

June 9, 1997

Agreement No. DTFH71-97-X-00034

FOREST HIGHWAY STATEWIDE AGREEMENT

among

TEXAS DEPARTMENT OF TRANSPORTATION

and

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

and

U.S. DEPARTMENT OF AGRICULTURE

FOREST SERVICE

for the

Administration of the Forest Highway Program

in the State of Texas

Parties to Agreement:

Eastern Federal Lands Highway Division, Federal Highway Administration, U.S. Department of Transportation, hereinafter called the FHWA unless otherwise noted; the Forest Service, U.S. Department of Agriculture, hereinafter called the FS; and the Texas Department of Transportation, hereinafter called the TxDOT.

Purpose:

The purpose of this Forest Highway Statewide Agreement (Agreement) is to set forth the general Statewide procedures, mutually acceptable to the parties hereto, for the cooperative planning, programming, survey, design, construction, and maintenance of Forest Highways (FH) in the State of Texas, pursuant to the provisions of 23 U.S.C Sections 202, 203 and 204, and the regulations issued thereunder jointly by the Secretary of Transportation and the Secretary of Agriculture. The Agreement also incorporates the public involvement/public hearing requirements of 23 C.F.R. Section 771.111 and 40 C.F.R. parts 1500 through 1508, other associated environmental review procedures under Section 771, and applicable FS requirements.

Under the Federal Lands Highway Program, Congress has authorized funds for FH that are within, or provide access to the National Forest System (NFS). Recognizing that substantial benefits will accrue to the State and to the Nation from the construction and maintenance of such FH and that the FH are under the jurisdiction of a public road authority, and further that the TxDOT has systems planning, maintenance, right-of-way acquisition, and interdisciplinary facilities available to assist in the accomplishment of the work, it is deemed fitting and desirable to the parties hereto to express by this instrument the general terms of their cooperation in that regard to achieve maximum benefits in the public interest.

As stated in 23 CFR 660.111, the design and construction of FH projects will be administered by the FHWA unless otherwise provided for in a Federal-Aid Project Agreement (PR-2) under this subpart. Through this Agreement, it is recognized that the TxDOT may be the agency administering the design and construction of the FH projects, and this Agreement provides procedures for either party to administer the projects.

The TxDOT is the agency administering the design and construction of FH projects in the State of Texas, unless a Memorandum of Agreement specific to the project is executed which identifies a different design and construct agency.

Forest Highway Routes:

This Agreement shall cover the FH routes, previously approved for inclusion in the designated FH network and any approved amendments. The FHWA shall maintain the inventory of the approved designated FH network. The list of such approved routes may be varied from time to time by agreement among the TxDOT and the FS, with the approval of the FHWA either by adding routes or removing routes or by altering the description of any route to give it proper identity. Each such action shall be indicated by a revised list showing the effective date of the revision.

Transportation Planning/Management Systems:

It is recognized that FHs are an integral part of the road network in any State. Transportation planning is then a function that will be performed by the TxDOT who will work with the FS and the FHWA on long-range planning activities of mutual concern. The TxDOT agrees that it will adhere, in performing these functions, to the environmental review/public involvement/public hearing procedures required under the guidelines of 23 CFR 771; to the statewide and metropolitan planning requirements of 23 CFR 450, and to appropriate agency implementing procedures and policies. The TxDOT agrees to incorporate the long range FH transportation plan into the State's long range transportation plan. The TxDOT agrees to share information on FH routes in its bridge, pavement, and safety management systems.

Program of Projects:

A program conference will be held biennially or more frequently if deemed necessary including the TxDOT, the FHWA, and the FS in accordance with 23 CFR 660.109(a). After agreement has been reached on the program of projects, the FHWA will prepare the approved, updated program and forward copies to the TxDOT and the FS.

The FHWA will provide the FH project data to the TxDOT prior to the TxDOT's public involvement process on the proposed Statewide Transportation Improvement Program (STIP). After the conclusion of the public involvement process, the TxDOT will incorporate the program of projects into its STIP. If applicable, the TxDOT will also forward a copy of the program to the appropriate Metropolitan Planning Organization (MPO) for incorporation into its Transportation Improvement Program (TIP).

Development of Projects:

As stated previously, either the FHWA or the TxDOT will be the agency administering the design and construction of FH projects. If it is determined to be in the public interest to have an agency other than the FHWA or the TxDOT be responsible for the administration of the FH project, a Memorandum of Agreement specific to the project will be prepared which will establish the responsibilities of each party. Regardless of which agency is administering the project, once projects are included in an approved FH program, the agency administering the project shall proceed promptly, and projects shall be carried forth through completion in accordance with the approved program. Design standards for the FH projects shall be appropriate to the use of the road, scope of the project and in consideration of the natural and cultural environment. Standards specific to FHs or to a particular project may be established by agreement of the TxDOT and the FS and approval of the FHWA.

