

Contract No 16-5XXIL00 (Dallas District)

THE STATE OF TEXAS §
THE COUNTY OF TRAVIS §

INTERLOCAL AGREEMENT

THIS CONTRACT is entered into by the Contracting Parties under Government Code, Chapter 791.

I. CONTRACTING PARTIES:

The Texas Department of Transportation	TxDOT
North Texas Tollway Authority	Local Government

II. PURPOSE: TxDOT has requested that the Local Government carry out the services described in Attachment A, Scope of Services.

III. STATEMENT OF SERVICES TO BE PERFORMED: The Local Government will undertake and carry out services described in Attachment A, Scope of Services.

IV. CONTRACT PAYMENT: The total amount of this contract shall not exceed \$280,000 and shall conform to the provisions of Attachment B, Budget. Payments shall be billed as provided in Attachment C, General Terms and Conditions.

V. TERM OF CONTRACT: Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party. This contract begins when fully executed by both parties and terminates upon completion or when otherwise terminated as provided in this contract.

VI. LEGAL AUTHORITY:

THE PARTIES certify that the services provided under this contract are services that are properly within the legal authority of the Contracting Parties

The Commission, by Minute Order No. 109519, has authorized TxDOT to accept the services by the Local Government.

The governing body, by resolution or ordinance, dated September 15, 2004, has authorized the Local Government to provide the scope of services.

This contract incorporates the provisions of Attachment A, Scope of Services, Attachment B, Budget, Attachment C, General Terms and Conditions, Attachment D, Resolution or Ordinance, Attachment E, Location Map Showing Project, and Attachment F, Special Terms and Conditions.

Contract No 18-5XX11001 (Dallas District)

TxDOT
Texas Department of Transportation

LOCAL GOVERNMENT
North Texas Tollway Authority

BY: *Janice Mullenix*
AUTHORIZED SIGNATURE

BY: *Jerry Hiebert*
AUTHORIZED SIGNATURE

Janice Mullenix
Director, Contract Services Section
Office of General Counsel

Jerry Hiebert
Executive Director

TYPED OR PRINTED NAME AND TITLE

TYPED OR PRINTED NAME AND TITLE

10.28.04
DATE:

DATE:

**ATTACHMENT A
SCOPE OF SERVICES**

Scope of Services

The Local Government, through the use of its consultants and staff, shall prepare and deliver to TxDOT feasibility evaluations for the four (4) projects listed below of a type commonly known as "Sketch-Level Planning Toll Evaluations," which are prepared with a level of detail that is useful to provide a basic sense of the applicable project's feasibility, but which is inadequate for financing purposes:

The Dallas District:

- (a) IH 30 from SH 360 to the Dallas Central Business District
- (b) Loop 12 from Spur 408 to IH-35E
- (c) IH-35E from the President George Bush Turnpike to FM 407
- (d) SH 183 from SH 360 to IH-35E

Services to be provided by NTTA

The NTTA has responsibility for the performance of services, as follows:

When a listed project is situated in an existing freeway corridor, each evaluation shall address up to three (3) different scenarios:

- 1) as currently designed or existing, with the addition of reversible High Occupancy Toll (HOT) lanes,
- 2) with tolled express lanes (concurrent flow) within new capacity, and
- 3) with all lanes tolled, both existing lanes and new capacity.

Each evaluation shall typically include three (3) sections consisting of an overview, conclusion and certain sketch-level reports for the listed projects, which sketch-level reports shall typically include the following three (3) components:

- 1) **Engineering.** Maps, typical sections, graphics and projected cost estimates, including projected:
 - a) construction costs and annual draw downs,
 - b) annual operating costs (toll collection, occupancy enforcement, directional management and administration) projected over a forty (40) year period, and
 - c) annual maintenance costs projected over a forty (40) year period.
- 2) **Traffic and Revenue.** Forty (40) year traffic and revenue estimates, provided that location-specific volumes will not be provided.
- 3) **Financial Feasibility.** Financial feasibility analysis, including projected:
 - a) annual net revenues and debt service,
 - b) percentage of construction costs supported by bonds, and
 - c) cumulative shortfall or surplus calculation.

Each listed project shall be analyzed independently, utilizing the assumption that other corridors are consistent with what is shown on Mobility 2025: The Metropolitan Transportation Plan, 2004 Update.

