlet (DRA-004-2007)
- Drop Inlet Type C (DRA-003-2007)
- Drop Inlet Type D (DRA-008-2007)

Communication Infrastructure

New fiber to be installed and fiber specifications to be used only if dark fiber not available and no other existing fiber in the vicinity is available

- Electrical Service Center (ESC-001-2009, ESC-002-2009, ESC-003-2009, ESC-004-2009, ESC-005-2009, ESC-006-2009)

- Fiber Optic Cable (ITS-001-2009 and ITS-002-2009) (applicable only to the extent dark fiber not available and no other existing fiber in vicinity is available)
- Communication Hut (ITS-003-2009)
- CCTV Camera Pole Details (ITS-006-2009) or (ITS-008-2009)

Bid Option Items:

The following standards will be included in the RFP as an option item to be priced:

- Columns (ABG-202-2009)
- Communication Infrastructure Dynamic Message Sign (ITS-007-2008)
- Fence (RFD-002-2007 and RFD-003-2005)
- Aesthetics Uncoated Finish (SS 850)
- Pavement Concrete Pavement Juncures (CPJ-201-2012) (If applicable)
- Drainage Pavement Underdrain details (DRA-007-2007)
- Sand stockpile precast sand stockpile (SSP-001-2011)

NTTA Design Criteria to be Used

- As agreed by the Parties

NTTA Requested Toll and ITS Specifications

The Parties will cooperate to seek FHWA approval to include the following equipment specifications and will require "like or equal" specifications to the extent approval is not obtained.

System Type	Vendor	Equipment	Part #
Cameras	<i>JAI Inc. Traffic Solutions</i>	Color Camera IR Camera	VIS-CAM-500 AIO Color VIS-CAM-500 AIO NIR
External Lights	<i>JAI Inc. Traffic Solutions</i>	Lights	TNL-50
Lane Controllers	<i>American Portwell Technology</i>	Lane Controller Image Controller	21-NO1100-000 (2U SBC System) 21-NO1101-0002 (2U Dual System)
AVI	<i>TransCore</i>	E6 Reader	10-6001-005
AVI	<i>TransCore</i>	Universal Toll Antenna	12-3152-0004
Metal Work	<i>Hydro Fabrication, Inc.</i>	Clamps, Camera Poles and Antenna Poles	

Loop Detection System	<i>Northstar Controls</i>	6 position rack, 19 inch rack, Quad Channel Loop Detector w/ remote tuning, 40w power supply	NRI6, NRI19, N 224IS, NPS4S
UPS	<i>Falcon Electric, Inc.</i>	UPS	SSG3KRM-1
Cabinets	<i>Graybar</i>	Hoffman Enclosures w/ HVAC cutouts	A72RA19TH
HVAC	<i>Graybar</i>	Power Connection	G280416G160
LIM	<i>ETCC</i>	Lane Interface Module	7900-0079
Failover	<i>ETCC</i>	Failover Module	7900-0085
LIM to Power Cable	<i>ETCC</i>	Cable	3010-1004
LIM to Loop Rack Cable	<i>ETCC</i>	Cable	3010-1005
System Type	Vendor	Equipment	Part #
DMS	<i>Skyline</i>	Walk in Dynamic Message Sign	VMSLED-W-3-18F-27X125-IRX
CCTV	<i>Axis</i>	ITS Camera	Q1602
CCTV	<i>Axis</i>	ITS Camera	Q6032-E

Note: DMS will be bid option item.

