

**THIRD AMENDMENT TO PROJECT AGREEMENT  
SH 121 TOLL PROJECT**

THIS THIRD AMENDMENT TO PROJECT AGREEMENT ("Third Amendment"), by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas ("**TxDOT**"), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas ("**NTTA**") is effective the 15<sup>th</sup> day of December, 2015 ("Effective Date").

**WITNESSETH**

**WHEREAS**, TxDOT and NTTA are parties to the Project Agreement - SH 121 Toll Project dated October 18, 2007 (the "Original Project Agreement") pertaining to the Sam Rayburn Tollway ("**SRT**"), a turnpike project that extends northeasterly from Business 121 near the county line of Dallas and Denton counties to U.S. 75 in Collin County; and

**WHEREAS**, the Original Project Agreement was amended by (a) First Amendment to Project Agreement – SH 121 Toll Project, dated August 26, 2009 ("First Amendment"), and (b) Second Amendment to Project Agreement – SH 121 Toll Project, dated August 15, 2013 ("Second Amendment") (the Original Project Agreement, as amended by the First Amendment, Second Amendment, and this Third Amendment shall be referred to as the "Project Agreement"); and

**WHEREAS**, where SRT and Interstate Highway 35E ("I-35E") intersect in Lewisville, Dallas County, Texas, at a point where SRT runs in generally a northeasterly/southwesterly direction and I-35E runs in generally a southeasterly/northwesterly direction; and

**WHEREAS**, four (4) direct-connector ramps at SRT and I-35E currently provide direct access from (a) the northwest-bound main travel lanes of I-35E to the main travel lanes of SRT in both directions, and from the main travel lanes of SRT in both directions to the southeast-bound main travel lanes of I-35E; and

**WHEREAS**, TxDOT wishes to design, construct, operate, and maintain four (4) additional direct-connector ramps at SRT and I-35E to provide direct access from (a) the southeast-bound main travel lanes of I-35E to the main travel lanes of SRT in both directions, and from the main travel lanes of SRT in both directions to the northwest-bound main travel lanes of I-35E, as depicted on Exhibit A, attached hereto and incorporated herein for all purposes (the "New Direct-Connector Ramps"); and

**WHEREAS**, NTTA and TxDOT have determined that the New Direct-Connector Ramps will benefit drivers traveling on SRT and I-35E; and

**WHEREAS**, TxDOT and NTTA desire to enter into this Third Amendment with respect to the New Direct-Connector Ramps; and

**WHEREAS**, Section 30 of the Original Project Agreement permits TxDOT and NTTA to amend the Project Agreement through written amendments.

## 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 and NTTA agree as follows:

### 1. Design and Construction Obligations of TxDOT for New Direct-Connector Ramps.

(a) New Direct-Connector Ramps. TxDOT, at its sole cost, shall be responsible for the timely development of the plans, specifications, and estimates, obtaining all required EPIC, and the construction of the New Direct-Connector Ramps, including all required construction management and construction materials testing services, and all required and remaining utility relocation and/or adjustment, if any. The parties contemplate that TxDOT's obligations hereunder are to be implemented and carried out by TxDOT's contractor under that certain Development Agreement dated [ ], 2015 by and between NTTA and AGL Constructors ("AGL") ("NTTA-AGL Agreement") and that certain Development Agreement dated May 17, 2013 by and between TxDOT and AGL ("TxDOT-AGL Agreement") (collectively, the "AGL Agreements"). NTTA agrees that TxDOT, AGL, and their respective contractors and subcontractors shall be granted sufficient rights of entry and construction licenses to enable each of them to perform, both directly and as TxDOT's contractor and subcontractors, TxDOT's obligations hereunder. The terms and conditions of those rights of entry and licenses are set forth in the NTTA-AGL Agreement, including NTTA's typical and reasonable requirements for work in NTTA right-of-way, including, but not limited to, insurance requirements and lane-closure protocols. TxDOT shall use its best efforts to construct and complete the New Direct-Connector Ramps by September 30, 2017. TxDOT has reviewed and approved the design and construction schedule for the New Direct-Connector Ramps and the completion date noted above and agrees that it is reasonable and achievable. TxDOT's construction obligations for the New Direct-Connector Ramps shall include all major items such as pavement, bridges and walls, as well as all columns; supports; curbs; headwalls; wingwalls; aprons; right-of-way fencing; guardrail and fencing; impact attenuators and other safety devices; junction boxes, inlets, manholes, culverts, channels, piping, containment and mitigation systems, conduits and other drainage structures; illumination devices; signage; pavement markings and other delineation devices; and other typical and necessary appurtenances (collectively, the "New D-C Work"). TxDOT shall permit NTTA to review, at mutually acceptable review intervals, any designs, plans, specifications, and construction records pertaining to TxDOT's construction obligations under this section to ensure that said New D-C Work is accomplished in a manner and to standards which, in the reasonable opinion of both TxDOT and NTTA, are consistent with the overall aesthetic guidelines, design, and construction of the Project. However, nothing in the Project Agreement shall impose any liability on NTTA for or with respect to the design, construction, operation, inspection, maintenance, policing, or regulation of the New Direct-Connector Ramps.

