

FINAL 4/12/12

NTTA: 03451-DNT-00-14-PM

AGREEMENT

**BY AND BETWEEN
TEXAS DEPARTMENT OF TRANSPORTATION
AND
NORTH TEXAS TOLLWAY AUTHORITY
(IH-635 INTERSECTION WITH DALLAS NORTH TOLLWAY)**

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Table of Contents

	<u>Page</u>
ARTICLE I. TERMINATION DATE PRIOR TO COMPLETION OF CONSTRUCTION OF THE LBJ EXPRESS STRUCTURES	2
A. RIGHTS AND OBLIGATIONS TO SECURE, RESTORE, AND MAINTAIN	2
1. TxDOT to Secure and Restore the LBJ Express Structures, the IH 635/DNT Interchange Limits, and the DNT	3
2. The Authority Undertakes Maintenance of the IH 635/DNT Interchange Limits and the DNT	3
3. TxDOT Continues to Maintain the LBJ Express Structures.....	3
4. Notice of Construction Activities	4
5. Noninterference and Safety; Compliance With Standards	4
6. Suspension of Activities	4
7. Reporting Obligations	4
8. Authorization to Secure, Restore, and Maintain the LBJ Express Structures, the IH 635/DNT Interchange Limits, and the DNT	4
B. RIGHTS AND OBLIGATIONS TO COMPLETE THE LBJ EXPRESS STRUCTURES	4
1. Parties to Collaborate on Completion of the LBJ Express Structures	4
2. License Agreement with Subsequent Developer or Contractor.....	5
ARTICLE II. TERMINATION DATE AFTER COMPLETION OF CONSTRUCTION OF THE LBJ EXPRESS STRUCTURES	5
A. TxDOT’S RIGHTS AND OBLIGATIONS TO OPERATE THE PROJECT	5
B. WARRANTIES	5
ARTICLE III. MISCELLANEOUS	5
A. RIGHTS RESERVED BY THE AUTHORITY	5
B. NO LIABILITY FOR THE AUTHORITY	6
C. MAINTENANCE OF RECORDS.....	6
D. RELATIONSHIP OF THE PARTIES	6
E. COMPLIANCE WITH APPLICABLE LAWS	6
F. TERMINATION OF THIS AGREEMENT	6
G. SUCCESSORS AND ASSIGNS	6
H. SEVERABILITY	7
I. WRITTEN AMENDMENTS.....	7
J. NOTICES.....	7
K. LIMITATIONS.....	7
L. AUTHORIZATION	7
M. INTERPRETATION	8
N. ENTIRE AGREEMENT	8

O.	GOOD INDUSTRY PRACTICE	8
P.	INDEPENDENT ENGINEER	8

EXHIBITS

Exhibit A – The IH 635/DNT Interchange Limits

Exhibit B – Maintenance Limits

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THIS AGREEMENT, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission (“**TxDOT**”), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas (the “**Authority**”), is executed to be effective the 25th day of May, 2012; both of the foregoing parties being hereby collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, under Chapter 366 of the Texas Transportation Code (the “**Regional Tollway Authority Act**”), the Authority is authorized to build and operate “turnpike projects,” as that term is defined in the Regional Tollway Authority Act, in Collin, Dallas, Denton and Tarrant Counties, Texas; and

WHEREAS, pursuant to the Regional Tollway Authority Act, the Authority operates and maintains, and periodically extends and improves, the Dallas North Tollway, a 32-mile controlled access turnpike extending north from the Central Business District of the City of Dallas to US 380 in Collin County (the “**DNT**”); and

WHEREAS, TxDOT and LBJ Infrastructure Group LLC, a Delaware limited liability company (“**Developer**”), entered into that certain Comprehensive Development Agreement dated September 4, 2009, as amended (the “**CDA**”) to design, build, operate, and maintain the IH-635/LBJ Managed Lanes Project (the “**Project**”); and

