No. 2 of 2 Executed
Original Counterparts

AGREEMENT
By and between the
FEDERAL HIGHWAY ADMINISTRATION,
UNITED STATES DEPARTMENT OF TRANSPORTATION

AND

TEXAS DEPARTMENT OF TRANSPORTATION

THIS AGREEMENT, made and entered into this 18 day of March, 2009, by and between the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas (hereinafter referred to as "TxDOT") and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter referred to as "FHWA") hereby provides as follows:

WITNESSETH:

WHEREAS, section 1604(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, as amended (SAFETEA-LU), establishes the Express Lanes Demonstration Program (hereinafter referred to as the "ELDP"), which directs the Secretary to carry-out up to 15 demonstration projects to permit States, public authorities, or a public or private entity designated by States, to collect a toll at eligible toll facilities, including facilities on the Interstate System;

WHEREAS, TxDOT submitted an application on September 18, 2007 in accordance with section 1604(b)(4) of SAFETEA-LU to toll the managed lanes (the "Managed Lanes") on the portions of IH 635 and IH 35E described in Attachment 1 hereto (the "Facility");

WHEREAS, on March 19, 2008, FHWA approved TxDOT's application, subject to execution of the toll agreement required by section 1604(b)(3)(C) of SAFETEA-LU, to impose tolls on the Managed Lanes in accordance with the requirements under the ELDP and designated TxDOT's application as one of the 15 demonstration projects in the ELDP;

WHEREAS, section 1604(b)(3)(C) of SAFETEA-LU requires the Secretary and the State to enter into an agreement that incorporates the conditions described in sections 1604(b)(3)(A) and 1604(b)(3)(B) of SAFETEA-LU.

NOW THEREFORE, TxDOT and FHWA hereby agree as follows:

1. FHWA agrees that TxDOT may impose tolls on the Managed Lanes (directly or through a third party public authority or private entity) in accordance with the provisions of this Agreement and section 1604(b) of SAFETEA-LU.

2. In accordance with section 1604(b)(3)(A) of SAFETEA-LU, TxDOT agrees that the toll revenues from the operation of the Managed Lanes will be used for debt service, for providing a reasonable return of any private financing, for the costs necessary for the proper operation and maintenance of the Facility (including reconstruction, resurfacing, restoration, and rehabilitation), and, if TxDOT annually certifies that the Managed Lanes are being adequately maintained, any other purpose relating to a highway or transit project carried out under titles 23 or 49, United States Code.

3. In accordance with section 1604(b)(3)(B) of SAFETEA-LU, FHWA and TxDOT agree that the Managed Lanes are a non-HOV facility and that TxDOT (directly or through a third party public authority or private entity), in its discretion, may establish a toll that varies in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

4. TxDOT agrees, upon reasonable notice, to make all its records pertaining to the Managed Lanes subject to audit by FHWA. TxDOT agrees to annually audit the records of the Managed Lanes for compliance with the provisions of this Agreement and report the results thereof to FHWA. In lieu of TxDOT performing said audit, a report of an independent auditor furnished to FHWA may satisfy the requirements of this section.

5. TxDOT agrees to be bound by and comply with the provisions of section 1604(b) of SAFETEA-LU, as well as all other applicable Federal laws, rules, and regulations.

6. In accordance with section 1604(b)(7) of SAFETEA-LU, FHWA approves and agrees to publish in the Federal Register for public comment, the performance goals, monitoring, and reporting program set forth in Attachment 2 hereto for the Managed Lanes. Upon close of the comment period, FHWA and TxDOT will review the comments and amend the performance goals, monitoring, and reporting program as deemed desirable and appropriate. Should any such amendments need to be made, Attachment 2 shall be updated and replaced without the need to formally execute an amendment to this Agreement. TxDOT (directly or through a third party public authority or private entity) may commence tolling prior to the publication and receipt of comments on the performance goals, monitoring, and reporting program described in this paragraph.

7. This Agreement will be prepared in duplicate originals so that each signatory will have an original Agreement.

8. Tolling shall be contingent upon completion of the applicable NEPA review process evaluating the impacts of tolling.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed, the day and year first written above.

TEXAS DEPARTMENT OF TRANSPORTATION

BY: _____

Name: Amadeo Saenz, Jr., P.E.
Title: Executive Director

FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

BY: _____

Name: Jeffrey P. Paniati
Title: Executive Director, Federal Highway Administration

ATTACHMENT 1

Description and Map of Facility and Managed Lanes

The following is a description of the Facility:

(1) IH 635 Section (IH 635 from east of IH 35E to east of Merit Drive). This section of IH 635 currently includes 8 general purpose lanes (4 each way) and 2 existing concurrent interim HOV lanes (1 each way). The fully reconstructed IH 635 Section will result in 8 reconstructed general purpose lanes, the elimination of the existing concurrent interim HOV lanes and the construction of 6 new separated managed lanes. The total length of the managed lanes on the IH 635 Section is approximately 7.4 miles.