(b) Progress of Construction of New Direct-Connector Ramps. If during the construction of the New Direct-Connector Ramps, TxDOT has reason to believe that the completion date indicated in the preceding paragraph may be exceeded, TxDOT shall promptly notify NTTA and, working collaboratively, the parties shall evaluate all feasible alternatives for

accelerating the progress of New D-C Work on the New Direct-Connector Ramps. TxDOT and NTTA shall utilize to the maximum practical degree the expedited and fully joint/concurrent design review process described and defined in Section 8 of the Original Project Agreement to track progress of the contractor(s) toward completing the New Direct-Connector Ramps to prevent that progress from falling behind the completion date set forth above. TxDOT shall forward to NTTA its monthly construction reports for the New Direct-Connector Ramps, which NTTA may distribute to its underwriters and other interested parties.

**2. New Direct-Connector Ramps are Retained Property.** TxDOT and NTTA each expressly acknowledges and agrees the New Direct-Connector Ramps are components of the I-35E interchange and, therefore, constitute Retained Property, as defined in Section 3 of the Original Project Agreement. TxDOT and NTTA shall have all rights and responsibilities regarding the New Direct-Connector Ramps and other Retained Property as set forth in the Project Agreement, including, without limitation, Section 3 of the Original Project Agreement. Without limiting the generality of the foregoing, TxDOT has and shall have sole responsibility for the design, construction, operation, maintenance, inspection, policing, and regulation of the New Direct-Connector Ramps. Handback Requirements under the Project Agreement shall not be applicable to the New Direct-Connector Ramps.

**3. Environmental Matters.**

(a) Emergency Response. If a petroleum, chemical or other hazardous material spill or discharge that requires an emergency response results from TxDOT's or AGL's construction or operation of the New Direct-Connector Ramps, or their other activities undertaken pursuant to this Third Amendment, TxDOT will be solely responsible for the repairs, cleanup, remediation and associated monitoring and further obligations at no cost or expense to NTTA. NTTA agrees that TxDOT may carry out such obligations using the services, personnel, and expertise of AGL, and that, as between TxDOT and AGL, all such costs will be borne by AGL; but such agreement will not relieve TxDOT from the obligation to provide for rapid and timely repairs to the New Direct-Connector Ramps so that the Authority may resume operation of the Project as soon as possible. TxDOT will require AGL to contact NTTA as soon as the need for the response is identified, and NTTA and AGL will cooperate so that the repairs, cleanup, remediation and any other actions can be made or the response can be undertaken in a manner that causes as little disruption or damage as possible to the use or operation of NTTA and/or TxDOT property, and/or any other NTTA facilities.

(b) Hazardous Materials Management. If during the course of the New D-C Work, AGL or TxDOT encounters Hazardous Materials or a Recognized Environmental Condition in connection with the New Direct-Connector Ramps, in an amount, type, quality or location that requires reporting or notification to any governmental entity or taking any preventive or remedial action, in each case under applicable federal, state or local laws, TxDOT (either directly or through AGL) shall: (a) promptly notify NTTA in writing and advise NTTA of any obligation to notify governmental entities under applicable laws; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If during the performance of the New D-C Work, NTTA discovers Hazardous Materials or a Recognized Environmental Condition

in connection with the New Direct-Connector Ramps, Project ROW or New D-C Work, NTTA shall promptly notify AGL and TxDOT in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, AGL shall utilize appropriately trained personnel and carry out any Hazardous Materials Management in accordance with TxDOT's standards and procedures. Wherever feasible and consistent with applicable Law and Good Industry Practice, contaminated soil and groundwater shall not be disposed off-site, but in no event shall any contaminated soil or groundwater be disposed of on NTTA right of way or other NTTA property without NTTA's express prior written consent, which NTTA may deny or condition in its sole and absolute discretion.