WHEREAS, Developer entered into that certain IH-635 Managed Lanes Project Design-Build Contract dated June 16, 2010 (the “**D-B Contract**”), with Trinity Infrastructure, LLC, a Texas limited liability company (“**Trinity**”), to design and build the Project; and

WHEREAS, as part of its design of the Project, Trinity wishes to cross the DNT and other portions of property in which the Authority has an easement interest, as shown in Exhibit A, attached hereto and made a part hereof (the “**IH 635/DNT Interchange Limits**”); and

WHEREAS, upon Trinity's completion of the Project, Developer will undertake the operation and maintenance of the Project pursuant to the CDA; and

WHEREAS, Trinity and Developer desire to obtain the necessary rights from the Authority to design, build, use, operate, inspect, maintain, and repair that portion of the Project crossing the IH 635/DNT Interchange Limits, and the Authority is willing to provide such rights, conditioned upon TxDOT providing the Authority certain assurances set forth in this Agreement; and

WHEREAS, pursuant to that certain document titled License and Use Agreement IH-635 Intersection with Dallas North Tollway, dated as of even date herewith (the "**DNT/CDA Agreement**"), Trinity, Developer, and the Authority (1) clarified the rights, entitlements, duties, obligations, and property interests of those parties with respect to the IH 635/DNT Interchange Limits and the DNT; (2) prescribed the manner in which the design and construction by Trinity of the applicable overpass, including, but not limited to, associated paving, piers, footings, beams, decking, entrance and exit ramps, and other related structures, on, across, or above the IH 635/DNT Interchange Limits (the "**LBJ Express Structures**") shall be performed or conducted; and (3) established post-construction operation and maintenance rights and requirements to be exercised and satisfied by Developer; and

WHEREAS, TxDOT and the Authority desire to set forth in this Agreement the rights and obligations of each Party if the Authority terminates the DNT/CDA Agreement for any reason pursuant to its terms, including as a result of the termination or expiration of the CDA, with said rights and obligations varying based on whether the LBJ Express Structures and the Project have been completed as of the date of said termination of the DNT/CDA Agreement (the "**Termination Date**"); and

WHEREAS, TxDOT and the Authority have received all authorizations, consents, and approvals, and have otherwise complied with all applicable law required to enter into and perform under this Agreement, and each acknowledges and agrees that it is fully authorized to enter into this Agreement and to fully perform its applicable obligations hereunder.

A G R E E M E N T

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the Parties to be by them respectively kept and performed as hereinafter set forth, TxDOT, acting by and under the authority of the Commission, and the Authority agree as follows:

ARTICLE I. TERMINATION DATE PRIOR TO COMPLETION OF CONSTRUCTION OF THE LBJ EXPRESS STRUCTURES

A. RIGHTS AND OBLIGATIONS TO SECURE, RESTORE, AND MAINTAIN. If the Termination Date occurs prior to the completion of construction for the LBJ Express Structures, the Parties, each at no cost to the other unless otherwise stated, agree as follows:

1. TxDOT to Secure and Restore the LBJ Express Structures, the IH 635/DNT Interchange Limits, and the DNT. Commencing upon TxDOT's receipt of notice of the Termination Date, TxDOT will maintain the unfinished construction zones within the IH 635/DNT Interchange Limits and the DNT in accordance with Good Industry Practice (as defined in Subsection III.O. below) until TxDOT's maintenance responsibilities are adjusted pursuant to the first sentence of Subsection I.A.2. After notice to and consultation with the Authority, TxDOT will address and restore, as quickly as reasonably possible, conditions on the IH 635/DNT Interchange Limits or the DNT resulting from the activities of Developer, its employees, agents, contractors (including, without limitation, Trinity), subcontractors, or invitees (the "**CDA Parties**"), by such means and methods as are reasonably and mutually agreed by the Parties, that either (a) constitute a potential safety hazard or (b) impair the safe and efficient operation of the DNT, including any constraints on the DNT's capacity or any lost or degraded functionality of the Authority's or other party's communication infrastructure.