Exhibit G

Project Loan Terms (Section 17)

1. Principal Amount. The principal amount of the Project Loan shall not exceed \$294 million excluding any interest that is capitalized in accordance with the terms hereof.
2. Term. The term of the Project Loan shall commence on the Substantial Completion Date and end on the date that is thirty-five (35) years after the Substantial Completion Date (the "Final Maturity Date") or on such earlier or later date as all amounts due or to become due to TxDOT hereunder have been paid.
3. Eligible Costs. Subject to Section 1 of the this Exhibit G, the original Project Loan principle balance shall be in the amount of Eligible Costs paid by TxDOT after the Effective Date in connection with the Initial Project.
4. Interest. The unpaid principal amount of the Project Loan shall bear interest from the Substantial Completion Date until the principal and the interest thereon are paid in full at a rate of 4.25 % per annum, compounded annually. Interest will be computed on the outstanding Project Loan balance (as well as on any past due and capitalized interest) from time to time on the basis of a 360-day year comprised of twelve 30-day months, for the actual number of days elapsed.
5. Initial Loan Payment Schedule.
 - a. The outstanding Project Loan principal balance will be (i) increased on each occasion on which TxDOT shall pay Eligible Costs hereunder after the Substantial Completion Date, by the amount of such Eligible Costs up to a maximum of \$294 million, (ii) increased on each occasion on which interest on the Project Loan is capitalized pursuant to the provisions of Section 7 hereof, by the amount of interest so capitalized and (iii) decreased upon each payment or prepayment of the principal amount of the Project Loan, by the amount of principal so paid or prepaid.
 - b. Within ninety (90) days after the Substantial Completion Date, TxDOT shall prepare a Project Loan Payment Schedule in accordance with subsection 17(a) of the Agreement. TxDOT may in its discretion at any time and from time-to-time, or when so requested by the Authority, advise the Authority by written notice of the amount of the outstanding Project Loan balance, including principal and interest, as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error. TxDOT may, from time to time, make applicable revisions to the Project Loan balance and in such event shall provide the Authority with a copy of the Project Loan Payment Schedule as revised, but no failure to provide or delay in providing the Authority

with such copy shall affect any of the obligations of the Authority under this Agreement.

6. Payment of Principal and Interest.

- a. Payments. The Authority agrees to pay the principal of and interest on the Project Loan by making payments in accordance with the provisions of this Agreement.
- b. Capitalized Interest Period. No payment of the principal of or interest on the Project Loan is required to be made during the Capitalized Interest Period. On each anniversary of the Substantial Completion Date occurring during the Capitalized Interest Period, interest accrued in the 12-month period ending immediately prior to such date on the Project Loan shall be capitalized and added to the outstanding Project Loan balance.
- c. Interest Only Period. No payment of the principal of the Project Loan is required to be made during the period commencing on the 5th anniversary of the Substantial Completion Date and ending on the date that is one day before the 10th anniversary of the Substantial Completion Date.
- d. Payment of Project Loan Debt Service.
 - i. On each Payment Date, the Authority shall pay TxDOT the Scheduled Loan Payment, which payment shall be made by wire transfer in immediately available funds in accordance with written instructions by TxDOT, as modified in writing from time-to-time by TxDOT.
 - ii. The amount of the Scheduled Loan Payments shall be initially calculated as of the Substantial Completion Date in such manner that the outstanding Project Loan balance as of such date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the principal balance of such Project Loan at the rate per annum set forth herein this Agreement, that interest is capitalized during the Capitalized Interest Period in accordance with this Agreement, that interest accrues at the rate set forth in Section 4 of this Exhibit G, that all Scheduled Loan Payments are made in a timely manner during the period commencing on the Substantial Completion Date and ending on the Final Maturity Date, and that no additional payments of principal of or interest on the Project Loan are made during such period). The Project Loan Payment Schedule may be revised by TxDOT from time to time in accordance with subsection 5(b) of this Exhibit G, including without limitation to reflect additional payments of Eligible Costs by TxDOT Project Loan made after the Substantial Completion Date, prepayments on the Project Loan, and late payments. In such event, the final Scheduled Loan Payment(s) will be revised to reflect such adjustments.

- iii. The Authority may prepay the amounts due hereunder in whole or in part, at any time or from time-to-time, without penalty or premium, by (A) providing TxDOT with thirty (30) days written notice, and (B) paying to TxDOT such principal amount of the Project Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Prepayments shall be made in principal denominations of \$100,000 or an integral multiple thereof. To the extent that any prepayments of the Project Loan shall be made in addition to the Scheduled Loan Payments, TxDOT shall apply such prepayments to the remaining outstanding Project Loan balance and shall recalculate the resulting Scheduled Loan Payments and reflect such prepayments and recalculations in a revised Project Loan Payment Schedule in accordance with Section 5 of this Exhibit G.