It is the intent of the project development process to keep all agencies informed of progress, to request the TxDOT, FS and FHWA attendance at the scheduled plan reviews, and to obtain written concurrence of the plans, specifications, and estimate (PS&E) and FHWA funds authorization prior to advertisement. If it becomes evident during the development of the project, that the scope of the project or the anticipated construction cost needs to be changed, the agency

administering the project should initiate coordination with the other parties to obtain TxDOT/FS concurrence and FHWA approval of the change in the project.

Specifically, if the FHWA is administering the project, the FHWA will coordinate all plan reviews with the TxDOT and the FS and obtain written concurrence in the PS&E prior to advertisement of the project for construction. The FHWA will follow established Federal Lands Highway Program procedures for the development of the project, taking established TxDOT and FS practices into consideration where appropriate.

If the TxDOT is administering the project, the TxDOT will coordinate with the FS during the development of the project, obtain written concurrence of the PS&E from the FS, and submit the advertisement PS&E package with evidence of the FS concurrence to the FHWA for FHWA project authorization. Upon FHWA verification that the project was developed in accordance with the approved program, FHWA will obligate funds and authorize the TxDOT to proceed with the advertisement and construction of the project under the provisions of the Oversight Agreement for Federal-Aid Projects, with the understanding that the TxDOT will ensure compliance with all provisions of the Oversight Agreement. Except as stated previously for the coordination with the FS and FHWA verification and funding authorization, the TxDOT will proceed with the project as provided under the Oversight Agreement for Federal-Aid Projects.

Compliance with Environmental Review/Public Involvement/Public Hearing Requirements in Project Development:

The FHWA and the TxDOT will adhere to the environmental review/public involvement/public hearing procedures required under the guidelines of 23 CFR 771 and appropriate agency implementing procedures and policies. These procedures include providing early and continuing opportunities during the project development process for the public to be involved in the identification of social, economic and environmental impacts. When FHWA is administering the project, consideration will be given to following the TxDOT and FS public involvement procedures. When the TxDOT is administering the project, the FHWA Federal-Aid Division office will take all formal approval action on the environmental document in accordance with approved Federal-Aid procedures.

The National Environmental Policy Act (NEPA) requires all Federal agencies and their agents to evaluate and disclose environmental impacts of their actions. This environmental evaluation process often involves several agencies. It is the intent under the Council of Environmental Quality (CEQ) regulations for a project to be evaluated one time comprehensively by a designated lead agency. Because highways are a charged responsibility of the FHWA and its companion State Departments of Transportation, it is reasonable to expect the FHWA to coordinate and complete the environmental process consistent with all State and Federal CEQ regulations.

The role and level of involvement of the FS will vary dependent upon the scope of the proposed action. Many projects will be confined within the limits of existing road rights of way and easements. This work will have minimal off-site impact and minor influence on the management

program of the FS. Coordination for this type of project will ensure conformance with the approved FH program of projects and a minimal level of environmental resource coordination.

Projects that encroach on National Forest System lands need a greater level of FS review of project area resources and potential project impacts, and more detailed documentation by both the agency administering the project and the FS. Because the highway project is the proposed action triggering the environmental review process, the FS is to be a Cooperating Agency. Because the FS is required to conduct an evaluation of the proposed highway action resulting in the consent to the appropriation and transfer of lands to the TxDOT, it is appropriate to document the review process and conclusions independently and attach these to the environmental document by appendices. When encroachment of National Forest System lands is anticipated, the agency administering the project and the FS should meet and agree upon the specific scope of the resource surveys, the type and frequency of public involvement actions to be used in the development of the project and the time frame for the FS to complete its decision process for the appropriation of the lands. These procedures will allow both the agency administering the project and the FS to fulfill their obligations in their own documentation formats, yet tie the coordinated reviews in a single NEPA document consistent with CEQ guidelines. In coordinating the environmental process and the anticipated Federal land transfer, the intent is to coordinate the issuance with the FS Decision Notice for the pending Federal land transfer and the NEPA public involvement process to achieve one joint public involvement process. It is understood that this may require advancing some design activities in order to provide more detailed right-of-way information at the NEPA public involvement stage of the project.

Construction of Projects:

Minor changes in grade, alignment, surface course, or structures made necessary by unforeseen contingencies or deemed desirable by conditions developing during the progress of work may be made by the agency administering the construction project without the prior or separate approval of the other parties to this Agreement. It is incumbent upon the agency administering the project to ensure that any such changes are not in conflict with any of the environmental and/or design considerations agreed to in the development of the project.

All construction is to be performed by contract entered into by competitive bids unless some other method is deemed to be more advantageous and in the public interest.

Following the award of the construction contract, the agency administering the project will notify the other parties in writing of the award of the construction contract, and invite their attendance to a preconstruction conference. Such meetings will provide an opportunity for all interested parties to discuss their mutual concerns regarding project construction. During construction, the FS (and the TxDOT, if FHWA is administering the project) will consult with the Project Engineer on matters pertaining to project construction and environmental and resource coordination required in the stipulation of special use permits such as clean up, borrow pit seeding, etc.

The FS (and the TxDOT if FHWA is administering the project) will be invited to participate in the final inspection. FS and TxDOT participation is to ensure that the project was constructed in accordance with the approved FH program.

