

EXHIBIT 16

REQUIRED CAPACITY IMPROVEMENTS, FACILITY EXTENSIONS AND TECHNOLOGY ENHANCEMENTS

A. Capacity Improvements

1. Principles

1.1. This Exhibit 16 sets forth the criteria, requirements and provisions in respect of Capacity Improvements.

2. General Purpose Capacity Improvement Trigger

2.1 The General Purpose Capacity Improvement Trigger Event shall occur on the earlier of (i) 18 months prior to December 31, 2030 or (ii) the General Purpose Capacity Improvement Early Trigger Date.

2.2 The calculations required pursuant to this Section 2.2 shall be made for each calendar year (the "GP Calculation Year"), commencing with the year in which the first Service Commencement Date occurs and continuing until the earlier of the date of the General Purpose Capacity Improvement Trigger Event or the date on which NTP GP is issued.

2.2.1 Within 15 days after the end of each GP Calculation Year, Developer and TxDOT shall jointly calculate using a 5% discount rate the present value (as of January 1 of the year the Effective Date occurs) of each of the following:

- (A) Excess Revenues minus any Revenue Payment Amounts calculated pursuant to Part A, Section 2 of Exhibit 7 from the first Service Commencement Date through the end of such GP Calculation Year; and
- (B) Revenue Losses commencing the second July 1st following the end of such GP Calculation Year (in order to account for the period allowed under Section 2.4) and continuing until December 31, 2030.

2.2.2 For purposes of this Section 2, "Excess Revenues" for each GP Calculation Year are calculated as the actual Toll Revenues commencing on the first day of the GP Calculation Year through the end of such GP Calculation Year minus the amount calculated pursuant to (i) or (ii), as applicable:

- (i) if Service Commencement of the Managed Lane Capacity Improvement has not been achieved, the Base Case Toll Revenues from the first day of the GP Calculation Year through the end of the GP Calculation Year; or

- (ii) if Service Commencement of the Managed Lane Capacity Improvement has been achieved, then for all periods during the GP Calculation Year prior to such Service Commencement the Base Case Toll Revenues, plus for all periods on and after such Service Commencement Date through the end of the GP Calculation Year, the Toll Revenues set forth on Revenue Line 3 as provided in the Base Case Financial Model.

2.2.3 For purposes of this Section 2, "Revenue Losses" for each calendar year are calculated pursuant to (i) or (ii) as applicable:

- (i) if Service Commencement of the Managed Lane Capacity Improvement has not been achieved, the Base Case Toll Revenues minus the Toll Revenues set forth on Revenue Line 1 as provided in the Base Case Financial Model; or
- (ii) if Service Commencement of the Managed Lane Capacity Improvement has been achieved, as the Base Case Toll Revenues minus the Toll Revenues set forth on Revenue Line 3 minus the Toll Revenues set forth on Revenue Line 2.

2.2.4 Revenue Line 1 represents the forecast of Toll Revenues in the Base Case Financial Model assuming that the General Purpose Capacity Improvement is opened on the first Service Commencement Date and the Managed Lane Capacity Improvement is opened in 2030. Revenue Line 2 represents the forecast of Toll Revenues in the Base Case Financial Model assuming that both the General Purpose Capacity Improvement and the Managed Lane Capacity Improvement are opened on the first Service Commencement Date. Revenue Line 3 represents the forecast of Toll Revenues in the Base Case Financial Model assuming that the General Purpose Capacity Improvement is opened in 2030 and the Managed Lane Capacity Improvement is opened on the first Service Commencement Date.

2.2.5 When the amount calculated pursuant to Section 2.2.1(A) equals or exceeds the amount calculated pursuant to Section 2.2.1(B), then the January 1 immediately following the end of the GP Calculation Year will be considered the General Purpose Capacity Improvement Early Trigger Date.

2.3 When TxDOT determines it is possible, based on traffic and revenue trends, that (A) could equal or exceed (B) (each calculated pursuant to Section 2.2.1) prior to the end of the calendar year, the calculations set forth in Section 2.2 shall be performed by the parties on a semi-annual basis for each six-month period ending on June 30th and December 31st. If a calculation made for the six-month period ending on December 31st indicates that (A) equals or exceeds (B) (each calculated pursuant to Section 2.2.1), then the next January 1st (i.e. the first day after such six-month period) will be considered the General Purpose Capacity Improvement Early Trigger Date. If a calculation is made for the six-month period ending on June 30th, then the amount calculated pursuant to Section 2.2.1(B) shall be Revenue Losses commencing the second January 1st thereafter and continuing until December 31, 2030. If a calculation made for the six-month period ending on June 30th indicates that (A) equals or exceed (B), then the next

July 1st (i.e. the first day after such six-month period) will be considered the General Purpose Capacity Improvement Early Trigger Date.

- 2.4** Developer shall achieve Service Commencement for the General Purpose Capacity Improvement on or before 18 months following the occurrence of the General Purpose Capacity Improvement Trigger Event, and for all purposes of this Agreement such date will constitute the Service Commencement Deadline for the General Purpose Capacity Improvement.

3. Managed Lane Capacity Improvement Trigger

- 3.1** The Managed Lane Capacity Improvement Trigger Event shall occur on the earlier of (i) 18 months prior to the December 31, 2030 or (ii) the Managed Lane Capacity Improvement Early Trigger Date.

- 3.2** The calculations required pursuant to this Section 3.2 shall be made for each calendar year (the "ML Calculation Year"), commencing with the year in which issuance of NTP GP or the date the General Purpose Capacity Trigger Event occurs, as applicable, and continuing until the earlier of the date of the Managed Lane Capacity Improvement Trigger Event and the date on which NTP ML is issued.