2. The Authority Undertakes Maintenance of the IH 635/DNT Interchange Limits and the DNT. Upon satisfying the securing and restoration responsibilities set forth in Subsection I.A.1. above, maintenance responsibility for those features of the IH 635/DNT Interchange Limits and of the DNT that were maintained by the Authority prior to the commencement of activities of the CDA Parties will revert back to and be assumed by the Authority, and TxDOT will be released from all responsibility therefor, except for any constructed portions or other features or consequences of the LBJ Express Structures and any portion of the IH 635/DNT Interchange Limits that remains affected by the construction of the LBJ Express Structures, with the limits of the Parties' respective maintenance obligations being otherwise depicted on **Exhibit B**, attached hereto and made a part hereof. TxDOT will notify the Authority not less than thirty (30) days in advance of its proposed transfer of such maintenance responsibilities to the Authority under the preceding sentence to permit (a) the Authority's confirmation or dispute, in writing, of TxDOT's satisfaction of its responsibilities set forth in Subsection I.A.1. above and (b) upon such confirmation, the coordinated cessation and transitioning of certain of TxDOT's activities on the IH 635/DNT Interchange Limits to the Authority.

3. TxDOT Continues to Maintain the LBJ Express Structures. While this Agreement remains in effect, TxDOT will maintain in accordance with Good Industry Practice the property depicted on **Exhibit B**, and any constructed portions or other features or consequences of the LBJ Express Structures and any portion of the IH 635/DNT Interchange Limits that remains affected by the construction of the LBJ Express Structures. The Authority will have the corresponding obligations regarding the property it maintains as depicted on **Exhibit B**. If TxDOT is unable or declines to perform any of its obligations under this Subsection I.A.3. or under Subsection I.A.1. above, the Authority, after reasonable notice to TxDOT (except in the case of a bona fide emergency), may, but is not obligated to, perform such obligations and TxDOT will reimburse the Authority for its resulting reasonable costs. Promptly following TxDOT's receipt of notice of the Termination Date, TxDOT will use all reasonable diligence to either (a) return the IH 635/DNT Interchange Limits to substantially its same condition as prior to the commencement of activities by the CDA Parties or (b) provide for the completion of the LBJ Express Structures.

4. Notice of Construction Activities. Prior to any initiation of work on the LBJ Express Structures pursuant to the terms of this Agreement, including, but not limited to, any activity that requires the closure of or involves work in or adjacent to DNT traffic lanes, or that, in the Authority's sole judgment, otherwise materially affects the Authority's operations or use or operation of the DNT or other portions of the IH 635/DNT Interchange Limits, TxDOT shall provide the Authority with no less than thirty (30) days prior written notice of the construction and/or major repair activity, unless the Authority consents to a shorter notice period for a particular activity, together with the opportunity for the Authority to review any designs, plans and specifications, as well as any traffic control plans.

5. Noninterference and Safety; Compliance With Standards. TxDOT, its employees, agents, contractors, and invitees will conduct all of their activities and operations on, over, under, and across the IH 635/DNT Interchange Limits, whether in connection with the securing, restoring, or maintaining of the LBJ Express Structures or otherwise, in such a manner as (a) does not unreasonably interfere with or impede the Authority's operations or its use and maintenance of the DNT, (b) avoids revenue loss to the Authority to the greatest degree reasonably possible, as mutually agreed by the Parties, and (c) conforms to and complies with this Agreement, Good Industry Practice, and any plans, restrictions, terms, or other agreement reached between the Parties specifically regarding such activities and operations. Without limiting the foregoing, TxDOT will be responsible for compliance with all required permitting, public involvement, and environmental obligations, and for the initiation, maintenance, and supervision of all safety operations and programs, regarding its rights and obligations under this Section I.A., and hereby releases the Authority from responsibility therefor.

6. Suspension of Activities. Upon notification from the Authority, TxDOT will immediately suspend its and its contractors' activities on the IH 635/DNT Interchange Limits that violate the terms of this Agreement, including any such activities that impair the safe and efficient operation of the DNT.

