DALLAS NORTH TOLLWAY/
STATE HIGHWAY 121

DESIGN AND CONSTRUCTION AGREEMENT

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DALLAS NORTH TOLLWAY/
STATE HIGHWAY 121

DESIGN AND CONSTRUCTION AGREEMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

THIS AGREEMENT, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission, hereinafter identified as "**TxDOT**," and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas, hereinafter identified as the "**Authority**," is executed to be effective the ____ day of _____, 2001.

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, the Authority has constructed and operates the Dallas North Tollway, a turnpike project that currently extends northerly approximately 21 miles from the Dallas Central Business District to a point slightly north of Legacy Drive in Plano, Texas (the "**DNT**"); and

WHEREAS, the Authority, may, without any obligation to do so, determine that an extension of the DNT to a point north of State Highway 121 ("**SH 121**") would enhance the operation and efficiency of the DNT and the other turnpike projects comprising the "Dallas North Tollway System" which is more fully described in Section 14 below, and the Authority may elect to undertake construction of such an extension (such extension, to the extent located within the Project Area, as such term is defined in Section 1 below, shall hereinafter be referred to as the "**DNT Extension**"); and

WHEREAS, on July 29, 1999, the Texas Transportation Commission (the "**Commission**") adopted Minute Order 107892 authorizing TxDOT to improve SH 121 by constructing (a) frontage roads along SH 121 between SH 289 on the east to the Collin County/Denton County border on the west, (b) SH 121 main lanes and grade separations of those lanes at the intersection of SH 121 and SH 289, and (c) SH 121 main lanes and grade separations of those lanes at the intersection of SH 121 and the DNT, as may be extended by the DNT Extension (all of the foregoing, to the extent the same are located within the Project Area, shall be referred to in this Agreement as the "**121 Improvements**"); and

WHEREAS, TxDOT, the Commission, and the Authority have determined that the travelling public will be well served by the construction of the 121 Improvements and the DNT Extension, which will reduce unacceptable levels of traffic congestion on the existing State Highway System, and improve mobility in the rapidly developing southern Collin County area; and

WHEREAS, TxDOT and the Authority desire to assist each other in the coordination of the design and construction of the DNT Extension and the portion of the 121 Improvements in the vicinity of the intersection of SH 121 and the DNT in order to promote the efficient scheduling and sequencing of those projects; and

WHEREAS, TxDOT and the Commission, under the authority of 43 TAC 27.44 and the corresponding Minute Order described below, together with the Authority have determined that it would be most efficient and cost effective for the design and construction of the DNT Extension and the 121 Improvements to be prosecuted as an integrated design project and an integrated construction project; and

WHEREAS, on March 29, 2001, the Commission adopted Minute Order 108466, under the authority of 43 TAC 27.44, authorizing the Authority's undertaking the 121 Improvements, which are located on the State Highway System; and

WHEREAS, Section 201.113 of the Texas Transportation Code authorizes the Commission and a regional tollway authority to enter into agreements for the improvement by a regional tollway authority of portions of the State Highway System; and

WHEREAS, the Authority has made the request to TxDOT for the Commission's review and approval acting under the authority of Section 201.113 of the Texas Transportation Code and the Regional Tollway Authority Act, to function as the lead agency in the coordination of the design, bidding, and construction of the DNT Extension and the 121 Improvements, and the Authority has agreed to serve in such capacity; and

WHEREAS, because the 121 Improvements are located on the National Highway System and federal funding is contemplated, the Federal Highway Administration (the "**FHWA**") has certain approval and inspection rights and responsibilities and, further, TxDOT is responsible for all coordination with the FHWA and for obtaining any necessary approvals from the FHWA for the 121 Improvements; 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.

AGREEMENT

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, TxDOT, acting by and under the authority of the Commission, and the Authority agree as follows:

1. Defined Terms. In this Agreement, the following terms shall have the meanings indicated, unless clearly stated otherwise:

(a) "**121 Engineer**" means Turner, Collie & Braden, Inc., the professional engineering firm with which the Authority has contracted to prepare the 121 PS&E in accordance with Section 4 of this Agreement.

(b) "**121 Improvements**" has the meaning given to such term in the Recitals, and also includes, without limitation, certain connections, ramps and other facilities depicted on **Exhibit A** and made a part of this Agreement, all being situated in the Project Area within that portion of SH 121 from SH 121 Centerline Station 660+00 on the west to SH 121 Centerline Station 715+00 on the east.

(c) "**121 PS&E**" means the plans, specifications and cost estimate (exclusive of right-of-way acquisition costs) prepared by the 121 Engineer for the construction of the 121 Improvements.

(d) "**Construction Contract**" means the contract entered into between the Authority and the General Contractor for the construction of the Project.

(e) "**Delivered Materials**" means all materials prepared by or for TxDOT in connection with the 121 Improvements, together with any and all other items or information in the possession of TxDOT and useful to or necessary for the Authority's completion of the Project; without limiting the foregoing, the Authority has identified certain items comprising part of the Delivered Materials that it requires, which items are identified on **Schedule 1** attached hereto and made a part of this Agreement.

(f) "**DNT Bridge**" means the grade separation and bridge comprising a portion of the DNT Extension (if the Authority elects to construct the same) carrying the DNT Extension over SH 121, as generally depicted on **Exhibit B** attached hereto and made a part of this Agreement.

(g) "**DNT Engineer**" means Shimek, Jacobs & Finklea, L.L.P., the professional engineering firm with which the Authority has contracted to prepare the DNT PS&E.

(h) "**DNT Extension**" has the meaning given to that term in the Recitals and pertains to the proposed extension of the DNT that is currently anticipated to be constructed from DNT Centerline Station 1080+00 on the south to DNT Centerline Station 1162+00 on the north. A proposed general layout of the portion of the DNT Extension that crosses and is immediately adjacent to the 121 Improvements is depicted on **Exhibit C** attached hereto and made a part of this Agreement.

(i) "**DNT PS&E**" means the plans, specifications and cost estimate (exclusive of right-of-way acquisition costs) prepared by the DNT Engineer for the construction of the DNT Extension.

(j) "**General Contractor**" means the firm or, collectively, the firms with which the Authority contracts under Section 6 of this Agreement for construction of the Project.

(k) "**Project Area**" generally refers to the vicinity of the intersection of SH 121 and the DNT Extension and more specifically means that portion of the DNT Extension from DNT Centerline Station 1080+00 to DNT Centerline Station 1162+00 and that portion of SH 121 from SH 121 Centerline Station 660+00 to SH 121 Centerline Station 715+00, as depicted on **Exhibit D** attached hereto and made a part of this Agreement, together with all permanent and/or temporary easement areas, license areas, and leased property required for the construction and operation of the Project.

(l) "**Project**" means the 121 Improvements; provided, however, if the Authority, at its sole option, elects to construct the 121 Improvements and the DNT Extension as a single construction project, the term "Project" shall mean both the 121 Improvements and the DNT Extension.

