

## VOLUNTARY RESOLUTION AGREEMENT

### I. Purpose and Background

This Voluntary Resolution Agreement (Agreement) is entered into by the Federal Highway Administration (FHWA) and the Texas Department of Transportation (TxDOT) to resolve the FHWA investigation of TxDOT regarding the North Houston Highway Improvement Project (Project) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-7 (Title VI) by setting forth specific mitigation actions for the Project. These actions will ensure that TxDOT carries out the Project consistent with the requirements of Title VI.

FHWA investigated TxDOT's compliance with Title VI and the U.S. Department of Transportation's (DOT) Title VI regulations, at Title 49 of the Code of Federal Regulations (C.F.R.), Part 21, in response to administrative complaints filed by the following individuals or entities: 1) Air Alliance Houston on January 18, 2021 (DOT Complaint No. 2021-0092); 2) Texas Housers on January 26, 2021 (DOT Complaint No. 2021-0095); 3) Modesti Cooper on February 28, 2021 (DOT Complaint No. 2021-0103); and 4) by Harris County on October 8, 2021 (DOT Complaint No. 2021-0250). The complaints alleged the Project would result in race, color, or national origin discrimination against multiple communities in the Project area in violation of Title VI. The complaints also alleged that the public participation process for the Project discriminated against individuals on the basis of race and national origin.

FHWA initiated its investigation in March 2021. TxDOT completed the environmental clearance process for the Project under the National Environmental Policy Act (NEPA) on February 3, 2021. To preserve the status quo during the course of its investigation, FHWA requested that TxDOT pause contract letting, property acquisition, and final design work, and TxDOT complied.

From April 2021 to March 2022, FHWA sent three Requests for Information to TxDOT, in response to which TxDOT provided nearly 9,000 documents, along with access to hundreds of additional documents. In addition to these documents, FHWA reviewed thousands of pages of publicly available documents developed through the NEPA process. Over the course of two site visits to Houston, FHWA conducted approximately 100 in-person interviews and 20 virtual interviews with members of the community affected by the Project, in addition to numerous interviews with TxDOT staff.

In accordance with DOT's Title VI regulations, FHWA entered into discussions with TxDOT in 2022 focused on reaching a voluntary resolution agreement on the concerns raised in the Title VI complaints. This Agreement is a result of those negotiations.

### II. Title VI Jurisdiction

Title VI provides that “[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal

financial assistance.” 42 U.S.C. §2000d. Title VI’s prohibition against national origin discrimination requires that recipients of federal funds take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP). DOT’s Title VI regulations at 49 C.F.R. Part 21 provide that recipients may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. TxDOT is a recipient of Federal financial assistance from the FHWA, and the Project includes Federal financial assistance. DOT has jurisdiction over TxDOT under Title VI and its Title VI regulations because TxDOT receives federal financial assistance from DOT. As a recipient, TxDOT must comply with Title VI in its programs and activities, which include not only this Project, but also “all of the operations of” TxDOT. 42 U.S.C. §2000d-4a.

### **III. General Terms**

1. This Agreement, and all provisions and Exhibits herein, are between TxDOT and FHWA as the sole parties to the Agreement. This Agreement will be applicable to, and binding upon, the parties to this Agreement, their officers, agents, employees, assignees, and successors in office. The FHWA Texas Division Office has been delegated responsibility for leading the oversight and implementation of this agreement.
2. The provisions and Exhibits herein constitute the entire Agreement.
3. If any part of the Agreement is deemed invalid, all other provisions remain valid.
4. The signatories represent that they are authorized to bind TxDOT and FHWA.
5. By signing this Agreement, TxDOT does not admit that any Title VI violation has occurred and voluntarily agrees to implement these actions.
6. This Agreement resolves this Title VI investigation and is limited to the facts and issues presented in the complaints identified during this investigation. This Agreement does not affect TxDOT’s continuing obligation to comply with Title VI, and all other federal laws and applicable regulations, or preclude FHWA from taking appropriate action to evaluate TxDOT’s compliance with any laws enforced by FHWA.
7. Neither TxDOT nor any entity or business party to an agreement to carry out the actions herein shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of Title VI or 49 C.F.R. Part 21, or because they have made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to Title VI . 49 C.F.R. § 21.11(e).
8. The term of this Agreement (Term) shall commence on the date that both parties sign this Agreement (Effective Date).

