

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 13-065

**APPROVING AN AGREEMENT WITH THE TEXAS DEPARTMENT OF
TRANSPORTATION RELATING TO THE FINANCING, DEVELOPMENT, AND
OPERATION OF THE SH 71 TOLL LANES PROJECT.**

WHEREAS, the SH 71 Toll Lanes Project is a planned toll road project located in Travis County that will add express toll lanes to SH 71 from Presidential Boulevard to just east of SH 130, and will include the realignment of FM 973 where that road intersects with SH 71 (the "Project");

WHEREAS, Sections 228.002, 228.003, 370.301, and 370.302 of the Transportation Code authorize an agreement between Texas Department of Transportation ("TxDOT") and the Central Texas Regional Mobility Authority ("Mobility Authority") pertaining to the design, construction, financing, operation, ownership, maintenance, and tolling of highways;

WHEREAS, the Project is subject to the "primacy" provisions set forth in Chapter 373 of the Code, and grants the Mobility Authority the first option to develop, finance, construct and operate the Project;

WHEREAS, pursuant to Resolution No. 13-014 passed on February 27, 2013, the Board of Directors (the "Board") elected to waive and decline to exercise its option to develop, finance, and construct the Project, and retained (and did not waive) its option to operate any potential toll lanes on the Project and to retain the revenues generated therefrom;

WHEREAS, pursuant to Minute Order No. 113494 approved on February 28, 2013, the Commission approved TxDOT's determination to exercise its option to develop, construct, and finance the Project;

WHEREAS, the Executive Director and staff at TxDOT have discussed and are negotiating a proposed agreement relating to the financing, development, and operation of the Project (the "Project Agreement"), the most current draft of which is attached as Exhibit 1; and

WHEREAS, the Executive Director recommends approval of the proposed Project Agreement subject to completion of negotiations with TxDOT, in the form or substantially in the form attached as Exhibit 1.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves the Project Agreement in the form or substantially in the form attached as Exhibit 1, and authorizes the Executive Director to finalize and execute the Project Agreement in the form or substantially in the form attached as Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of October, 2013.

Submitted and reviewed by:



Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Ray A. Willkerson
Chairman, Board of Directors
Resolution Number: 13-065
Date Passed: 10/30/13

Exhibit 1

Project Agreement

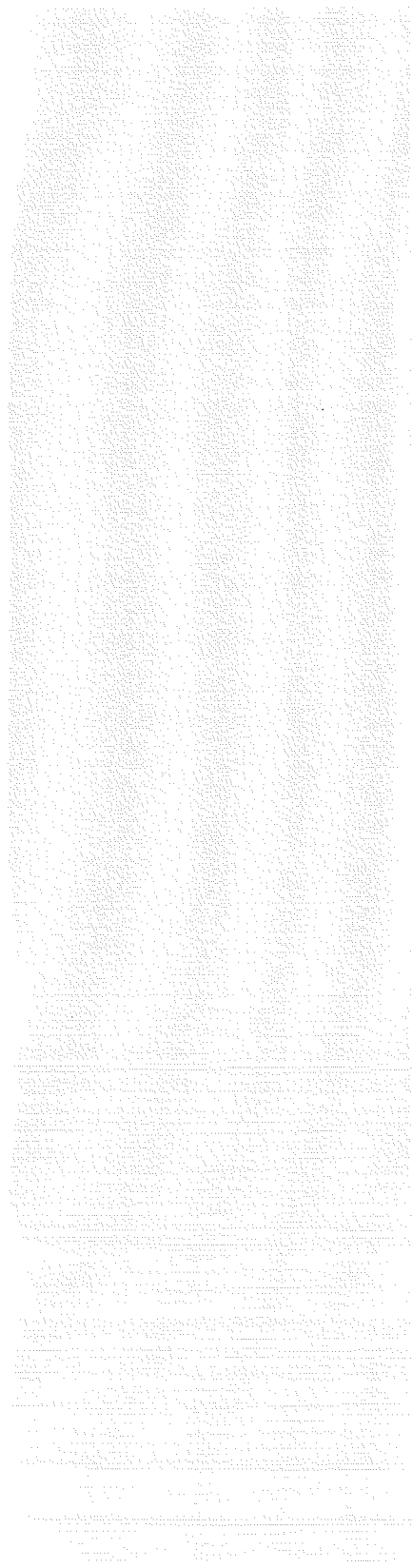
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PROJECT AGREEMENT
STATE HIGHWAY 71 TOLL LANES

Between
Texas Department of Transportation
and
Central Texas Regional Mobility Authority

Dated _____, 2013



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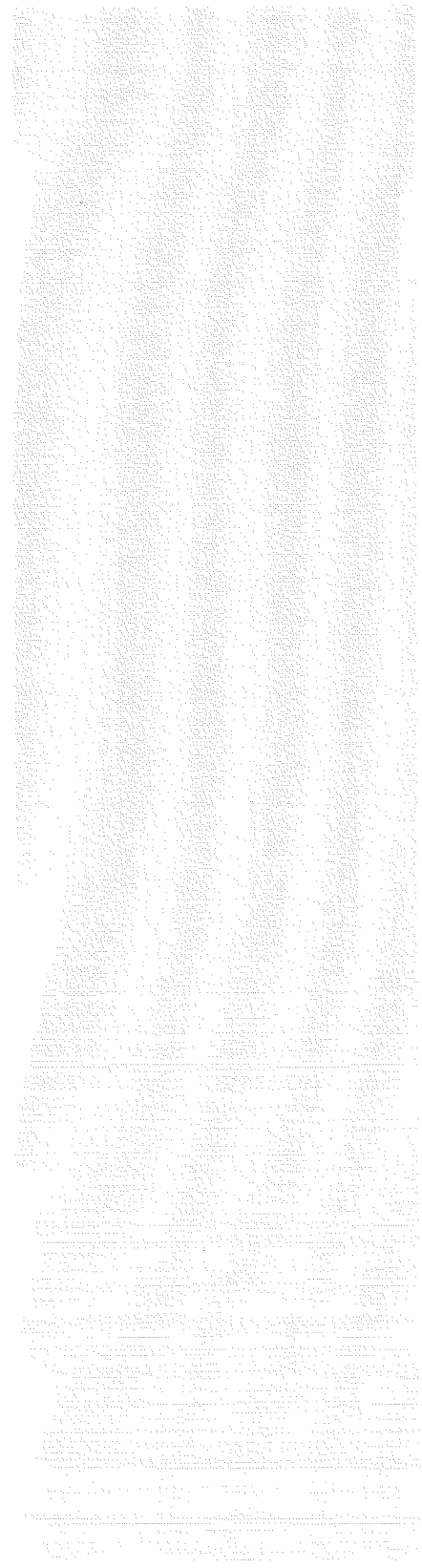
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Exhibit A -



PROJECT AGREEMENT

STATE HIGHWAY 71 TOLL LANES

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 **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**, a regional mobility authority and a political subdivision of the State of Texas (the "Authority"), is executed to be effective the ___ day of _____, 2013 (the "Effective Date").