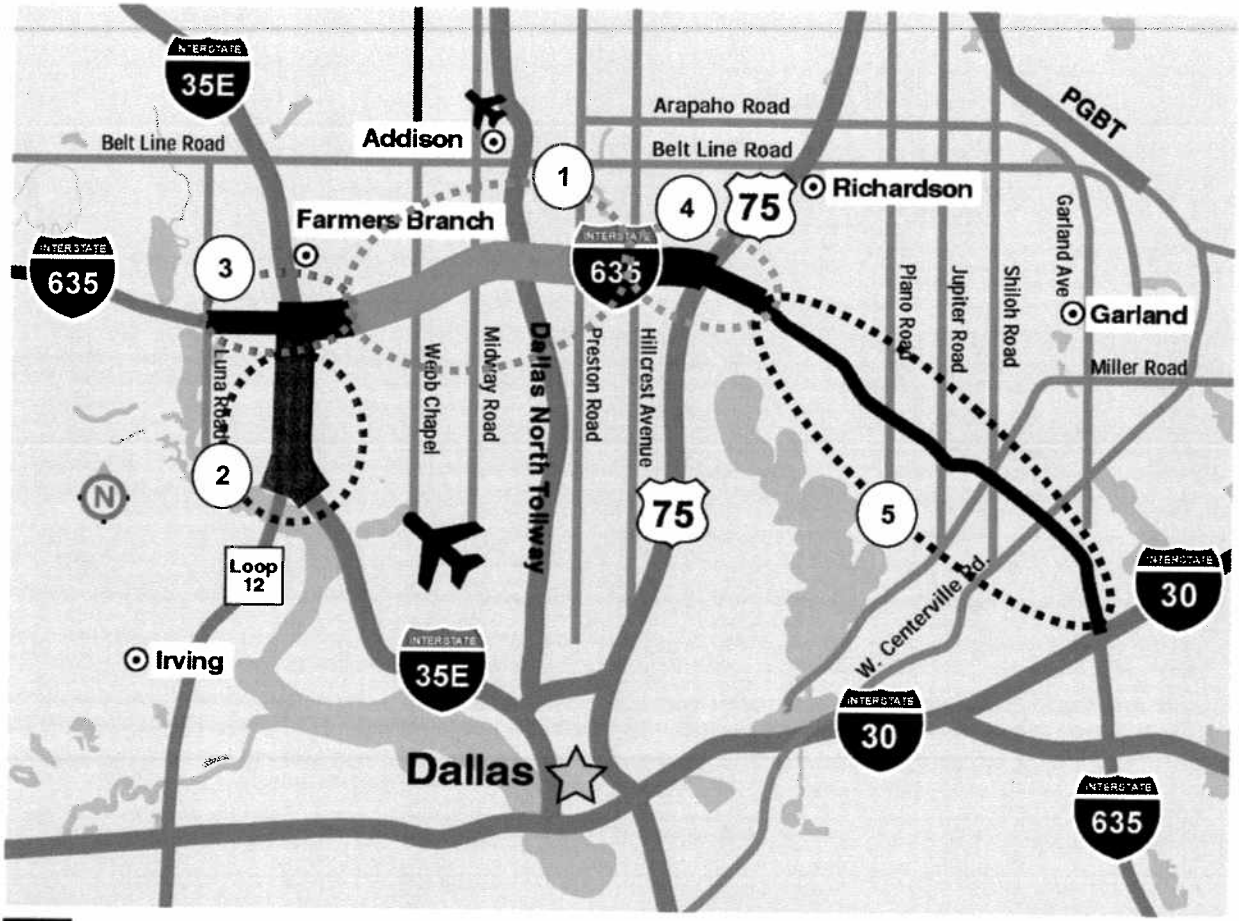
(2) IH 35E Section (IH 35E from the Loop 12/IH 35E Split to Crown Road). The existing IH 35E Section consists of 10 general purpose lanes (5 in each direction). This section of the Managed Lanes will include the construction of 6 elevated managed lanes (3 each way) along IH 35E that will provide a continuous link between the Loop 12/IH 35E Split and the IH 635/IH 35E Interchange direct connectors. The total length of the elevated managed lanes on the IH 35E Section is approximately 3.2 miles.