(m) "**Project PS&E**" means the plans, specifications and cost estimate (exclusive of right-of-way acquisition costs) for the construction of both the 121 Improvements and the DNT Extension if the Authority, at its sole option, elects to instruct the DNT Engineer to combine the 121 PS&E and the DNT PS&E in accordance with Section 4.

(n) "**Schedule**" means the design and construction schedule described in Section 13 and set forth on **Exhibit E**.

(o) "**Technical Work Group**" has the meaning given that term under Section 12 below.

2. **Right of Way Acquisition.** TxDOT shall acquire by purchase, condemnation, dedication or other means within its statutory authority all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind required for constructing and operating the 121 Improvements. The Authority shall acquire by purchase, condemnation, dedication or other means within its statutory authority all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind required for constructing and operating the DNT Extension.

3. **Wetlands Mitigation Costs.** The Authority identified waters of the United States and wetland sites affected by construction of the 121 Improvements. The Authority determined the appropriate means for mitigation of disturbed wetlands, if any, which are so affected, subject to TxDOT's approval. In accordance with these obligations, the Authority obtained a Section 404 permit for the Project and TxDOT approved same. TxDOT will reimburse the Authority for all costs associated with the determination, design, coordination, construction and/or other provision of mitigation sites, for the 121 Improvements, including any cash outlays, fees or other payments.

4. **Project Design.** Utilizing the preliminary schematic design prepared by TxDOT and reviewed by the Authority, the Authority has, in accordance with the Authority's procurement policies and, to the extent otherwise required by law, 23 CFR 172 and Texas

Government Code 2254, Subpart A, selected and entered into a contract with the 121 Engineer for the preparation of the 121 PS&E. At the Authority's sole option, the 121 PS&E and the DNT PS&E may be combined by the DNT Engineer with each other as a single "**Project PS&E**" (herein so called), and the Authority and TxDOT shall share proportionally the resulting cost.

(a) The Authority shall cause the 121 Engineer and the DNT Engineer to distinguish the 121 PS&E components from the DNT PS&E components in sufficient detail to allow all costs of the 121 Improvements to be specified separately from the costs of the DNT Extension.

(b) To assist the Authority in the design and construction of the 121 Improvements and, specifically, to reduce the cost of completing the Project, contemporaneously with the execution of this Agreement (or at such earlier time as may be agreeable to the parties), TxDOT will provide the Authority with all original counterparts or, if originals are unavailable, copies of the Delivered Materials that have been prepared to date, including those items identified on **Schedule 1** attached hereto.

(c) The 121 PS&E shall be developed, and the 121 Improvements shall be constructed, consistent with the latest edition and revisions of the American Association of State Highway and Transportation Officials' (AASHTO) Standard Specifications for Highway Bridges, including applicable interim specifications, TxDOT's Highway Design Division Operations and Procedures Manual, TxDOT's Standard Specifications for Construction of Highways, Streets and Bridges, TxDOT's Foundation Exploration Manual, TxDOT's Bridge Design Guide, and The Texas Manual on Uniform Traffic Control Devices (TMUTCD). For all items not discussed in the above-referenced documents, AASHTO's A Policy On Geometric Design of Highways and Streets shall be referenced for guidance. In accordance with the following schedule, the Authority shall submit the 121 PS&E to TxDOT's District Office for review and approval as portions are completed:

(i) Upon completion of sixty percent (60%) of the 121 PS&E;

(ii) Upon completion of the final design of the 121 PS&E; and

(iii) Upon final submission for a letter of authority.

TxDOT shall use its best efforts to provide the Authority with written objections, if any, to 121 PS&E materials within thirty (30) calendar days following the Authority's submission of the 60% complete version to TxDOT's District Office and within six (6) weeks following the Authority's submission of the final version to TxDOT's District Office. TxDOT shall use its best efforts to support and effect the issuance of the letter of authority by the FHWA for the Project within six (6) weeks following the Authority's final submission therefor to TxDOT's District Office. TxDOT and the Authority shall utilize to the maximum practical degree the Technical Work Group to facilitate and expedite the preparation and review of the 121 PS&E and the construction of the 121 Improvements.

(d) TxDOT acknowledges that it has reviewed and approved the DNT Bridge layouts. If and when the DNT PS&E is completed (or, at the Authority's discretion, as stages thereof are completed), the Authority shall certify to TxDOT that the components of the DNT

PS&E that pertain to the DNT Bridge are consistent with the DNT Bridge layouts submitted to and approved by TxDOT; or, if such components are modified, the Authority will submit such modifications to TxDOT for review and comment. TxDOT shall use its best efforts to provide the Authority with written objections, if any, to any modified components within thirty (30) calendar days following the Authority's submission thereof to TxDOT's District Office. Also, TxDOT shall review all construction sequencing and traffic handling, but shall not unreasonably withhold or delay its approval thereof. Except as provided in this Subsection 4.(d), TxDOT shall not review or comment on the DNT PS&E.

(e) The Authority shall ensure that, to the extent otherwise required by law, the 121 PS&E are in compliance with the Texas Accessibility Standards ("**TAS**") issued by the Texas Department of Licensing and Regulation under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

(f) For federally funded contracts, the parties to this Agreement will comply, to the extent otherwise required by law, 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, to the extent otherwise required by law.

5. **Payment of PS&E Charges.** The Authority's contracts with the 121 Engineer and the DNT Engineer shall require that invoices under each contract allocate all fees and other charges thereunder between the 121 PS&E and the DNT PS&E (if the same is part of a unified Project PS&E), based upon time spent and other charges incurred in preparing the 121 PS&E and the DNT PS&E, respectively. TxDOT shall pay all fees and charges allocated to the 121 PS&E, and the Authority shall pay all fees and charges allocated to the DNT PS&E. The Authority shall provide TxDOT with copies of all invoices and supporting materials received in connection with the 121 PS&E. The Authority shall pay all amounts invoiced under the contracts with the 121 Engineer and the DNT Engineer. TxDOT shall reimburse the Authority for all invoiced amounts for which TxDOT is obligated under this Section 5 within thirty (30) calendar days after the Authority submits such invoices to TxDOT. As of the date of this Agreement, the estimated fees and charges to be paid by TxDOT under this Section 5 are $760,000. Both TxDOT and the Authority acknowledge and agree that the foregoing amount is an estimate only and constitutes neither a minimum nor maximum amounts payable under this Agreement with respect to the 121 PS&E.

6. **Construction Bids and Contract Letting.** In accordance with applicable law and the Authority's established bidding and procurement procedures, the Authority shall solicit competitive bids for the construction of the Project based on the approved 121 PS&E, and, if the Authority has elected at its sole option to construct the 121 Improvements and the DNT Extension as a single Project, the approved DNT PS&E. If applicable, all bidders shall be required to submit bids in a form that assists the 121 Engineer and the DNT Engineer to separately allocate all costs for the 121 Improvements and the DNT Extension. The Authority shall analyze the bids and shall award the construction contract for the Project (the

"**Construction Contract**") to the lowest responsive bidder that complies with the criteria for the Project set forth in the bid documents prepared by the Authority, all as more specifically provided in the following paragraph.