WITNESSETH

WHEREAS, the Authority is authorized to study, evaluate, design, finance, acquire, construct, operate, maintain, repair, expand, and extend transportation projects within the Counties of Travis and Williamson, pursuant to Chapter 370 of the Texas Transportation Code (the "Code"), as amended (the "Regional Mobility Authority Act");

WHEREAS, the SH 71 Toll Lanes Project is a planned toll road project located in Travis County that will add express toll lanes to SH 71 from Presidential Boulevard to just east of SH 130, and will include the realignment of FM 973 where that road intersects with SH 71 (the "Project"), as depicted in Exhibit A attached hereto and made a part hereof;

WHEREAS, the Project will be constructed on State-owned right-of-way, as more particularly described in Exhibit B to this Agreement;

WHEREAS, sections 228.002, 228.003, 370.301, and 370.302 of the Code authorize agreements between TxDOT and certain governmental entities, including regional mobility authorities, pertaining to the design, construction, financing, operation, ownership, maintenance, and tolling of highways;

WHEREAS, the Project is located within the jurisdiction of the Authority;

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

WHEREAS, Chapter 373 of the Code grants the Authority the first option to develop, finance, construct and operate the Project;

WHEREAS, pursuant to Resolution No. 13-014 passed on February 27, 2013, the Board of Directors of the Authority (the "Board") elected to waive and decline to exercise its option to develop, finance, and construct the Project, and retained (and did not waive) its option to operate any potential toll lanes on the Project and to retain the revenues generated therefrom;

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WHEREAS, pursuant to Minute Order No. 113494 approved on February 28, 2013, the Commission approved TxDOT's determination to exercise its option to develop, construct, and finance the Project;

WHEREAS, section 373.055 of the Code authorizes TxDOT and the Authority to waive or decline to exercise any option, step, or other right under Subchapter B of Chapter 373 of the Code and to, by written agreement, alter any step or time limit under that subchapter, including the timing of or conditions for initiating the process under Section 373.051;

WHEREAS, TxDOT and the Authority have agreed that this Agreement is an agreement under section 373.055 to waive or alter an option or step under Subchapter B of Chapter 373 by providing for TxDOT's operation and maintenance of all aspects of the Project other than the toll lanes on the Project;

WHEREAS, pursuant to Resolution No. ____ passed on _____, 2013, the Board authorized the Authority's Executive Director to enter into this Agreement;

WHEREAS, on _____, 2013, the Commission passed Minute Order _____, authorizing the executive director of TxDOT to enter into this Agreement;

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 construction by TxDOT and operation by the Authority of the Project.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and promises of the parties as described in this Agreement, TxDOT and the Authority agree as follows:

1. Definitions

Authority Improvements shall mean those portions of the Project, specifically described on Exhibit "C" attached hereto and made a part hereof, for which the Authority has certain responsibilities, as more particularly described in section 7.b. below.

Authorized Representative means an individual designated by a party to this Agreement who shall be authorized to make decisions and bind the party on matters relating to this Agreement, and to perform such other functions as described herein. The initial designations of the Authorized Representatives are provided in section 21 below. Such designations may be changed by written notice provided to the other party. A party's Authorized Representative may, by written notice provided to the other party, also delegate all or part of his/her duties to another individual.

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Environmental Documents means, as applicable, an environmental assessment, an environmental impact statement, a categorical exclusion, a Finding of No Significant Impact, a Record of Decision, any re-evaluation of an environmental assessment, any decision in connection therewith, any environmental permit or related authorization or decision, and/or any other environmental commitments or obligations, as they may relate to the Project.

Final Acceptance means the achievement of Substantial Completion, the achievement and delivery of all punchlist items to the satisfaction of TxDOT after consultation with the Authority, and the occurrence of all the other events and satisfaction of all the other conditions as set forth in the TxDOT design-build contract for the Project.

Force Majeure means actual delay or permanent or temporary inability to perform due to any of the following events to the extent such events have a physical impact on the Project and are beyond the parties' reasonable control, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by the affected party: fire, flood, earthquake, hurricane, or other unavoidable acts of God. No delay shall be considered to be caused by Force Majeure unless the affected party notifies the non-affected party within ten (10) days after the affected party learns that such event will cause a delay.

NEPA Approval means the decision document issued by the FHWA, 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.

Net Revenues means the total annual toll revenues collected from the Project (including tolls and administrative fees, violation enforcement fees and penalties allocated to the project by the Authority) minus those costs chargeable to the Project for operations and maintenance of the toll lanes.

Project Right-of-Way means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines established by the NEPA Approval to delineate the outside limits of the Project, as such limits may be adjusted from time to time as necessary for the design and construction of the Project, and specifically includes all air space, surface rights and subsurface rights within the limits of the Project Right of Way.

Substantial Completion means the satisfaction of all conditions to substantial completion contained in the TxDOT design-build contract for the Project, and is the point at which the Authority will assume operations and maintenance of the toll lanes.

Toll Collection System means the toll collection system, including its components, systems and subsystems, hardware, software, and physical infrastructure that is not otherwise provided or installed by the design-build contractor.

2. Support for Project

- a. The Authority and TxDOT acknowledge their support for the funding (subject to

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repayment by the Authority as provided herein), environmental planning, procurement, design and construction by TxDOT of the Project as a toll project pursuant to Chapter 228 of the Code, the use by the Authority of portions of the Project Right-of-Way after completion of the Project, the operation and maintenance by the Authority of the toll lanes within the Project as a "turnpike project" pursuant to the Regional Mobility Authority Act, 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.

b. TxDOT and the Authority anticipate that the 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 and maintenance of the toll lanes within the Project, including any capital improvements thereto, after Final Acceptance of the Project occurs in accordance with the design-build contract.

3. Project Description and Overview

a. **Project Limits.** The Project can generally be described as the development of toll lanes on SH 71 extending from Presidential Boulevard to just east of SH 130, and including the realignment of FM 973 where that road intersects with SH 71, as has been approved by the Commission, the Authority Board of directors, and the Capitol Area Metropolitan Planning Organization. The Project will be developed, operated and maintained within the Project Right of Way, as shown in Exhibit B.

b. **Project Development.** TxDOT shall be the lead agency in the design, permitting and construction of the Project, in cooperation with the Authority. Except for Authority Improvements, and subject to the provisions of this Agreement, TxDOT shall issue the necessary procurement documents; manage the procurement process; acquire right of way and relocate/adjust utilities; and manage the design and construction of the Project with Authority input as set forth herein.

c. **Authority Improvements.** The Authority shall be responsible for the design, procurement, permitting, installation, testing and commissioning of the Authority Improvements, specifically described on Exhibit C.

d. **Project Operations and Maintenance.** Upon Substantial Completion, the Authority shall operate and maintain the toll lanes on the Project, which shall include, but not be limited to, the collection of the tolls, setting toll rates, servicing customers, toll enforcement, and facilities and toll collection system maintenance, repairs and capital improvements to the toll lanes, toll facilities and related equipment. The Authority shall retain the revenues generated from the Project, which revenues shall be used to pay operation and maintenance costs of the toll lanes, toll facilities and related equipment, and to reimburse TxDOT, to the extent provided in this Agreement. TxDOT shall operate and maintain all other aspects of the Project, including but not necessarily limited to, the general purpose lanes, and the FM 973 realigned intersection with SH

e. Project Funding. TxDOT will fund the development, design, and construction of the Project, subject to partial reimbursement from the Authority as provided in this Agreement. The estimated Project design-build cost is \$140 million, of which the Authority will reimburse TxDOT for up to \$65 million of those costs (the "Reimbursement Amount"), plus interest on the Reimbursement Amount, except as provided in Section 7.b.(2). The Reimbursement Amount shall consist of (i) up to \$60 million as reimbursement for TxDOT's Project costs, and which may be reduced dollar for dollar by the difference between the estimated Project cost of \$140 million and the actual Project cost; and (ii) up to \$5 million for costs initially incurred by the Authority for Authority Improvements and its related consulting costs. Interest on the Reimbursement Amount is determined as provided below in Section 5 below. Except as provided in section 7.b.(2), in no event shall the Authority's obligation to reimburse TxDOT exceed the amounts set forth in this subsection 3.e. absent the written agreement of the parties. The reimbursement by the Authority to TxDOT shall be payable solely from Net Revenues, with a 35-year term, with the first payment being due on the first anniversary of Substantial Completion, as more particularly set forth in Section 5.

f. Project Schedule. Pursuant to Section 373.053 of the Code, TxDOT, within two (2) years after the date on which all environmental requirements necessary for the development of the Project are secured and all legal challenges to development are concluded, will enter into a contract for the construction of the Project, unless otherwise agreed by the Parties. If TxDOT does not enter into a contract for the construction of the Project as provided herein, this Agreement shall terminate and the Authority and TxDOT may reinstate the process under Section 373.054 of the Code to develop, finance, construct and operate the Project. The parties agree that the deadline for advertising for the initial procurement contained in Section 373.053(b)(1) of the Code does not apply.