7. Reporting and Cooperation.

a. Accounts and Reporting.

- i. The Authority shall keep proper books of records and accounts in which complete and correct entries shall be made of transactions relating to the Project and the Authority's performance or observance of its obligations under this Agreement in accordance with GAAP or pursuant to applicable federal or state laws or regulations, and with all other applicable federal and state requirements then in effect for entities similar to the Authority and enterprises similar to the Project.
- ii. TxDOT shall receive copies of any periodic statements regarding SH 360 Custodial Fund balances and transfers, as well as the investment of any amounts deposited in the SH 360 Custodial Fund, from the Custodian.
- iii. The Authority shall employ the Authority's Accountant to audit its annual financial statements relating to the Project. In the event that the Authority's Accountant should at any time cease to be its independent public accountant for any reason, the Authority shall as soon as practicable appoint, and thereafter maintain, as its accountants, a nationally recognized firm reasonably acceptable to TxDOT. Concurrent with such appointment, the Authority shall authorize such accountants to communicate directly with TxDOT and to respond within a reasonable period of time to queries of TxDOT regarding the Authority's accounts and operations in connection with the exercise by TxDOT of its rights to review the books, records and papers of the Authority as set forth in Section 15 of the Agreement and to receive and review the audited financial statements of the Project as set forth in subsection 7(a)(v) below. The Authority shall be given notice by TxDOT of any such meetings or telephone communications with such accountants at least five (5) Business Days' prior to the date scheduled for such meetings or telephone communications, and Authority shall have a reasonable opportunity to

participate in such meetings or telephone communications and shall be copied on such communications by email when they are in writing.

- iv. The Authority shall deliver to TxDOT within one hundred twenty (120) days after the Substantial Completion Date and no later than sixty (60) days after the end of each fiscal year thereafter an annual report ("Loan Annual Report") that includes the following information:
- 1) a toll rate and fee schedule setting forth the actual toll rates, and rates for video toll premiums, HOV discounts, incidental charges, penalties and fees for the previous Year and any projected or anticipated changes in such rates in the next two Years, and a certificate in a form acceptable to TxDOT certifying compliance with the toll rate covenant set forth in subsection 19(b) of the Agreement;
 - 2) a coverage table showing projected annual revenues prospectively for two years, O&M Payments, Tolling Services Expenses and coverage percentage expected of the Scheduled Loan Payments in each year in the form attached as Attachment 1 to this Exhibit G;
 - 3) a spreadsheet listing any and all draw requests under the Financial Backstop Agreement (including date and amount of each draw request), corresponding reductions in allocations of UTP Funds in accordance with the Financial Backstop Agreement (including date and amount of such reductions in UTP Funds allocations), repayments of draws made under the Financial Backstop Agreement (including date and amount any repayments) and the current balance owed RTC under the Financial Backstop Agreement for draws made plus interest as confirmed by the RTC in the form attached as Attachment 2 to this Exhibit G;
 - 4) a listing of any Additional Project Debt outstanding, current rating, and the amortization schedule of said Additional Project Debt; provided however, if no rating exists, then a statement of payment status (whether in default);
 - 5) a spreadsheet in the form attached as Attachment 3 to this Exhibit G showing five (5) years of historical gross annual Project Revenues, O&M Payments, Tolling Services Expenses, Project Loan payments, any draws on the Financial Backstop Agreement, residual revenue after the foregoing payments, and the disposition of such residual revenue (including amounts applied toward payments for landscaping and Capacity Improvements, revenue sharing, repayment of Additional Debt, and repayments under the Financial Backstop Agreement);

