

STATE OF TEXAS §
COUNTY OF TRAVIS §

**DESIGN AND CONSTRUCTION AGREEMENT
For IH 635 Interim Ramping Modifications between
The Dallas North Tollway and Midway Road**

THIS AGREEMENT (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the North Texas Tollway Authority, authorized under Chapter 366 of the Texas Transportation Code, acting by and through its duly authorized officials, hereinafter called the "NTTA."

WITNESSETH

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of state and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order ~~102257~~, authorizing the State to undertake and complete a highway improvement generally described as interim ramping modifications; and,

WHEREAS, the Board of Directors of the NTTA has approved entering into this Agreement by resolution dated September 15, 2004 which is attached hereto and made a part hereof as Attachment "A" for design and construction of the interim ramping modifications at the location shown on the Map in Attachment "B" hereinafter referred to as the Project.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Scope of Work

Design and construction of an interim westbound ramp and auxiliary lane improvements on IH 635 between the Dallas North Tollway (DNT) and Midway Road, as shown on Attachment "B".

3. Local Project Sources and Uses of Funds

- a. The total estimated cost of the Project is shown in the Project Budget - Attachment "C" which is attached hereto and made a part hereof. The expected cash contributions from the federal or state government, the NTTA, or other parties are shown in Attachment "C". The State will pay for only those project costs that have been approved by the Texas Transportation Commission.
- b. This Project cost estimate shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- c. The NTTA will be responsible for all costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.

4. Termination of this Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- a. the Agreement is terminated in writing with the mutual consent of the parties, or,
- b. the Agreement is terminated because of a breach of this Agreement but only after the defaulting party has received written notice of the breach and a reasonable opportunity to cure that breach; any cost incurred due to a breach of this Agreement shall be paid by the breaching party.
- c. after the PS&E are prepared, the NTTA may elect not to provide the funding or construct the Project and the Project does not proceed because of insufficient funds; the NTTA then agrees to reimburse the State for any reasonable actual costs incurred during the Project.

5. Amendments

Amendments to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

6. Remedies

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

7. Architectural and Engineering Services

The NTTA has responsibility for the performance of architectural and engineering services.

The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, and the special specifications and special provisions related thereto.

The State shall provide timely review and comments of all requested and properly submitted engineering documents.

8. Construction Responsibilities

- a. The NTTA shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract.
- b. The NTTA will use its approved contract letting and award procedures to let and award the construction contract.
- c. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- d. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B. As indicated on Attachment "C," no federally funded contracts are anticipated for the Project.

9. Project Maintenance

The State shall be responsible for maintenance of the Project, which is on the state highway system after completion of the work, and shall give the NTTA reasonable prior notice before materially altering or closing the Project prior to implementing the ultimate State schematics for IH 635 improvements. This Paragraph 9 shall survive the termination of this Agreement caused by the completion of the Project, but not otherwise.

10. Right of Way and Real Property- Not applicable. The State is providing the NTTA access to existing right of way to construct the Project.

11. 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:

NTTA:	State:
Mr. Mark A. Bouma, P.E. North Texas Tollway Authority 5900 W. Plano Parkway, Suite 100 Plano, Texas 75093	Mr. Matthew MacGregor, P.E. Texas Department of Transportation 4777 E. Highway 80 Mesquite, Texas 75150

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

12. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

13. Responsibilities of the Parties

The State and the NTTA 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.

14. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State, but shall be available to the NTTA without restriction or limitation on their future use. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the NTTA shall be transmitted to the State as required by the State. The originals shall remain the property of the NTTA.

15. Compliance with Laws

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the NTTA shall furnish the State with satisfactory proof of this compliance.

16. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

17. Inspection of Books and Records

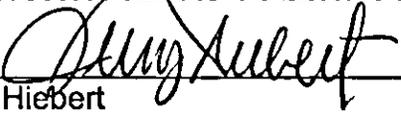
The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the NTTA, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this Agreement or until any impending litigation, or claims are resolved. Additionally, the State, the NTTA, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

18. Signatory Warranty

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE NORTH TEXAS TOLLWAY AUTHORITY



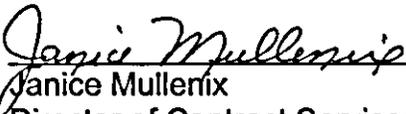
Jerry Hiebert
Executive Director

10/7/04

Date

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.