TxDOT will cooperate with and not unduly restrict the Authority's installation of the Authority Improvements in order to meet the Authority's scheduled completion date, provided the Authority's contractors cooperate with TxDOT's design-build contractor, and they do not materially interfere with each other. TxDOT shall provide the Authority with a copy of the master schedule under the design-build contract so that the Authority may coordinate the Authority Improvements to ensure that its work is complete and operational by the deadlines set forth in Exhibit C.

g. Contract Term. The term of this Agreement shall begin on the Effective Date, shall end at the earlier of thirty five (35) years after Substantial Completion, or upon full payment by the Authority of the Reimbursement Amount and all accrued interest. This Agreement may be extended under terms and conditions mutually acceptable by the Parties.

h. Project Completion Date. TxDOT shall use reasonable efforts to reach Substantial Completion by December 31, 2016.

i. After Substantial Completion. Upon Substantial Completion, the Authority will

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operate and maintain the toll lanes and the Authority Improvements and will collect all tolls. Upon Final Acceptance, the Authority shall become solely responsible for operation and maintenance of the toll lanes of the Project and will remain responsible for the operation and maintenance of the Authority Improvements.

j. License and Right of Possession. Pursuant to paragraph 6.c., TxDOT will grant the Authority a license and right of entry and possession on, over, and under such parts of the Project Right of Way as necessary to enable the Authority to operate and maintain the toll lanes and to construct the Authority Improvements.

4. Planning, Environmental, and Procurement Phase

a. TxDOT Responsibilities. Except for the Authority Improvements, TxDOT shall be responsible for the planning, environmental permitting, and procurement for the Project, in cooperation with the Authority, and consistent with TxDOT's standards and procedures for design-build projects. TxDOT's responsibilities shall include:

(1) Obtaining NEPA and other environmental clearances necessary for the design and construction of the Project.

(2) Preparing all Project plans and technical specifications.

(3) Preparing all other procurement-related documents and schedules.

(4) Administering the procurement process.

(5) Selecting the contractors and negotiating and executing all Project-related contracts, with the design-build contract to include a warranty, assignable to the Authority, covering the work performed by the contractor on the Project.

(6) Providing staff members to serve on the Leadership Team, and Design and Construction Technical Committee.

(7) Requiring and ensuring the execution of confidentiality agreements by TxDOT personnel or its consultant personnel who work on the Project. (8) In the event that the Project design-build contractor is subject to liquidated damages, the payment thereof will first be made to TxDOT to offset any actual costs or expenses of TxDOT resulting from delays by the design-build contractor, with the remainder being applied to reduce the Reimbursement Amount owed hereunder by the Authority to TxDOT, in consideration of the delay in the Authority's collection of toll revenues.

b. Authority Responsibilities. The Authority shall support the TxDOT procurement process and TxDOT's development of the plans and technical specifications, including the review of plans and technical specifications. Authority staff, and other Authority representatives subject to the prior approval of TxDOT, may participate in procurement related meetings, including observation of proposer evaluations and interviews, subject to TxDOT's procurement

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rules and confidentiality requirements. Authority responsibilities shall include:

- (1) Providing Authority staff members to serve on Leadership Team.
- (2) Providing Authority staff members (or consultants, to the extent authorized below) to serve on the Design and Construction Technical Committee which will meet throughout the term of the Project.
- (3) The Authority shall, to the extent legally capable and upon compliance with all procedures legally required therefor, promptly after the Effective Date, provide TxDOT with all original counterparts or, if originals are unavailable, copies of all materials prepared by or for the Authority (or otherwise held by the Authority) in connection with the 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 Project, including any Authority context-sensitive design information or materials.
- (4) Requiring and ensuring that all personnel and consultants working on the Project on its behalf sign confidentiality agreements similar to those executed by TxDOT staff.
- (5) Reviewing contract documents, technical requirements, and plans and specifications, and submitting comments, if any, in a timely manner as requested by TxDOT, to avoid any delays in the design-build schedule and any contractor claims.
- (6) Reviewing and providing plans and technical specifications related to the infrastructure design as necessary to ensure its ability to accommodate the Authority Improvements and long-term maintenance of the Project.
- (7) Reviewing procurement documents as necessary to determine compliance with this Agreement.
- (8) Procuring and coordinating the design and installation of the Authority Improvements in a manner to avoid any delays in Project development and opening of the Project.
- (9) Ensuring that Authority consultants involved in the Project procurement are not permitted to be part of a proposer team or the developer team for the Project.
- (10) Providing support reasonably requested by TxDOT in connection with TxDOT's efforts to obtain the environmental clearance, permits, approvals, and agreements necessary for the Project.

5. **Project Funding**

a. **TxDOT Responsibilities.**

- (1) TxDOT agrees to fund the design-build costs of the Project, including, but not

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limited to, the costs of planning, design, permitting, construction, construction oversight and implementation, subject to reimbursement for up to \$60 million (plus interest) of those costs by the Authority as provided herein. In the event the total design-build cost of the Project is less than \$140 million, then the Reimbursement Amount to be reimbursed by the Authority to TxDOT shall be reduced on a dollar for dollar basis by the amount by which the total design-build cost is less than \$140 million. In the event the total design-build cost of the Project exceeds \$140 million, the Authority's reimbursement obligation shall be limited to the amounts stated herein unless otherwise agreed to in writing in accordance with Paragraph 7.b(2).

(2) In addition, TxDOT shall pay for up to \$2.6 million in costs incurred by the Authority in connection with the Authority Improvements. Prior to incurring these costs, the Authority shall submit to TxDOT, for its review and consideration, a scope of work and proposed budget for the work for which the Authority intends to seek reimbursement. Upon receipt of an invoice for such costs, the Authority shall review such invoice for accuracy and completeness, and upon completion of that review, forward the invoice to TxDOT. TxDOT will promptly pay the invoice directly to the Authority. All amounts paid by TxDOT under this section shall be added to the total amount to be reimbursed to TxDOT by the Authority, and shall accrue interest as provided herein.

(3) In addition, TxDOT shall pay for up to \$2.4 million in consultant costs incurred by the Authority in connection with the Project. Prior to incurring these costs, the Authority shall submit to TxDOT, for its review and consideration, a scope of work and proposed budget for the work for which the Authority intends to seek reimbursement. Upon receipt of an invoice for such costs, the Authority shall review such invoice for accuracy and completeness, and upon completion of that review, forward the invoice to TxDOT. TxDOT will promptly pay the invoice directly to the Authority. All amounts paid by TxDOT under this section shall be added to the total amount to be reimbursed to TxDOT by the Authority, and shall accrue interest as provided herein.

(4) TxDOT shall provide the Authority with the information it and its contractors, vendors and consultants shall require in order to pay for the Authority Improvements and related consultant costs.

(5) Authority underwriters, investment bankers financial advisors, legal counsel and other consultants shall not act as consultants to TxDOT for the Project without the express written consent of the Authority.

(6) TxDOT retains the discretion not to proceed with the Project and to terminate this Agreement if TxDOT is unable to fund the Project for any reason. In particular, and without limitation, in the event the total project cost, including the cost of all right of way acquisition, utility adjustment and relocation, and contingencies, exceeds \$140 million, then TxDOT may, in its sole option, cancel the Project and terminate this Agreement, without any liability or obligation to the Authority. In the event TxDOT terminates this Agreement prior to construction beginning, the Authority shall immediately, upon written notice from TxDOT, cease all work done by or on behalf of the Authority TxDOT has agreed to pay the costs of pursuant to

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subparagraphs a.(2) and a.(3) above. The Authority shall promptly remit to TxDOT any work product and equipment acquired by the Authority and to be paid for by TxDOT pursuant to subparagraphs a.(2) and a.(3) above. TxDOT shall pay to the Authority the amounts owed, and the work product and equipment shall be in full satisfaction of the Authority's obligation to reimburse TxDOT for such costs.

b. Authority Responsibilities

(1) Within ten (10) business days of receipt, the Authority shall submit the invoices and requests for payment from its contractors, vendors and consultants to TxDOT for processing and payment, subject to the provisions contained above. The Authority shall be responsible for reviewing and verifying all invoices and requests for payment from its contractors, vendors and consultants prior to submission to TxDOT, and shall be solely responsible for properly classifying the invoice for payment for Authority Improvement costs or for the related consultant fees. TxDOT will disburse funds not more than once per month to the Authority for disbursement to its Project contractors, vendors and consultants.

(2) The Authority shall provide to TxDOT documentation that substantiates its costs incurred for Authority Improvements and consultant costs; and shall be responsible for ensuring that its contractors, vendors and consultants provide the proper documentation for payment.