- 6) annual toll system audit report; and
 - 7) a Tolling Services Expenses details report that provides a detailed breakdown of actual Tolling Services Expenses for the previous years and a detailed breakdown of estimated Tolling Services Expenses for the following two fiscal years.
- v. The Authority shall deliver the following financial information to TxDOT:
- 1) as soon as available and, in any event, within forty-five (45) days after the end of each fiscal quarter of the Authority, unaudited consolidated financial statements relating to the Project, including an unaudited balance sheet and an unaudited statement of income, all prepared in accordance with GAAP;
 - 2) as soon as available, and in any event no more than one hundred forty (140) days after the close of each fiscal year of the Authority (1) the audited annual financial statement of the Project prepared in accordance with GAAP and with all other applicable federal and state requirements, and (2) a certificate of the auditors setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary and confirming that in their opinion such statements present fairly the financial position of the Project and the results of the operations of the Project for the fiscal year reported on and have been prepared in accordance with GAAP;
 - 3) the audited financial statements of the Authority prepared in accordance with GAAP as soon as available after the end of each fiscal year of the Authority; and
 - 4) simultaneously with the delivery of each set of financial statements referred to in sub-clause (2) above, a certificate of an officer of the Authority confirming that such financial statements fairly present the financial condition of the Project and the results of the operations for the periods covered.
- vi. The Authority shall deliver to TxDOT within sixty (60) days prior to the Substantial Completion Date, an insurance report from the Authority's insurance consultant confirming that the insurance to be maintained after the Substantial Completion Date complies with the requirements of subsection 13(h) of the Agreement.
- b. Cooperation with Consultants. NTTA shall (i) cooperate in all reasonable respects with all consultants retained by TxDOT in connection with the Project Loan and transactions contemplated by the Agreement, and (ii) provide each

consultant with all information reasonably requested and reasonably required by such consultant in connection with the performance of its obligations in respect of the Agreement.

- c. Continuing Disclosure Reports and Notices. The Authority shall provide TxDOT with copies of all annual financial reports and material events notices submitted by Authority in connection with its compliance with any continuing disclosure undertaking entered into with respect to Additional Project Debt as required under Rule 15c2-12 adopted by the Securities and Exchange Commission.
- d. All reports and notices required to be provided to TxDOT under this Section 7 of Exhibit G shall be delivered personally, sent by e-mail followed by deposit in the U.S. Mail, or sent by Certified or Registered U.S. Mail, postage prepaid, addressed to TxDOT's Chief Financial Officer at the following respective address, as such address may be updated from time to time in writing by TxDOT:

Texas Department of Transportation
125 East 11th Street
Austin, TX 78701
Attention: Chief Financial Officer

All personally delivered notices shall be deemed given on the date so delivered. Notice by e-mail shall be deemed given on the date of confirmation of receipt of the e-mail, provided such notice is also deposited in the U.S. Mail. All mailed notices shall be deemed given three (3) days after being deposited in the mail. TxDOT may change the above address by sending written notice of such change to the other in the manner provided for in the Agreement.

8. Conditions Precedent.

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective and TxDOT shall have no obligation to pay any Eligible Costs until the Authority, the RTC and TxDOT have entered into the Financial Backstop Agreement, in a form acceptable to the Parties.

Exhibit G

Attachment 1

Fiscal Year	Projected Gross Revenue	O&M Allowable Costs	Tolling Service Allowable Costs	Projected Net Revenue	Scheduled Loan Payment	Expected Coverage
FY 1				-		
FY 2				-		

*Amounts based on FY Jan. 1 to Dec. 31.

Exhibit G

Loan Annual Report

Attachment 2: SH 360 Financial Backstop Draws and Repayment Schedule*

Draw Requested	Draw Date	Backstop Applied	Comments
\$		\$	
0		0	
Total			

Fiscal Year	Beginning Balance	Interest Rate	Interest Accrued	Date of Repayment	Repayment to RTC	Ending Balance
FY 1						-
FY 2						-
FY 3						-
...						-
						-
						-
Total			-		-	

Exhibit G
Loan Annual Report
Attachment 3: SH 360 Project Historical Flow of Funds*