9. This Agreement shall terminate after the date that all terms in Article IV have been completed, except that Articles VIII and IX will survive the termination of this Agreement as necessary to effectuate their intent. If the Project is terminated, this agreement will cease to be effective. Should the project be suspended due to funding or legal action, the actions required in this Agreement are suspended during the time of the Project suspension, with the exception of those actions in Article IV.2.a (compliance with Uniform Act); Article IV.2.f (Affordable Housing initiatives); Article IV.2.l (project website); Article IV.6.k.vi (participation in Emancipation Trail feasibility study); Article IV.6.k.vii (Olivewood National Register of Historic Places); and Article IV.8.g (LEP SOP).
10. This Agreement may be modified by mutual agreement of both FHWA and TxDOT after negotiating in good faith and in writing.
11. If TxDOT is unable to comply with the initial timelines in this Agreement, then TxDOT may send FHWA a written extension request detailing the reasons for the request and the new dates requested. The new dates will become effective only if FHWA responds in writing to TxDOT accepting the request terms. FHWA may propose a counterproposal to the terms proposed by TxDOT. If TxDOT does not comply with the timelines agreed to under this Agreement and does not otherwise secure an extension request from FHWA, then FHWA may pursue potential sanctions, as discussed in Section IX of this Agreement.
12. All mitigation measures described in the Final Environmental Impact Statement (FEIS), Record of Decision (ROD), and this Agreement mitigate impacts resulting from the Project and represent reasonable public expenditures after considering the impacts of the action and the benefits of the proposed mitigation measures. As such, the mitigation measures described in the FEIS, ROD, and this Agreement are eligible for federal reimbursement pursuant to 23 CFR §771.105(e).
13. TxDOT will cooperate in a timely manner with FHWA regarding all additional requests for information and documentation, pursuant to 49 C.F.R. § 21.9, et seq.
14. Nothing in this Agreement shall be construed as creating any liability in favor of any third party or parties against FHWA or TxDOT.

#### **IV. TxDOT Actions**

As the Recipient of Federal-Aid Highway funds from FHWA, TxDOT is solely responsible for effectuating the actions described in this Agreement. Except where noted, the actions described below will be performed in addition to the mitigation actions already committed to by TxDOT, as they relate to the Project, contained within the ROD. TxDOT agrees to comply with the Americans with Disabilities Act and with Section 504 of the Rehabilitation Act of 1973 in constructing all pedestrian-related elements associated with the Project.

TxDOT will perform or effectuate the following<sup>1</sup>:

**1. Reducing the NHHIP Footprint During Detailed Design**

- a) Consistent with the requirements of all state and federal law, including NEPA and Title VI, and consistent with actions established by the ROD and FEIS, TxDOT remains committed to evaluating reasonable opportunities to reduce the project footprint in ways that would not compromise the integrity and functionality of the purpose and need of the Project, as described in the ROD. TxDOT agrees that requests to reduce the Project footprint should be evaluated with a focus on the following:
  - i. Strengthening Houston's economy;
  - ii. Reducing flooding on and off the freeway;
  - iii. Making travel safer for all road users;
  - iv. Providing long-term capacity for all users of the roadway, including automobile, freight, and transit;
  - v. Serving and preserving the neighborhoods along the corridor while enhancing connectivity between neighborhoods;
  - vi. Mitigating impacts to existing parks and open space while creating additional opportunity for open space; and
  - vii. Ensuring accessible evacuation routes.
- b) TxDOT agrees to use the least amount of right-of-way as allowed and defined by law, after evaluation of the project footprint.
- c) It is important to note that any proposals to reduce the Project footprint must not compromise safety, flooding mitigation, design standards, freight mobility and evacuation effectiveness.

**2. Displacements, Relocations, Housing, and Other Community Impacts**

TxDOT is committed to minimizing residential, business, and community resource displacements due to the Project to the extent practicable, consistent with meeting the purpose and need of the Project and consistent with Title VI requirements. In addition, TxDOT recognizes the impacts of the Project on the already limited availability of affordable housing in the Project area and is committed to mitigating such impacts as set forth in the Project Record of Decision (ROD) and this VRA. TxDOT will continue to engage and inform the public about project developments

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<sup>1</sup> Unless otherwise provided, nothing in this Agreement should be construed to be limited by the terms of the agreements between TxDOT and the City of Houston, and between TxDOT and Harris County, regarding the NHHIP.

and construction impacts as the Project moves forward and provide competent language assistance services, interpretation and translation for persons with LEP.