(3) The Authority shall not take any action that might impair TxDOT's rights under this Agreement. In the event TxDOT believes that such action has occurred or is imminent, TxDOT shall notify the Authority and the parties shall work to resolve the action in a manner which protects the interests of both parties.

c. Repayment Obligations.

(1) Interest shall accrue on the unpaid Reimbursement Amount at an annual rate of 3.62% (TIFIA 35 year rate on October 22, 2013), compounded annually, beginning on Substantial Completion. Beginning on the first anniversary date of Substantial Completion (the "Payment Date"), and continuing every year thereafter for a total of thirty five (35) years from Substantial Completion (the "Payment Term") or until the Reimbursement Amount and all accrued interest is paid, the Authority shall pay to TxDOT one half of Net Revenues (as further defined herein). This payment shall first be applied to all accrued interest, and any leftover amount of the payment shall be applied to the unpaid Reimbursement Amount. In the event the payment is not sufficient to pay for all accrued interest, then the unpaid accrued interest shall be added to the Reimbursement Amount.

(2) Until the Authority has paid to TxDOT all amounts owed hereunder, the Authority further agrees as follows: (i) it shall set toll rates at an amount expected to yield Net Revenues sufficient to fully reimburse TxDOT in accordance within the Payment Term, unless TxDOT and the Authority agree that any increase in toll rates then in effect could materially adversely affect revenues from lanes; (ii) the Authority shall not assign, pledge, or otherwise encumber the toll revenues from the Project in any manner that would make repayment to

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TxDOT subordinate or inferior to any cost, charge, or expense, other than the payment of operation and maintenance expenses, and (iii) it shall not use TxDOT's share of Net Revenues for any purpose other than paying to TxDOT the amounts owed under this Agreement.

(3) In the event that, at the end of the Payment Term, the Reimbursement Amount and all accrued interest has not been paid in full, the Authority shall pay all amounts owing within 180 days after the last Payment Date, unless otherwise agreed by TxDOT and the Authority. There shall be no penalty for early payment or prepayment of the Reimbursement Amount, and no obligation to pay interest in connection with an early payment or a prepayment other than interest that has accrued through the date of the payment.

6. Project Right of Way

a. **TxDOT Responsibilities.** TxDOT has acquired, or shall be responsible for acquiring, at its sole expense, all Project Right of Way necessary to accommodate the Project and to achieve Final Acceptance. Upon Final Acceptance, TxDOT shall grant to the Authority a license and right of entry to occupy and use the Project Right of Way as further provided in subparagraph c. below. If the parties desire to transfer the Project, or a portion thereof, to the Authority, then the Authority and TxDOT agree to cooperate as necessary to obtain the approvals and consents needed for such a transfer.

b. **Authority Responsibilities.** The Authority shall be responsible, at its sole expense, for the acquisition of any right of way other than the Project Right of Way, if required for the operation and maintenance of the tolled lanes. Title to all right of way acquired by the Authority shall remain with the Authority.

c. **Use of Project Right of Way.** TxDOT grants to the Authority a license and right-of-entry on, over, and under such area and right-of-way owned by, and subsequently acquired, and otherwise under TxDOT's control and as necessary to enable the Authority to cause the tolled lanes within the Project to be operated, maintained, policed and regulated. Such license and rights of entry relating to the aforementioned activities shall be deemed granted upon Substantial Completion and shall remain in effect unless and until operation and maintenance of the tolled lanes within the Project is otherwise permanently acquired and assumed by TxDOT in accordance with paragraph 5.e, with the consent of the Authority, or pursuant to applicable law. The right-of-way to which use is granted hereunder is depicted on Exhibit __. In the event a third party requests evidence of authorization for the Authority to use TxDOT owned right-of-way pursuant to this Agreement or otherwise, TxDOT agrees to execute a license, right-of-entry, or other document in a form reasonably acceptable to TxDOT and which evidences the rights granted herein. All use of the Project Right of Way by the Authority shall comply with the requirements of applicable state and federal law and will not impair the interests of TxDOT and the Commission in the use of the Project Right of Way for operations of TxDOT, including public safety and congestion mitigation on the general purpose lanes and other areas of the corridor outside the toll lanes within the Project. The Authority acknowledges that it enters the TxDOT property "AS IS" with all faults, including but not limited to any and all pollutants, asbestos, underground storage tanks and/or any other hazardous materials, and that TxDOT has

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not made any representations or warranties as to the condition of the Project Right of Way. TxDOT will provide to the Authority information TxDOT may have concerning the environmental status of the property. The Authority hereby waives any and all causes of action, claims, demands, and damages based on any warranty, express or implied, including but not limited to any implied warranty of suitability for a particular purpose, any and all warranties of habitability, and any other implied warranties not expressly set forth in the Agreement. The Authority acknowledges and agrees that it has fully exercised the right to inspect the Project Right of Way for any defects as to the suitability of such property for the purpose to which the Authority intends to put it. This Agreement is subject to all covenants, easements, reservations, restrictions and other matters applicable to the Project Right of Way, and the Authority is using the Project Right of Way subject to rights, if any, of any other persons or entities, including utilities authorized to be in the right-of-way of a state highway. The provisions of this Subsection 6.c. shall survive the expiration or termination of this Agreement.

d. Project Extension or Expansion. Neither party anticipates the acquisition of right of way for future extensions or changes. In the event thereof, the Parties shall determine at the time of the desired acquisition the responsibilities, title to and control thereof. Notwithstanding the forgoing, any major modification to, expansion or extension of the Project infrastructure shall be subject to TxDOT approval.

e. Liability. TxDOT will not have to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the Authority's activities on the Project Right of Way. The provisions of this Subsection 6.e. shall survive the expiration or termination of this Agreement.

7. Design and Construction of the Project

a. TxDOT Responsibilities for Design and Construction.

(1) Except as provided herein, TxDOT shall be responsible for the design and construction of the Project consistent with the standards TxDOT utilizes on other design-build projects, unless otherwise agreed to by the parties. TxDOT shall not be responsible for the Authority Improvements.

(2) 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.

(3) TxDOT also shall be responsible for securing construction oversight and inspection, and materials testing and inspection.

(4) Except as provided herein, TxDOT shall have primary authority and responsibility for (i) the design of the Project and all features thereof; (ii) the selection of consultants, construction managers, engineers, architects, surveyors, testing engineers and

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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 Project; (iii) the commencement, sequencing and timing of design and construction activities and other work; (iv) construction oversight and inspection; (v) materials testing and inspection; (vi) the acceptance or rejection of work or other deliverables; (vii) the negotiation, bidding, letting and management of contracts, including the design-build contract for the Project; (viii) complying with federal oversight and reporting requirements; and (ix) the resolution of disputes under such contracts.

(5) Context-Sensitive Design Criteria - Roadway structures and other design elements shall follow the context-sensitive design requirements for the Project provided to TxDOT by the Authority and which are in effect on the date proposals for the design-build contract are due, or as may be otherwise agreed by the parties.

(6) Roadway Design Criteria - Roadway and structures shall be designed according to the applicable TxDOT design manuals and criteria as supplemented by any specific terms the Authority and TxDOT may agree upon.

(7) TxDOT shall be responsible for the timely development of the plans, specifications and construction of the Project.

(8) Except as provided herein, TxDOT shall be responsible for all required utility relocations and/or adjustments.

(9) TxDOT shall coordinate with and require its contractors to coordinate work activity and schedules with the Authority and its system integrator to facilitate the timely installation of the Authority Improvements.

(10) TxDOT shall include the Authority as an additional insured on any insurance policy providing coverage beyond Final Acceptance of the Project.

(11) TxDOT shall assign its rights, title and interest in all warranties and warranty bonds pertaining to the toll lanes of the Project upon Final Acceptance. TxDOT shall reasonably assist the Authority in the Authority's pursuit of any breach of contract, negligence, or other claim against any of TxDOT's contractors, which assistance may include the sharing of documentation, providing access to its employees and consultants, or, if necessary, joinder in any legal action, provided that the Authority shall promptly reimburse TxDOT for all costs it incurs as a result.

(12) TxDOT shall, as requested by the Authority, participate in and provide comments regarding the design, and installation of the Authority Improvements.

