



February 21, 2013

To Whom It May Concern:

We are writing to you, jointly, on behalf of Trinity Highway Products, LLC<sup>1</sup> ("Trinity Highway") and Texas A&M Transportation Institute ("TTI"). As many of you know, engineers with TTI developed and designed the ET-Plus® system. The patents covering the ET-Plus® system are owned by the Texas A&M University System ("Texas A&M"). Trinity Highway manufactures and markets the ET-Plus® system under an exclusive license granted by Texas A&M of their intellectual property.

Trinity Highway and TTI are aware that one or more individuals have continued (despite FHWA acceptance) to attempt to mislead people regarding the ET-Plus® system. While both Trinity Highway and Texas A&M have attempted to respond to these disparaging assertions through pending litigation, these individuals have now carried their misleading allegations beyond the courthouse going directly to various highway authorities and even media outlets. Therefore, as a follow up to the letter sent to you on March 14, 2012 by Trinity Highway, this correspondence is written to rebut the misleading allegations now being disseminated and set the record straight.

*The ET-Plus® system remains accepted for use by the FHWA*

You will recall that in the March 2012 letter, we fully discussed TTI's recommendation to Trinity Highway that the impact performance of the extruder head may be enhanced "by reducing the available clearance" of the W-beam guardrail within the guide channels, "in both the lateral and vertical directions". In that letter, Trinity Highway also included the reasons that TTI suggested this improvement to enhance the already demonstrated performance of the system in the field: (1) improved alignment of the extruder head and, therefore, enhanced rail extrusion during head-on impacts; (2) reduction of the impact impulse on the occupants during a head-on collision with the system; and, (3) it created a stronger weld of the extruder head to the guide channels.

You were also made aware that an extruder head with 4-inch guide channels was utilized in a May 27, 2005 crash test of an ET-Plus® system and these performance results were submitted to the FHWA for consideration. We have also communicated that TTI inadvertently omitted a drawing showing the 5-inch to 4-inch detail (that was sent to them by Trinity) from the crash test report that TTI composed. This was explained to the satisfaction of the FHWA in February of 2012.

The FHWA determined that this ET-Plus® end terminal system was acceptable for use on the national highway system. This acceptance was reaffirmed in October 2012 by Nick Artimovich with FHWA:

On February 14, 2012, Barry Stephens and Brian Smith of Trinity Highway Products (Trinity) stated the company's ET end terminal with the 4-inch wide guide channels was crash tested at the Texas Transportation Institute (TTI) in May 2005. Roger Bligh of TTI confirmed this information on February 14, 2012. Trinity submitted documentation on various dates of changes made to its ET end terminals, which included changes from the ET-2000 to the ET-Plus. On February 14, 2012, the company reported the reduction in the width of the guide channels from 5 inches (in the year 2000) to 4 inches (in 2005) was a design detail omitted from the documentation submitted to the Agency on August 10, 2005. On

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<sup>1</sup> Formerly Trinity Highway Safety Products, Inc.

March 15, 2012, Trinity submitted a letter to FHWA dated March 14, 2011 (sic), which stated its ET-Plus with the 4-inch guide channels was crash tested at TTI in May 2005. The Trinity ET-Plus end terminal with the 4-inch guide channels is eligible for reimbursement under the Federal-Aid Highway Program under FHWA letter CC-94 of September 2, 2005.

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FHWA Letter CC-94 is attached.

Regards,  
Nicholas Artimovich, II  
Highway Engineer, Office of Safety Technologies  
Federal Highway Administration HSST  
1200 New Jersey Avenue SE, Room E71-322  
Washington, DC 20590

*No "other design changes" have been made to the ET-Plus® system*

When Trinity Highway and TTI crash-tested the prototype ET-Plus® system (with 4-inch guide channels attached to the extruder head) on May 27, 2005, fractional adjustments had to be made in fabrication drawings to actually build the product to accommodate the guide channel improvement. Following the crash test, these drawings were revised/updated in the Trinity Highway system in July 2005. These drawing "revisions" do not reflect design changes – as is being represented by these individuals who seek to malign the ET-Plus® system – but simply reflect fabrication adjustments in the Trinity Highway system for Trinity Highway's manufacturing employees building the product. At that time, and with the full knowledge and guidance of TTI, Trinity Highway implemented these fabrication adjustments in its own system. These individuals have also claimed in media reports that there were "other changes" to the ET-Plus® system made by Trinity, and this simply is not true.

