

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE NORTH EAST TEXAS
REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 16-47

WHEREAS, the North East Texas Regional Mobility Authority ("NET RMA") was created pursuant to the request of Gregg and Smith Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.1, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the NET RMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Panola, Wood, Van Zandt, Titus, and Kaufman joined the Authority and are represented on the Board of Directors; and

WHEREAS, the NET RMA is responsible for the operation of Toll 49; and

WHEREAS, the NET RMA is currently pursuing the development of Segment 4 of Toll 49 (the "Project"); and

WHEREAS, on June 14, 2007, the Texas Transportation Commission (the "Commission") approved Minute Order Number 110964 in which it identified a list of candidate projects, including Toll 49, for development, construction, and operation as toll projects and directed TxDOT staff to work with local toll project entities to develop market valuations for those projects; and

WHEREAS, TxDOT's Tyler District and the NET RMA agreed on business terms and conditions for the Toll 49 market valuation as required by Section 228.0111 of the Texas Transportation Code, and, in Resolution No. 08-08, dated April 16, 2008, the NET RMA Board of Directors approved the business terms and conditions for the market valuation analysis for Toll 49; and

WHEREAS, in Resolution No. 08-12, dated June 18, 2008, the NET RMA exercised its option to be the entity to develop Toll 49; and

WHEREAS, in Resolution No. 16-21, dated March 1, 2016, the Board of Directors of the NET RMA authorized the Interim Executive Director to enter into a contract for the construction of Segment 4 of Toll 49 with Webber, LLC; and

WHEREAS, to facilitate development and construction of the Project, it is necessary for the NET RMA to enter into a Project Development Agreement with the Texas Department of Transportation ("TxDOT") to clarify the relationships between TxDOT and the NET RMA concerning the development of the Project; and


WHEREAS, the Interim Executive Director has negotiated the terms of a Project Development Agreement with TxDOT, a copy of which is attached hereto as Attachment "A."

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the NET RMA hereby approves the entry into a Project Development Agreement with TxDOT in the form, or substantially the same form, attached hereto as Attachment "A;" and

BE IT FURTHER RESOLVED, that the Interim Executive Director is authorized to execute such Project Development Agreement on behalf of the NET RMA.


Adopted by the Board of Directors of the North East Texas Regional Mobility Authority on the 10th day of May, 2016.

Submitted and reviewed by:



C. Brian Cassidy
General Counsel for the North East
Texas Regional Mobility Authority

Approved:



Linda Ryan Thomas
Chair, Board of Directors
Resolution Number 16-47
Date Passed: 05/10/16

NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE AUTHORITY'S OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT. WITHOUT PREJUDICE TO THE SURVIVAL OF ANY OTHER OBLIGATION OF THE AUTHORITY HEREUNDER, THE INDEMNITIES AND OBLIGATIONS OF THE AUTHORITY CONTAINED IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT

Notwithstanding the forgoing, 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.

8. Termination of this Agreement. The Agreement may be terminated upon the occurrence of any one of the following conditions:

- (a) By written mutual agreement and consent of the Parties hereto;
- (b) The Commission does not approve the Project, as required by § 370.187 of the Texas Transportation Code before construction of the Project begins, in accordance with the requirements of 43 TEX. ADMIN. CODE §§ 11.58 and 26.31;
- (c) By either party hereto, upon the failure of the other party to fulfill the material obligations as set forth in this Agreement (a “Default”), provided that notice of Default and opportunity to cure shall have been given as provided below, and further provided that the Parties must have first followed the procedures set forth below.
- (d) By satisfactory completion of all responsibilities and obligations described herein.

The Party receiving a notice of Default shall have thirty (30) days after receipt to cure such Default; provided that if the Default is of such a nature that the cure cannot with diligence be completed within such time period and the Party has commenced meaningful steps to cure promptly after receiving the Default notice, the Party 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.

Notwithstanding the foregoing, certain provisions may survive termination of this Agreement, including without limitation, Section II.1 and the provisions granting access to needed right-of-way, except for a termination for the following reasons: (i) the Commission’s failure to approve the Project, and (ii) failure of the Authority to enter into a contract for the construction of the Project by the date specified in this Agreement. For a termination under any of those provisions, all provisions of this Agreement shall be terminated.

9. Dispute Resolution. The Authority and TxDOT will set up a formalized process to resolve any issues that arise in connection with this Agreement. The process will include an issues resolution ladder to resolve questions at the appropriate organizational levels. Any questions that cannot be resolved by use of the issues resolution ladder will be referred to the Authority's Executive Director or their designee and TxDOT's Executive Director or their designee to resolve by agreement between them, if possible. If a dispute is processed under the issues resolution ladder and not resolved, the Parties agree to use the procedures in the next following sentences. The party making a claim may advance it in accordance with the statutes and administrative rules applicable on the Effective Date, including all statutory provisions that effect a waiver, in whole or part, of sovereign immunity to suit for the purpose of adjudicating a claim for a breach under this Agreement. The Parties agree to use any alternative dispute resolution procedure that is a part of the applicable claim procedure. The Parties shall satisfy the requirement for alternative dispute resolution by participating in non-binding arbitration, unless otherwise agreed to by the Parties. During the resolution of an issue the Authority and TxDOT will not hinder work under this Agreement and such work will proceed.