The FHWA will administer projects in accordance with established Federal Lands Highway Program procedures, and in accordance with the applicable Federal acquisition regulations and procedures. The TxDOT will administer projects in accordance with the Oversight Agreement for Federal-Aid Projects.

Funding

When any proposed construction is to be administered by the TxDOT and financed in whole or in part with Federal funds, such circumstances will be set forth in the Project Agreement (PR-2) together with a statement of the amount of Federal funds obligated for that project. The expenditure of Federal funds shall not exceed the amount shown on the PR-2. If it appears that the project cost may exceed the estimate and additional Federal funds may be needed, no obligation on the part of FHWA shall occur until the TxDOT requests and receives an approved Modification of Federal-Aid Project Agreement (PR-2A).

As the work progresses, the TxDOT shall submit Form PR-20 vouchers to the FHWA or shall submit electronic billing claims to the FHWA using the FHWA PR-20 Electronic Billing System for payment of the Government's pro rata share of the cost of the work. The TxDOT shall send Form PR-20 to: Eastern Federal Lands Highway Division, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, Virginia, 20166. Upon completion of the work, the TxDOT shall send a final voucher form PR-20 to the FHWA at the above address.

When the FHWA is administering projects funded entirely with FH funding or other funding provided directly to the Eastern Federal Land Highway Division, all project financial transactions will be processed in the Sterling office.

If State, local, other Federal-Aid funds or FS funds are made available on projects, the cost responsibilities and procedures to transfer these funds or to reimburse either the TxDOT or the FHWA for eligible project costs shall be covered by a Memorandum of Agreement specific to the project. Any unused balance of these funds will be returned to the provider after closure of the financial records. The amount of cooperative funds as set forth in the Memorandum of Agreement specific to the project shall be the maximum commitment to the project, unless a modification of the Memorandum of Agreement specific to the project is executed.

When cooperative and/or FS funds are involved, the agency administering the project shall furnish to the other parties to the FH program a summary statement of the cost of the project. The FHWA will provide a statement of the FH portion of the project cost as reported in periodic FH financial reports. All financial information will be available at any time to the parties to this Agreement upon request.

Project Agreement:

A Memorandum of Agreement specific to the project is to be entered into between the TxDOT and the FHWA for each project for which (1) the survey, construction, acquisition of rights-of-way, or maintenance in connection with a project included in an approved FH program is to be accomplished in a different manner from that set forth in this Agreement, (2) cooperative funds, including Federal funds from programs other than the Federal Lands Highway Program, are to be made available to the FHWA for the project.

Rights-of-Way

Rights-of-way or other interests in property are to be acquired by and in the name of the TxDOT. The cost of such rights-of-way or other interests in property acquired by the TxDOT are to be at the TxDOT's expense unless otherwise provided in a Memorandum of Agreement specific to the project.

The agency administering the project will perform the title searches, surveys, write the description, and prepare right-of-way plans. Regardless of whether FHWA or the TxDOT administers the project, the TxDOT will administer the right-of-way acquisition. The TxDOT shall certify to the FHWA that the right-of-way has been acquired in accordance with the Oversight Agreement for Federal-Aid Projects.

For Federal land transfers, the agency administering the project will prepare a Highway Easement Deed. All Federal land transfers will be completed in accordance with the Federal-aid procedures which stipulates the coordination process with Federal agency, the TxDOT, and the FHWA Division and Regional offices to execute the Federal lands transfer.

Access across National Forest Lands needed for such uses as access to gravel or fill sources and temporary use of lands (such as material source sites, stockpile sites, disposal sites, minor sloping, etc.) outside of the right-of-way required for the construction and maintenance of the highway facility, will be authorized by the FS issuance of an appropriate special use permit.

Claims

The agency administering the project is responsible for resolution of any claim that arises as a result of any project design or construction contract. For TxDOT administered projects, reimbursement of the settlement will be made in accordance with the Oversight Agreement for Federal-Aid Projects.

Maintenance

The TxDOT will maintain the FH project, or, by formal agreement with appropriate officials of a county, municipal government, or other public road authority, cause it to be maintained.

Prior to final construction acceptance by the contracting authority, the project shall be inspected by the TxDOT and the FS to identify and resolve any mutual concerns.

Amendments to FH Statewide Agreements:

This Agreement together with the environmental review/public involvement/public hearing procedures may be modified by advance notice of 60 days from any of the three parties to the other two.

This Agreement shall be effective as of the 15 th day of July 1997, and shall supersede all prior existing cooperative agreements for the same routes entered into pursuant to 23 U.S.C. Sections 202, 203, and 204, "Federal Lands Highway Program" except those involving commitment of funds or arrangement for the performance of construction work on projects underway but not yet completed and final settlement made.

TEXAS
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF AGRICULTURE
FOREST SERVICE
REGION 8

By: [Signature]

By: [Signature]

Title: Executive Director

Title: Regional Forester

Date: 6/12/97

Date: _____

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION

By: [Signature]

Title: Division Engineer

Date: 7/14/97