(13) TxDOT shall provide in its design-build contract that the contractor shall be responsible for liquidated damages and other losses incurred by TxDOT and the Authority as a result of the contractor's delays or inability to perform.

b. Authority Responsibilities for Design and Construction

(1) The Authority shall provide comments to the above described documents within five (5) business days of receipt from TxDOT and shall not delay or hamper the Project schedule.

(2) In the event the Authority requests changes to the design and/or technical specifications, TxDOT and the Authority shall confer in an effort to reach an agreement as to the incorporation of those requested changes. In the event that any Authority-requested change would cause an increase in TxDOT's project costs, TxDOT and the Authority agree that, following the written approval of the performance of such work provided by the Authority to TxDOT, the amount of that increase will be added to the Reimbursement Amount, which may then exceed \$65 million. In this case, the Authority will be responsible for the upward adjustment of the Reimbursement Amount.

(3) The Authority shall use good faith efforts to complete construction/installation of the Authority Improvements as required by the Project construction schedule, subject only to delays caused by Force Majeure events. The Authority shall cooperate with TxDOT and its contractors, and cause its contractors to cooperate with TxDOT and its contractors, in scheduling and coordinating this work. The toll collection system shall be interoperable with other toll facilities within the state.

(4) The Authority and TxDOT shall work jointly in identifying a mutually agreed upon location in the corridor for maintenance operations and storage of materials needed for maintenance.

(5) The Authority shall be responsible for the acceptance or rejection of any work or deliverables related to the items for which it is responsible.

(6) The Authority shall include TxDOT as an additional insured on any insurance policy providing liability and property coverage beyond Final Acceptance.

(7) The Authority shall provide in its contract with its toll system integrator that the integrator shall be responsible for liquidated damages and other losses incurred by TxDOT and the Authority as a result of the integrator's delays or inability to perform, as such deadline will materially and adversely impact TxDOT's cost to complete the Project. TxDOT shall notify the Authority of TxDOT's estimate of the cost impacts attributable to such Authority delay. Unless otherwise agreed, the Authority shall provide to TxDOT all amounts received by the Authority from its toll system integrator as a payment for damages and other losses incurred by TxDOT, without any offset or withholding by the Authority.

(8) The Authority forever releases, waives, relinquishes, and agrees not to assert any and all claims for loss, damage, or penalty of any kind whatsoever it may have or may hereafter acquire against TxDOT, its agents, employees, officers, successors, assigns, contractors and/or consultants, arising from or related to the design and/or construction of the Project, regardless of whether such claim is known or unknown. Nothing contained in this Agreement or elsewhere

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shall impose any liability on TxDOT for or with respect to the design and construction of the Project, other than the funding thereof. 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. 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.

8. Project Acceptance

a. TxDOT Responsibilities

(1) Within two business days after TxDOT receives notice from the design-build contractor of the date it expects to achieve substantial completion of the work (but not less than twenty (20) days prior to such date), TxDOT shall provide the Authority with written notification of such date. 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 compliance with the technical requirements in the design-build contract and the Authority Improvements contract and for identification of patent defects and preparation of a punch list. Such inspection shall occur no later than fifteen (15) days after the date TxDOT provides the Authority with written notification of the expected date of substantial completion of the work. The punch list items shall be subject to review and reasonable concurrence by TxDOT and the Authority that the items listed (i) constitute material obligations of the design-builder, and (ii) are in material non-compliance with the requirements of the design-build contract. TxDOT and the Authority shall jointly prepare a single, consolidated punchlist. If any material 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 work.

(2) TxDOT shall cause punchlist items, including patent defect identified by the parties, to be diligently completed following Substantial Completion. Satisfactory completion of the punchlist items shall be subject to review and reasonable concurrence by TxDOT and the Authority

(3) After Substantial Completion, completion of all the punch list work by the TxDOT contractor, and satisfaction of all other conditions to Final Acceptance contained in the contract between TxDOT and its contractor, TxDOT will issue a certificate of Final Acceptance with regard to the work. Prior to issuing the certificate TxDOT shall confer with the Authority concerning the determination that all conditions to Final Acceptance have been satisfied.

(4) Upon Final Acceptance, TxDOT shall provide one copy of the following documents to the Authority:

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- i. As-built or record drawings of all release for construction plans
- ii. Geotechnical reports
- iii. Drainage reports
- iv. Shop drawings
- v. Warranties from all subcontractors and suppliers
- vi. Applicable maintenance and operations manuals provided by the contractor for any installed equipment

(5) To the extent permitted by law, upon Final Acceptance, TxDOT will transfer to the Authority all of TxDOT's rights and obligations under the Environmental Documents.

b. Authority Responsibilities.

(1) The Authority shall participate in the inspection for creating the punch list as provided above.

(2) The Authority shall participate in inspections at Final Acceptance of the Project, as described above.

(3) The Authority shall ensure that the toll collection system is operable at Substantial Completion, subject to correction of punch list items, consistent with the Project schedule.

(4) Within two (2) business days after the Authority receives notice from its system integrator of the date it expects to achieve substantial completion, the Authority shall provide TxDOT written notification of such date.

(5) If any material patent defect is not eligible for treatment as a punch list item, the Authority shall cause it to be rectified as a condition to achieving Substantial Completion of the Authority Improvements.

(6) Prior to deploying any toll collection equipment or technology the Authority (or its contractor) shall certify to TxDOT that the technology complies with the interoperability rules that are in effect on the date of issuance of the request for proposals for the toll systems integration contract.

(7) The Authority shall provide to TxDOT a letter acknowledging the final acceptance of the Authority Improvements by the Authority.

9. Operation and Maintenance

Prior to the Final Acceptance of the Project, TxDOT shall be responsible for the development construction, operation, maintenance, and policing of the Project, except that the Authority shall be responsible for the installation of the Authority Improvements, and the operation and maintenance of the toll lanes, including the Authority Improvements, from and after Substantial Completion. The Parties shall work together to coordinate maintenance activities on the portions

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of the Project that each will maintain and operate so as to minimize disruptions to service and negative impacts to their respective facilities.

a. TxDOT Responsibilities.

(1) Except as provided in subsection 9.b. below, TxDOT shall be responsible for operation and maintenance of the Project through Final Acceptance, except that the Authority shall be responsible for operation and maintenance of the toll lanes, including the Authority Improvements, following Substantial Completion. TxDOT shall remain responsible for the operation and maintenance of the general purpose lanes in the corridor.

(2) If requested by the Authority, TxDOT shall conduct the necessary studies to determine the appropriate speed limits for the Project and install and maintain the appropriate highway operations signage, in accordance with the Texas MUTCD.

(3) In the event the Authority adopts any business rules specific to the Project (and the operation of the toll lanes), TxDOT shall participate in the development of and any revisions to such business rules.

(4) TxDOT shall notify the Authority of any modifications in the Project's operations and maintenance that may be required for TxDOT's customer service center ("CSC") operations or for the efficient operation of adjacent TxDOT facilities, provided such modifications do not have a material adverse impact on toll operations and the generation of toll revenues.

(5) TxDOT shall be primarily responsible for the resolution of and compliance with any environmental permitting and mitigation issues through Final Acceptance, with the Authority having such responsibility thereafter.

(6) TxDOT shall (i) operate and maintain the general purpose lanes adjacent and parallel to the Project, in a manner that does not materially interfere with the Authority's operation and maintenance of the toll lanes within the Project; (ii) perform all required federal inspections for bridges, structural steel/signs, and other facilities after Final Acceptance; (iii) operate and maintain traffic signals and other traffic control devices at the interchanges; and (iv) coordinate with the Authority concerning the timing and duration of closures of interchanges for maintenance or other non-emergency purposes.

(7) TxDOT shall establish the speed limits and conditions for use of the general purpose lanes adjacent to the toll lanes within Project.

(8) TxDOT shall allow the Authority to locate and maintain signage concerning use of the toll lanes within the Project at mutually agreeable locations within the right-of-way maintained by TxDOT.

(9) TxDOT shall process TxTag transponder transactions and manage the related customer accounts for the Project in accordance with the fee structure rates set forth in the Interlocal Agreement for Interoperability of Toll Collection Systems (the "Interlocal

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Agreement”), as that agreement may be amended from time to time hereafter, and to which TxDOT and the Authority are among the parties.

b. Authority Responsibilities.