10. 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 agency to the Authority and/or TxDOT. Neither TxDOT nor the Authority shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law, except that either Party may assign its interests in this agreement to a successor entity assuming all or substantially all of the duties and obligations of the assigning entity, without the consent of the other Party.

11. Officials Not to Benefit. No member or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom. No member, officer, or employee of the State of Texas, TxDOT, the Authority, or of a local public body with jurisdiction over the approval, development or operation of the Project during his/her tenure shall have interest in this Agreement or the benefits/proceeds thereof.

12. Debarment Requirements. The Authority shall require its Construction Contractor to complete the "Debarment Certification", attached hereto as Exhibit "D" and made a part hereof for all purposes. All subcontractors to the Authority's Construction Contractor must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Exhibit "E" and made a part hereof for all purposes.

13. Circulation of the Agreement. Copies of this Agreement will be provided to, reviewed and relied upon by underwriters, investment bankers, brokerage firms, bond counsel, and similar parties in connection with the provision of any additional financing.

14. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal, invalid, or void for any reason and shall be invalid or unenforceable, the remainder of the 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.

15. 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.

16. Notices. All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

Authority:

Interim Executive Director
North East Texas Regional Mobility Authority
909 ESE Loop 323, Ste. 520
Tyler, Texas 75701

TxDOT:

District Engineer
Texas Department of Transportation
Tyler District Office
2709 W. Front Street
Tyler, Texas 75702

with a copy to:

Locke Lord, LLP
600 Congress Avenue, Suite 2200
Austin, TX 78701
Attn: C. Brian Cassidy

with a copy to:

Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701
Attn: Office of General Counsel

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

17. 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.

18. Remedies. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

19. 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.

20. 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 do the parties, by this Agreement, intend to create a joint enterprise, joint venture, or partnership.

21. 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. If and to the extent that any approval or action by the Governor of the State of Texas is required to effectuate or authorize any provision of this Agreement, TxDOT agrees that it will use all reasonable efforts to obtain said approval or action. Each signatory on behalf of TxDOT and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

22. 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.

23. Gratuities. Any person who is doing business with or who may do business with TxDOT under this Agreement may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of TxDOT's Executive Director.

24. Conflict of Interest. The Authority shall not assign an employee to the Project if the employee:

- (a) owns an interest in or is an officer or employee of a business entity that has or may have a contract with TxDOT relating to the Project;
- (b) has a direct or indirect financial interest in the outcome of the Project;
- (c) has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with TxDOT; or
- (d) is a current part-time or full-time employee of TxDOT.

25. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of agreements, if any, under which TxDOT is providing financial assistance to the Authority to fund certain costs of the Project (the "Financial Assistance Agreements"), but in the event of conflict the terms of the Financial Assistance Agreements shall control.

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

**NORTH EAST TEXAS REGIONAL
MOBILITY AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Everett Owen, P.E.
Interim Executive Director