### Displacements

- a) TxDOT will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (Uniform Act) and associated regulations at 49 CFR Part 24 throughout the course of the Project. TxDOT will include the data elements in Parts B and C of Appendix B, 49 CFR part 24, for all residential and non-residential displacements associated with the Project in the Progress Reports required by Article VI of this VRA. Additionally, for each displacement reported in the previous sentence, TxDOT will provide documentation of benefits provided in accordance with the Uniform Act. TxDOT will redact all personally identifiable information in its reports, but shall make the information available for review by FHWA upon request.
- b) Within 90 days of signing this VRA, TxDOT will complete a survey of all non-residential businesses, services, or other organizations displaced by the Project, accommodating those entities' language preferences, to confirm their receipt of relocation services under the Uniform Relocation Act. For those entities that have already relocated and respond that they did not receive relocation services or did not receive adequate relocation services, TxDOT will provide such relocation services as committed to for non-residential relocations under the NHHIP ROD within 150 days of signing this VRA. TxDOT will document progress in providing the non-residential relocation services described herein, including the number of non-residential businesses, services, or other organizations that have received such services, which services have been requested, which services have been provided, and the cost of the services provided, in the Progress Reports as required by Article VI of this VRA.
- c) With the first Progress Report under Article VI of this VRA, TxDOT will submit to FHWA a plan for how TxDOT will ensure that roadway, transit, and pedestrian/bicycle access to essential services, including but not limited to health care facilities, grocery stores, pharmacies, schools, places of worship, and voting locations, will be maintained during and after construction in neighborhoods where such essential services will be impacted by the Project. In developing the access plan, TxDOT will coordinate with local governments and community stakeholders to identify access impacts to specific types of services, effective alternative routes, and alternative resource locations nearby to ensure that the public retains use of these services.
- d) Prior to resuming acquisition and demolition activities on individual parcels, TxDOT will review the properties included in the relocation impacts identified in the FEIS and ROD. Should TxDOT determine that the proposed acquisition or demolition of that specific parcel was not included in the FEIS or ROD, prior to

proceeding with the action on the parcel, TxDOT will conduct a re-evaluation under 23 CFR 771.129(c) to determine whether a Supplemental Environmental Impact Statement (SEIS) is required. This commitment will apply to all segments of the Project. This commitment does not apply to the state-funded acquisition of any remainder that is voluntarily sold by a property owner to TxDOT pursuant to Texas Transportation Code Section 203.0521 and that will not be used in connection with the Project. TxDOT will provide information on any acquisition or demolition of a parcel that was not included in the FEIS or ROD, including state-funded acquisitions that are voluntarily sold by a property owner to TxDOT, in the Progress Reports required by Article VI of this VRA.

- e) TxDOT, during final design of each segment of the NHHIP, will evaluate changes to the Project (as compared to what was approved in the ROD) that would reduce the amount of right-of-way needed and the displacement impacts, especially with respect to multi-family housing units, while ensuring that the final design meets the project Purpose and Need as described in the ROD. TxDOT will document in the Progress Reports as required by Article VI of this VRA instances where right-of-way needs and displacements have been reduced.
- f) TxDOT committed in the ROD to providing \$27 million to support affordable housing initiatives in the neighborhoods most affected by the project in addition to the individual acquisition and relocation compensation provided to homeowners, renters and businesses that would be displaced. Through this VRA, TxDOT agrees to commit an additional \$3 million, for a total of \$30 million, to affordable housing entities to aid in the implementation of these affordable housing initiatives. TxDOT will coordinate with Houston Housing Authority (HHA) and develop an opportunity for the public to provide input on how these funds might be utilized and distributed. Following the completion of this public outreach, TxDOT will prepare a plan and a schedule for disbursement and use of the funds and provide to FHWA within 90 days of completion of the plan. As part of this plan, TxDOT will describe considerations given to the viability of a community land trust(s) as part of affordable housing mitigation. TxDOT will include a report on implementation of this paragraph in the Progress Reports required by Article VI of this VRA.
- g) TxDOT will discuss with the City of Houston (City) the use of portions of the Project's future surplus right-of-way for affordable and workforce housing as developed by third parties in potential partnership with the City, with the understanding that any surplus property must be acquired pursuant to TxDOT policy. TxDOT will include a report on implementation of this paragraph in the Progress Reports required by Article VI of this VRA.