After TxDOT's issuance of a letter of authority, the Authority shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award the Construction Contract for the Project in accordance with existing procedures and applicable laws. The Authority shall use its established bidding and procurement procedures and shall have TxDOT's concurrence prior to awarding the Construction Contract, said approval or disapproval thereof to be provided in the TxDOT's reasonable judgment within ten (10) days following its receipt thereof. The contractor under the Construction Contract will be referred to herein as the "**General Contractor.**" TxDOT shall be entitled, after providing reasonable notice prior to bidding, to require that the Construction Contract obligate the General Contractor to (a) list TxDOT as "additional insured" with respect to any insurance for which the General Contractor must obtain an "additional insured" rider or amendment and (b) cause any such insurance policies to be properly endorsed to provide for a waiver of the insurance company's right of subrogation against any insured or additional insured thereunder. Prior to the Authority performing any work on the 121 Improvements, the Authority shall furnish to TxDOT a completed Certificate of Insurance (Form 20.102, latest version) evidencing the Authority's compliance with the preceding sentence.

7. **The Authority's Responsibility for Construction of the Project.** Except as otherwise provided in this Agreement, the Authority shall have sole authority and responsibility for (a) the selection of financial advisors, legal counsel, consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, sureties, and other parties retained in connection with the construction of the Project, (b) the commencement, sequencing and timing of design and construction activities and other work, (c) the inspection, acceptance or rejection of work or other deliverables, and (d) the negotiation, bidding, and letting of contracts.

Except as set forth below in this Section 7, the Authority shall be responsible for the construction of the Project in accordance with the approved 121 PS&E or Project PS&E, as applicable, in all material respects, including, without limitation, all required construction management, inspection, and construction materials testing. Provided, however, that the Authority shall have no responsibility for procurement of right-of-way or any other property interests required for the construction, operation, and maintenance of the 121 Improvements. 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. Except as provided in the previous sentence, if the 121 Improvements are constructed in all material respects in accordance with the 121 PS&E approved by TxDOT under Section 4 above (as such 121 PS&E may be modified or amended with TxDOT's written approval as provided in Section 9 below), the Authority shall have no liability for or with respect to the design, construction, or operation of the 121 Improvements, and, TxDOT hereby releases the Authority from responsibility therefor to the extent, but only to the extent, that the 121 Improvements are constructed in all material respects in accordance with

the 121 PS&E (as amended or modified with TxDOT's written approval). 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.

8. **Payment of Project Costs.**

(a) TxDOT shall pay all amounts under the Construction Contract that pertain to the 121 Improvements as follows. Within ten (10) days after TxDOT's receipt of an invoice, TxDOT shall deliver to the Authority the amount invoiced under the Construction Contract with respect to the 121 Improvements. If the Authority elects to construct the DNT Extension as part of the Project, the Construction Contract shall allocate all fees, costs, and other charges thereunder between the 121 Improvements and the DNT Extension.

(b) Based upon the estimated construction costs relating to the DNT Extension versus the 121 Improvements, the Authority and TxDOT have agreed to allocate construction management, shop drawing review, and materials testing costs on the basis of sixty-eight percent (68%) for the Authority and thirty-two percent (32%) for TxDOT. Consequently, TxDOT's reimbursement obligation with respect to construction management, shop drawing review, and materials testing costs shall be thirty-two percent (32%) of the total of such costs incurred for the Project if the Authority elects to construct the 121 Improvements and the DNT Extension as a single construction project, or one hundred percent (100%) of such costs if only the 121 Improvements are constructed. TxDOT shall pay such costs by remitting to the Authority, at the same time TxDOT is obligated to make payments under Subsection (a) above, the applicable amount computed in accordance with this Subsection (b).

9. **Change Orders and Supplemental Agreements.** Any change orders, supplemental agreements or additional work orders regarding the 121 Improvements which may become necessary subsequent to the award of the Construction Contract shall be subject to the prior approval of TxDOT. TxDOT shall provide its comments to any proposed change orders, supplemental agreements or additional work orders which increase the cost of the 121 Improvements less than $300,000.00 within ten (10) calendar days of its receipt thereof; TxDOT shall not unreasonably withhold its consent to any changed, supplemental or additional work regarding the 121 Improvements provided the 121 PS&E continue to comply with the standards enumerated in Subsection 4.(c) above, and TxDOT shall fully cooperate with the Authority to expedite any review of proposed change orders, supplemental agreements, or additional work orders which increase the cost of the 121 Improvements $300,000.00 or more.

10. **Review of Work and Records.** In addition to the regular exchange of information through meetings of the Technical Work Group, TxDOT shall have the right, as more specifically described below, to (a) audit, inspect, and copy all records and documents, including all project records, maintained by the Authority relating to the design or construction of the 121 Improvements and (b) conduct field inspections of the 121 Improvements. TxDOT will make suitable inspection of materials and equipment, and the work of installation sufficient

to determine and permit certification that the 121 Improvements and their components meet the applicable requirements of the 121 PS&E. TxDOT will promptly notify the Authority of any failure of materials, equipment, or installation methods, and the Authority shall take such measures as reasonably necessary to obtain acceptable materials, equipment and installation methods without delay. TxDOT will accomplish these inspection responsibilities by making periodic reviews; it is neither anticipated nor desired by the parties that TxDOT will have an office at the Project site or otherwise maintain a full-time or daily presence at the Project. Further, TxDOT's disapproval of materials, equipment, installation methods or record keeping shall be in accordance with the standards, procedures, policies and requirements utilized by TxDOT on its own highway improvement projects, and the Authority may utilize all methods and remedies available to TxDOT under similar circumstances. TxDOT and the Authority will use best efforts to fully address any conditions or events that may arise during inspection of the Project. Consistent with the Authority's responsibility to supervise and inspect all construction work for the 121 Improvements and to lessen the possibility of conflicting directives and resulting delays, TxDOT shall communicate all comments regarding the construction to the Authority only, and shall not redirect or manage construction workers or site activities, except in response to a bona fide emergency, as determined in TxDOT's reasonable judgment.

11. Utility Relocation and Adjustments. All utility adjustments, removals and/or relocations required to complete the 121 Improvements shall be the responsibility of TxDOT, and shall be overseen by TxDOT or by the Authority on behalf of TxDOT as provided in this Section 11. The Authority, in cooperation with TxDOT, shall determine the scope of utility work and notify the appropriate utility company or companies to schedule adjustments in accordance with 43 TAC 21.31-21.53, as applicable. TxDOT acknowledges and agrees that the Authority or its consultants may, on behalf of TxDOT, coordinate the utility adjustments, removals or relocations to ensure the safe, timely and efficient adjustment, removal or relocation of utilities.