By: _____
James Bass, CPA
Executive Director

Date: _____

Date: _____

DRAFT

EXHIBIT A

Toll 49, Segment 4 Project Map

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EXHIBIT B

Toll 49, Segment 4 Project Map

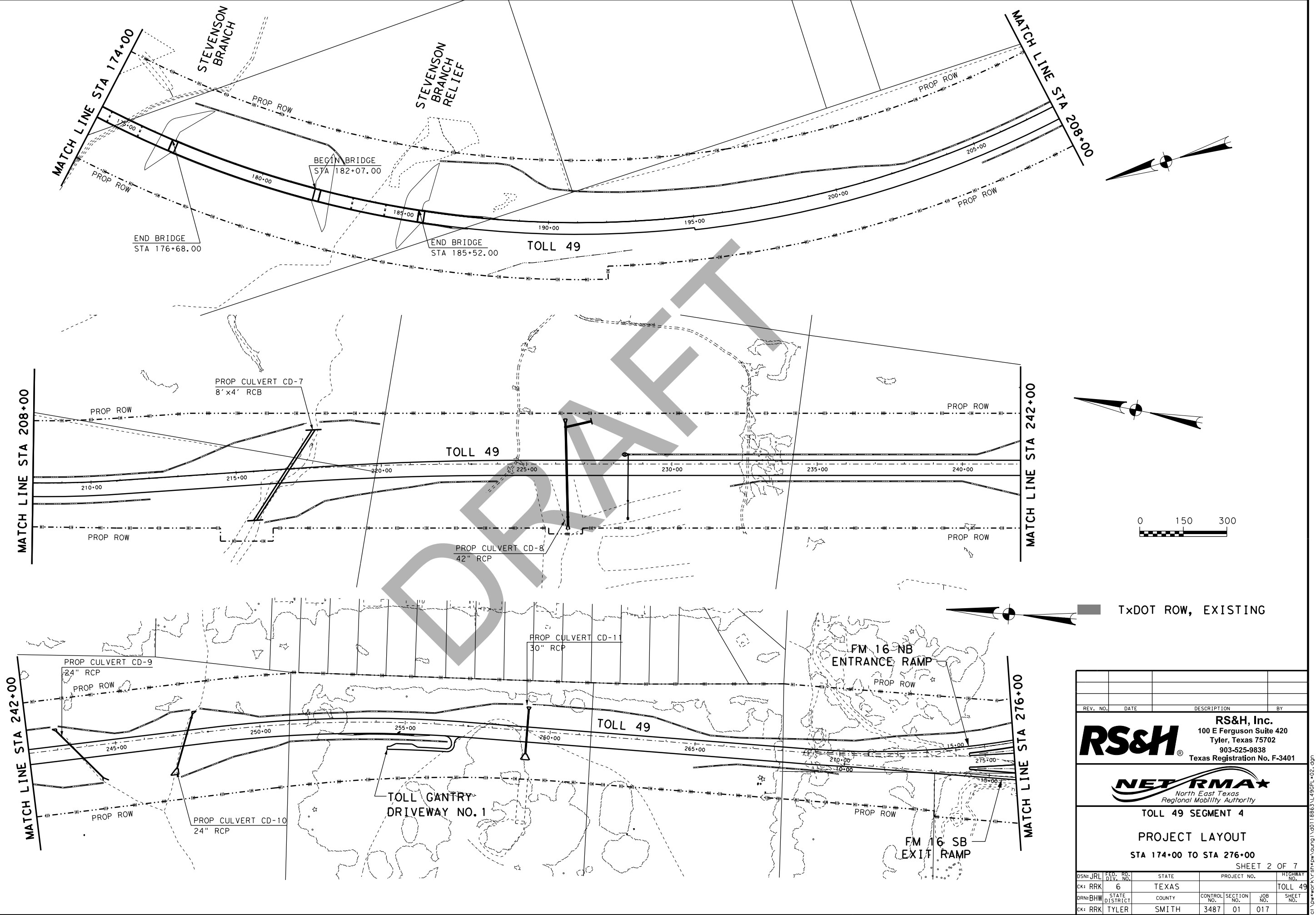
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EXHIBIT C

TxDOT-Owned Property


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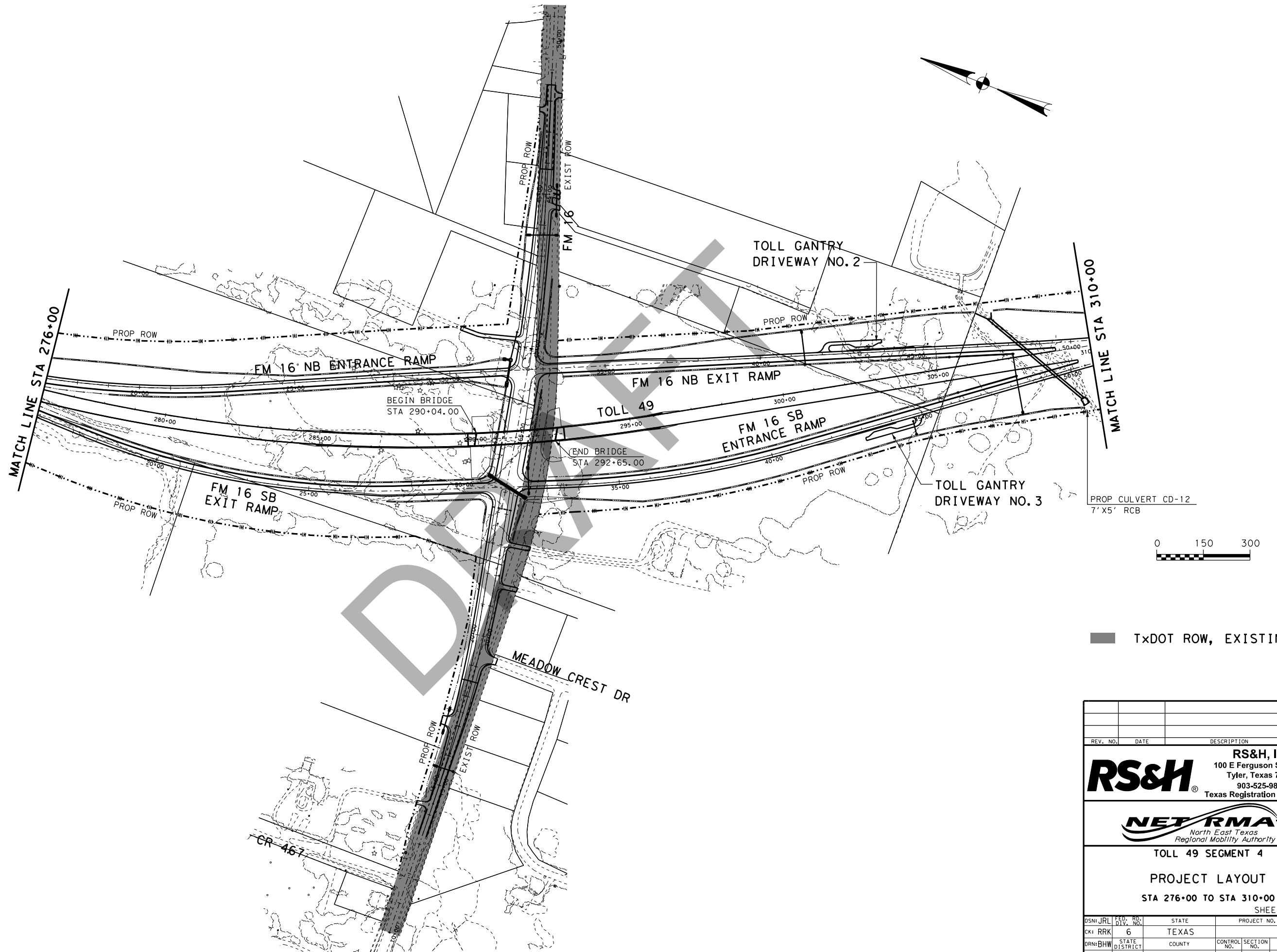
REV. NO.	DATE	DESCRIPTION	BY

