

**INTERLOCAL AGREEMENT  
BETWEEN THE NORTH TEXAS TOLLWAY AUTHORITY  
AND THE CITY OF GARLAND  
PERTAINING TO ROADWAY CONSTRUCTION AND REDESIGN,  
DISPOSAL OF SURPLUS PROPERTY AND DRAINAGE MAP REVISION**

**THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS         §**

THIS AGREEMENT, by and between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas, hereinafter identified as the "Authority," and the **CITY OF GARLAND**, a Texas Home-Rule Municipality, hereinafter identified as the "City," is to be effective as of the 5<sup>th</sup> day of December 2000.

**WITNESSETH**

WHEREAS, under the authority of Chapter 366 of the Texas Transportation Code, the Authority has designed, constructed, and is operating within the municipal limits of the City a portion of the President George Bush Turnpike, hereinafter referred to as the "Turnpike", following the planned route of SH190 from its eastern terminus at SH 78 in eastern Dallas County to its western terminus at West Beltline Road in the City of Irving;

WHEREAS, the Texas Department of Transportation ("TxDOT") has designed and constructed service roads, eastbound and westbound along the Turnpike route and generally abutting the north and south Turnpike right-of-way limits within the City as shown on Exhibit A, attached hereto and incorporated herein for all purposes (the "Service Roads"), which Service Roads abut, but are not a part of, the Turnpike being constructed by the Authority; and

WHEREAS, the City requested that the Authority modify the existing design for the Turnpike and the plans and specifications therefor (the "Turnpike Plans") to incorporate changes to two (2)

entrance ramps, two (2) exit ramps and two (2) bridges which are located near the intersections of the Turnpike with Big Springs Road and North Garland Road, and the Authority made those modifications based upon terms, and for the consideration, hereinafter set forth; and

WHEREAS, the City, by Resolution No. 7897 (October 7, 1997) through its City Council, authorized its City Manager to enter into an agreement with the Authority whereby the City would provide partial funding for cross-street improvements at the hereinafter specified intersections of City streets with the Turnpike and the Service Roads; and

WHEREAS, the Authority, by Resolution No. 55 (November 12, 1997) through its Board of Directors, approved the City's request for changes to the Turnpike Plans and agreed to partially fund design and construction of those cross-street improvements; and

WHEREAS, the City has made an offer to acquire from the Authority a surplus of earthen material resulting from the Authority's construction of the Turnpike;

WHEREAS, the Authority has requested that the City apply to the Federal Emergency Management Agency ("FEMA") for revisions to FEMA flood maps to reflect the effect of revisions requested by the City in the design of certain Turnpike drainage facilities in the City; and

WHEREAS, the Authority is a political subdivision of the State of Texas, pursuant to Chapter 366 of the Texas Transportation Code; and

WHEREAS, the City is a Texas home rule municipal corporation with all of the authority and powers related thereto as prescribed by laws of the State of Texas; and

WHEREAS, pursuant to Article 11 of the Authority's Policy Regarding Procurement and Disposition of Goods and Services, the Authority may accept an offer made by a municipality to acquire surplus property of the Authority based on terms acceptable to the Authority; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the Authority and the City have determined that mutual benefits and advantages can be obtained by formalizing their agreements as provided herein.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the City agree as follows:

**ARTICLE I  
DESIGN CHANGES AND SHARING OF COSTS**

**A. Design Changes, Generally.**

The City requested and the Authority agreed to modify the existing design for the Turnpike within the City's municipal limits in the manner described in Section I.(B) below with the respect to (i) two (2) Turnpike bridges crossing over Big Springs Road and North Garland Road, respectively (the "Bridge Revisions"); (ii) two (2) City cross streets – Big Springs Road and North Garland Road – that intersect the Turnpike and adjoining Service Roads (the "Cross-Street Revisions"); and (iii) four (4) ramps providing access between the Turnpike and the Service Roads in the vicinity of Big Springs Road (the "Ramp Revisions"). For and in consideration of the Authority's agreement to modify the Turnpike and to construct the Bridge Revisions, Cross-Street Revisions and the Ramp Revisions, the City has agreed to share certain costs as described in Section I.(C).