(3) IH 635/IH 35E Interchange (Interchange between IH 635 and IH 35E, IH 635 from east of Luna Road to east of IH 35E and IH 35E from Crown Road to south of Valwood Parkway). This interchange currently consists of 8 direct connectors between IH 635 and IH 35E, with from 1 to 3 ramp lanes on each direct connector. In addition, there is an existing single reversible interim HOV connecting "S" ramp on IH 35E through the interchange from the north. The reconstructed IH 635/IH 35E Interchange will include the construction of 4 additional direct connectors containing from 2 to 3 managed lanes each that will connect IH 35E with the managed lanes to be built on the IH 635 Section. The existing single lane reversible interim HOV connecting "S" ramp will remain operational as an interim HOV facility from the north. The total length of the direct connection managed lanes in the IH 635/IH 35E Interchange is approximately 4.2 miles.

(4) IH 635/US 75 Interchange (IH 635 from east of Merit Drive to Greenville Avenue). The IH 635/US 75 Interchange includes 4 phased managed lanes (2 each way, currently operating as HOV lanes) passing through the interchange from east of Merit Drive to Greenville Avenue and a single lane reversible direct connector ramp from US 75 north of the interchange to IH 635 west of the interchange. The existing IH 635/US 75 interchange will remain functionally in place. The adjustments to the interchange will provide for the full utilization of 4 phased managed lanes (2 each way) and the single lane reversible direct connection ramp for pricing from east of Merit Drive to Greenville Avenue. The total length of the IH 635/US 75 Interchange is approximately 1.8 miles.

(5) IH 635 East Interim Managed Lanes (IH 635 from Greenville Avenue to IH 30). This section of IH 635 currently contains 8 general purpose lanes (4 each way). The completed IH 635 East Interim Managed Lanes includes 2 concurrent managed lanes (1 each way). These managed lanes are designated as "HOV/Managed Lanes" (to indicate a managed lanes facility provides an incentive for HOVs in the Metropolitan Transportation Plan (titled "Mobility 2030: The Metropolitan Transportation Plan for the Dallas-Fort Worth Area"). The total length of the managed lanes on the IH 635 East Interim Managed Lanes Section is approximately 9.4 miles.

Managed Lanes Location Map



- 6 Managed HOV Lanes
- 6 Subsurface Managed HOV Lanes
- 6 Elevated Managed HOV Lanes
- 4 Managed HOV Lanes
- 2 Managed HOV Lanes

(1) IH 635 Section

(2) IH 35E Section

(3) IH 635/IH 35E Interchange

(4) IH 635/US 75 Interchange

(5) IH 635 East Interim Managed Lanes

Attachment 2

Performance Goals, Monitoring and Reporting Program

This document describes the Express Lane Demonstration Program Performance Goals, Measures, Monitoring and Reporting Program. This document has been developed cooperatively with the Federal Highway Administration (FHWA).

A. Performance Goals

The Federal Highway Administration (FHWA) and the Texas Department of Transportation (TxDOT) have identified the following four Performance Goals for the project. These Performance Goals reflect the priorities for the project at the state and local levels. The Performance Goals also reflect the goals of the Express Lanes Demonstration Project set forth in federal law at SAFETEA-LU Section 1604(b).

I. Effects on travel, traffic, and air quality
II. Distribution of benefits and burdens
III. Use of alternative transportation modes
IV. Use of revenues to meet transportation or impact mitigation needs

B. Core Performance Measures

The following Core Performance Measures will be utilized to focus the monitoring and reporting work undertaken to evaluate facility performance. The Performance Goals for which each Core Performance Measure will provide relevant information are indicated in parenthesis. Specific reporting items for each Core Performance Measure are listed immediately below it.

Generally, facility performance will be assessed by reference to baseline values or trends for the reported items under the Core Performance Measures. The methodology for determining each baseline value or trend will be explained in detail in the Performance Monitoring and Evaluation Manual described below.

1. Travel-time reliability in priced lanes (I, II, III)

- Report percentage of time that the managed lanes are operating at a minimum average speed of 50 miles per hour, broken down into daily averages for the a.m. peak, off-peak and p.m. peak periods.
- Report 95th percentile travel times for the managed lanes, broken down into daily averages for the a.m. peak, off-peak and p.m. peak periods. (The 95th percentile represents the slowest traffic day each month.) This measure is reported in minutes.
- Report the Buffer Index calculated to demonstrate performance in the managed lanes, broken down into daily averages for the a.m. peak, off-peak and p.m. peak periods. The Buffer Index is the extra time that travelers must add to their average travel time when planning trips to ensure on-time arrival. (For example, a buffer index of 40 percent means

that for a trip that usually takes 20 minutes a traveler should budget an additional 8 minutes to ensure on-time arrival most of the time. The 8 extra minutes is called the buffer time. Therefore, the traveler should allow 28 minutes for the trip in order to ensure on-time arrival 95 percent of the time.)