Janice Mullerix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation

10.26.04

Date

ATTACHMENT A

Resolution or Ordinance

RESOLUTION NO. 04-80

**A RESOLUTION OF THE NORTH TEXAS TOLLWAY AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE
AND EXECUTE AN INTERLOCAL AGREEMENT
WITH THE TEXAS DEPARTMENT OF TRANSPORTATION
FOR THE WESTBOUND IH 635 RAMP MODIFICATIONS
BETWEEN THE DALLAS NORTH TOLLWAY AND MIDWAY ROAD**

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, in August 2003, the NTTA Board of Directors (the "Board") approved the procurement of design services for the modifications to southbound Dallas North Tollway ("DNT") at IH 635, and modifications to westbound IH 635 ramps from DNT to Midway Road; and

WHEREAS, the DNT is an NTTA turnpike project, and IH 635 is an interstate highway project of the Texas Department of Transportation ("TxDOT"); and

WHEREAS, the NTTA and TxDOT consider it appropriate and in the best interest of both entities that the NTTA construct the designed modifications to the westbound IH 635 ramps between the DNT and Midway Road (the "Project"); and

WHEREAS, in consideration thereof, the NTTA and TxDOT desire to execute an interlocal agreement that defines the NTTA's construction responsibilities for the Project and authorizes the NTTA to construct the Project within TxDOT right-of-way, and under which the NTTA agrees to fund the costs associated with the Project, including, without limitation, all costs of the preliminary and final design, services of the NTTA's General Engineering Consultant, construction, and construction administration within the Project limits.

NOW THEREFORE BE IT RESOLVED that the Board authorizes the Executive Director to negotiate and execute an interlocal agreement with TxDOT for the construction of the Project and under such terms as the Executive Director deems appropriate, including NTTA's funding of the reasonable costs associated with the Project.

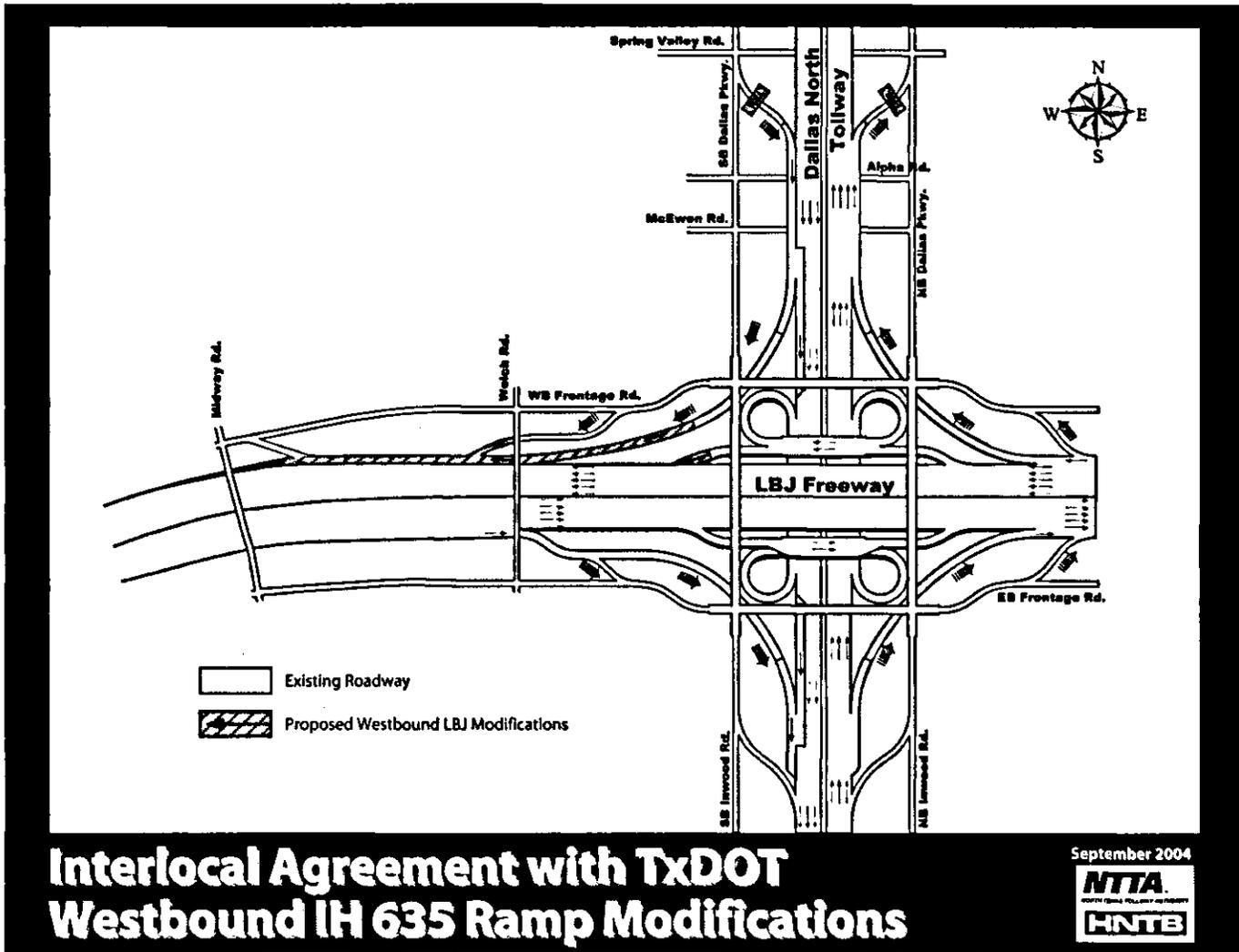
ATTEST:


Donald D. Dillard, Chairman


Ruby Franklin, Secretary

ATTACHMENT B

Location Map Showing Project



ATTACHMENT C

Project Budget And Description:

The NTTA will provide funding of all costs of the preliminary engineering, PS&E and construction of the westbound ramp and auxiliary lane improvements on IH 635 between the Dallas North Tollway and Midway Road, which is an on-system location. These improvements will include the following:

- Separating the southbound DNT to westbound IH 635 exit ramp from the IH 635 westbound frontage road entrance ramp,
- Realigning the southbound DNT to westbound IH 635 exit ramp and the IH 635 westbound frontage road entrance ramp,
- Adding an auxiliary lane between the southbound DNT exit ramp and IH 635/Midway exit ramp,
- Adding a "runout" lane beyond the westbound exit ramp to Midway Road,
- Retaining wall modifications, including drainage, pavement, rail, signing and associated items, to accommodate improvements, as needed,
- New pavement markings and signage are required for the auxiliary lane and ramp improvements,
- Development of a preliminary phasing scheme based on current State schematics between the southbound DNT to westbound IH 635 exit ramp and the westbound exit ramp to Midway Road.

The estimated cost of this work is \$1,300,000.00, including design/preliminary engineering, construction items, and engineering and contingencies, as follows:

		Project Budget			CSJ: 2374-01-928	
Description	Total Estimated Cost	Federal Participation	State Participation	Local Participation	Actual Participation	
	100%	0.0%	0.0%	100.0%	\$0.00	\$0.00
Land (no cash contribution)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Utilities (no cash contribution)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Environmental Cost (no cash contribution)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Preliminary Engineering - State Review	N/A (on-system)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Plans, Specs & Estimate (PS&E)	\$150,000.00	\$0.00	\$0.00	\$150,000.00	\$150,000.00	\$150,000.00
Construction	\$1,000,000.00	\$0.00	\$0.00	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
State construction oversight	N/A (on-system)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Engineering & Contingency (estimated 13%)	\$150,000.00	\$0.00	\$0.00	\$150,000.00	\$150,000.00	\$150,000.00
Total	\$1,300,000.00	\$0.00	\$0.00	\$1,300,000.00	\$1,300,000.00	\$1,300,000.00

Total Participation required from the local government = \$1,300,000.00

Engineering and contingencies charges will be based on actual charges.

NTTA's Estimated Participation (100%) = \$1,300,000.00