**B. Bridge Revisions, Cross-Street Revisions and Ramp Revisions.**

The Authority has caused the existing design for the Turnpike and Turnpike Plans to be revised to incorporate the following modifications at the referenced locations:

- (1) **The Bridge Revisions:** The Turnpike bridges and retaining walls shall be redesigned to provide for an eight (8) lane cross-street width (excluding U-turn lanes) at Big Springs Road and at North Garland Road.
- (2) **The Cross-Street Revisions:** Big Springs Road and North Garland Road shall be widened to provide for continuous left turns for each direction and three (3) through lanes for each direction between the limits of the Service Roads. The U-turn lanes at Big Springs Road and at North Garland Road will be relocated as necessary to accommodate the widened cross streets.
- (3) **The Cross-Street Revisions:** The Turnpike entrance ramps and exit ramps that are located on each side of Big Springs Road shall be reversed.

The Bridge Revisions, the Cross-Street Revisions and the Ramp Revisions are depicted on Exhibit B attached hereto and incorporated herein.

**C. Sharing of Costs**

The City shall pay to the Authority the sum of Five Hundred Thousand Dollars (\$500,000.00) toward the construction and redesign of the Bridge Revisions, Cross-Street Revisions, and Ramp Revisions as described herein. The payment by the City to the Authority shall be made no later than thirty (30) days after the execution date of this Agreement, and forwarded to the address contained herein for notifications. The Authority shall be responsible for all other costs relating solely to the Bridge Revisions, Cross-Street Revisions, and Ramp Revisions.

**D. Public Involvement.**

If public meetings or hearings are required by the Federal Highway Administration (“FHWA”) as a result of the design changes described in this Article I, the City and the Authority have agreed to jointly host and lead the meetings or hearings. TxDOT officials also shall be encouraged to participate

in those meetings and hearings. The City, at its expense, has agreed to notify all residents affected by the Bridge Revisions, Cross-Street Revisions and Ramp Revisions, and the Authority has agreed to provide material or personnel reasonably required to brief those residents on those design changes. Any public meetings involving the Turnpike within the City's municipal limits will be conducted with the City's support and involvement, working in full cooperation with the Authority toward expediting completing of the Turnpike. More specifically, the City shall (i) seek the necessary approvals of all abutting property owners affected by the construction; (ii) document comments received at public hearings and/or public meetings conducted by the City; and (iii) seek approvals from TxDOT and FHWA, as may be required.

**E. Approval of Design.**

The City hereby acknowledges and agrees that (i) the Turnpike Plans have been revised to fully incorporate the Bridge Revisions, Cross-Street Revisions and Ramp Revisions, and (ii) the design and alignment of the Turnpike, as indicated by the Turnpike Plans, is fully acceptable to the City in all respects.

**ARTICLE II  
SURPLUS PROPERTY AND MAP REVISIONS**

**A. Surplus Property Transfer.**

The Parties have agreed that upon execution of this Agreement the Authority will immediately transfer to the City full ownership, use, control and maintenance of the existing earthen stockpile (the "Stockpile") located on the north side of the Turnpike between Brand Road and US 78 in the City's municipal limits. The City acknowledges that upon transfer of the Stockpile, it shall become solely responsible for the Stockpile and all liabilities associated therewith and henceforth. The City shall have all rights and responsibilities related to the removal of the Stockpile. The Authority agrees to allow the City access to the Stockpile via Authority property, provided however, that such use and

passage over Authority property shall not in any way interfere with the operation of the Turnpike project or the Authority's use of its property. The City's access on and over Authority property shall be specifically limited to the City's removal and use of the Stockpile and such access shall terminate immediately upon the complete removal of the Stockpile from its current site. The City shall assume responsibility and compensate the Authority for any damages to the Authority as a result of its use of or passage over Authority property to access the Stockpile.

**WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE TRANSFER OF THE STOCKPILE IS MADE ON AN "AS IS," "WHERE IS" BASIS. THE AUTHORITY ACQUIRED THE STOCKPILE FOR PURPOSES OF USING IT AS FILL DIRT ON ITS CONSTRUCTION PROJECT IN THE CITY OF GARLAND. TO THE BEST OF THE AUTHORITY'S KNOWLEDGE THE STOCKPILE MAY BE USED FOR SIMILAR PURPOSES. NONETHELESS, THE NTTA (1) SHALL HAVE NO RESPONSIBILITY FOR OR LIABILITY CONCERNING THE SUITABILITY OF THE STOCKPILE FOR ANY USES TO WHICH THE CITY MAY PUT THE STOCKPILE OR THE MATERIALS COMPRISING THE STOCKPILE; AND (2) HAS NOT MADE ANY AGREEMENT WITH THE CITY TO ALTER, REPAIR, SHORE UP, CONTAIN, IMPROVE, OR REMOVE THE STOCKPILE. THE CITY ACKNOWLEDGES THAT IT HAS THE RIGHT TO INSPECT THE STOCKPILE AND THAT IT IS RELYING SOLELY ON ITS OWN INSPECTIONS OF THE STOCKPILE, IF ANY, IN DETERMINING THE CONDITION AND COMPOSITION OF THE STOCKPILE AND ITS ELECTION TO TAKE TITLE TO THE SAME, AND IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF THE AUTHORITY WITH RESPECT THERETO.**

**NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IF, IN ITS SOLE DISCRETION, THE CITY DETERMINES THAT THE STOCKPILE IS OR MAY BE CONTAMINATED WITH OR BY ANY HAZARDOUS, TOXIC OR DANGEROUS WASTE, SUBSTANCE, CONTAMINANT OR MATERIAL DEFINED AS SUCH BY ANY FEDERAL OR STATE LAW AND INCLUDING, WITHOUT LIMITATION, PCBS, ASBESTOS, RADIOACTIVE MATERIALS OR ANY OTHER SUBSTANCE CONSIDERED TO BE HAZARDOUS BY A REASONABLY PRUDENT PURCHASER OF REAL PROPERTY,**

THEN THE CITY MAY DECLINE TO TAKE OR USE THE STOCKPILE IN WHICH EVENT THE AUTHORITY SHALL PROPERLY HANDLE AND DISPOSE OF THE STOCKPILE IN ACCORDANCE WITH APPLICABLE LAW. THE CITY SHALL MAKE SUCH DETERMINATION OF POSSIBLE CONTAMINATION AND PROVIDE DOCUMENTATION TO THE AUTHORITY NO LATER THAN 45 DAYS AFTER EXECUTION OF THIS AGREEMENT (THE "INSPECTION PERIOD"). IF THE CITY FAILS TO DO SO WITHIN THE TIME SO STATED, THE STOCKPILE SHALL AUTOMATICALLY AND IMMEDIATELY BECOME THE UNCONDITIONAL AND SOLE RESPONSIBILITY AND PROPERTY OF THE CITY, AND THE AUTHORITY SHALL BE RELEASED OF ANY AND ALL LIABILITY AS RELATED TO THE STOCKPILE'S CONTENTS AND ITS USE. UPON EXECUTION OF THIS AGREEMENT, DURING THE 45-DAY INSPECTION PERIOD, AND UPON AND AFTER ACCEPTANCE OF THE STOCKPILE, THE CITY SHALL ASSUME RESPONSIBILITY FOR CONTROLLING ACCESS TO THE STOCKPILE.

**B. Drainage Map Revisions**

The City agrees to accept full responsibility for submitting all applications required to obtain a Conditional Letter of Map Revisions ("CLOMR") and final Letter of Map Revisions (LOMR) from FEMA regarding FEMA map revisions necessitated by the effect of the Holford Road Drainage System Outfall, as depicted on Exhibit A attached hereto and incorporated herein for all purposes. The City agrees to use its best efforts to secure approvals from FEMA and from property owners affected by the proposed map revisions. The Authority and City shall take all steps necessary to expedite and avoid delays in the application process for the CLOMR and LOMR. The City agrees to promptly contact the Authority regarding technical and other matters requiring assistance from the Authority's staff or agents.

The Authority agrees to provide the technical information and assistance required to prepare the map revision applications. Should easements across private property be required to effect the proposed map revisions and to accommodate the drainage improvements related to and necessitated by

the Turnpike, the Authority shall be responsible for acquiring the easements at its cost. The City acknowledges and agrees to the extent that the map revisions call for passage on, over, through or under City-owned property, the City shall grant the necessary easements at no cost to the Authority.