Fiscal Year	Gross Revenue	O&M Allowable Costs	Tolling Services Allowable Costs	Net Revenue	Scheduled Loan Payment	Actual Loan Payment	Loan Coverage	Residual Revenue	Backstop Repayment	Additional Debt Repayment	Capacity Improvement Costs	Other Payments	Available Remaining Revenue	Revenue Share to TxDOT	Revenue Share to NTIA
FY 1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* Amounts based on FY Jan 1 to Dec 31

Exhibit H

Annual O&M Payment Amounts (Section 13)

Commencing on the Substantial Completion Date, the Annual O&M Payment Amount payable to the Party responsible for the performance of O&M Services for each Year shall be the amount of \$30,000 per lane mile per Year as of the Substantial Completion Date for the total lane miles of the Project, including main lanes and frontage roads, as escalated in accordance with this Exhibit H.

Commencing on the Substantial Completion Date, the amount of \$30,000 per lane mile per Year shall increase on the anniversary of the Substantial Completion Date every Year thereafter, compounded annually, based on any increases in the Highway Cost Index for such Year.

It is currently estimated that the Initial Project will include sixty-eight (68) lane miles, however the Parties shall measure the Project and determine the actual lane miles of the Project on or around the Substantial Completion Date and any time Capacity Improvements or other improvements to the Project are completed. The Project's actual lane miles shall include measurements from Project limit to Project limit of all main lanes, frontage roads, turn lanes, acceleration and deceleration lanes, turn bays, and other lanes of any kind. The Parties anticipate the Parties will use a similar methodology for measuring the Project as was used by the Parties on the PGBT Eastern Extension project.

Exhibit I

Annual Tolling Services Amounts
(Section 13)

The following table sets forth Annual Tolling Services Amounts for the five-year period commencing on the Substantial Completion Date. The Annual Tolling Services Amounts are not subject to adjustment or escalation except to the extent set forth in subsection 13(j)(iv) of the Agreement.

<u>Year of Operations</u>	<u>Base Cost</u>	<u>Overhead</u>	<u>Total Annual Payment Amount</u>
1	\$2,272,000	\$500,000	\$2,772,000
2	\$2,730,000	\$500,000	\$3,230,000
3	\$3,059,000	\$500,000	\$3,559,000
4	\$3,868,000	\$500,000	\$4,368,000
5	\$3,861,000	\$500,000	\$4,361,000

Exhibit J

Tolling Services Standards (Section 13)

The Authority shall provide the Tolling Services in accordance with the applicable Performance Standards set forth on Attachment 1 to this Exhibit J, the applicable provisions and requirements of this Project Agreement, and, to the extent equal to or better than the foregoing requirements and standards or to the extent not addressed by the foregoing requirements and standards, in accordance with the Authority's standard management practices, procedures, protocols and business rules with which it performs such services and functions for its own facilities and at the level provided customers on the Authority's own facilities. In the event of a modification to such management practices, procedures, protocols or business rules affecting the Authority's performance of the Tolling Services or the Project, the Authority shall provide TxDOT with notice of such change sixty (60) days prior to the date the Authority adopts such modification; provided that the Authority shall not adopt any modification that is reasonably anticipated to (i) disproportionately and adversely affect the Project or its operations, (ii) materially adversely affect the aggregate annual Project Revenues generated by the Project net of O&M Costs and Tolling Services Expenses or (iii) adversely affect satisfaction of, or require any adverse change to, the Performance Standards set forth on Attachment 1 hereto.