The NTTA will typically utilize the following assumptions and information in preparing the Evaluations:

- a) Assume the complete reconstruction of any existing corridor.
- b) Utilize the general parameters and indicated access points on either TxDOT's schematic or in the Mobility 2025, as indicated above.
- c) Utilize TxDOT's standard \$5,000 per-lane-mile annual maintenance expense figure for non-tolled lanes and the NTTA's typical maintenance expense estimate for tolled lanes.
- d) Assume that any reversible lanes are open twenty (20) hours per day.
- e) Assume trucks are prohibited from any managed lanes.
- f) Assume all-electronic toll collection with time-of-day pricing.
- g) Assume a toll increase every ten (10) years over the projected forty (40) year period.
- h) Assume Single Occupancy Vehicles (SOV) and High Occupancy Vehicles with a maximum of two passengers (HOV2) are tolled, with only High Occupancy Vehicles with a minimum of three passengers (HOV3+) not tolled, in any managed lanes.
- i) Assume all vehicles are tolled in any tolled lanes.
- j) Utilize generally accepted bonding assumptions typically employed by the NTTA and TxDOT in their feasibility analyses.

In procuring professional services, the parties to this contract must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

**ATTACHMENT B
BUDGET**

Evaluations/Studies Budget

Description	Cost Per Evaluation/ Study	Federal Participation		State Participation		NTTA Participation	
		0%	Cost	100%	Cost	0%	Cost
Estimated Evaluations/Studies Cost							
Evaluation/Study	\$70,000.00			100%	\$70,000.00		
Total for 4 Evaluations/Studies					\$280,000.00		

ATTACHMENT C

GENERAL TERMS AND CONDITIONS

Article 1. Additional Work

- A. If the Local Government is of the opinion that any assigned work is beyond the scope of this contract and constitutes additional work, it shall promptly notify TxDOT in writing. The written notice shall present the relevant facts and show how the work constitutes additional work.
- B. If TxDOT in its sole discretion finds that the work does constitute additional work, TxDOT shall so advise the Local Government and a written amendment will be executed. The Local Government shall not perform any proposed additional work or incur any additional costs before the execution of an amendment.
- C. TxDOT shall not be responsible for actions by the Local Government or for any costs incurred by the Local Government relating to additional work that is performed before an amendment is executed or that is outside the scope of the contract, as amended.

Article 2. Amendments

This contract may only be amended by written agreement executed by both parties before the contract is terminated.

Article 3. Notice to Proceed

Not applicable.

Article 4. Conflicts Between Agreements

If the terms of this contract conflict with the terms of any other contract between the parties, the most recent contract shall prevail.

Article 5. Nonconforming Work

If the Local Government submits work that does not comply with the terms of this contract, TxDOT shall instruct the Local Government to make any revisions that are necessary to bring the work into compliance with the contract. No additional compensation shall be paid for this work.

Article 6. Termination

This contract terminates at the end of the contract term, when all services and obligations contained in this contract have been satisfactorily completed, or by mutual written agreement, whichever occurs first. TxDOT shall compensate the Local Government only for the agreed-upon, lump-sum amount (\$70,000.00 per completed evaluation) and only if the work has been completed in a manner satisfactory and acceptable to TxDOT. The Local Government shall neither incur nor be reimbursed for any new obligations after the date of termination.

Article 7. Funding

TxDOT shall pay for services from appropriation items or accounts from which like expenditures would normally be paid. Payments received by the Local Government shall be credited to the current

appropriation items or accounts from which expenditures of that character were originally made. If for any reason subcontractors and suppliers, if any, are not paid before TxDOT reimburses the Local Government for their services, the Local Government shall pay the subcontractors and suppliers all undisputed amounts due for work no more than 10 days after the Local Government receives payment for the work unless a different time is specified by law. This requirement also applies to all lower-tier subcontractors and suppliers and must be incorporated in all subcontracts. If the Local Government fails to comply with this Article, TxDOT may withhold payments and suspend work until the subcontractors and suppliers are paid. The Local Government is authorized to submit requests for the agreed-upon payment upon or after delivery to TxDOT of a completed evaluation.

Article 8. Basis for Calculating Reimbursement Costs

Not applicable.

Article 9. Gratuities

Any person who is doing business with or who reasonably speaking may do business with TxDOT under this contract 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 the Executive Director of the Texas Department of Transportation.

Article 10. Conflict of Interest

The Local Government shall not assign an employee to a 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 the state 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.

