STATE OF TEXAS §

COUNTY OF TRAVIS §

CITY SECRETARY
CONTRACT NO.

AMENDMENT #1
TO THE
AGREEMENT BETWEEN THE CITY OF FORT WORTH, THE NORTH TEXAS TOLLWAY AUTHORITY, AND THE TEXAS DEPARTMENT OF TRANSPORTATION CONCERNING THE DEVELOPMENT OF THE SOUTHWEST PARKWAY

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of Fort Worth, a home-rule municipal corporation, hereinafter called the City, and the North Texas Tollway Authority, a regional tollway authority and political subdivision of the State of Texas, hereinafter called the NTTA (the State, the City and the NTTA being sometimes collectively referred to as the Parties).

WITNESSETH

WHEREAS, on July 29, 1999 the Texas Transportation Commission passed Minute Order 107892, authorizing the State to construct SH 121/Southwest Parkway from IH 30 to Alta Mesa Boulevard; and,

WHEREAS, the State, the City, and the NTTA executed a contract as of November 28, 2000 to effectuate their agreement to develop SH 121/Southwest Parkway from IH 30 in the City for Fort Worth to US 67 in the City of Cleburne, such contract being identified as City of Fort Worth City Secretary Contract No. 26411 (the Original Contract); and,

WHEREAS, the North Central Texas Council of Governments Regional Transportation Council on January 8, 2004, approved Transportation Implementation Plan Modification 2004-093 allocating $60,000,000 in funding to aid the City in the acquisition of right of way for the proposed SH 121/Southwest Parkway corridor; and,

WHEREAS, it has become necessary to amend the Original Contract; and,

WHEREAS, on June 8, 2004 the City Council of the City of Fort Worth approved Mayor & Council Communication C-20112, authorizing the City Manager to execute this Amendment, a copy of which is attached hereto and made a part hereof as Attachment A, for the acquisition of right of way along the SH 121/Southwest Parkway corridor; and,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State, the City, and the NTTA do agree as follows:

AGREEMENT

Article 1.

Section 5, **The City's Obligations**, of the Original Contract, is hereby amended by adding the following to Section 5:

> The City will acquire the right of way in accordance with Title II and III of the Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970. All appraisals must be reviewed and approved by the State prior to acquisition of the right of way. The City will be reimbursed with federal funds by the State for eligible costs incurred during the right of way acquisition process, these cost include:
>
> - Appraisal Services
> - Environmental Site Assessments and Remediation Costs
> - Attorney's Fees
> - Land Agent Services
> - Title Policies

- Relocation Expenses
- Land Purchases

Upon execution of this Amendment, the City will forward a check or warrant made payable to the Texas Department of Transportation in the amount of $25,000. These funds will be utilized by the State for administrative costs during the right of way acquisition process.

Article 2

Section 14, General Provisions of the Original Contract is hereby amend to add the following to Section 14:

n. **Cost Principles:** In order to be reimbursed with federal funds, the City shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the SH121/Southwest Parkway.

o. **Inspection of Books and Records:** The Parties shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Amendment and shall make such materials available to the State, the City, 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 the Original Contract, as amended by this Amendment (collectively, the Contract), or until any impending litigation, or claims are resolved. Additionally, the State, the City, the NTTA and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to the Contract for the purpose of making audits, examinations, excerpts, and transcriptions.

- p. **Compliance with Laws:** The Parties shall comply with all otherwise applicable 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 the Contract. When required, the City shall furnish the State with satisfactory proof of this compliance.

- q. **Procurement and Property Management Standards:** The City shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

- r. **Office of Management and Budget (OMB) Audit Requirements:** The City shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

- s. **Civil Rights Compliance:** The Parties shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

- t. **Disadvantaged Business Enterprise Program Requirements:** The Parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

- u. **Debarment Certifications:** The Parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." The Parties shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

- v. **Lobbying Certification:** In executing this Amendment, the Parties certify to the best of their current, actual knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the Parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Amendment, the Parties affirm this lobbying certification with respect to the SH 121/Southwest Parkway and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

- **w. State Auditor:** 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.

A breakdown of the funding for the right of way acquisition is shown on Attachment B.

Article 3. Effect of Amendment.

All other provisions of the Original Contract that are not in conflict with this Amendment are unchanged and remain in full force and effect, including the general obligation of the City to acquire right-of-way as set forth therein.

Article 4. Signatory Warranty

The signatories to this Amendment warrant that each has the authority to enter into this Amendment on behalf of the organization they represent

IN WITNESS WHEREOF, THE STATE, THE CITY, AND THE NTTA have executed triplicate counterparts to effectuate this Amendment, which will become effective on the date that the last party executes this Amendment.