(c) Off-Site Disposal of Hazardous Materials. In connection with the off-site disposal of Hazardous Materials generated, released, or discovered in connection with the construction or operation of the New Direct-Connector Ramps, TxDOT shall be considered the generator and shall assume generator responsibility for Hazardous Materials encountered during the performance of the New D-C Work, except for NTTA-caused releases of Hazardous Materials that occur after execution of this Third Amendment.

(d) Hazardous Materials Management Costs. NTTA will not be responsible for payment of any costs incurred by AGL or TxDOT for the management or disposal of Hazardous Materials generated, released, or discovered in connection with the construction or operation of the New Direct-Connector Ramps, except for costs incurred as a result of an NTTA-caused release of Hazardous Materials that occurs after execution of this Third Amendment.

(e) Defined Terms. For purposes of this Section 3, the following definitions apply:

(i) Hazardous Materials shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any environmental laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term "Hazardous Materials" includes the following:

(A) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

(B) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(C) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(D) Any flammable substances or explosives;

(E) Any radioactive materials;

(F) Any asbestos or asbestos-containing materials;

(G) Any lead and lead-based paint;

(H) Any radon or radon gas;

(I) Any methane gas or similar gaseous materials;

(J) Any urea formaldehyde foam insulation;

(K) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(L) Pesticides;

(M) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any persons in the vicinity of the New Direct-Connector Ramps or to the indoor or outdoor environment; and

(N) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

(ii) Recognized Environmental Condition shall have the meaning set forth in environmental-site-assessment standards promulgated by ASTM International as ASTM E-1527-05.

**4. Amended Maintenance Limits.** Exhibit L attached to Original Agreement is hereby amended by adding a new sheet labeled "Sheet 3A of 24" which is attached and hereby made a part of this Third Amendment.

**5. Tolling of New Direct-Connector Ramps.** NTTA acknowledges that TxDOT shall have the right to impose tolls for the use of the New Direct-Connector Ramps. TxDOT agrees that the rate of such tolls shall adhere to the tolled managed lane policies adopted by the Regional Transportation Council of the North Central Texas Council of Governments. For purposes of this Section 5, the "toll rates" established for the New Direct Connector Ramps may include a premium added to the base toll rate, such as a premium for video tolling. Nothing in this Section 5 affects TxDOT's obligations under the Original Project Agreement.

**6. Controlling Agreement.** This Third Amendment is hereby incorporated into the Project Agreement for all purposes, and except as otherwise stated herein, the terms, provisions and definitions of the Project Agreement shall apply to this Third Amendment. To the extent any provision contained herein conflicts with the Project Agreement, the provisions contained herein shall supersede such conflicting provisions. All other provisions of the Project Agreement not in conflict are affirmed and ratified and shall remain in full force and effect.

**7. Authorization.** Each party to this Third Amendment represents to the other that it is fully authorized to enter into this Third Amendment 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 Third Amendment in accordance with its terms, other than those that have been obtained.

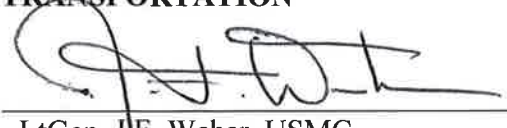
**8. Entire Project Agreement/Third Amendment.** The Original Project Agreement amended by the First Amendment, Second Amendment, and this Third Amendment, embody the entire agreement between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof.