Article 11. Local Government Resources

All employees of the Local Government shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Local Government certifies that it currently has adequate qualified personnel in its employment to perform the work required under this contract or will be able to obtain adequate qualified personnel from sources other than TxDOT. On receipt of written notice from TxDOT detailing supporting factors and evidence, the Local Government shall remove from the project any employee of the Local Government who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Local Government shall furnish all equipment, materials, supplies, and other resources required to perform the work.

Article 12. Assignment Subcontracts

A subcontract may not be executed by the Local Government without prior written authorization by TxDOT. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this

contract. No subcontract will relieve the Local Government of its responsibility under this contract. Neither party shall assign any interest in this contract.

Article 13. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

Article 14. Disputes

The Local Government shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contract services. TxDOT shall be responsible for the settlement of any dispute concerning this contract unless the dispute involves a subcontract.

Article 15. Records and Ownership

- A. The Local Government agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs at its office during the contract period and for four years from the date of final payment under the contract. These materials shall be made available for inspection and copying by TxDOT, by the State Auditor's Office, and by their authorized representatives. If the contract is federally funded, these materials shall also be made available for inspection and copying by the U.S. Department of Transportation and by the Office of the Inspector General.
- B. After completion or termination of this contract, all documents prepared by the Local Government or furnished to the Local Government by TxDOT shall be delivered to and become the property of TxDOT. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, on request, to TxDOT without restriction or limitation of further use.
- C. TxDOT shall own all title to, all interests in, all rights to, and all intellectual property (including copyrights, trade and service marks, trade secrets, and patentable devices or methods) arising from or developed under this contract, save and except any methods, models, processes, calculations, formulas or other intellectual property created or used by the NTTA and its consultants in the preparation of the evaluations.
- D. Except to the extent that a specific provision of this contract states to the contrary, all equipment purchased by the Local Government or its subcontractors under this contract shall be owned by TxDOT and will be delivered to TxDOT at the time the contract is completed or terminated.
- E. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

Article 16. Reference to Costs Principles and Circulars

Not applicable.

Article 17. Equal Employment Opportunity

The Local Government agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by Department of Labor regulations, 41 CFR Part 60. The Local Government agrees to consider minority universities for subcontracts when the opportunity exists. The Local Government warrants that it has developed and has on file appropriate affirmative action programs as required by applicable rules and regulations of the Secretary of Labor.

Article 18. Nondiscrimination

- A. The Local Government shall comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in federally-assisted programs, including 49 CFR, Part .21; 23 CFR, Subchapter C; and 41 CFR, Part 60-74 (the Regulations).
- B. The Local Government, with regard to the work performed during this contract, shall not discriminate on the basis of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- C. In all subsequent solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurements of materials and leases of equipment, but not including routine purchase orders, each potential subcontractor or supplier shall be notified by the Local Government of the Local Government's obligations under this contract and the Regulations.
- D. The Local Government shall provide all information and reports required by the Regulations and directives issued under the Regulations and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the Texas Department of Transportation or the U.S. Department of Transportation to be pertinent to ascertain compliance with the Regulations or directives. If any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government shall so certify to the Texas Department of Transportation or the U.S. Department of Transportation, whichever is appropriate, and shall set forth what efforts the Local Government has made to obtain the requested information.
- E. In the event of the Local Government's noncompliance with the nondiscrimination provision of this contract, the Texas Department of Transportation shall impose such sanctions as it or the U.S. Department of Transportation may determine to be appropriate.
- F. The Local Government shall include the provisions of paragraphs A through E in every subcontract subsequently let for the services described in this contract, including procurements of materials and leases of equipment, except routine purchase orders, unless exempt by the Regulations or directives. The Local Government shall take such lawful action with respect to any subcontract or procurement as the Texas Department of Transportation may direct as a means of enforcing these provisions, including sanctions for noncompliance. In the event the Local Government becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of directions given by TxDOT, the Local Government may request the Texas Department of Transportation to enter into the litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into litigation to protect the interests of the United States.

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Article 19. Compliance with Laws

The parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this contract. After receiving a written request from TxDOT, the Local Government shall furnish TxDOT with satisfactory proof of its compliance with this Article.

Article 20. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this contract on behalf of the entity represented.