(1) Upon Substantial Completion, the Authority shall assume full responsibility for the operation and maintenance of the Authority Improvements and the toll lanes, and shall have the right to receive and collect the tolls therefrom, subject to the terms of this Agreement. The Authority shall be responsible, at its expense, for (i) incorporating tolling operations into its existing toll collection system; and (ii) operating and maintaining the Authority Improvements and the toll lanes in a manner consistent with Authority policies and other Authority projects. Upon Substantial Completion, the Authority shall also be responsible for all losses or damage to the Authority Improvements and/or the toll lanes, save and except for those damages caused by TxDOT or its design-build contractor.

(2) Upon Substantial Completion, the Authority shall be responsible for setting the toll rates, tolling scheme and rate adjustments.

(3) The initial toll rate structure shall be such that the rates are static (that is, not dynamic). As may be warranted by congestion, the Authority may, in consultation with TxDOT, employ the use of a dynamic pricing rate structure, at its cost, to manage congestion. To minimize degradation to the TxDOT CSC operations, the Authority shall consult with the TxDOT Toll Operations Division prior to undertaking the use of dynamic pricing and coordinate efforts to inform motorists and CSC customers.

(4) Upon Substantial Completion, and as provided in Chapter 370 of the Transportation Code, the Authority shall have the exclusive right to enforce and collect tolls from the users of the tolled lanes of the Project, which shall offer electronic toll collection and pay-by-mail collection options.

(5) The Authority shall be responsible for toll collection, violation processing, revenue handling and accounting, and customer service and support for the Project via a third party vendor, TxDOT, or other means. The Authority shall either self-perform, without contracting with a third party, or contract with the TxDOT Toll Operations Division for TxTag transponder transaction processing, and related customer service and account management. In the event the Authority contracts with TxDOT for those services, it shall compensate TxDOT in accordance with fee schedule and terms set forth in the Interlocal Agreement. TxDOT and the Authority will work cooperatively to determine the operations of the toll lanes, system interoperability, and internal control documents for data and valid transponder files and transactions, to minimize any adverse impact on TxDOT customer service center operations and adjoining facilities.

(6) Upon Final Acceptance, the Authority shall assume full responsibility for the operation and routine maintenance (including pavement repair, litter pickup, trimming, etc.) and capital maintenance of the toll lanes on the Project, and all of the Project Right-of-Way in which

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the toll lanes are located, which includes shoulders, pavement, pavement striping, toll signage, concrete traffic barrier or striping separation, toll lane bridge decks, sound walls, retaining walls, structural steel, and any other appurtenances associated with the toll lanes operations in accordance with agreed upon standards. The Authority shall be responsible for operating and maintaining the infrastructure facilities, including any barriers or traffic control device used to separate the toll lanes from the general purpose lanes. The Authority's responsibilities under this subsection do not extend to the general purpose lanes in the corridor, which remain the responsibility of TxDOT.

(7) Upon Final Acceptance, the Authority will comply with all requirements of the Environmental Documents, and will be responsible for all permitting and mitigation issues, and for obtaining any changes to the Environmental Documents that may be necessary for the operation and maintenance of the Project after Final Acceptance. In operating and maintaining the Project, the Authority agrees to comply with all applicable laws, rules, and regulations.

(8) Upon Final Acceptance, the Authority shall be responsible for all inclement weather operations, repairs of facilities located in or on the toll lanes within Project, and for obtaining and/or maintaining equipment required for these operations.

(9) Upon Final Acceptance, and as provided for herein, the Authority shall have the right to use Project Right of Way and the Project infrastructure/facilities to operate and maintain the tolled lanes and collect the tolls on the toll lanes within the Project.

(10) The Authority shall (i) establish the speed limits and conditions for use of the toll lanes within the Project, and (ii) ensure that its operation and maintenance of the toll lanes does not materially interfere with or adversely affect TxDOT's operation or use of the general purpose lanes and other adjacent TxDOT facilities.

(11) Upon Final Acceptance, the Authority shall be responsible for all major capital improvements to the toll lanes within the Project to include, but not be limited to:

- i. Toll lane bridge deck repair and rehabilitation
- ii. Sound wall repair and rehabilitation
- iii. Retaining wall repair and rehabilitation
- iv. Pavement repair and rehabilitation
- v. Barrier or traffic control device repair, rehabilitation and replacement
- vi. Sign/lighting/striping repair, replacement and rehabilitation
- vii. Applicable signal installation, repair, and replacement, and coordination with affected cities, as appropriate.

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- viii. Toll collection system repair, rehabilitation and replacement.
- ix. Toll lane capacity expansions.

(12) Upon Final Acceptance, the Authority shall perform or contract to perform all traffic management and safety operations to include:

- i. Police services in a manner consistent with the Authority's system
- ii. Wrecker services in a manner consistent with the Authority's system
- iii. Lane closures in a manner consistent with Authority standards, and as coordinated with TxDOT.

(13) Upon Final Acceptance, the Authority shall be responsible for the security of all toll-related Project equipment, systems, stores, stockpiles, structures, buildings, and maintenance facilities, if any.

(14) The Authority shall operate and maintain the toll lanes within the Project in accordance with the annual operations and maintenance budget to the extent Project revenues are available therefor.

10. Oversight Committees

Immediately after the Effective Date, the Parties shall designate their respective members of the Leadership Team and Design and Construction Technical Committee.

a. Design and Construction Technical Committee.

The Design and Construction Technical Committee shall have oversight responsibility for project design and construction issues and directives to the contractor including, but not limited to responding to inquiries, resolving issues and participating in the review of design questions, requests for information, requests for changes, change orders, design and construction deviations, noncompliance reports and notices of design change and other technical questions from the design-build contractor and toll collection system integrator. The Design and Construction Technical Committee will consist of eight members: four members each from TxDOT and the Authority. Consultants may serve in place of staff members but numbers are limited to a total number of four for each party. Consultants may not make decisions on behalf of a party but serve as a technical resource and support. This committee will meet no less than monthly during the design and construction of the project to discuss:

- (1) Design and construction progress and related schedule impacts;
- (2) Contractor requests regarding technical requirements that may impact operations and maintenance of the Project;

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- (3) Construction coordination
- (4) Necessary or desirable changes to design and technical requirements.

b. Leadership Team.

A Leadership Team shall be established to help resolve issues relating to the parties' responsibilities under this Agreement that arise during the procurement for the design-build contract, design and construction of the Project and operations and maintenance of the Project, and which are not resolved between TxDOT's project manager and the Authority's dedicated staff, or by the Design and Construction Technical Committee. The Leadership Team shall consist of four members: two staff members each from TxDOT and the Authority. Consultants may not serve on the Leadership Team. The Leadership Team shall meet as necessary and appropriate during design, construction, and operations, and may only take action by means of a majority vote of its members.

11. Insurance

- a. Upon Final Acceptance, 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 toll lanes within 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 its other projects. The costs of insurance for the Project shall be an operating expense of the Project.

b. This Agreement authorizes the Authority or its contractor to perform work on TxDOT right-of-way. Before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT's Form 1560 Certificate of Insurance. The amounts and types of insurance specified and certified to on the Certificate of Insurance must comply with the insurance requirements of _____. This coverage shall be maintained until all work on TxDOT right-of-way is complete. If coverage is not maintained, all work on TxDOT right-of-way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

12. Reports

- a. For such time that the Authority is obligated to reimburse TxDOT, 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 shall be made available to authorized representatives of TxDOT 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 the Authority for five (5) years after the record or document is created.

b. Not less than sixty (60) days and not more than ninety (90) days before the commencement of each fiscal year, the Authority shall deliver to TxDOT for its review a

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preliminary annual operations and maintenance budget for such fiscal year. Such budget shall be based on operating and maintaining the Project to the standards as agreed upon prior to Final Acceptance or, for an item not specifically addressed in this Agreement, to the standards the Authority utilizes on its other projects, and cost allocations to the Project shall be in accordance with the cost principles established in OMB Circular A-87 that specify that costs must be allowable, reasonable and allocable to the Project. The Authority shall deliver to TxDOT for its review any subsequent changes to the current operations and maintenance budget. The Authority shall also deliver to TxDOT monthly expenditures to-date compared to annual budgets for each fiscal year, monthly reports regarding Project operating and maintenance expenditures, completed preventative maintenance activities, transaction reports, revenues collected and toll collection rates. The Authority will provide notice within ten days to TxDOT if any actual operating and maintenance costs exceed the amount budgeted for such costs in the annual operating and maintenance budget by an amount equal to or above 105% of such aggregate budgeted amount, including a brief narrative explanation of the reasons for such variance.