7. Reporting Obligations. Either Party will immediately inform the other Party of any accident or other event on or adjacent to the IH 635/DNT Interchange Limits that results in, or might result in, injury to the person or property of any person or entity.

8. Authorization to Secure, Restore, and Maintain the LBJ Express Structures, the IH 635/DNT Interchange Limits, and the DNT. Immediately upon the Termination Date, TxDOT may enter the IH 635/DNT Interchange Limits for the purposes, and undertake the activities, set forth in this Section I.A, in accordance with the terms of this Agreement.

B. RIGHTS AND OBLIGATIONS TO COMPLETE THE LBJ EXPRESS STRUCTURES. If the Termination Date occurs prior to the completion of construction of the LBJ Express Structures, the Parties, each at no cost to the other unless otherwise stated, agree as follows:

1. Parties to Collaborate on Completion of the LBJ Express Structures. Upon TxDOT's satisfaction of its obligations under Subsection I.A.1. above, the Parties will meet to address the completion of the LBJ Express Structures and the Project. Neither Party will be bound by any approval or consent previously given by it or Developer to any schematics,

design, plans, or specifications, conceptual or final traffic plans, lane or ramp closure plan or revenue loss amounts, and similar deliverables regarding the LBJ Express Structures under the DNT/CDA Agreement, provided that, to avoid the misinterpretation of the foregoing, when the LBJ Express Structures are ultimately completed, any incomplete work commenced by the CDA Parties pursuant to a certain design or plans approved under the DNT/CDA Agreement will be completed in accordance with Good Industry Practices, and in no event be abandoned and left incomplete, provided TxDOT will be under no obligation to pay make-whole or other revenue loss amounts nor will the Authority be obligated to accept designs or plans that result in unreasonable revenue loss. The Parties will use all reasonable efforts, working diligently and in good faith, to finalize the deliverables referenced in the preceding sentence.

2. License Agreement with Subsequent Developer or Contractor. The Authority agrees to provide a license to the developer to which TxDOT awards and executes a comprehensive development agreement, design-build contract, or other agreement, pursuant to an agreement similar to the DNT/CDA Agreement and satisfactory to the Authority, under which TxDOT's obligations under Section I.A. are assumed by that developer.

**ARTICLE II.
TERMINATION DATE AFTER COMPLETION OF
CONSTRUCTION OF THE LBJ EXPRESS STRUCTURES**

A. TxDOT's RIGHTS AND OBLIGATIONS TO OPERATE THE PROJECT. If the Termination Date occurs after the completion of construction of the LBJ Express Structures, TxDOT, at no cost to the Authority, shall assume the operation and maintenance of the LBJ Express Structures and the Project, save and except for features maintained by the Authority or other parties as of the Effective Date, in a safe and prudent manner as a portion of the State Highway System in compliance with the Texas Transportation Code and other applicable laws. Consistent with the DNT/CDA Agreement, TxDOT will be responsible for maintaining any high-mast lighting changed or added as a result of construction of the LBJ Express Structures.

B. WARRANTIES. TxDOT will fully collaborate with the Authority in TxDOT's exercise of any warranty rights arising under the CDA or otherwise regarding features of the Project that directly affect the IH 635/DNT Interchange Limits or the DNT.

**ARTICLE III.
MISCELLANEOUS**

A. Rights Reserved by the Authority. The rights provided to TxDOT under this Agreement are subject to (1) the continuing right and obligation of the Authority to use the IH 635/DNT Interchange Limits in the performance of its statutory purpose under the Regional Tollway Authority Act and to operate, maintain, extend, and improve the DNT, and (2) the Authority's reservation to itself of the right to use and to grant to others the right to use the IH 635/DNT Interchange Limits above, underneath, and adjacent to the LBJ Express Structures to construct, upgrade, place, remove, inspect, maintain, repair, and operate lanes, ramps, utility lines, pipelines, communication lines, and other structures above, below and on the surface of its property, and such other uses that the Authority deems appropriate, provided, however, that no such right, obligation, reservation, use, or grant by the Authority as described in this

Section III.A. will be made that materially interferes with, or prevents TxDOT from the exercise of, the rights provided TxDOT.