- Report traffic volumes and traffic volume changes on a total and percentage-change basis annually, broken into daily averages, for daily total, by a.m. peak, off-peak and p.m. peak the managed lanes by direction.
- Report traffic speeds and traffic speed differences from the previous year (on a total and percentage-change basis) annually, broken into daily averages, for daily total, by a.m. peak, off-peak and p.m. peak for the managed lanes by direction.
- Report actual number of incidents and identify the effect on lane availability for the managed lanes during this time, including the length of time each such lane was unavailable.

2. Changes in mode split/ridership/vehicle occupancies of priced vs. general purpose lanes (I, II, III)
    - Report number of declared HOVs for the year and differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak and p.m. peak for managed lanes.
    - Report number of buses (i.e. registered non-revenue accounts) for the year and differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak, off-peak and p.m. peak for managed lanes.
    - Report average toll charged for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type, broken into daily averages, by a.m. peak, off-peak and p.m. peak for managed lanes.
    - If reasonably available, report ridership volumes for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type; SOV, HOV2+, HOV3+, Bus, Van Pool and Other, broken into daily averages by a.m. peak, off-peak, and p.m. peak for the general purpose lanes, managed lanes and parallel access roads as applicable.
    - Report on the amount of vehicle miles traveled (VMT) for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type; SOV, HOV2+, HOV3+, Bus, Van Pool and Other, broken into daily averages by a.m. peak, off-peak, and p.m. peak on the managed lanes.
    - Report Metropolitan Planning Organization (MPO) rideshare payments, HOV subsidy and other disbursements.

3. Transit schedule adherence (II, III)
    - To the extent the information is reasonably available, report on transit service reliability – percentage of on-time performance of transit service
    - To the extent the information is reasonably available, report on any existing bus transit routes or sanctioned van-pool accounts utilizing the corridor in advance of opening the project for tolling. This is to be used as a benchmark for added bus transit routes or sanctioned van-pool accounts utilizing the corridor after tolling begins.

4. Application of revenue reinvestment (II, IV)
    - Report breakdown of the use of revenues
    - Report percentage of revenue used to mitigate impacts
5. Change in criteria pollutant emissions for the region (I)
    - Report on the concentrations of six criteria pollutants (particle pollution, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead) during the current year and differences from the previous year (on a total and percentage-change basis) utilizing reasonably available and reliable air quality reporting tools and mechanisms.
    - Utilize the results of the core performance sub-elements B.I(a) (Travel-time reliability in tolled lanes) and B.III(a) (Changes in mode split/ridership/vehicle occupancies of tolled vs. general purpose lanes) to the extent possible to assist in utilizing the NCTCOG's air quality modeling tools and mechanisms to demonstrate any reductions in criteria pollutant emissions.

C. Monitoring and Reporting Program

I. Performance Monitoring and Evaluation Manual

Prior to commencement of pricing operations on the facility, TxDOT will prepare a Performance Monitoring and Evaluation Manual document that will describe the information to be collected, the methodology for identifying baseline values and approach for developing the annual reports that assess facility performance. It will serve as a tool to facilitate achievement of the performance goals identified in Part A by documenting the program for regular monitoring and reporting to be utilized in the assessment of the Core Performance Measures identified in Part B.

The Performance Monitoring and Evaluation Manual will be in the form of an instruction manual, and will address the following subject areas.

1. Project Overview
2. Purpose and Need
3. Organization of Document
4. Overview of Project Goals
5. Overview of Core Performance Measures
    a. Key Questions and definition of Core Performance Measures
    b. Description of how specific reported information relates to Core Performance Measures and Performance Goals
6. Methodology for Determining Baseline Measurements
7. Annual Monitoring Program Measurement Processes and Procedures
8. Coordination with other Transportation Providers
9. Reference Documentation Listing as Applicable

II. Monitoring and Reporting Annual Report

The annual monitoring and reporting program measurement processes and procedures will be documented in an annual report that shall include the following sections.

1. Project Information
2. Performance Highlights
3. Performance Summary
4. Performance Details

D. Timeline and Process for Submission of ELDP Monitoring Report

The annual reporting period for the Express Lanes Demonstration Program is between January 1st and December 31st of each year. Data collected and reported will align with this time period. The first year's data after tolling commences will be data collected from the date of service commencement to December 31st of that year.

TxDOT's submission to FHWA of the Monitoring and Reporting Annual Report will occur no later than March 31st of each year.