RS&H [®]	RS&H, Inc. 100 E Ferguson Suite 420 Tyler, Texas 75702 903-525-9838 Texas Registration No. F-3401
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 NET RMA North East Texas Regional Mobility Authority	
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TOLL 49 SEGMENT 4	
PROJECT LAYOUT	
STA 174+00 TO STA 276+00	
SHEET 2 OF 7	

DSN: JRL	FED. RD. DIV. NO.	STATE	PROJECT NO.		HIGHWAY NO.
CK: RRK	6	TEXAS			TOLL 49
DRN: BHW	STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.
CK: RRK	TYLER	SMITH	3487	01	017
					SHEET NO.



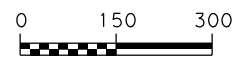
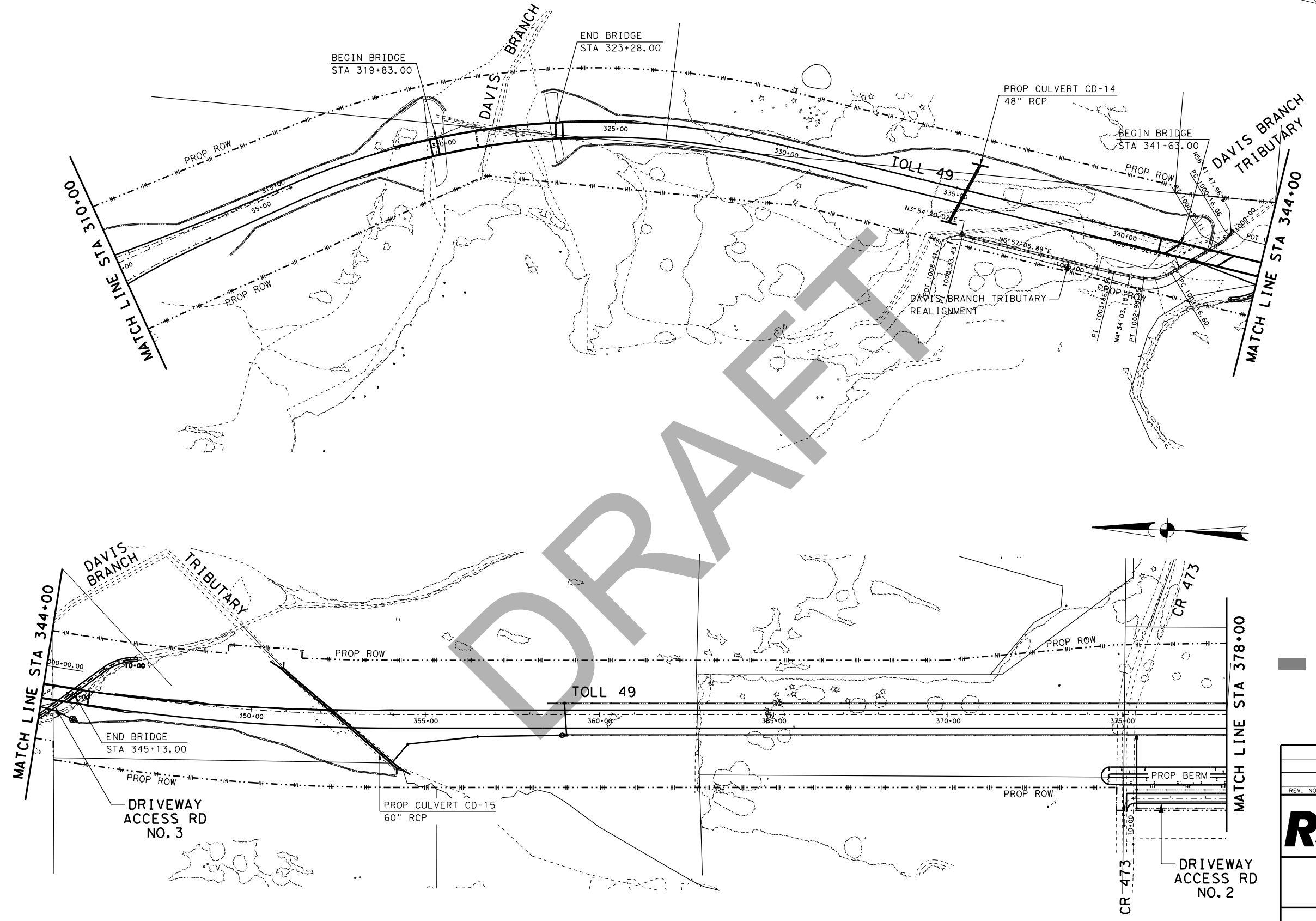
■ TxDOT ROW, EXISTING