To further clarify, here are the specifics:

When TTI recommended that the guide channels attached to the extruder head be reduced from 5 inches to 4 inches, this affected the width, length, and height of the attached guide channels. Rather than butt welding the channels to the outside of the extruder throat, the guide channels were now inserted, fractionally, into the throat and connected with a fillet weld.

Although the overall length of the 4-inch guide channel is the same as the original 5-inch guide channel, a slight reduction in the length of the channel extending beyond the extruder throat resulted from insertion of the upstream end of the guide channel into the extruder throat to facilitate an improved welded connection. All of the research engineers at TTI involved in the ET-Plus® system were consulted and approved this fabrication revision (prior to any manufacturing). In their opinion, this fractional reduction of  $\frac{3}{4}$ " in guide channel length beyond the end of the extruder throat represents a very minor modification and they concluded (and so advised Trinity) that the 4-inch wide guide channel did not need to be lengthened to offset the small insertion fraction.

In the ET-Plus® system extruder head that was crash tested on May 27, 2005, as explained above, the 4-inch guide channels were fractionally inserted into the extruder throat. This resulted in a slight reduction of the vertical dimension between the two guide channels. After making an initial revision to the fabrication drawings to reflect this change, it was subsequently determined that an additional reduction of this measurement of  $\frac{1}{8}$  inch was needed to accurately reflect what was tested.

Again, TTI engineers were fully aware of the need to revise this measurement and approved it.

It is also important to note that two additional end-on crash tests on the ET-Plus® system were performed in 2010. Both 2010 crash tests demonstrated performance of the ET-Plus® system within applicable NCHRP Report 350 criteria.

*The ET-Plus® system works, and we will protect it*

Finally, you may be aware that both Trinity Industries, Inc. (“Trinity”) and Texas A&M brought litigation against the companies with which these individuals are associated. The allegations against those companies are a matter of public record. Trinity and Texas A&M have claimed, among other things, that these companies infringed the patents governing the ET-Plus® system by fabricating, selling, and installing their own end terminals similar or identical to the patented ET-Plus® system. Trinity and Texas A&M settled the patent infringement lawsuit on terms that were satisfactory to our efforts.

In February 2012, Trinity and Texas A&M filed a defamation and commercial disparagement lawsuit in the Eastern District of Texas because one of these individuals created a website which published false and misleading information related to the ET-Plus® system. A month later, following this individual’s appearance in this defamation lawsuit, he filed a lawsuit “under seal” in the same court, accusing Trinity of making false claims to the government. The federal government investigated his claims, as the law requires them to do, and *declined* to join this individual in his lawsuit. This result was made known to Texas A&M and Trinity a few weeks ago when the federal court unsealed the lawsuit. In addition, Texas A&M and Trinity have filed a defamation case against this individual in Georgia because of his persistence in publishing knowingly false information and recklessly disregarding the real truth.

*We will continue these efforts to protect the reputation of Trinity, Trinity Highway and Texas A&M against those who would malign the ET-Plus® system and its proven history of performance.*

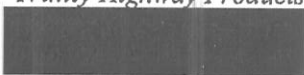
It is very unfortunate that this individual chooses to use the public domain, rather than a courthouse, to respond to these lawsuits. Trinity has tried to remain above the fray and make its arguments in the legal setting only. However, we thought that many of these representations were so reckless that Trinity Highway and TTI needed to reply in the form of this letter.

As always, Trinity Highway remains available 24 hours a day, 7 days a week to answer your questions about any of our products. Please do not hesitate to contact us with any questions or comments.

Sincerely,



Gregory Mitchell, President  
Trinity Highway Products, LLC



Dr. Roger Blich  
Texas A&M Transportation Institute