Attachment D

RESOLUTION OR ORDINANCE

RESOLUTION NO. 04-79

**A RESOLUTION OF THE NORTH TEXAS TOLLWAY AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE
AND EXECUTE A FUNDING AGREEMENT WITH
THE TEXAS DEPARTMENT OF TRANSPORTATION FOR
SKETCH-LEVEL CORRIDOR EVALUATIONS**

September 15, 2004

WHEREAS, the North Texas Tollway Authority (the "NTTA") is a regional tollway authority governed by Chapter 366 of the Texas Transportation Code; and

WHEREAS, the Texas Department of Transportation ("TxDOT") Dallas District Engineer William L. Hale, P.E., and the TxDOT Fort Worth District Engineer Maribel P. Chavez, P.E., each sent letters, dated January 29, 2004, and March 5, 2004, respectively, to the NTTA requesting that the NTTA assist TxDOT in its preliminary assessments of managed lane facilities; and

WHEREAS, the NTTA has the expertise and ability to perform or cause to be performed the requested eight sketch-level corridor evaluations for potential managed lane facilities on the state highway system ("the Project"); and

WHEREAS, pursuant to Chapter 791 of the Texas Government Code, the NTTA and TxDOT are authorized to enter into agreements as may be necessary for carrying out their goals and obligations as governmental entities; and

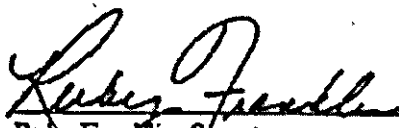
WHEREAS, the NTTA has offered to complete these studies for a cost not to exceed \$70,000 per corridor study; and

WHEREAS, in consideration thereof, the NTTA and TxDOT desire to execute funding agreements under which TxDOT agrees to reimburse the NTTA for the NTTA's costs of completing the Project.

NOW THEREFORE BE IT RESOLVED that the Board of Directors authorizes the Executive Director to negotiate and execute interlocal agreements with TxDOT for the reimbursement of costs incurred by the NTTA in connection with the Project and under such terms as the Executive Director deems appropriate and in the best interest of the NTTA.

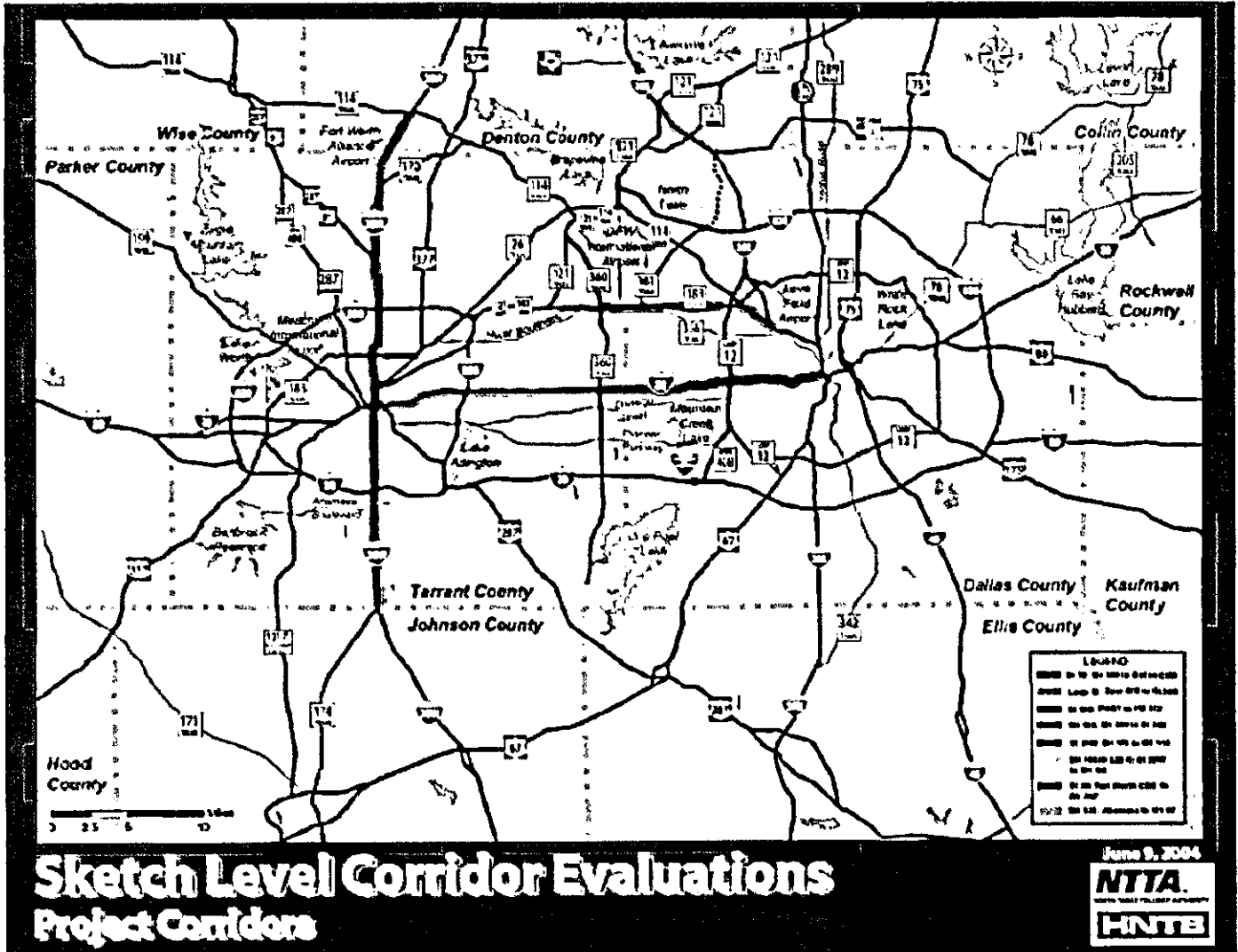
ATTEST:


Donald D. Dillard, Chairman


Ruby Franklin, Secretary

Attachment E

LOCATION MAP SHOWING PROJECT



Attachment F

SPECIAL TERMS AND CONDITIONS

Article 1. Ownership And Use Of Evaluations

Notwithstanding anything to the contrary contained in this contract (including in Article 15 of Attachment C), once an evaluation is delivered to TxDOT, there are no restrictions on the NTTA's use or release to other parties of all or any portion of the evaluation and TxDOT hereby provides a fully paid, perpetual and royalty-free license to the NTTA for those purposes.

Article 2. TxDOT's Obligations

TxDOT shall deliver descriptions of the listed projects and other necessary materials to the NTTA for use by its staff and consultants in preparing the evaluations. Those materials shall typically include a schematic for each project, pertinent studies or reports in TxDOT's possession, and associated cost estimates. TxDOT shall reasonably cooperate with the NTTA, its staff and consultants during the preparation of each evaluation and shall pay the agreed-upon cost to the NTTA upon its receipt of that evaluation. The District Office overseeing the four (4) projects evaluated under this contract is representing, and directing all services performed for, TxDOT under this contract and serves as the NTTA's point of contact hereunder.

Article 3. No Obligation To Construct, Etc.

This contract neither creates nor imposes any obligations on TxDOT or the NTTA with respect to the ultimate design, construction, operation and/or maintenance of any project by either party to this contract, and neither TxDOT nor the NTTA makes any representations or agreements with respect thereto.

Article 4. Nature of the evaluations

TxDOT acknowledges and agrees that (A) the process used to prepare the evaluations is very general in nature and the data utilized in their preparation are subject to a significant degree of interpretation, (B) the evaluations will be extremely preliminary in nature and should be utilized only to draw very basic conclusions as to which projects warrant additional evaluation and study, and (C) the NTTA will be relying heavily on its consultants identified in Article 5 below in the preparation of the evaluations.

Article 5. The NTTA's Consultants

Notwithstanding anything to the contrary contained elsewhere in this contract (including in Articles 11 and 12 of Attachment C), TxDOT acknowledges and agrees that the NTTA intends to use its existing consultant team to perform the evaluations pursuant to previously finalized contracts which, for the purposes of said Article 12, are hereby authorized by TxDOT. Specifically, (A) HNTB Corporation, the NTTA's General Engineering Consultant, and its subconsultants, shall furnish the "Engineering" component of the evaluations described in Attachment A, Scope of Services, (B) Wilbur Smith

Associates, the NTTA's Traffic and Revenue Engineer, shall furnish the "Traffic and Revenue" component of the evaluations described under Attachment A, and (C) RBC Dain Rauscher Inc., the NTTA's Financial Advisor, shall furnish the "Financial Feasibility" component of the evaluations described under Attachment A. The NTTA shall instruct the consultants to regularly consult and coordinate activities with one another so that the several modeling assumptions are consistently applied in the evaluations. The NTTA shall not substitute other parties for the consultants listed above without TxDOT's prior written authorization.

Article 6. Sole Benefit and No Federal Funds

This contract is entered into for the sole benefit of TxDOT and the NTTA and their respective successors and permitted assigns. Nothing in this contract 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. As indicated by Attachment B, Budget, this contract is not federally funded and therefore all provisions contained in this contract and identified as applicable to federally funded contracts or projects are not applicable.