HE CITY

ATTEST:

Sylvia Glover
Acting City Secretary

C-20112
Contract Authorization

Date: 6-8-2004

CITY OF FORT WORTH

Marc A. Ott
Assistant City Manager

Date: 7/1/04

APPROVED AT TO FORM AND LEGALITY:

Gary Steinberger
Assistant City Attorney

Date: 7/1/04

APPROVAL RECOMMENDED:

Doug Rademaker, P.E.
Director, Department of Engineering

NORTH TEXAS TOLLWAY AUTHORITY

By: Jerry Hebert
Jerry Hebert,
Executive Director

7/2/04
Date

APPROVED AS TO FORM:

LOCKE LIDDELL & SAPP LLP,
General Counsel

By:

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.

By: Janice Mullenix
Janice Mullenix
Director of Contract Services Section
Office of General Counsel

8.2.04
Date

ATTACHMENT A

CITY RESOLUTION OR ORDINANCE

COUNCIL ACTION: Approved on 6/8/2004 - Ordinance No. 15999

DATE:	6/8/2004	**REFERENCE NO.:**	C-20112	**LOG NAME:**	30NTTATXDOT#1
CODE:	C	**TYPE:**	NON-CONSENT	**PUBLIC HEARING:**	NO

SUBJECT: Amendment #1 to the Agreement Between the City of Fort Worth, the North Texas Tollway Authority, and the Texas Department of Transportation for the Development of SH 121 Tollway (Southwest Parkway)

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize the City Manager to enter into Amendment #1 to the agreement between the City of Fort Worth, The North Texas Tollway Authority (NTTA), and the Texas Department of Transportation (TxDOT), in the amount of $49,375,000. 20% of this total, in the amount of $9,875,000, is the City's match; and

2. Approve the transfer of the City's 20% match in the amount of $9,875,000 from the SH 121 way (Southwest Parkway) Fund to the Grants Fund; and

3. Upon execution of the agreement, adopt the attached appropriation ordinance increasing estimated receipts and appropriations in the Grants Fund in the amount of $49,375,000 from increased revenues to be received from reimbursements from TxDOT and the City's match; and

4. Authorize payment to TxDOT in the amount of $25,000.00 for administrative costs related to this Grant

DISCUSSION:

On January 8, 2004, the North Central Texas Council of Governments Regional Transportation Council (RTC) approved the Transportation Implementation Plan Modification 2004-093, allocating $39,500,000 in funding to aid the City in the acquisition of right of way for the proposed Southwest Parkway Corridor. The $39,500,000 is inclusive of the $20,000,000 in funding approved by the RTC finance in December of 2000. This funding is part of the overall funding strategy the City has developed to pay for its obligations under the original tri-party agreement for the Southwest Parkway

This funding is in the form of an 80%/20% reimbursement agreement whereby the City will be reimbursed for 80% of all eligible Right-of-Way expenses. The City's match is $9,875,000.

The Texas Department of Transportation (TxDOT), the City of Fort Worth, and the North Texas Tollway Authority (NTTA) executed a contract on December 22, 2000 to effectuate their agreement to develop Southwest Parkway from IH 30 in the City for Fort Worth to US 67 in the City of Cleburne. This agreement is the vehicle through which the three parties have developed Southwest Parkway to date. Staff is recommending that the proposed RTC funding agreement take the form of an amendment to the existing agreement executed on December 22, 2000.

Amendment #1 will allow for the City to seek an 80% reimbursement for all eligible right-of-way acquisition

expenses which include, but are not limited to, appraisal services, land agent services, legal services, environmental site assessments, remediations, title commitments, and land purchases. However, prior to the project obtaining environmental clearance, as promulgated by the issuance of a Record of Decision, all acquisitions must be approved by the State and the Federal Highway Administration prior to the expenditure of federal funds.

FISCAL INFORMATION/CERTIFICATION:

The Finance Director certifies that upon approval of the above recommendations and adoption of the attached appropriation ordinance, funds will be available in the current capital budget, as appropriated, of the SH121T Southwest Parkway Fund and the Grants Fund.

TO Fund/Account/Centers		FROM Fund/Account/Centers	
(2) GR76 472221 030302943000	$9,875,000.00	(2)	$9,875,000.00
(3) GR76 451942 030302943000	$39,500,000.00	(4)	$25,000.00
(3) GR76 541100 030302943010	$45,625,000.00		
(3) GR76 531200 030302943010	$3,750,000.00		

Submitted for City Manager's Office by: Marc Ott (8476)

Originating Department Head: A. Douglas Rademaker (6157)

Additional Information Contact: A. Douglas Rademaker (6157)

ATTACHMENTS

30NTTATXDOT1.doc

ATTACHMENT B

PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

Description	Total Estimated Cost	Authorized Amount	Federal Participation	State Participation	Local Participation (the City)		
			80% of Authorized Amount	N/A	20% of Authorized Amount	Other Participation	Actual Participation
Right of Way Acquisition	$60,000,000	$49,375,000	$39,500,000	$0.00	$9,875,000	$10,625,000	$20,500,000
TOTAL	$60,000,000	$49,375,000	$39,500,000	$0.00	$9,875,000	$10,625,000	$20,500,000
Payment Due Upon Execution of Amendment							$25,000

Total participation required from the local government = $20,500,000