**9. Counterparts.** This Third Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF,** TxDOT and NTTA have executed this Third Amendment by six (6) multiple counterparts on the dates shown below, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY AUTHORITY TEXAS DEPARTMENT OF  
TRANSPORTATION**

By:   
Gerald Carrigan, Executive Director

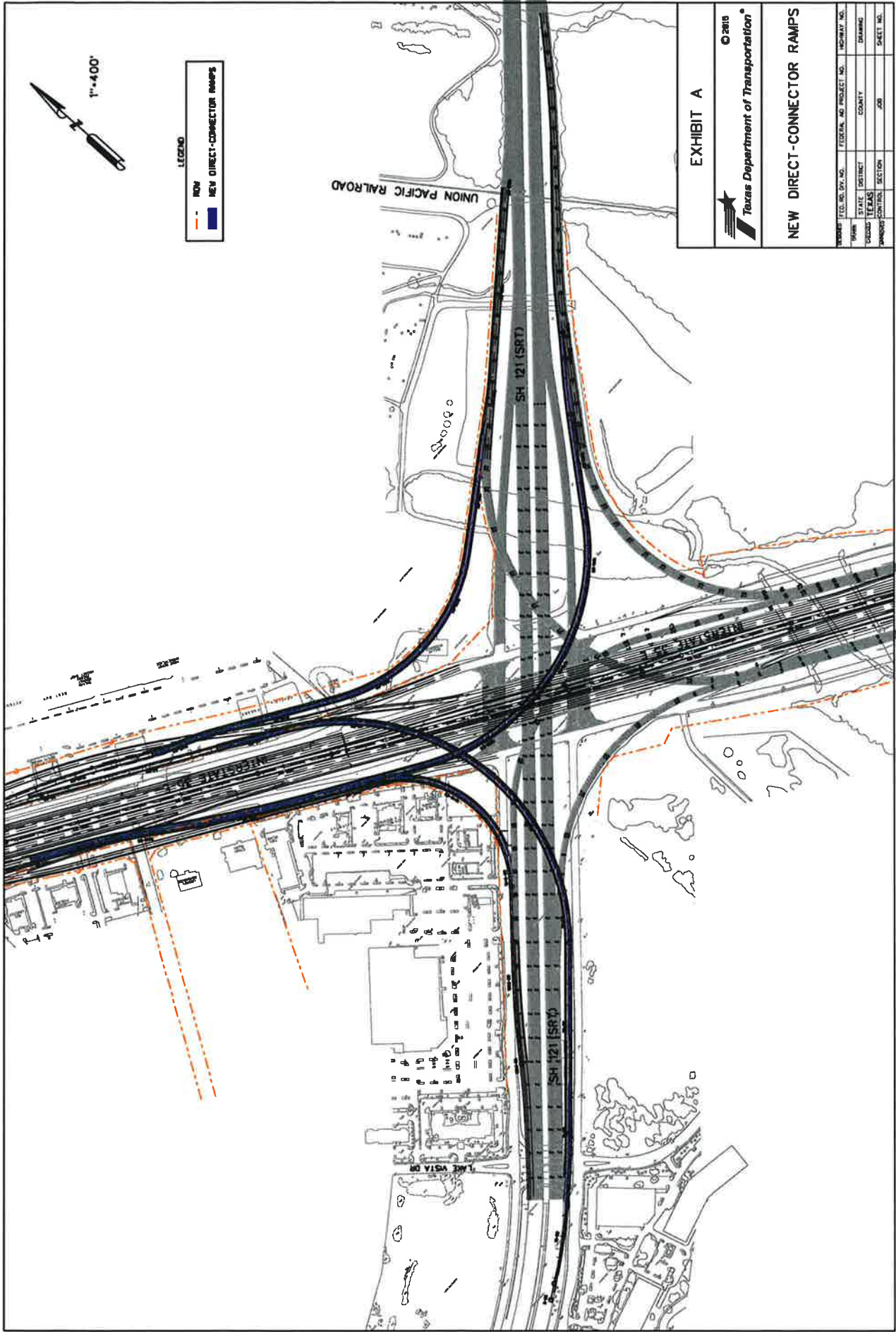
By:   
LtGen. J.F. Weber, USMC  
(Ret) Executive Director  
Texas Department of Transportation

Date: 10/6/15

Date: 12/15/15

**EXHIBIT A**





**LEGEND**

	ROW
	NEW DIRECT-CONNECTOR RAMP

**EXHIBIT A**

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 Texas Department of Transportation

**NEW DIRECT-CONNECTOR RAMP**

PROJECT NO.	FEDERAL AID PROJECT NO.	NO. DRAWING
STATE DISTRICT	COUNTY	DRAWING
SECTION	JOB	SHEET NO.