12. Technical Work Group. Promptly following the full execution of this Agreement, TxDOT and the Authority shall form a "**Technical Work Group**" (herein so called) for the Project. The Technical Work Group shall be composed of representatives from TxDOT, the Authority, and such other members representing affected municipalities or other governmental or quasi-governmental bodies as TxDOT or the Authority designates. Any other members designated by TxDOT or the Authority shall be selected to provide technical and other assistance to the Technical Work Group, and shall not have any authority to make or implement final actions or decisions binding on the Technical Work Group, TxDOT, or the Authority. The Authority will chair and host regularly scheduled meetings that are intended to (a) encourage open and continuous dialogue between the various participants, (b) facilitate the preparation of the 121 PS&E or the Project PS&E, as applicable, (c) facilitate and expedite TxDOT's review of (i) the 121 PS&E and any changes to the DNT Bridge schematic designs, (ii) construction bids and the Construction Contract, and (iii) change orders or supplemental agreements requiring TxDOT's approval, (d) facilitate TxDOT's audit of the Project and project records under Section 10 above, and (e) facilitate and expedite agreement regarding remedial actions, if any, to be accomplished under Section 10 above. The goal of the Technical Work Group is to provide a streamlined review and information disseminating process. To that end, the Authority and TxDOT agree to distribute in advance the materials to be discussed and reviewed by the Technical Work Group at any meeting. When approved by TxDOT, the 121 PS&E shall be

deemed complete and approved. The representatives designated by TxDOT and the Authority to the Technical Work Group shall be responsible for conveying project information to their respective organizations and securing all necessary authorizations as promptly as possible.

13. **Schedule.** TxDOT and the Authority shall utilize to the maximum practical degree the Technical Work Group, and take all other reasonable steps, to facilitate and expedite the preparation and review of the 121 PS&E or the Project PS&E, as applicable, and the construction of the Project. TxDOT has reviewed and approved the design and construction schedule for the Project (the "**Schedule**") set forth on **Exhibit E** attached hereto and made a part hereof. TxDOT and the Authority agree that the Schedule is reasonable and achievable.

14. **Operation and Maintenance of the Project.** Upon completion, the 121 Improvements shall be operated and maintained by TxDOT as a portion of the State Highway System in compliance with the Texas Transportation Code and other applicable laws, and the DNT Extension shall be operated and maintained by the Authority in compliance with the Regional Tollway Authority Act and relevant provisions of any trust agreement(s) or similar documentation binding on the Authority and as an extension and enlargement of a system of turnpike projects known as the Dallas North Tollway System, which currently is composed of the DNT, the President George Bush Turnpike, and the Addison Airport Toll Tunnel.

15. **Maintenance of Records.** All records and documents prepared by the Authority under this Agreement or otherwise relating to the design, construction, operation or maintenance of the Project shall be maintained by the Authority in compliance with all applicable laws pertaining to the retention of records and access thereto.

16. **Delivery of Final Plans to TxDOT.** At the earliest possible date following completion of construction of the 121 Improvements, the Authority will deliver to TxDOT a set of final plans and specifications for said 121 Improvements as actually constructed, which shall clearly identify the limits and items to be maintained by the Authority and by TxDOT, as applicable, pursuant to the terms and conditions of this Agreement and the Regional Tollway Authority Act. The Authority and TxDOT shall negotiate and execute agreements with applicable municipalities and counties delineating, in a manner consistent with the set of final plans and specifications, their respective maintenance, operation, regulation and policing obligations regarding the service roads and interchanges.

17. **Public Involvement.** Subsequent to the execution of this Agreement, it is not anticipated that public meetings or hearings will be required under laws and procedures applicable to the Project; however, should the Authority determine that additional public involvement is necessary or beneficial, the Authority shall host and lead all such meetings with TxDOT's full support and participation.

18. **Compliance With Applicable Laws.** The Authority and TxDOT shall comply with all laws applicable to them with respect to this Agreement and the construction of the Project.

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

(a) By written mutual agreement and consent of the parties hereto; or

(b) By satisfactory completion of all responsibilities and obligations described herein.

20. Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors.

21. 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 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.

22. Written Amendments. Any changes in the character, agreement, 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 Authority and TxDOT.

23. 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
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.

24. 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.

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

26. 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 between TxDOT and the Authority.

27. 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.

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

29. 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.

30. No Obligations re: DNT Extension. TxDOT and the Authority each hereby acknowledges and agrees that notwithstanding anything to the contrary contained in this Agreement, the Authority shall have no obligation to cause the DNT Extension or any part thereof to be designed or constructed, and that the Authority shall have sole jurisdiction and authority over all decisions with respect to the DNT Extension and with respect to all other matters pertaining to the DNT.

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by six (6) multiple counterparts on the dates shown below, effective on the date listed above.

NORTH TEXAS TOLLWAY AUTHORITY

By: _____
Jerry Hiebert,
Executive Director

Date: 9/14/01

ATTEST:

_____
Ruby Franklin, Secretary

APPROVED AS TO FORM:

LOCKE LIDDELL & SAPP LLP
General Counsel

By: _____
Frank E. Stevenson, II

TEXAS DEPARTMENT OF TRANSPORTATION

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.