### **ARTICLE III GENERAL PROVISIONS**

**A. Prior Agreement.**

The City and the Authority each hereby affirms, ratifies, and acknowledges that all of the terms and conditions of that Signalization and Maintenance Agreement (DNT 304) between the City and the Authority dated August 20, 1998, which is incorporated herein by reference for all purposes, remain in full force and effect, except as modified and supplemented by this Agreement.

**B. No Liability.**

Nothing in this Agreement shall be construed as an imposition or assumption of liability by the City, the Authority, the Authority's consultants, including its Consulting Engineer and Section Engineers, or the Authority's or City's respective employees, agents, servants, directors or officers for personal injury or property damage arising out of or in connection with the FEMA map revisions, Bridge Revisions, Cross-Street Revisions, or Ramp Revisions. Furthermore, it is not the intent of this Agreement to impose upon the City or the Authority any liability for injury to persons or damage to property arising out of any construction unrelated to this Agreement undertaken by any contractor employed or engaged by the Authority or the City. Nothing herein shall be construed as a waiver of any rights that may be asserted by either party hereto, including the defense of governmental immunity.

**C. 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, partnership or joint venture between the City and the Authority.

**D. Notices.**

In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (i) when delivered in hand, (ii) one (1) business day after being deposited with a reputable overnight air courier service, or (iii) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

In the case of the City:

City of Garland  
Attn: Robert Wunderlich  
Managing Director of Transportation  
and Engineering  
P. O. Box 469002  
Garland, Texas 75016-9002

In case of the Authority:

North Texas Tollway Authority  
Attn: Jerry Hiebert  
Executive Director  
5900 W. Plano Parkway  
Suite 100  
P.O. Box 260729  
Plano, Texas 75026

Either party hereto may from time to time change its address for notification purposes by giving the other party prior written notice of the new address and the date upon which it will become effective.

**E. Successors and Assigns.**

This Agreement shall bind and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Other than as provided in the preceding sentence, neither the City

nor the Authority shall assign, sublet, or transfer their respective interests in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

**F. Severability.**

If any provision of this Agreement or the application thereof is rendered or declared illegal for any reason or 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.

**G. Written Amendments.**

Any change in the agreements, 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 City and the Authority.

**H. Limitations.**

All covenants and obligations of the City 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 the City or the Authority shall have any personal obligations or liability hereunder.

**I. Sole Benefit.**

This Agreement is entered into for the sole benefit of the City 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 person, firm, corporation or other entity, including, without limitation, the public in general.

**J. Authorization.**

This Agreement is entered into subject to the provisions of the City's charter and the ordinances of the City and all applicable state and federal laws and the applicable regulations of administrative agencies with jurisdiction over the subject matter of this Agreement. 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. Each signatory on behalf of the City and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

**K. Venue.**

The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas, and exclusive venue for any legal actions arising hereunder shall be in Dallas County, Texas.

**L. Interpretation.**

No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

**M. Waiver.**

No delay or omission by either party to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

**N. Entire Agreement.**

This Agreement constitutes the entire agreement between parties with respect to the subject matter thereof. There are no representations, understandings, or agreements relative hereto which are not fully expressed in this Agreement.

**O. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and shall constitute one single agreement between the parties.

**P. Headings.**

The article and section used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Authority have executed this Agreement on the dates shown below, to be effective on the date listed above.

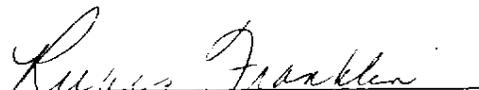
ATTEST:

  
\_\_\_\_\_  
ROBERT E. UNDERHILL

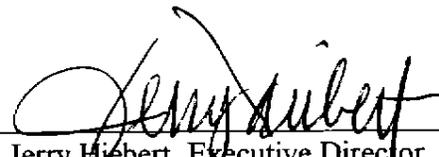
**CITY OF GARLAND,**  
a Texas home-rule municipality

By:   
\_\_\_\_\_  
Name: MARTIN E. GLENN  
City Manager  
Date: DECEMBER 6, 2000

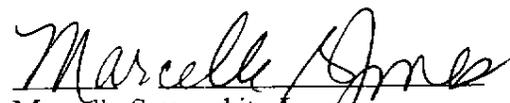
ATTEST:

  
\_\_\_\_\_  
Ruby Franklin, Executive Secretary

**NORTH TEXAS TOLLWAY AUTHORITY**

By:   
\_\_\_\_\_  
Jerry Liebert, Executive Director  
Date: November 30, 2000

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marcelle Sattiewhite Jones  
General Counsel

**EXHIBIT A**

**Diagram of the Service Roads  
and Holford Road Drainage System Outfall**

**[Attached hereto]**

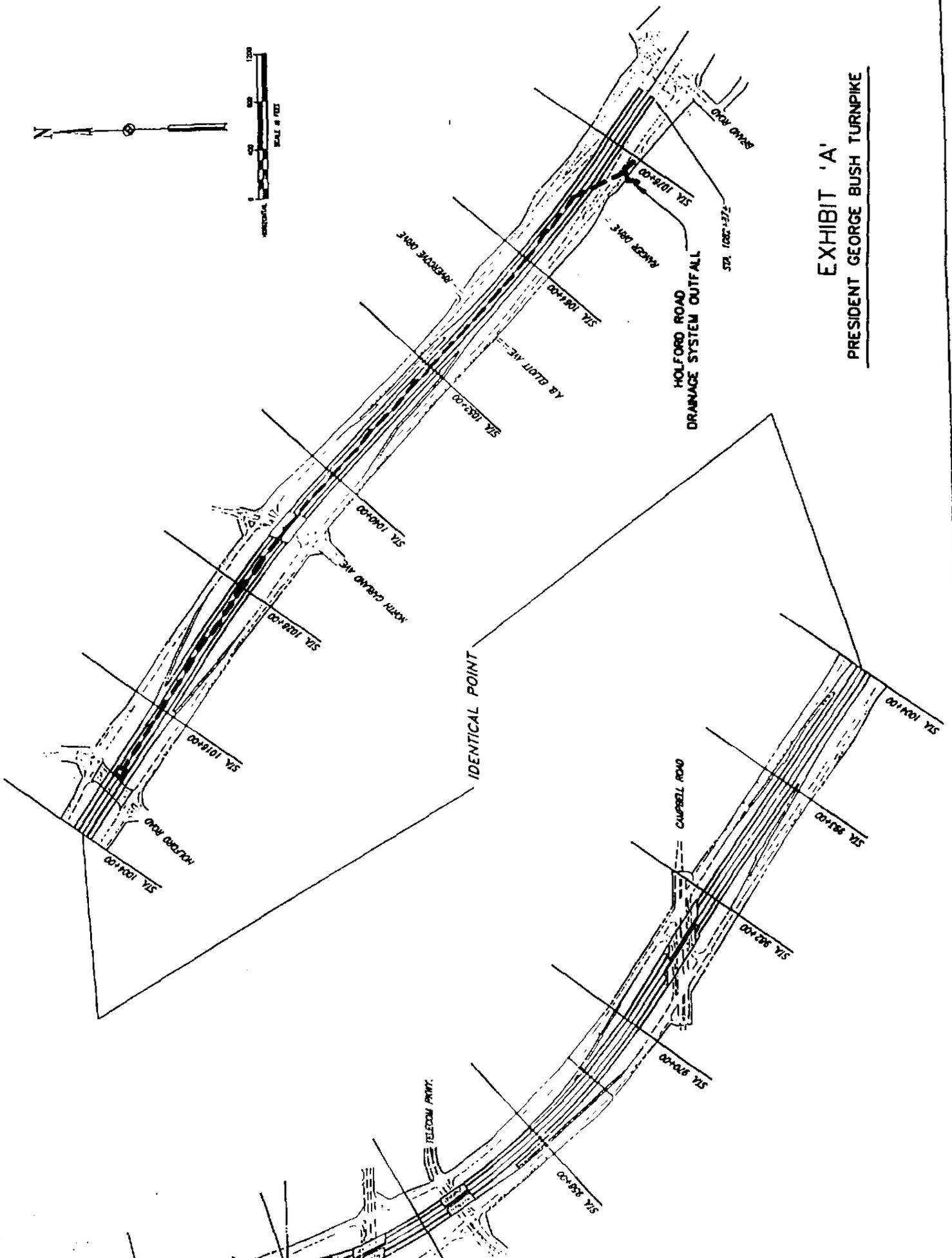
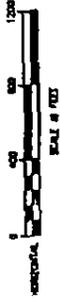
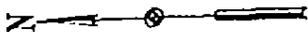