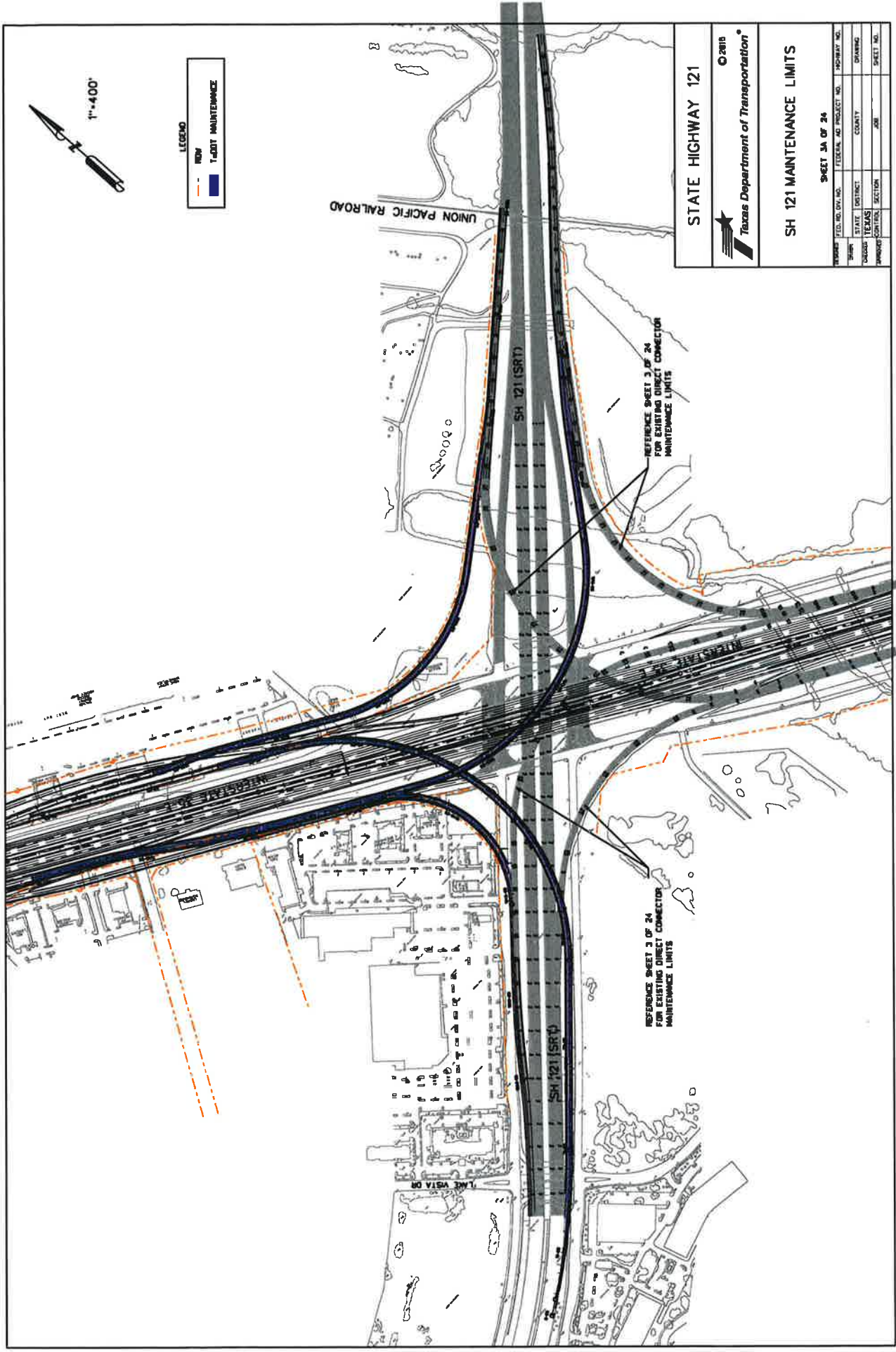


**NEW SHEET 3A OF 24**  
**IN EXHIBIT L TO THE ORIGINAL PROJECT AGREEMENT**



**LEGEND**

	ROW
	1-DOT MAINTENANCE



**STATE HIGHWAY 121**

**Texas Department of Transportation**

**SH 121 MAINTENANCE LIMITS**

**SHEET 3A OF 24**

PROJECT NO.	FEDERAL AID PROJECT NO.	SECTION NO.
SHEET NO.	STATE	DISTRICT
COUNTY	COUNTY	SECTION
SECTION	SECTION	SECTION
SECTION	SECTION	SECTION