B. No Liability for the Authority. Notwithstanding the Authority's review of any schematics, designs, plans, specifications, traffic plans, or lane or ramp closure plans, or its exercise of any other review, audit, or inspection right provided under this Agreement, the Authority is not accepting any responsibility or liability for any features of the LBJ Express Structures Plans, or any other plans, specifications, or other deliverable provided by TxDOT. Similarly, TxDOT, through its contractors and at their sole expense, shall adequately perform, police, and supervise all of their work and activities, which responsibility will not be lessened or affected by the Authority's review rights referenced in the preceding sentence or by the presence at TxDOT's jobsite of any representative of the Authority observing the work.

C. Maintenance of Records. All records and documents prepared by the Parties under this Agreement or otherwise relating to the design or construction of the LBJ Express Structures shall be maintained by the applicable Party in compliance with all applicable laws pertaining to the retention of records and access thereto.

D. Relationship of the Parties. TxDOT and the Authority agree that neither Party is an agent, servant, or employee of the other Party, and each Party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents during the performance of the work authorized in this Agreement. Neither TxDOT nor the Authority waives, relinquishes, limits, or conditions its governmental immunity or any other right to avoid liability which 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, nor shall anything in this Agreement ever be construed as relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the Authority. Without limiting the foregoing, TxDOT is not, and will not be deemed or construed as, a successor to Trinity or Developer under the CDA, the D-B Contract, or the DNT/CDA Agreement, nor as an assignee to Trinity or Developer under the DNT/CDA Agreement unless TxDOT so assumes, in writing, those parties' rights and obligations thereunder. Similarly, the Authority will not be bound in its performance under this Agreement by or to any obligation or duty arising under the DNT/CDA Agreement.

E. Compliance with Applicable Laws. The Authority and TxDOT shall comply with all laws applicable to them with respect to this Agreement.

F. Termination of this Agreement. This Agreement may be terminated upon the occurrence of either of the following conditions:

- (1) By written mutual agreement and consent of the Parties; or
- (2) By satisfactory completion of all responsibilities and obligations described herein.

G. Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective Parties and their legal successors. Nothing in this Agreement or in any approval subsequently provided by either Party 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.

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

I. Written Amendments. Any changes in the character, agreement, terms and/or responsibilities of the Parties 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.

J. Notices. All notices to either Party by the other required under this Agreement shall be delivered personally, sent by facsimile transmission, or sent by Certified or Registered U.S. Mail, postage prepaid, addressed to such Party at the following respective addresses:

North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
P.O. Box 260729
Plano, Texas 75026
Attention: Executive Director

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150-6643
Attention: District Engineer

All personally delivered notices shall be deemed given on the date so delivered. Notice by facsimile shall be deemed given on the date indicated by written confirmation of transmission to, in the case of the Authority, (214) 528-4826 or, in the case of TxDOT, (214) 320-6117. All mailed notices shall be deemed given three (3) days after being deposited in the mail. Either Party hereto may change the above address or facsimile number by sending written notice of such change to the other in the manner provided for above.

K. 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, commissioner, director, or employee of TxDOT or the Authority shall have any personal obligations or liability hereunder.

L. 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.

M. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of a 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.

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

O. Good Industry Practice. "Good Industry Practice" means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

P. Independent Engineer. An "Independent Engineer" will be retained pursuant to the CDA to perform, for the benefit of TxDOT, certain inspection, review, and other oversight services regarding the design and construction of the Project. During the pendency of the DNT/CDA Agreement and continuing past any Termination Date until the Project is completed, TxDOT will allow the Authority access to the Independent Engineer and to all analyses, reports, results, and similar work product generated by the Independent Engineer regarding the LBJ Express Structures or within the IH 635/DNT Interchange Limits. If requested by the Authority, TxDOT will cooperate in obtaining from the Independent Engineer the right of the Authority to rely on the Independent Engineer's work product and professional conclusions. Any third-party costs incurred by TxDOT pursuant to this Section III.P. will be reimbursed by the Authority.