## Relocations

- h) TxDOT will make relocation benefits available to all eligible displacees and not deny benefits in cases that would result in exceptional and extremely unusual hardship to such a displacee. TxDOT will report to FHWA in each Progress Report any displacee who is denied relocation benefits and the benefits denied.
- i) As committed to in the ROD, TxDOT will provide enhanced relocation services by conducting workshops with residential property owners and renters who would be displaced, including topics such as:
- Getting to know household members and future goals and ability to accomplish such goals;
  - Developing communications that are culture- and context-sensitive;
  - Determining needs and preferences;
  - Explaining relocation benefits in language used by household, assist with relocation interview and explain relocation schedule;
  - Providing assistance in keeping appointments with relocation service providers;
  - Supplying information on other federal and state programs offering assistance;
  - Providing counseling to minimize hardships;
  - Explaining the acquisition process;
  - Explaining the relocation process;
  - Explaining the appraisal process;
  - Providing title information and review of documents;
  - Explaining property tax & exemption impacts;
  - Providing moving resources and move planning;
  - Providing first-time homebuyer seminars;
  - Explaining escrow process and title clearing;
  - Explaining how to update voter registration information;
  - Explaining how to get social services and benefits;
  - Explaining how to select a real estate agent;
  - Explaining how to check your credit and improve your score;
  - Explaining household budgeting; and
  - Explaining household maintenance.

TxDOT will prepare a plan for offering enhanced relocation services and submit the plan to FHWA within 30 days of completion. TxDOT will document within the plan all future discussions held with U.S. Department of Housing and Urban Development and HHA regarding enhanced relocation services provided to residents of Clayton Homes and Kelly Village. TxDOT will document progress in providing the enhanced relocation services described herein, including the number of property owners and tenants who have received such services, which services

have been requested, which services have been provided, and the cost of services provided, in the Progress Reports as required by Article VI of this VRA.

- j) TxDOT shall identify whether its planned ROW acquisition for the NHHIP will leave any residential or non-residential owners or renters outside of the Project footprint isolated or cut off from the rest of the community and assess whether it must provide relocation acquisition or assistance or advisory services pursuant to the Uniform Act and associated regulations at 49 CFR Part 24, as well as this VRA, to such owners or renters to mitigate such impacts. TxDOT shall report to FHWA in the Progress Reports required by VRA Article VI on this issue after the conclusion of each acquisition phase of the Project.

### Housing

- k) TxDOT will inform all residential and non-residential property owners of the option to enter into an Occupancy Agreement for parcels that TxDOT acquires well in advance of the start of associated project construction. The Occupancy Agreement would allow property owners an option to continue to occupy the property after it has been acquired by TxDOT while the property owner gets reestablished at their new location until such time the property needs to be prepared for the start of associated project construction.
- l) Within 30 days of this agreement, TxDOT will establish a publicly available project-specific website. The website will be maintained and updated regularly through completion of the Project. The website will provide information in English, Spanish, and all other languages for which translation has been requested at NHHIP public meetings. The website will include the following information, as it becomes available:
  - Eligibility requirements for the move out stipend, rent stipend, and weatherization and energy efficiency programs;
  - Move out dates for public housing residents, and how public housing residents can claim their priority status for housing at the new Houston Housing Authority affordable housing developments;
  - How residents and businesses can communicate with TxDOT about common construction issues including the clean-up of construction debris, filing nuisance dust reports and alerting TxDOT of potential best management practice issues such as silt fencing maintenance needs;
  - Information on NHHIP-related jobs and job fairs;
  - Advance notice of specific disruptions during construction, including bus reroutes, road closures and detours, trail closures, demolitions, and late-night activity;
  - Links to local air quality status (code red days), and monitoring information produced by the project;



- Flooding mitigation plan development/implementation, including public involvement opportunities, and notice of alerts when access to depressed sections of the highways is closed in the event of a pump failure;
- Active transportation options in the project corridor;
- A link to the Emancipation National Historic Trail Study;
- School Access and the project ombudsman;
- Copies of the memoranda with the City of Houston and Harris County and periodic progress reports of the implementation of the memoranda;
- Transit access; and
- Noise barrier decision processes.