REV. NO.	DATE	DESCRIPTION	BY

<h1>RS&H[®]</h1>		RS&H, Inc. 100 E Ferguson Suite 420 Tyler, Texas 75702 903-525-9838 Texas Registration No. F-3401	
 NET RMA[®] North East Texas Regional Mobility Authority			
TOLL 49 SEGMENT 4			
PROJECT LAYOUT			
STA 276+00 TO STA 310+00			
SHEET 3 OF 7			

DSN: JRL	FED. RD. DIV. NO.	STATE	PROJECT NO.			HIGHWAY NO.
CK: RRK	6	TEXAS				TOLL 49
DRN: BHW	STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.
CK: RRK	TYLER	SMITH	3487	01	017	

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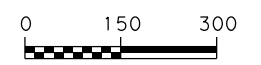
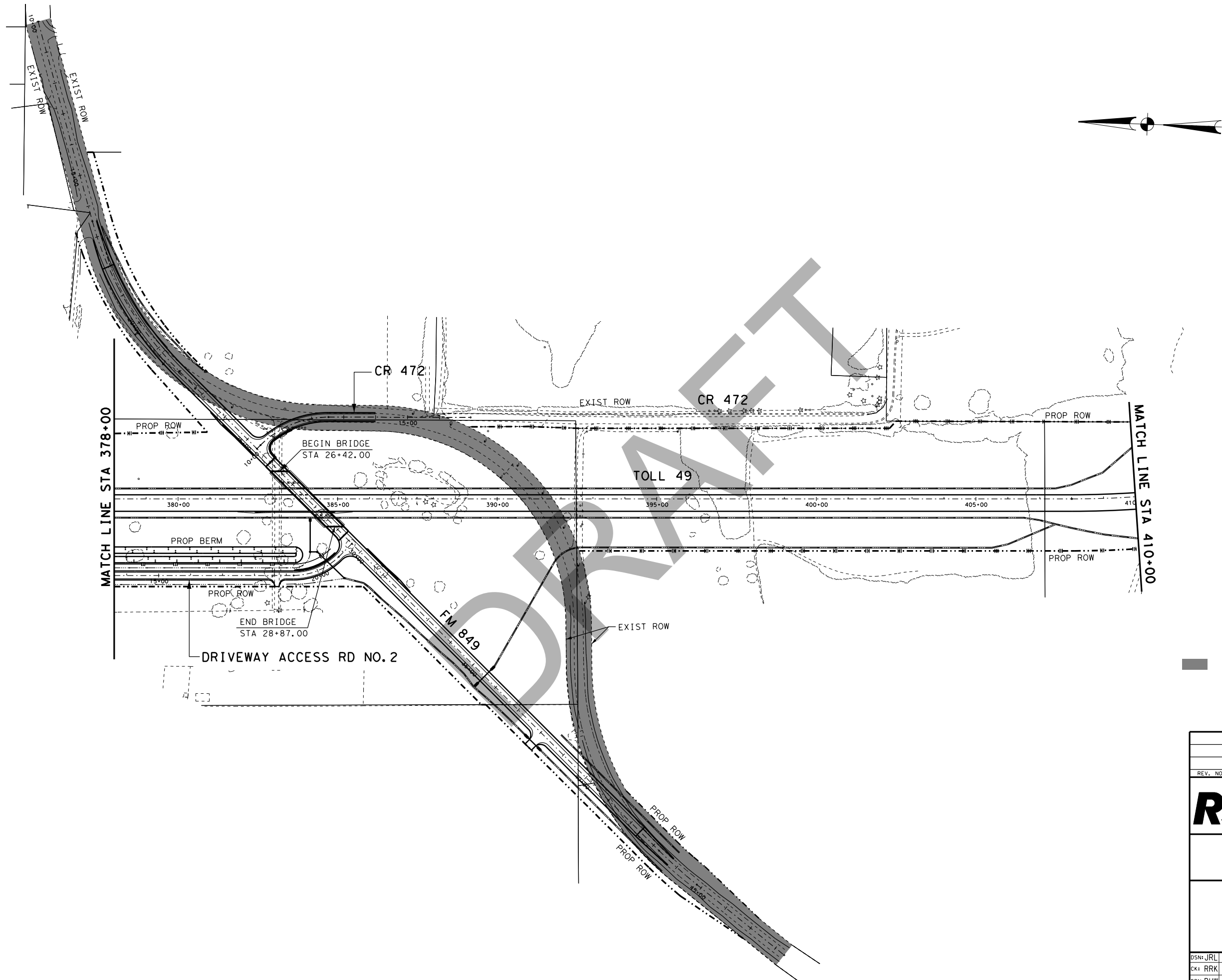
■ TxDOT ROW, EXISTING