By: _____
Michael W. Behrens, P.E.,
Executive Director

Date: 9-26-01

EXHIBIT A

121 IMPROVEMENTS

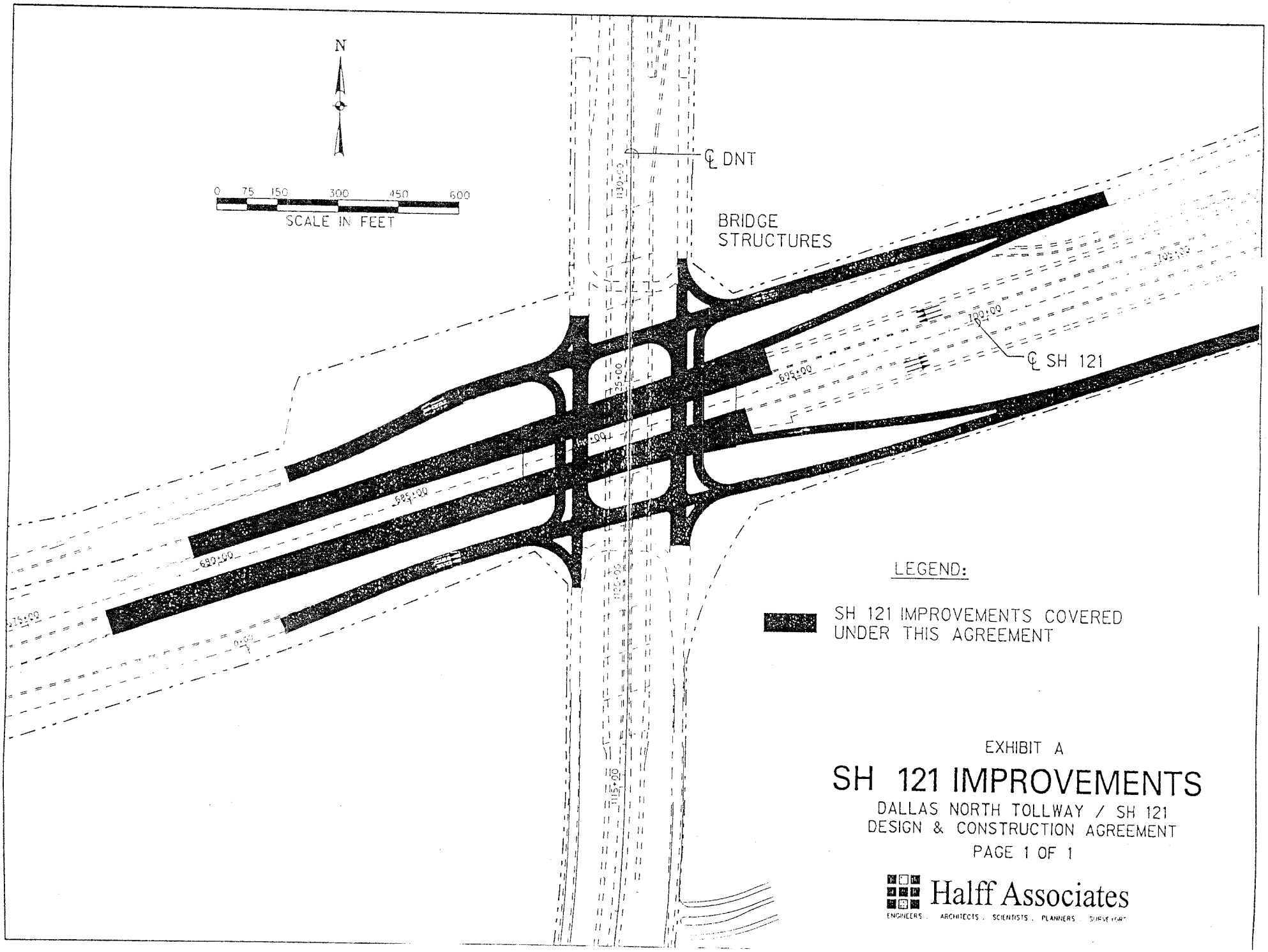


EXHIBIT A

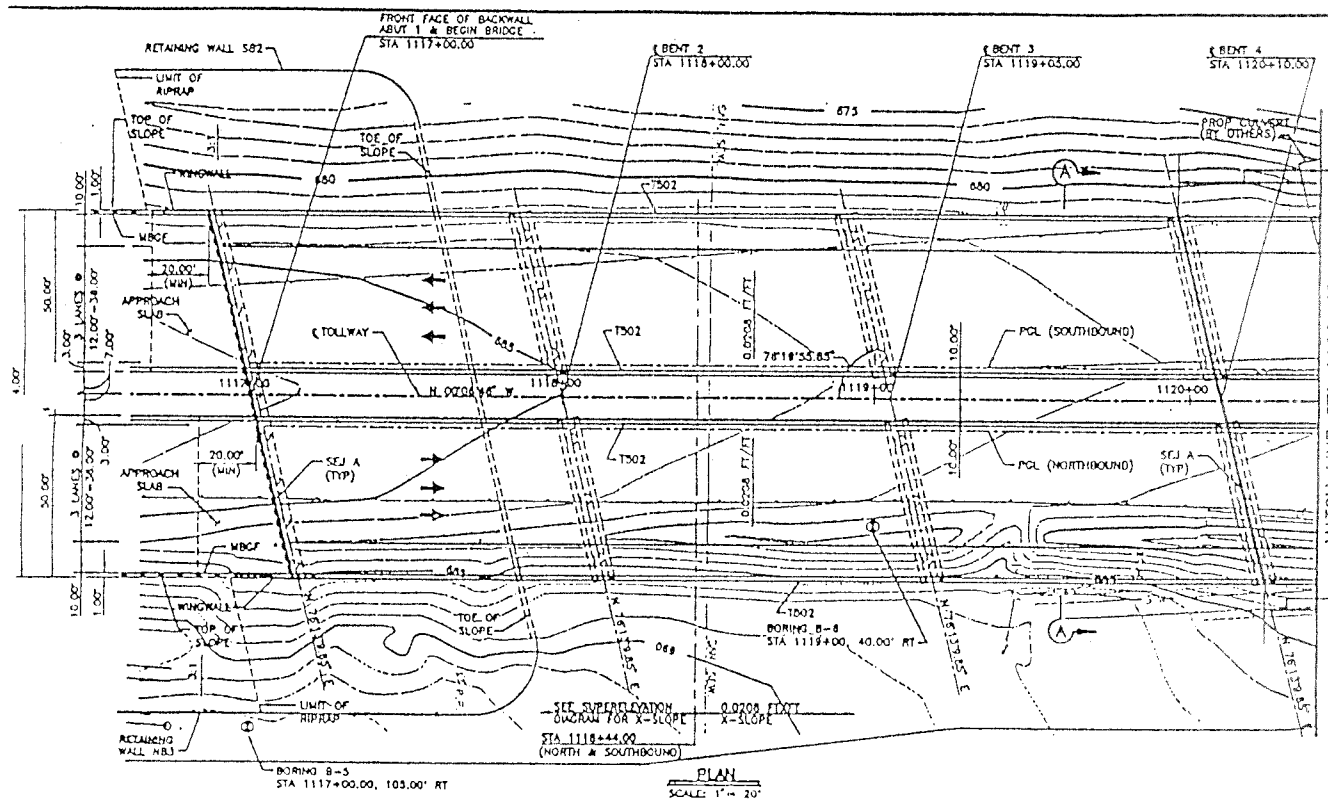
SH 121 IMPROVEMENTS

DALLAS NORTH TOLLWAY / SH 121
DESIGN & CONSTRUCTION AGREEMENT

Halff Associates
ENGINEERS . ARCHITECTS . SCIENTISTS . PLANNERS . SURVEYORS

EXHIBIT B

DNT BRIDGE



NOTES:

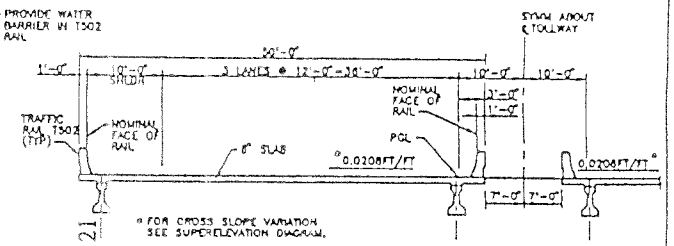
1. BRIDGE DESIGNED FOR HS20-44 LOADING UNDER 1998 AASHTO STANDARD SPECIFICATION FOR HIGHWAY BRIDGES.
2. FOR APPROACH SLAB DETAILS, SEE STANDARD DRAWING BAS-94.
3. FOR TRAFFIC RAIL DETAILS, SEE STANDARD DRAWINGS. TRAFFIC RAIL TYPE T502.
4. FOR CONCRETE RIPRAP DETAILS, SEE STANDARD DRAWINGS CRR.
5. ALL DIMENSIONS ARE HORIZONTAL OR VERTICAL AND MUST BE CORRECTED FOR GRADE AND CROSS-SLOPE WHERE APPROPRIATE.
6. DESIGN SPEED = 70 M.P.H. ADT = 6,300. FUNCTIONAL CLASS = TOLLWAY.
7. THE PROFILE GRADE LINE LOCATIONS FOR STATE HIGHWAY 121 FRONTAGE ROADS AND MAIN LANES ARE BASED ON THE MOST RECENT SCHEMATIC DATED APRIL 1999.