13. Reliance by TxDOT

The Authority acknowledges and agrees that in connection with the performance by TxDOT of its obligations under this Agreement, TxDOT will rely on (i) the Authority's waiver of its option and primacy rights, and the exercise by TxDOT of its option and primacy rights for the purposes of developing, financing, and constructing the Project, (ii) the Authority's exercise of its option and primacy rights for the purpose of operating and maintaining the toll lanes within the Project and collecting the revenues therefrom from and after Final Acceptance, and (iii) the rights and obligations of the parties under this Agreement. Accordingly, the Authority hereby covenants and agrees that it shall not seek to (a) terminate this Agreement, (b) revoke the Authority's waiver of its option and primacy rights for the purposes of developing, financing, and constructing the Project, , or (c) seek or support legislation that would have a direct and material adverse impact on the intent of this Agreement. The provisions of this Section 14 shall survive termination of this Agreement.

14. 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 provisions of the Transportation Code are to those provisions as they were in effect on September 1, 2013. If amendments to any such provisions become (or became) effective at any time after September 1, 2013, that impact a party's rights and obligations hereunder, the Authority and TxDOT agree to promptly make such amendments to the 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.

15. Termination of this Agreement.

a. **Mutual Termination.** Except as provided herein, this Agreement may be terminated

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only by written mutual agreement and consent of the parties hereto.

b. Primacy. Either party may terminate this Agreement by written notice to the other party if the Authority's waiver of its primacy rights and option with regard thereto is terminated or rescinded.

c. Dissolution of the Authority. In the event that the Authority is dissolved, ceases to function, or its operations assumed by a third party, then TxDOT may elect to terminate this Agreement. Upon termination of this Agreement, the Authority shall, within 180 days of such termination, pay to TxDOT all amounts remaining owed to TxDOT under the terms hereof. In the event the Authority fails to make such payment, the operation and maintenance of the toll lanes within the Project, including toll collection and the rights to toll revenues, shall revert back to TxDOT. Further, the Authority's license to use the Project Right of Way shall terminate. TxDOT shall then have the right to operate, maintain and collect the tolls from the Project, and assume full control of and responsibility to operate and maintain the Project. In that event, the Authority shall transfer its interest in the Authority Improvements and assign any and all related operations and maintenance contracts, including its interests in the toll collection system.

16. 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"):

(1) The Authority fails to reimburse TxDOT for all amounts owed hereunder on or before 180 days after the last Payment Date;

(2) The Authority fails to reimburse TxDOT for all amounts owed hereunder within 180 days after termination of this Agreement by TxDOT; or

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

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

(1) Respecting an Authority Default under subsection a.(1), a period of thirty (30) days after TxDOT delivers to the Authority written notice of the Authority Default.

(2) Respecting an Authority Default under subsection a.(2), 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.

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c. TxDOT Remedies for Authority Defaults.

(1) TxDOT shall be entitled to seek an action in mandamus against the Authority on account of the occurrence of an Authority Default including without limitation a default in the obligation to remit the portion of Net Revenues held by the Authority and to be remitted to TxDOT pursuant to this Agreement.

(2) In addition to the forgoing, if the Authority fails to perform or fails to meet the standards required hereunder for any of the tolling operations it is required to perform for a period of thirty (30) days, upon notice to the Authority, TxDOT shall have the right but not the obligation to step-in and undertake the operation and maintenance of the Project, including the collection of tolls and other tolling services under this Agreement using any and all reasonable means necessary to perform such services and collect such tolls; provided that, if TxDOT exercises its right to step-in, 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 services not earlier than one year after the date TxDOT exercises its right to step-in 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 services, and (B) sets forth the specific steps the Authority intends to take as well as the schedule to resume performing such services in compliance with the requirements of this Agreement.

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"):

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

(2) 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:

(1) Respecting a TxDOT Default under subsection d.(1), a period of thirty (30) days after the Authority delivers to TxDOT written notice of the TxDOT Default.

(2) Respecting a TxDOT Default under subsection d.(2), 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.

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

17. 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 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.

18. 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.

19. 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.

20. Authorized Representatives

The initial Authorized Representative designations for the Parties are:

For TxDOT:

For the Authority:

Such designations may be changed by a subsequent writing delivered to the other.

21. 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:

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Delivered personally:

Central Texas Mobility Authority
[address]

Delivered by mail:

Central Texas Mobility Authority
[address]

If to TxDOT:

Texas Department of Transportation
[address]

With a copy to:

Texas Department of Transportation
[address]

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.

22. 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.

23. 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.

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24. 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.

25. Authorization.

Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement in accordance with its terms, other than those that have been obtained.

26. 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.

27. 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.

28. Conflicts.

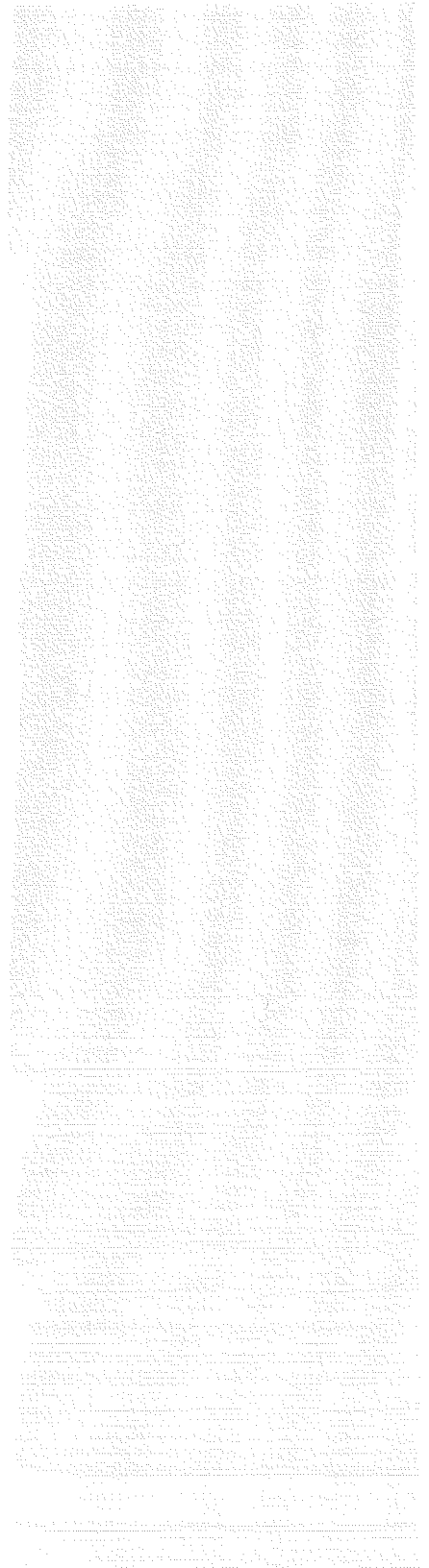
If any conflict or inconsistency exists between this Agreement and the Term Sheet, this Agreement shall govern.

29. 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.