Attachment 1

Performance Standards

Performance Standard	Std.
1. Less than 5% of walk in customers at the "store front" kept waiting for greater than ten minutes before being seen by the Authority staff, as demonstrated by statistically reliable random sampling each month.	<5% greater than 10 mins.
2. Call Efficiency – 80/20 service level with 80% of calls to be answered within 20 seconds.	80% in 20 seconds
3. Customer service requests via the Authority's Online CSC will be responded to within 2 Business Days.	within 2 Business Days
4. 95% of customer service requests via email, facsimile, and postal mail will be responded to within 2 Business Days.	within 2 Business Days
5. Customer Service Hours – operating sales office with walk in customer service manned in-person 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding Authority-observed holidays	
6. Customer Service Hours – manned telephone coverage 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding Authority-observed holidays, and 24 hour availability of interactive voice response (IVR) system. Faults to telephone line and/or IVR rectified as soon as possible but no later than within 24 hours, with the possible exception of faults outside of scheduled maintenance and failures due to non-Authority equipment or failures outside the Authority's control.	within 24 hours
7. 24X7 availability of secure customer access through the Authority Online CSC (in English and Spanish) for account maintenance purposes (including opening an account, changing information on an account, viewing account status and statements, and replenishing an account balance, etc.). Faults that result in the Authority Online CSC being unavailable (outside of scheduled maintenance and failures due to non-the Authority equipment or failures outside the Authority's control) rectified as soon as possible but no later than within 24 hours.	within 24 hours
8. 24X7 availability to receive email. Faults to email availability rectified as soon as possible but no later than within 24 hours.	within 24 hours

Exceptions include faults outside of scheduled maintenance and failures due to non-the Authority equipment or failures outside the Authority's control.	
9. 24X7 availability to receive facsimile. Faults to facsimile availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-Authority equipment or failures outside the Authority's control.	within 24 hours
10. Call abandon rate less than or equal to 4%.	< or = 4%
11. 96% of escalations received via the Service Recovery Process receive a response within one Business Day.	96%
12. 96% of Customer Service Specialists will have at least two customer interactions monitored each month.	96%
13. The Authority Customer Service Center shall maintain a 90% or higher quality monitoring rating each month, based on evaluations using the quality monitoring form acceptable to TxDOT.	>90%
14. The Authority CSC Host Availability - the Authority CSC Host shall be available to receive information from TxDOT on a 24X7 basis (excluding scheduled maintenance and failures due to non-Authority equipment or failures outside the Authority's control). Any fault that results in the Authority CSC Host being unavailable (outside of scheduled maintenance and failures due to non-Authority equipment or failures outside the Authority's control) rectified as soon as possible but no later than within 24 hours.	24 hours
15. Determine and document disposition of 98% of customer disputes within five Business Days after notice of dispute received by telephone, by email, by written correspondence or in person. Rejection or request for further information due to insufficient information from customer constitutes a determination and disposition.	Within 5 Business Days
16. For customer disputes determined to require a refund of an overcharge, issue 99% of customer refunds (and mail if appropriate) within five Business Days after resolution of dispute.	Within 5 Business Days
17. For any customer correspondence requiring a written response, including requests for written receipts, 98% are provided a written response within three Business Days	Within 3 Business Days
18. The Authority shall deliver to TxDOT such other information as	Within 3

TxDOT may reasonably request and that is reasonably available to the Authority within the time frame for delivery contemplated for this Performance Standard to operate the Project and to evaluate the Authority's compliance with and performance of this Project Agreement.	Business Days
19. The Authority will not charge a User more than once for a single transaction.	100%
20. The Authority will not charge a toll different than the toll determined in accordance with this Project Agreement.	100%
21. The Authority will reclassify an uncollected transponder transaction to a video transaction within 31 days after the Authority's receipt of the applicable transponder transaction or such other time period as applies from time to time under an applicable interoperability agreement to which the Authority is a party or is otherwise bound.	100%
22. The Authority will process video transaction images through OCR within three Business Days of date of User trip. Images of reclassified transponder transactions and interoperable transactions shall be processed within three Business Days of being reclassified to a video transaction.	Within 3 Business Days
23. The Authority will process video transaction images within ten Business Days of completing OCR, through manual image review.	Within 10 Business Days
24. The Authority will process and transition video transactions and invoices (up to the final notice) according to the Authority's Business rules, within the required number of days.	85% of all Video Transactions required to be escalated under the Authority's business rules within the calendar month
25. Roadside Customer Service availability 24x7 to help stranded motorists, provide protection at incident scenes and assist during disasters, regional emergencies and evacuations.	Consistent with service provided on NTTA System
26. Department of Public Safety availability 24x7 to assist in driver safety and enforcement of laws	Consistent with service provided on NTTA System