TxDOT will explore alternative ways to communicate the information provided through the website to low literacy residents, seniors, and people without internet access. This may include outreach and engagement with, among others, leaders of community organizations, places of worship, and legal service organizations to understand the effective methods to communicate website and critical information related to displacements, relocations, housing, and other community impacts.

#### Community Impacts

##### m) *Clayton Homes:*

- i. TxDOT's acquisition of Clayton Homes is being undertaken in two phases. TxDOT has completed Phase 1, which included units no longer occupied. TxDOT will not complete the acquisition of the second phase until all residents are relocated from the Phase 2 portion of the property.
- ii. In addition to the Tenant Protection Vouchers being offered by HHA, TxDOT will also offer housing relocation supplements (up to market-valued rent) to Clayton Homes residents as an alternate relocation path under the Uniform Act. This alternate path would not rely on and therefore not exhaust available voucher capacity and would be available to all displacees even if they do not qualify for HHA Tenant Protection Vouchers. Should a Clayton Homes resident choose the alternate relocation path in the interim while the Clayton replacement units are being constructed but want to exercise their first right to return to the Clayton replacement units which are intended to be voucher based, they would be eligible to do so assuming they meet the HHA Tenant Protection Vouchers criteria at the time of their return to the replacement units.
- iii. TxDOT will work with HHA to maintain active contact information for Clayton Homes displacees in order to offer the first option to move to replacement dwellings once completed.

- n) *Kelly Village*:
- i. In addition to the Tenant Protection Vouchers that would be offered by HHA, TxDOT will also offer housing relocation supplements (up to market-valued rent) to Kelly Village residents as an alternate relocation path under the Uniform Act. This alternate path would not rely on and therefore not exhaust available voucher capacity and would be available to all displacees even if they do not qualify for HHA Tenant Protection Vouchers. Should a Kelly Village resident choose the alternate relocation path in the interim while the Kelly Village replacement units are being constructed but want to exercise their first right to return to the Kelly Village replacement units which are intended to be voucher based, they would be eligible to do so assuming they meet the HHA Tenant Protection Vouchers criteria at the time of their return to the replacement units.
  - ii. TxDOT will work with HHA to maintain active contact information for Kelly Village displacees in order to offer the first option to move to replacement dwellings once completed.
- o) TxDOT will coordinate with the City of Houston and homeless services providers to develop a plan to assist in addressing the services needed by persons experiencing homelessness within the Project limits TxDOT will submit this plan to FHWA for review within 30 days of finalization of the plan to address services needed by persons experiencing homelessness.
- p) TxDOT will review the strategies in the October 2022 DOT report on “Promising Practices for Meaningful Public Involvement in Transportation Decision-Making” to continue to meet with stakeholders and consider public input as it proceeds through future project development phases. Additionally, TxDOT will continue to coordinate with the NHHIP Housing and Communities Focus Group to explore and define best practices, identify opportunities to leverage existing programs and resources, and develop strategies to achieve positive solutions during project implementation. TxDOT will report on what strategies they are using for considering public input in each Progress Report as required by Article VI of this VRA. To the extent necessary, FHWA will provide feedback on these strategies and work with TxDOT on improvements.
- q) TxDOT will hold public engagement meetings—consistent with the public meeting provisions, including language access provisions, in its FHWA-approved Environmental Handbook for Public Involvement—twice each calendar year in each segment while design and construction is ongoing in the segment. TxDOT will provide FHWA a list of those invited to these meetings and its methods for publicizing the meetings a week before they occur. In advance of these meetings, TxDOT will engage affected communities and provide meeting notices in English and in the most common languages spoken by individuals with LEP in the

communities. During these public meetings, TxDOT will provide the community with up-to-date information regarding the Project, informational assistance regarding the implementation of this agreement, and will provide an open forum for the community to provide feedback, raise issues, and ask questions about the Project or TxDOT's compliance with this agreement. TxDOT will include updates of public engagement meetings in the Progress Reports as required by Article VI of this VRA. These meetings will be held at times and locations that are convenient and accessible for affected communities, and TxDOT will take reasonable steps to ensure meaningful access for persons with LEP, including the provision of language assistance services free of cost to the persons with LEP. TxDOT will consider and incorporate information provided at these meetings, as applicable, during the design and construction of the project.