EXHIBIT 'A'  
PRESIDENT GEORGE BUSH TURNPIKE

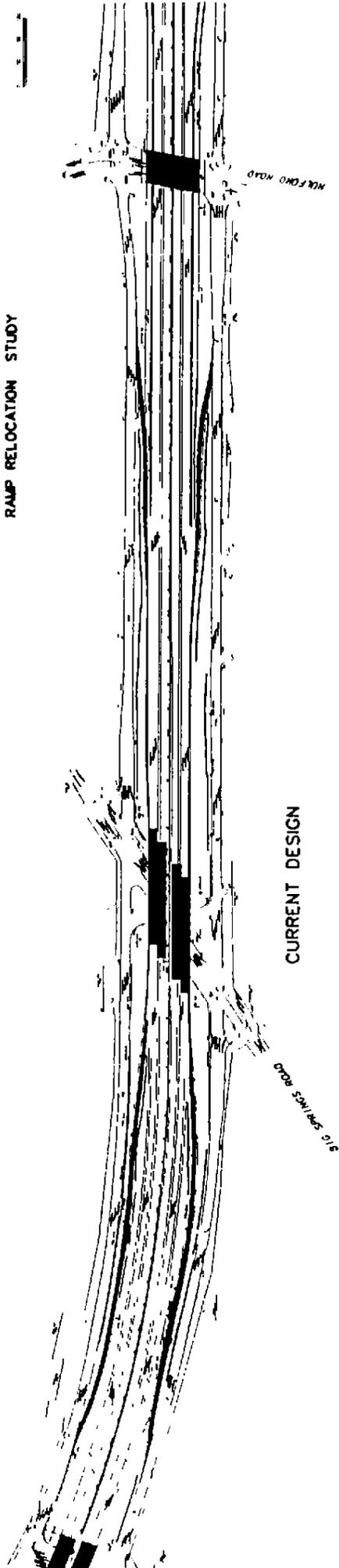
**EXHIBIT B**

**Schematics or Plan Sheets  
Depicting Ramp Revisions, Cross-Street Revisions  
and Bridge Revisions**

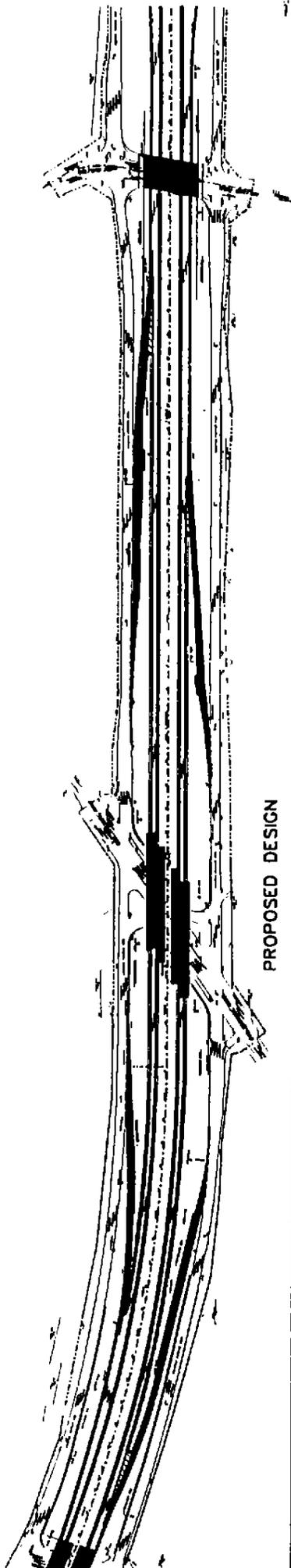
**[Attached hereto]**

**EXHIBIT 'B'**  
**PRESIDENT GEORGE BUSH TURNPIKE**

SEGMENT 4, SECTION 20X  
BIG SPRINGS ROAD  
RAMP RELOCATION STUDY



CURRENT DESIGN



PROPOSED DESIGN