REV. NO.				DATE				DESCRIPTION				BY			
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<div>NET RMA North East Texas Regional Mobility Authority</div>															
TOLL 49 SEGMENT 4															
PROJECT LAYOUT															
STA 310+00 TO STA 378+00															
SHEET 4 OF 7															
DSN: JRL		FED. RD. DIV. NO.		STATE		PROJECT NO.		HIGHWAY NO.		TOLL NO.					
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DRN: BHW		STATE DISTRICT		COUNTY		CONTROL NO.		SECTION NO.		JOB NO.		SHEET NO.			
CK: RRK		TYLER		SMITH		3487		01		017					

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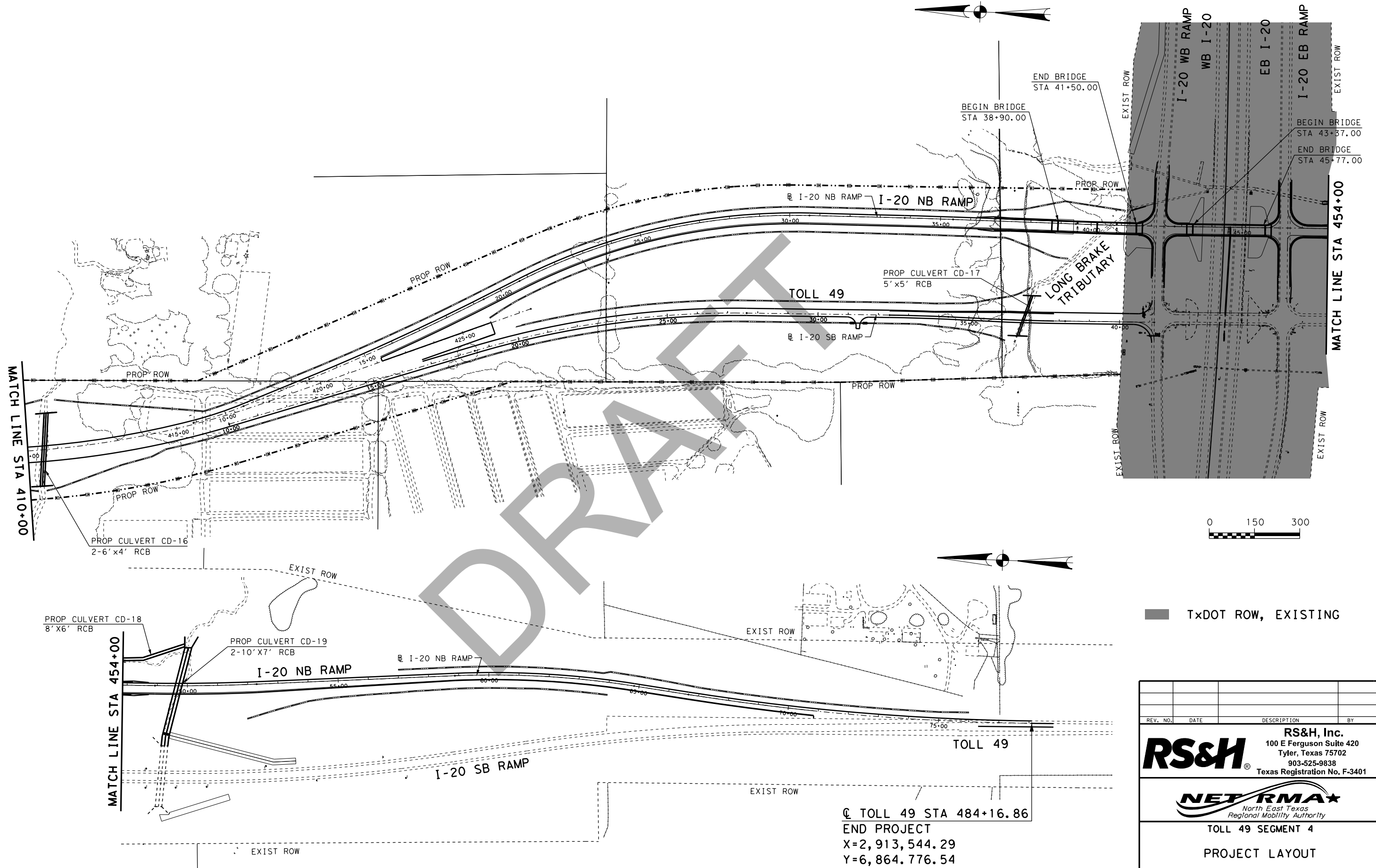
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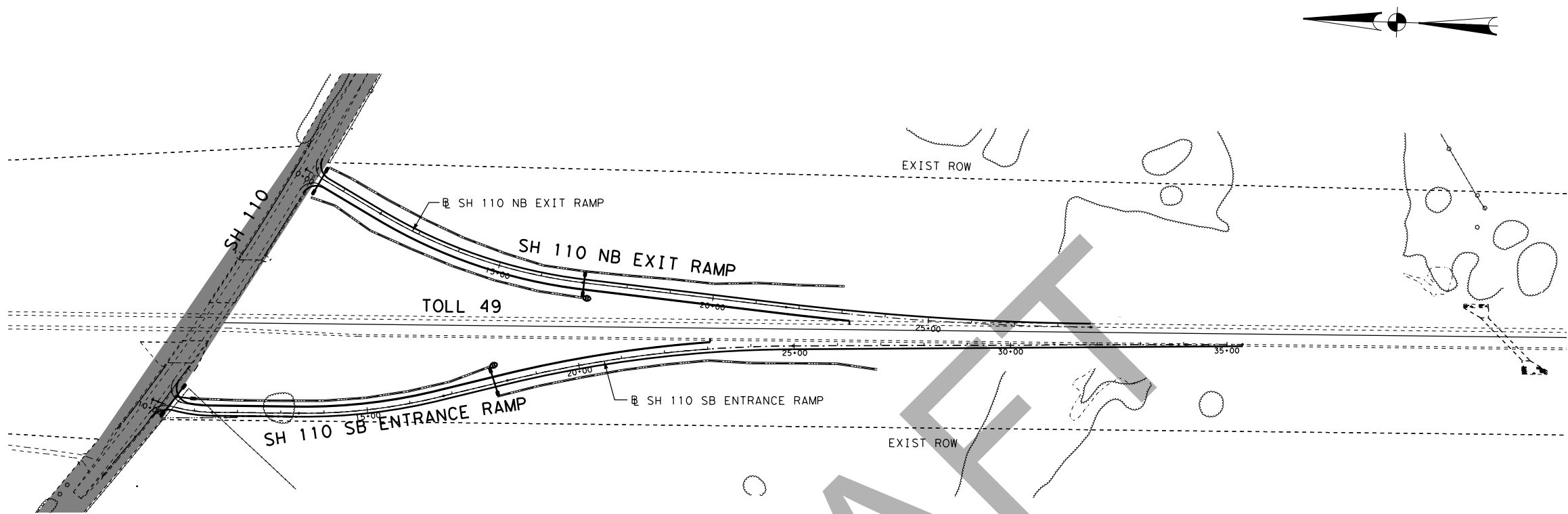
■ TxDOT ROW, EXISTING