TBM #1 "8" CUT NORTH RIM OF S S MH
℄ STA 1128+08
ELEV 669.56

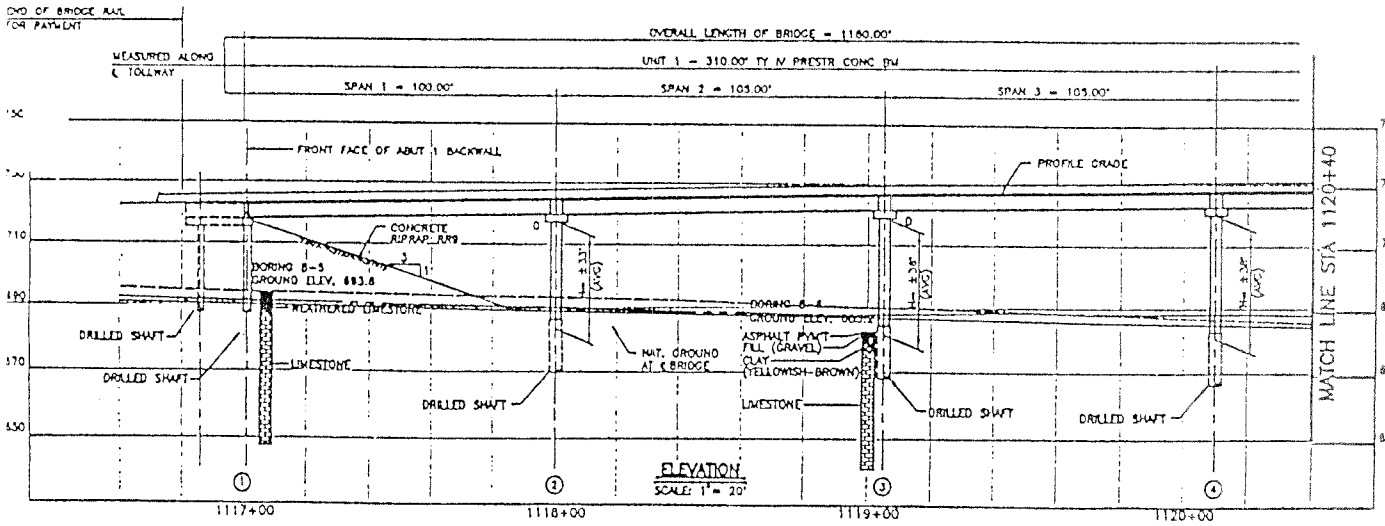
TBM-A "□" CUT IN CENTER HDWL WEST SIDE OF DNT 100 FT +/- SOUTH OF SH 121
N=518834.15 E=2207398.82
ELEV 560.49

H = HEIGHT OF COLUMN AT ℄

BEAM END CONDITIONS:
D- DENOTES A SLOTTED HOLE AT BEAM END.
BLANK- DENOTES NO HOLE.



HALF SECTION A-A
NTS



DALLAS NORTH TOLLWAY / STATE HIGHWAY 121
DESIGN AND CONSTRUCTION AGREEMENT

EXHIBIT B
DNT BRIDGE
PAGE 1 OF 3

PRELIMINARY
SUBMITTED FOR REVIEW
BY BALRAN LAMBA P.E.49274
N. A. Kennedy & Assoc.
DATE JUL. 07, 1999
NOT FOR CONSTRUCTION, BIDDING OR PERMITTING PURPOSES

