

CSJ #: 2964-01-031  
District #: 18 – Dallas  
Code Chart 64 #: 61957  
Project: SH 161  
Limits: North of IH 30 to South of  
Rock Island Road  
Dallas County

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**LOCAL PROJECT ADVANCE FUNDING AGREEMENT FOR  
VOLUNTARY NORTH TEXAS TOLLWAY AUTHORITY CONTRIBUTIONS  
TO TRANSPORTATION IMPROVEMENT  
PROJECTS WITH NO REQUIRED MATCH**

**THIS AGREEMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the North Texas Tollway Authority, acting by and through its duly authorized officials, hereinafter called the "NTTA".

**WITNESSETH**

**WHEREAS**, Texas Transportation Code, Chapters 201, 221, 227 and 361 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

**WHEREAS**, Texas Government Code Chapter 791 and Texas Transportation Code §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

**WHEREAS**, Commission Minute Order Number 111215 authorizes the State to undertake and complete a highway improvement generally described as construction of six (6) lane frontage road segments and mainlanes over the Trinity River on SH 161 from North of IH 30 to South of Rock Island Road in Dallas County; and,

**WHEREAS**, the NTTA has requested that the State allow the NTTA to participate in said improvement by funding that portion of the improvement described as pavement widening and conduit runs for future gantry installation by NTTA in several locations outlined in Change Order #30, hereinafter called the "Project"; and,

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State;

**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, the State and the NTTA do agree as follows:

**AGREEMENT**

**Article 1. Time Period Covered**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed, and the State and the NTTA will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

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## **Article 2. Project Funding and Work Responsibilities**

The State will authorize the performance of only those Project items of work which the NTTA has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract.

In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the NTTA and will be carried out and completed by the NTTA, at no cost to the State.

The State will notify the NTTA in writing when the State is required to pay the contractor for the work done on the Project. The NTTA shall make payment to the State within thirty (30) days from receipt of the State's written notification

In the event that the State determines that additional funding by the NTTA is required at any time during the Project, the State will notify the NTTA in writing. The NTTA shall make payment to the State within thirty (30) days from receipt of the State's written notification.

Whenever funds are paid by the NTTA to the State under this Agreement, the NTTA shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund". The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the NTTA's contractual obligations to the State under another advance funding agreement.

## **Article 3. Right of Access**

If the NTTA is the owner of any part of the Project site, the NTTA shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

## **Article 4. Adjustments Outside the Project Site**

The NTTA will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

## **Article 5. 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.

## **Article 6. Document and Information Exchange**

The NTTA agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the NTTA will use the State's document template. The NTTA shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local entity creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the NTTA shall submit any information related to the Project, required by the State in the format directed by the State.

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**Article 7. Interest**

The State will not pay interest on funds provided by the NTTA. Funds provided by the NTTA will be deposited into, and retained, in the State Treasury.

**Article 8. Inspection and Conduct of Work**

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications approved by the State.

**Article 9. Increased Costs**

In the event it is determined that the funding provided by the NTTA will be insufficient to cover the State's cost for performance of the NTTA's requested work, the NTTA will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the NTTA a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The NTTA shall pay the funds to the State within thirty (30) days of the written notification, unless otherwise agreed to by all parties to this Agreement. If the NTTA cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 11-Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon the State and the NTTA.

If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the NTTA. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

**Article 10. Maintenance**

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A, Payment Provision and Work Responsibilities to this Agreement.

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#### **Article 11. Termination**

This Agreement may be terminated in the following manner:

- ◆ By mutual written agreement and consent of both parties;
- ◆ By either party upon the failure of the other party to fulfill the obligations set forth herein, after notice and reasonable period of time to cure such failure.

If the Agreement is terminated in accordance with the above provisions, the NTTA will be responsible for the payment of Project costs incurred by the State on behalf of the NTTA up to the time of termination.

#### **Article 12 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, or sent by electronic mail, (electronic notice being permitted to the extent permitted by law, but only after a separate written consent of the parties), addressed to such party at the following addresses:

<b>North Texas Tollway Authority - NTTA</b>	<b>State:</b>
North Texas Tollway Authority Attention: Project Manager 5900 West Plano Parkway, Suite 100 Plano, Texas 75026	Texas Department of Transportation Attention: Project Manager 4777 East Highway 80 Mesquite, Texas 75150-6643

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.

#### **Article 13. Sole Agreement**

In the event the terms of the Agreement are in conflict with the provisions of any other existing agreements between the NTTA and the State, the latest agreement shall take precedence over other agreements in matters related to the Project.

#### **Article 14. Successors and Assigns**

The State and the NTTA each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

#### **Article 15. Amendments**

By mutual written consent of the parties, this contract may be amended prior to its expiration.

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#### **Article 16. 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

**Article 17. Insurance**

If this agreement authorizes the NTTA or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**Article 18. Debarment**

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." By executing this Agreement, the NTTA certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract 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.

**Article 19. Signatory Warranty**

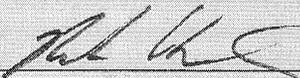
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party they represent.

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IN WITNESS WHEREOF, THE STATE AND THE NTTA have executed duplicate counterparts to effectuate this agreement.

**NORTH TEXAS TOLLWAY AUTHORITY – NTTA**

**THE STATE OF TEXAS**

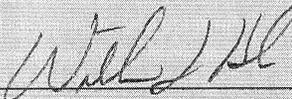
By:   
Signature

RICK HERRINGTON  
Printed/Typed Name

Deputy Executive Director  
Printed/Typed Title

Date: 8/4/09

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: 

William L. Hale, P.E.  
District Engineer, Dallas District  
Texas Department of Transportation

Date: 8/6/09

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## Attachment A

### Payment Provision and Work Responsibilities

The NTTA will pay for the cost of the pavement widening and conduit runs for future gantry installation by NTTA in several locations outlined in Change Order #30, which are on-system locations. The NTTA's participation is 100% of the cost of this particular improvement. The NTTA's estimated cost of this additional work is \$192,620.32, including construction items, and engineering and contingencies. The State has estimated the project to be as follows:

Description	Total Estimate Cost	State Participation		NTTA Participation	
		%	Cost	%	Cost
Construction	\$175,109.38	0%	\$0.00	100%	\$175,109.38
Direct State Costs (inspection and oversight-E&C at 10% of Construction)	\$17,510.94	0%	\$0.00	100%	\$17,510.94
<b>TOTAL</b>	<b>\$192,620.32</b>		<b>\$0.00</b>		<b>\$192,620.32</b>

**Direct State Cost will be based on actual charges.**

**NTTA's Participation (100%) = \$192,620.32**

It is further understood that the State will include only those items for the improvements as requested and required by the NTTA. This is an estimate only, final participation amounts will be based on actual charges to the Project.