REV. NO.				DATE				DESCRIPTION				BY			
RS&H				100 E Ferguson Suite 420				Tyler, Texas 75702				903-525-9838			
NET RMA				North East Texas				Regional Mobility Authority				Texas Registration No. F-3401			
TOLL 49				SEGMENT 4				PROJECT LAYOUT				STA 378+00 TO STA 410+00			
SHEET 5 OF 7				PROJECT NO.				HIGHWAY NO.				TOLL 49			
CK: RRL				6				TEXAS				COUNTY			
DRN: BHW				STATE DISTRICT				CONTROL NO.				SECTION NO.			
CK: RRL				TYLER				SMITH				3487			
												JOB NO.			
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TXDOT ROW, EXISTING

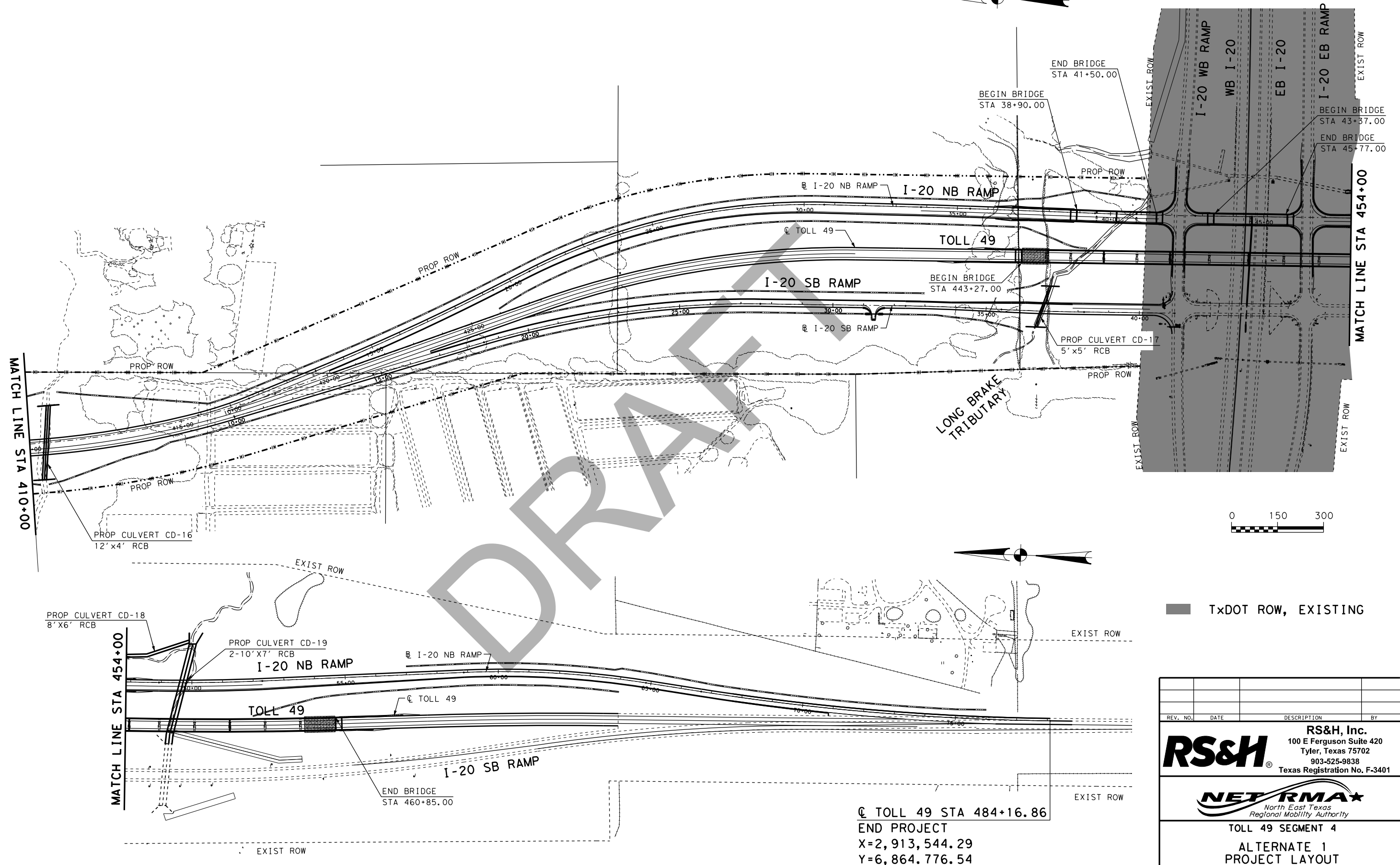
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NET RMA North East Texas Regional Mobility Authority			
TOLL 49 SEGMENT 4			
PROJECT LAYOUT			
STA 410+00 TO STA 486+00			
SHEET 6 OF 7			
DSN: JRL	FED. RD. DIV. NO.	STATE	PROJECT NO.
CK: RRK	6	TEXAS	TOLL 49
DRN: BHW	STATE DISTRICT	COUNTY	CONTROL NO.
CK: RRK	TYLER	SMITH	3487
			SECTION NO.
			01
			JOB NO.
			017
			SHEET NO.



■ TxDOT ROW, EXISTING

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REV. NO.	DATE	DESCRIPTION	BY
<div>RS&H, Inc. 100 E Ferguson Suite 420 Tyler, Texas 75702 903-525-9838 Texas Registration No. F-3401</div>			
<div>NET RMA North East Texas Regional Mobility Authority</div>			
TOLL 49 SEGMENT 4			
PROJECT LAYOUT			
SH 110 NB & SB RAMPS			
SHEET 7 OF 7			
DSN: JRL	FED. RD. DIV. NO.	STATE	PROJECT NO.
CK: RRK	6	TEXAS	TOLL 49
DRN: BHW	STATE DISTRICT	COUNTY	CONTROL NO. SECTION NO. JOB NO. SHEET NO.
CK: RRK	TYLER	SMITH	3487 01 018



REV. NO.	DATE	DESCRIPTION	BY
RS&H, Inc. 100 E Ferguson Suite 420 Tyler, Texas 75702 903-525-9838 Texas Registration No. F-3401			
NET RMA North East Texas Regional Mobility Authority			
TOLL 49 SEGMENT 4			
ALTERNATE 1			
PROJECT LAYOUT			
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SHEET 6 OF 7			
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DRN: BHW	STATE DISTRICT	COUNTY	CONTROL NO.
CK: RRK	TYLER	SMITH	3487
			SECTION NO.
			01
			JOB NO.
			017
			SHEET NO.

EXHIBIT D
Debarment Certificate

- (1) The CONTRACTOR certifies to the best of its knowledge and belief, that its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public* transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public* transactions terminated for cause or default.
- (2) Where the CONTRACTOR is unable to certify to any of the statements in this certification, such CONTRACTOR shall attach an explanation to this certification.

*federal, state or local

Signature of Certifying Official

Typed Name

Title

Date

EXHIBIT E

Lower Tier Participant Debarment Certification

(Negotiated Contracts)

_____, being duly sworn
(insert name of certifying official)
or under penalty of perjury under the laws of the United States, certifies that neither
_____, nor its principals are presently:
(insert name of lower tier participant)

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

Signature of Certifying Official

Title

Date of Certification