SHEET 1 OF 3

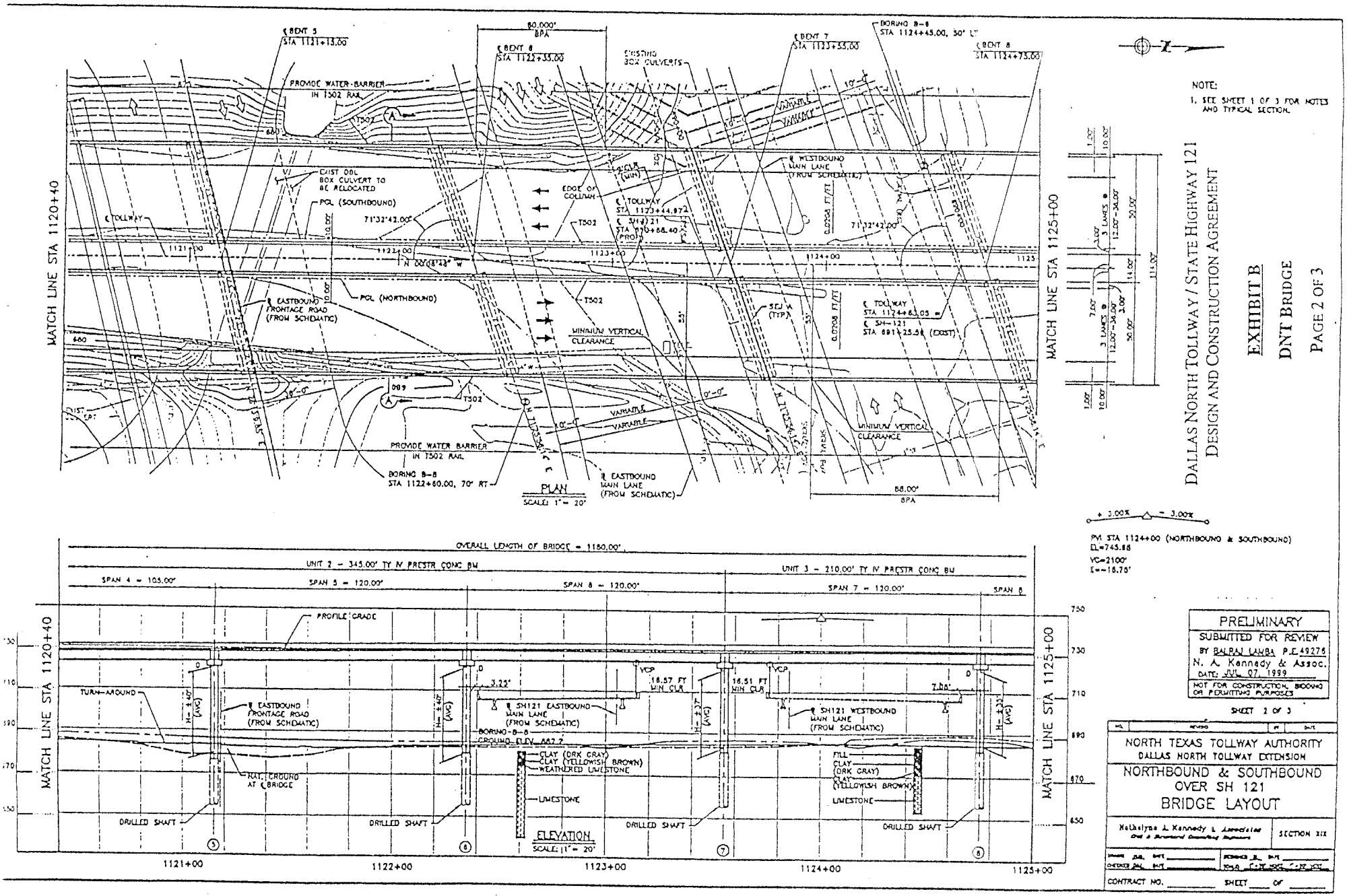
NORTH TEXAS TOLLWAY AUTHORITY
DALLAS NORTH TOLLWAY EXTENSION

NORTHBOUND & SOUTHBOUND OVER SH 121
BRIDGE LAYOUT

Nathalyne A. Kennedy & Associates
Civil & Structural Consulting Engineers

SECTION XIX

CONTRACT NO. _____ SHEET ___ OF ___

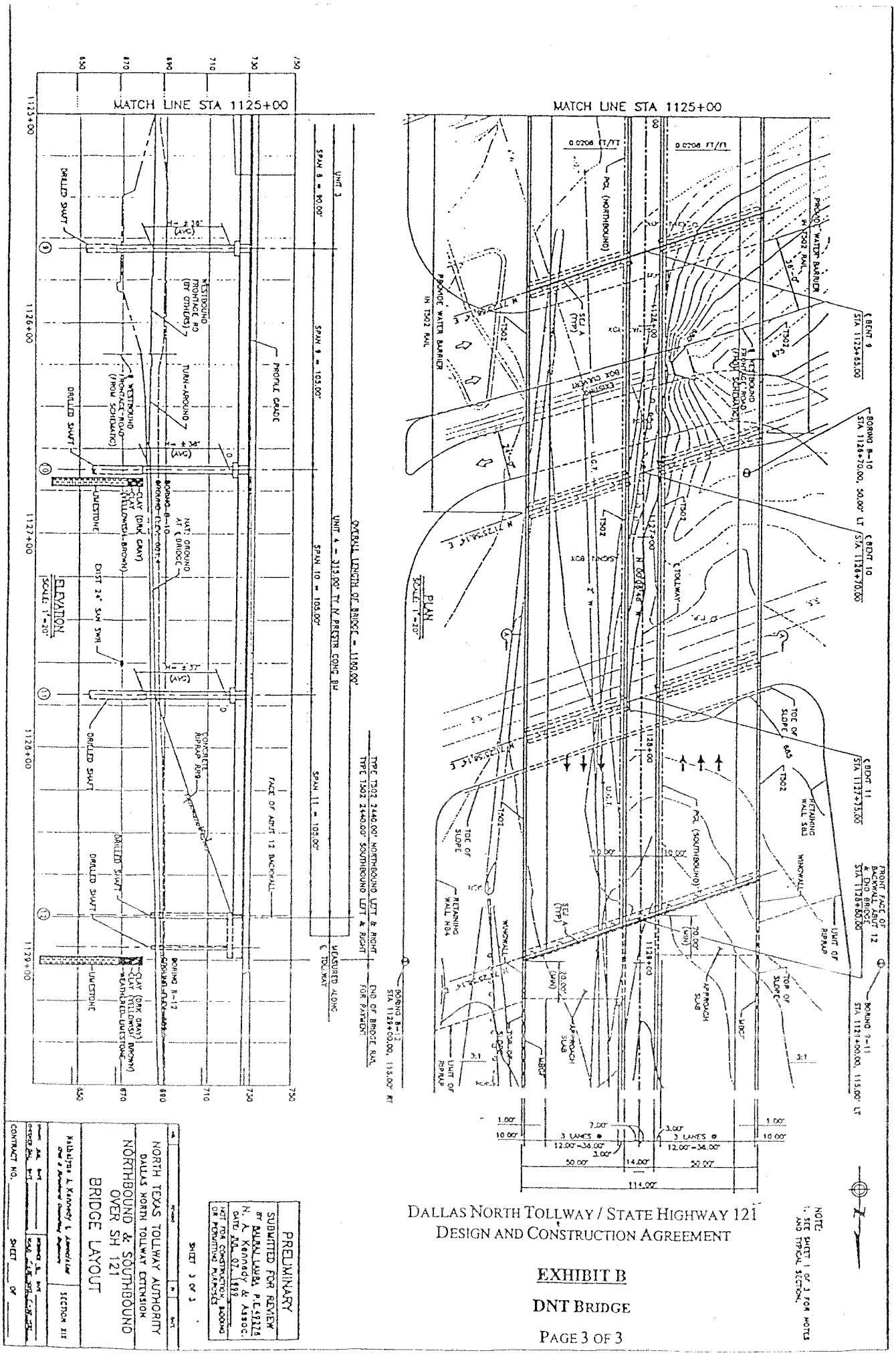


DALLAS NORTH TOLLWAY / STATE HIGHWAY 121
DESIGN AND CONSTRUCTION AGREEMENT

EXHIBIT B

DNT BRIDGE

PAGE 2 OF 3



DALLAS NORTH TOLLWAY / STATE HIGHWAY 121
DESIGN AND CONSTRUCTION AGREEMENT

EXHIBIT B

DNT BRIDGE

PAGE 3 OF 3

EXHIBIT C

DNT EXTENSION

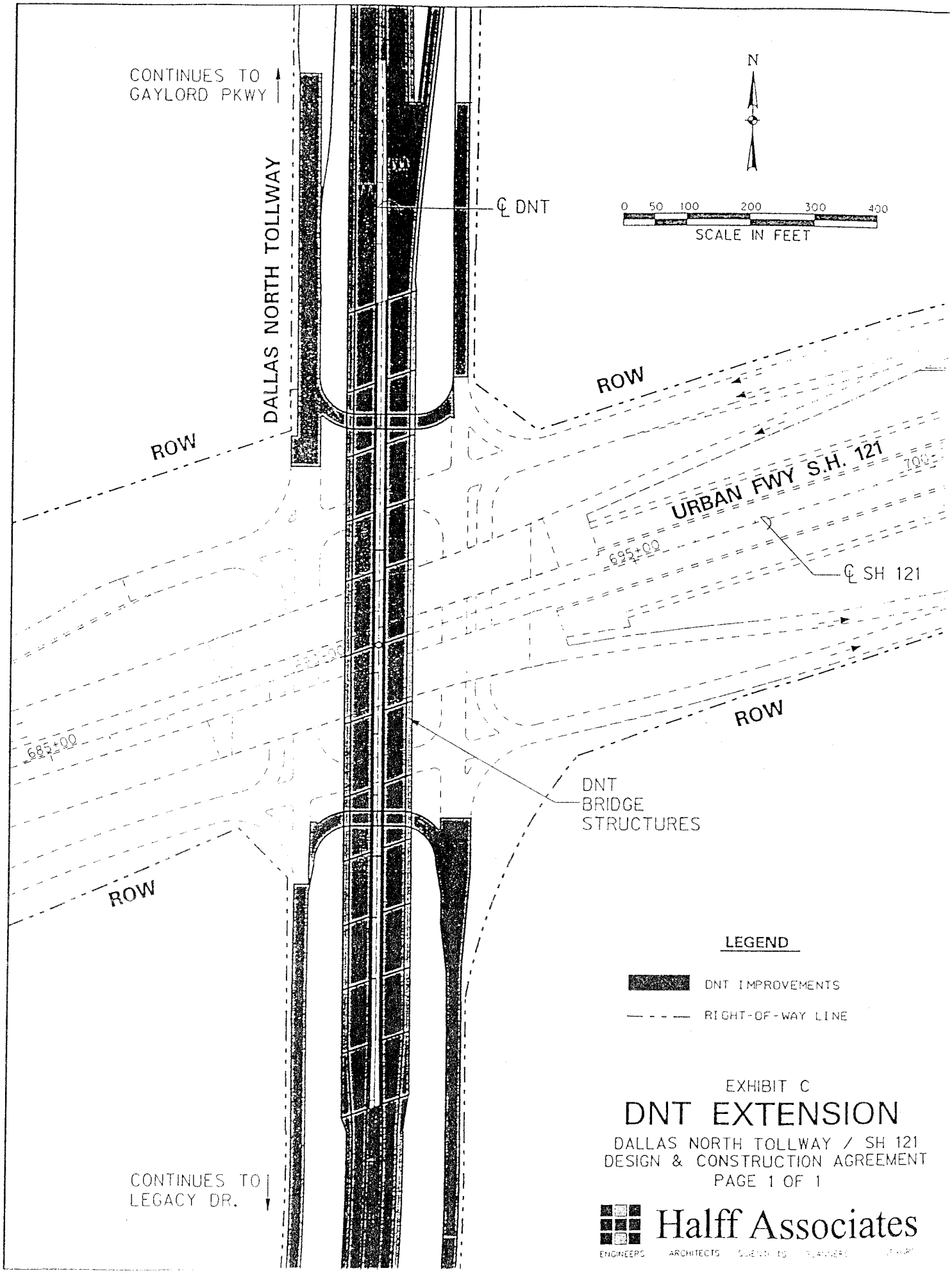


EXHIBIT C

DNT EXTENSION

DALLAS NORTH TOLLWAY / SH 121
DESIGN & CONSTRUCTION AGREEMENT
PAGE 1 OF 1

Halff Associates
ENGINEERS ARCHITECTS SCIENTISTS PLANNERS

EXHIBIT D

121 PROJECT AREA

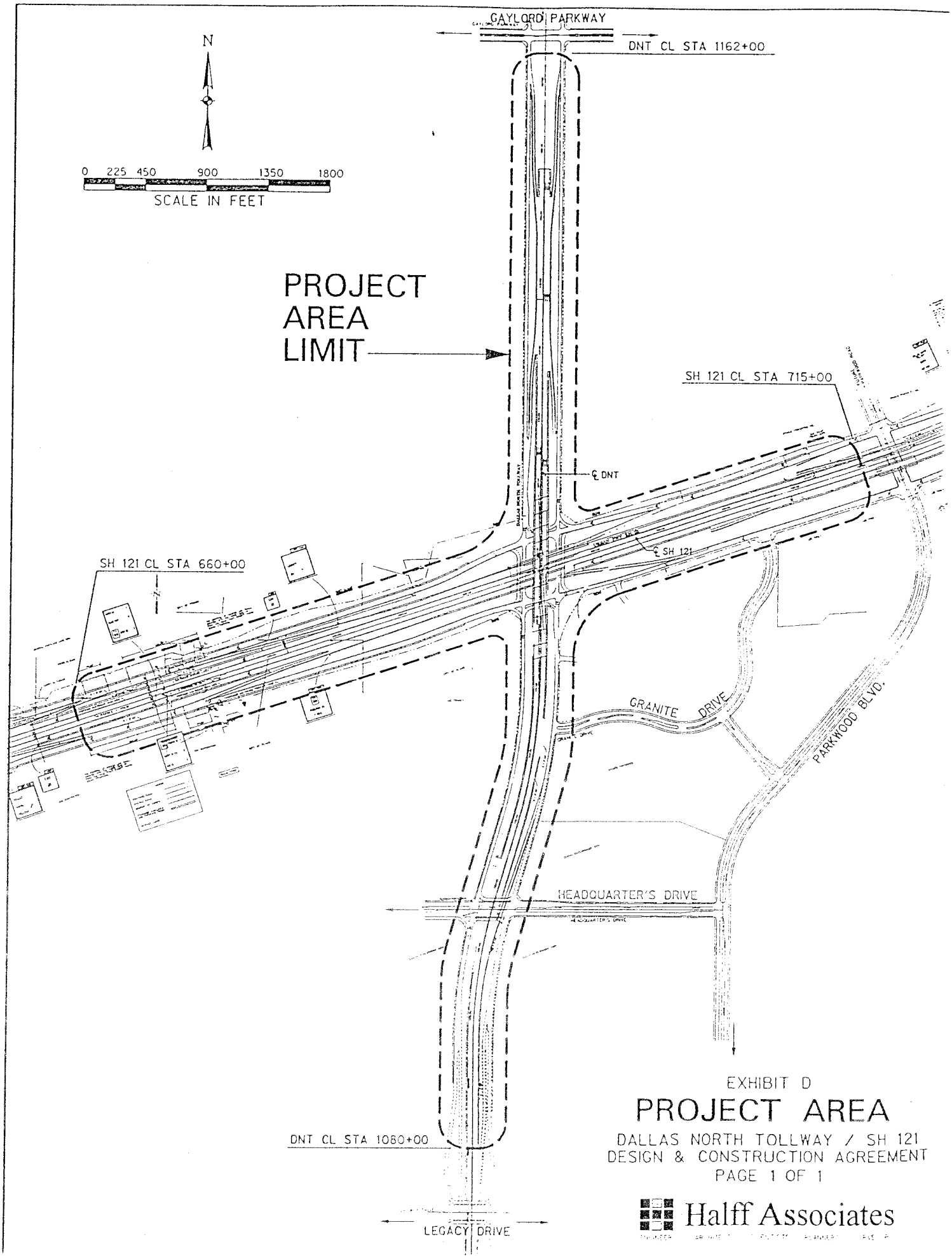


EXHIBIT D

PROJECT AREA

DALLAS NORTH TOLLWAY / SH 121
DESIGN & CONSTRUCTION AGREEMENT
PAGE 1 OF 1

Halff Associates

EXHIBIT E

SCHEDULE

July 31, 2001:	Completion of Project PS&E and preparation of bid documents
November 1, 2001:	Selection of General Contractor and Execution of Construction Contract
July 1, 2004:	Completion of Project

SCHEDULE 1

DELIVERED MATERIALS

- Microstation graphics files in three-dimensional format of the aerial topography within the Project Area.
- Microstation graphics files for required State Standard Sheets, Title Sheet and Basic Plan Sheet, including level use assignments and font library files.
- Existing utility investigation data and mapping.
- Right-of-way/easement maps, plats, legal descriptions, conveyance documents and title policies including digital coordinate information relative to SH121 centerline for all right-of-way corners.
- Typical pavement sections for all permanent pavement improvements.
- Three (3) sets of the construction record drawings for all of the existing roadway/signalization improvements within the Project Area.
- Large sign schematic for SH121 within two (2) miles of the Project Area.