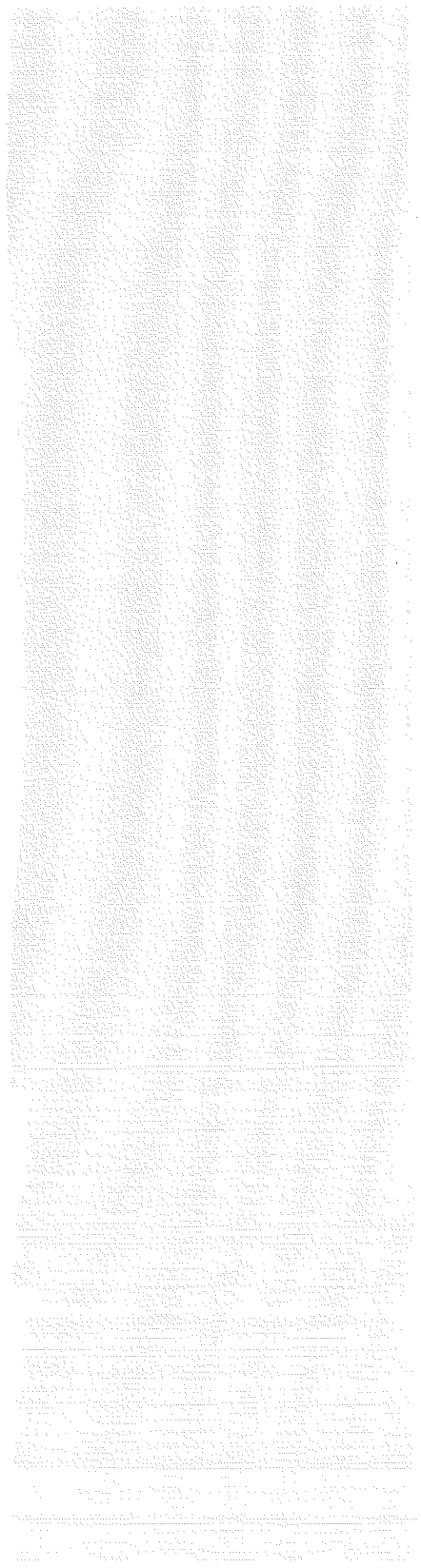
IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by ___ () multiple counterparts on the dates shown herein below, effective on the Effective Date listed above.

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[Signatures]



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EXHIBIT A
SH 71 Toll Lanes Project



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Exhibit B

SH 71 Toll Lanes Project

[Description of Project Right of Way]

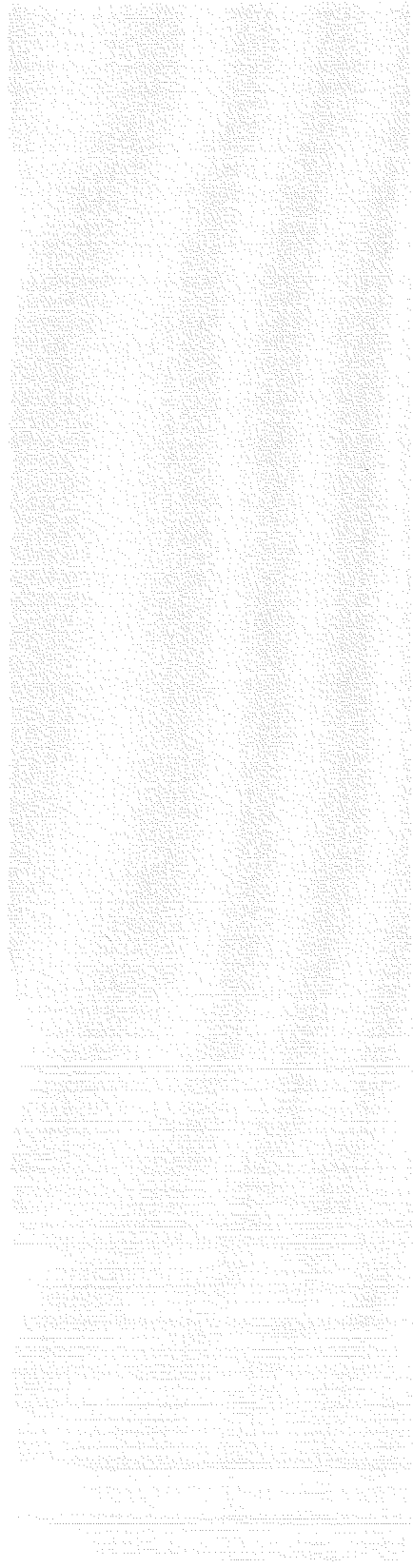


Exhibit C

Authority Improvements

1. AUTHORITY IMPROVEMENTS

The Authority Improvements shall be those items listed below under the Authority headings and shall not include any of the items listed below under the TxDOT headings.

A. TOLL GANTRIES

1. Provide, install and maintain tolling equipment, cameras and antennas
2. The installation of tolling equipment:
 - a. Video tolling cameras, antennas, mounting brackets, cabling and camera programming and configuration
 - b. Inductive loops, loop wiring, loop detection hardware and software
 - c. Network switch, equipment racks and cabling
 - d. Supporting systems and buildings

B. COMMUNICATION

1. Design of fiber optic cable infrastructure for the project corridor and fiber optic infrastructure connecting _____
2. The project corridor fiber optic cable infrastructure includes the following:
 - Fiber optic backbone cable consisting of 288 strand single-mode fiber optic cable
 - Fiber optic lateral cables consisting of 6 strand and 12 strand single-mode fiber optic cables
3. Installation, splicing, testing and connecting all fiber optic cables, including splice cases, patch panels and incidental materials fiber optic markers and test stations
4. Fiber will be installed on the SH71 corridor and to the first Main Lane Plaza on SH 130 north of the interchange of SH 71 and SH130. The fiber will be connected to the TxDOT toll network which is connected to the Authority's toll and traffic operations building on 183A toll road
5. Design and construction of supporting electrical systems sufficient for operation of communications equipment
6. Design of fiber optic infrastructure. Infrastructure shall be dedicated to the operation of the project and will not be comingled with other roadway systems.

Comment [A1]: Per Tim: this needs definition. CTRMA's toll system integrator will provide requirements and assist in the design but construction of the fiber infrastructure is generally part of the civil contractor's work.

Comment [A2]: Per Tim: this needs to be provided by the civil contractor

Comment [A3]: Typically we provide power to the ROW and the system integrator provides the rest

Comment [A4]: Per Tim: this needs definition. CTRMA's toll system integrator will provide requirements and assist in the design but construction of the fiber infrastructure is generally part of the civil contractor's work.

C. NETWORK AND SERVER/STORAGE INFRASTRUCTURE INSTALLATION

1. Connectivity to Authority system
2. Design and construction of supporting electrical system sufficient for operation of network equipment deployed in the project corridor

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3. Provide, install and maintain network hardware consistent with Authority practices
 - Network switch gear required for tolling operations at each Main Lane and each Ramp Gantry location
4. Provide, install and maintain required server and storage systems at the Authority Data Center consistent with Authority practices
 - Servers required to handle back office processing of transactions will be compatible with Authority systems and software
 - Storage required for video and transaction retention will be compatible with Authority systems and software

D. SECURITY

1. IT Buildings at Tolling Points
 - Provide and install cameras, temperature sensors, smoke alarms and access control and supporting network equipment and roadside cabinets.

Comment [A5]: Per Tim: These will most likely be roadside cabinets

2. COMPLETION DEADLINES

A. CRITICAL PATH ITEMS

The completion deadline for the Critical Path Items shall be 15 days prior to the Substantial Completion Date as set forth in the design-build contractor's schedule pursuant to the design-build contract. The Critical Path Items shall not be considered complete until all Critical Path items have been installed, all systems and equipment testing have been successfully completed, the systems and equipment are ready for operation, and the Authority has delivered to TxDOT the written certification required under the Agreement.

3. TXDOT RELATED RESPONSIBILITIES

A. TOLL GANTRIES

1. Design and construction of mainlane and ramp gantries to include columns, superstructure lightening protection and supporting frame to hold toll collection equipment in accordance with Authority standard drawings and specifications
 2. Design and construction of mainlane and ramp gantry tolling infrastructure to include all underground conduit, junction boxes and above ground equipment slabs based on the Authority's specifications and plans
3. Bringing of power source to the project at the ROW line for the supporting electrical systems of tolling and network equipment
- 3.

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B. COMMUNICATIONS

Design and construction of fiber optic infrastructure to include duct bank, conduit, junction boxes and equipment slabs based on the Authority's specifications and plans. The SH 71 duct bank will connect to the main duct bank on SH130.

1. Construction of fiber optic infrastructure. Infrastructure shall be dedicated to the operation of the project and will not be comingled with other roadway systems

C. DYNAMIC MESSAGE SIGNS

Design and construction of structures, trusses, and conduit for two DMS locations within the project limits in accordance with Authority standards and practices.

D. ALL THIRD PART UTILITY SERVICES

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EXHIBIT ____

[Payment schedule to be agreed]