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

**NORTH TEXAS TOLLWAY
AUTHORITY**

By: 
Gerry Carrigan,
Executive Director

Date: 5-23, 2012

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: 
Phil Wilson,
Executive Director

Date: 5/25, 2012

ATTEST:


Ruby Franklin, Secretary

EXHIBIT A
The IH 635/DNT Interchange Limits
(Recitals)

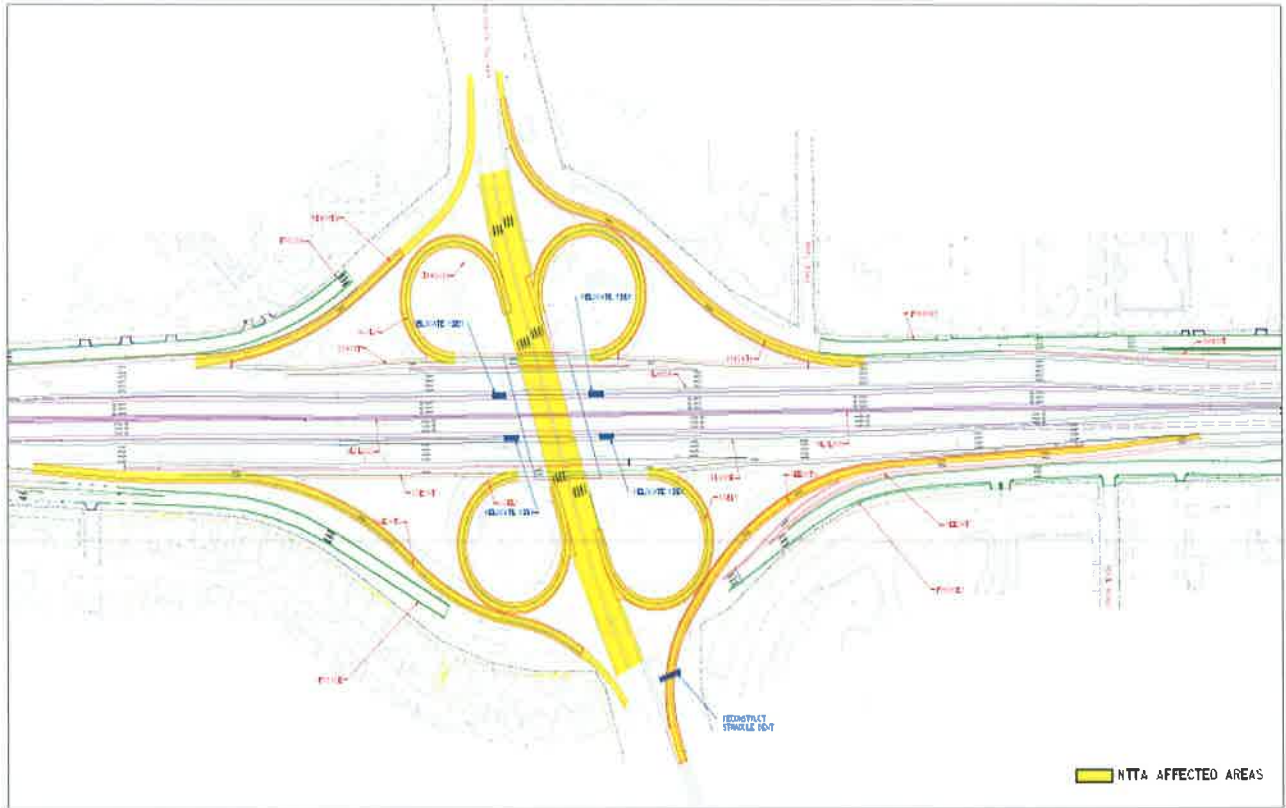
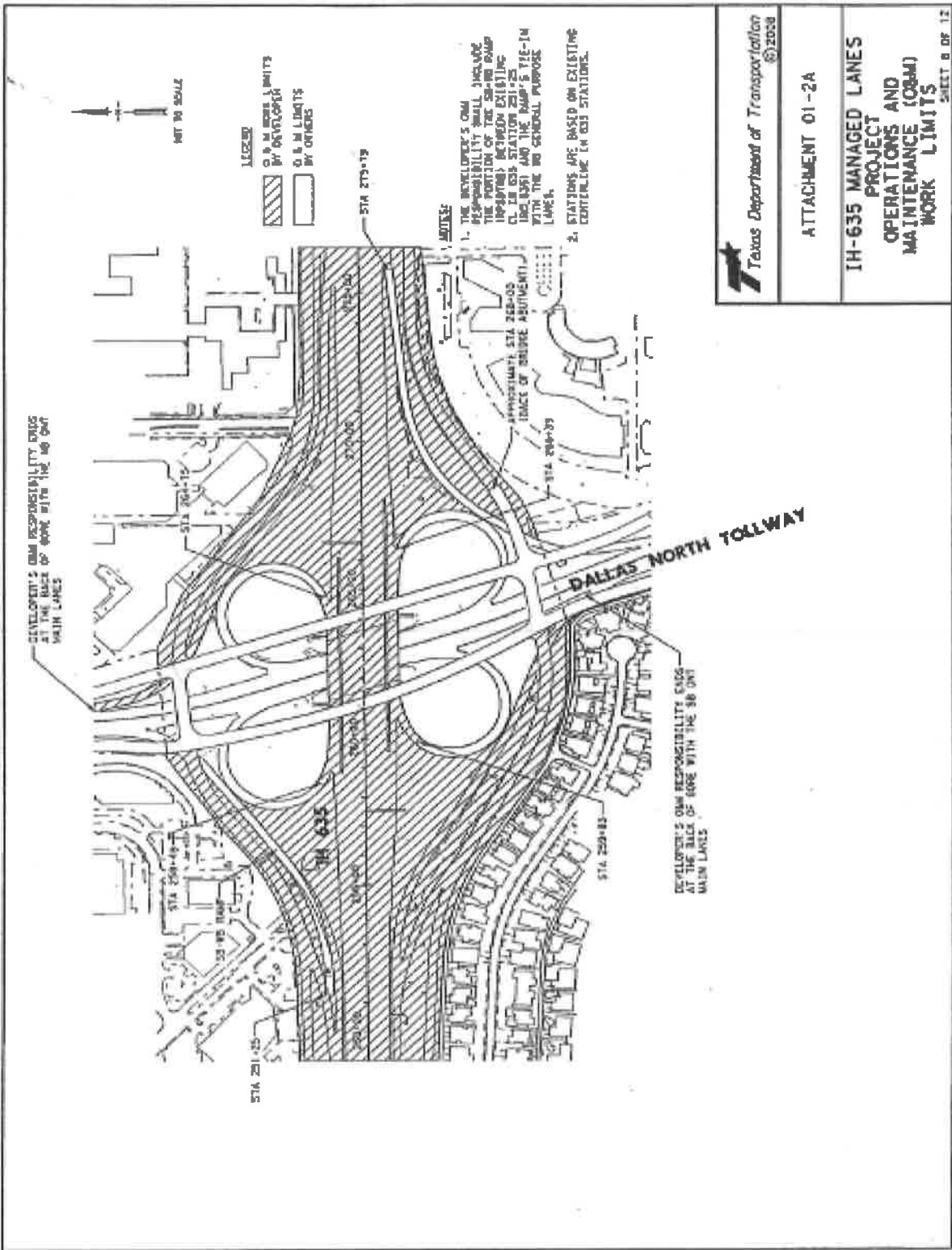


EXHIBIT B
Maintenance Limits
(Subsection I.A.2.)

[see following page]



Texas Department of Transportation
 TEXAS
 ATTACHMENT 01-2A

IH-635 MANAGED LANES PROJECT OPERATIONS AND MAINTENANCE (OSM) WORK LIMITS

SHEET 8 OF 12