3.2.1 Within 15 days after the end of each ML Calculation Year Developer and TxDOT shall jointly calculate using a 5% discount rate the present value (as of January 1 of the year the Effective Date occurs) of each of the following:

- (A) Excess Revenues minus any Revenue Payment Amounts calculated pursuant to Part A, Section 2 of Exhibit 7 commencing on the date of issuance of NTP GP or the date the General Purpose Capacity Trigger Event occurs, whichever is earlier, through the end of such ML Calculation year; and
- (B) Revenue Losses commencing the second July 1st following the end of such ML Calculation Year, (in order to account for the period allowed under Section 3.4) and continuing until December 31, 2030.

3.2.2 For purposes of this Section 3, "Excess Revenues" for each ML Calculation Year shall equal the actual Toll Revenues commencing on the first day of the ML Calculation year (or, for the first ML Calculation Year, commencing on the General Purpose Capacity Improvement Trigger Date or the date of issuance of NTP GP, as applicable) through the end of such ML Calculation Year minus the amount calculated for the same period pursuant to (i) and/or (ii), as appropriate, as follows:

- (i) for all periods from the General Purpose Capacity Improvement Trigger Date or the date of issuance of NTP GP, as applicable, through the day prior to the Service Commencement Date for the General Purpose Capacity Improvement, the cumulative Base Case Toll Revenues, and

- (ii) for all periods from the Service Commencement Date for the General Purpose Capacity Improvement through the end of the ML Calculation Year, the cumulative Toll Revenues set forth on Revenue Line 1 as provided in the Base Case Financial Model.

3.2.3 For purposes of this Section 3, "Revenue Losses" shall equal the Toll Revenues set forth on Revenue Line 1 minus the cumulative Toll Revenues set forth on Revenue Line 2.

3.2.4 When the GP Trigger Credit plus the amount calculated pursuant to Section 3.2.1(A) equals or exceeds the amount calculated pursuant to Section 3.2.1(B), then the January 1 immediately following the end of the ML Calculation Year will be considered the Managed Lane Capacity Improvement Early Trigger Date.

The GP Trigger Credit shall equal the amount calculated pursuant to Section 2.2.1(A) minus the amount calculated pursuant to Section 2.2.1(B), each calculated as of the earlier of the General Purpose Capacity Improvement Trigger Date or the date of issuance of NTP GP.

3.3 When TxDOT determines it is possible, based on traffic and revenue trends, that the amount calculated pursuant to Section 3.2.1(A) could equal or exceed the amount calculated pursuant to Section 3.2.1(B) prior to the end of the calendar year, the calculations set forth in Section 3.2 shall be performed by the parties on a semi-annual basis for each six-month period ending on June 30th and December 31st. If a calculation made for the six-month period ending on December 31st indicates that the amount calculated pursuant to Section 3.2.1(A) equals or exceeds the amount calculated pursuant to Section 3.2.1(B), then the next January 1st (i.e. the first day after such six-month period) will be considered the Managed Lane Capacity Improvement Early Trigger Date. If a calculation is made for the six-month period ending on June 30th, then (B) shall be the Revenue Losses commencing the second January 1st thereafter and continuing until December 31, 2030. If such calculation indicates that the amount calculated pursuant to Section 3.2.1(A) equals or exceeds the amount calculated pursuant to Section 3.2.1(B), then the next July 1st (i.e. the first day after such six-month period) will be considered the Managed Lane Capacity Improvement Early Trigger Date.

3.4 Developer shall achieve Service Commencement for the Managed Lane Capacity Improvement on or before 18 months following the occurrence of the Managed Lane Capacity Improvement Trigger Event, and for all purposes of this Agreement such date will constitute the Service Commencement Deadline for the Managed Lane Capacity Improvement.

4. Exceptions

Developer shall have no obligation to undertake a Capacity Improvement if the same is subject to obtaining a separate record of decision or other separate action thereon under NEPA and a no action alternative is selected.

5. Costs and Financing

Developer acknowledges and represents that the cost of mandatory Capacity Improvements and future financing therefor are incorporated into the Base Case Financial Model. Accordingly, Capacity Improvements required under this Exhibit 16 shall be at Developer's sole cost and expense and shall not be treated as a Compensation Event or otherwise entitle Developer to any Claim against TxDOT. If the Capacity Improvement requires TxDOT to undertake any environmental study, investigation, analysis, assessment or documentation under NEPA, Developer shall reimburse TxDOT on a current basis for all its reasonable costs and expenses of such work, including TxDOT's Recoverable Costs. Reimbursement shall be due within 30 days after each date that TxDOT delivers to Developer a written request together with reasonable written evidence of the costs and expenses incurred.

B. Facility Extensions

No Facility Extensions are required.

C. Technology Enhancements

Developer shall have no obligation to undertake Technology Enhancements during the last 15 years of the Term in the following circumstances:

- (a) The costs incurred to implement such Technology Enhancements cannot be reasonably recovered (including a reasonable rate of return on equity invested) over the remaining Term;
- (b) Developer submits to TxDOT a reasonable analysis demonstrating item (a) above, and setting forth reasonably detailed cost and financial information for such Technology Enhancements, including information on cost subsidies from TxDOT; and
- (c) Developer does not receive from TxDOT, within 60 days after TxDOT receives such analysis, written notice under which TxDOT commits to subsidize such cost, to the extent necessary to enable Developer to recover such costs (including a reasonable rate of return on equity invested). TxDOT's commitment to subsidize such cost may take the form of a commitment to pay as costs of such improvements are incurred or to pay an up front lump sum payment, in either case to the extent necessary to enable Developer to realize a reasonable rate of return on its own additional equity invested.