### **3. Flooding**

TxDOT understands that transportation infrastructure is integrated into the overall drainage pattern of a project and its surrounding areas. A primary objective of the NHHIP is to construct a resilient highway system that functions during extreme weather events. In the event that the National Oceanic and Atmospheric Administration (NOAA) publishes a subsequent version to Atlas 14 for the integration of future climate projections, TxDOT will take actions that will use such updates to inform the final design should they be published prior to completion of design activities as stated below. Another key objective is to improve the status quo by reducing flooding in the project area. TxDOT has and will continue to work closely with the City of Houston and Harris County Flood Control District to develop partnerships that will leverage the roles and responsibilities, as well as the resources, of each entity to deliver beneficial drainage improvements throughout the overall drainage system, prioritizing areas that are most vulnerable to flooding.

- a) Prior to completing final design for each segment of the NHHIP, TxDOT will use Atlas 14 rainfall data to complete drainage studies. Such drainage studies will rely on the state of practice HEC-RAS 2D model approach. In the event NOAA publishes a subsequent version to Atlas 14 to account for variations in climate conditions, TxDOT will incorporate such updates into individual NHHIP projects that have not exceeded the 30% detailed design phase.
- b) Consistent with item (a) above, TxDOT will perform a detailed drainage study for Segment 1 prior to the final design for Segment 1 and submit it to FHWA with the first Progress Report due after finalization of the study under Article VI of this VRA.
- c) Before submittal to the Texas Transportation Commission for consideration, FHWA must review and approve any and all Final Requests for Proposal for Design-Build Contract, which include the specifications that would control the design parameters once the design-build contract is executed.

- d) For any portion of the NHHIP that is delivered by design-build method, TxDOT will require design-build contractors to abide by the same drainage design criteria that TxDOT will require for design-bid-build projects, in order to reduce the latitude of design-build contractors to deviate from drainage design parameters.
- e) As may be requested by Harris County Flood Control District (HCFCD) and mutually agreed upon by HCFCD and TxDOT, TxDOT will transfer maintenance responsibilities of certain drainage basins and channels to HCFCD within the State's right-of-way.
- f) As may be requested by HCFCD and mutually agreed upon by HCFCD and TxDOT, TxDOT will enter into funding, design, and construction, operations, and maintenance agreements for HCFCD to build and maintain drainage basins that would have a broader regional drainage benefit and would supplement and not impair the planned NHHIP drainage improvement.
- g) Contingent upon TxDOT receiving the necessary FHWA approvals for the NHHIP and upon mutual agreement between TxDOT and the City of Houston , TxDOT will enter into an Advanced Funding Agreement with the City in which TxDOT will provide \$20 million to the City for the design and construction of the north canal project.
- h) TxDOT will fund, design and construct its alternative for the south canal. Upon mutual agreement between TxDOT and the City, TxDOT would enter into the necessary agreements to permit the City to modify TxDOT's alternative for the south canal.
- i) TxDOT will collaborate with HCFCD as the NHHIP drainage improvements are being designed so that TxDOT can accommodate future planned improvements to be implemented by HCFCD.
- j) TxDOT will collaborate with HCFCD to identify locations to evaluate the design and construction of bridges in a manner that would accommodate improvements to the drainage channel while taking upstream and downstream channel impacts into consideration.
- k) TxDOT will collaborate with HCFCD and other governmental entities for the planning, design, construction, operations and maintenance of trails on the upper banks of the bayous that are crossed by the NHHIP (*see Exhibit A*). TxDOT will design, fund and construct trails that are within the State's right of way for the NHHIP and such trails would be operated and maintained by a third-party governmental entity and would not impair the primary drainage function of the bayous.
- l) TxDOT will collaborate with HCFCD to develop a process in which one party performs a peer review of the other party's proposed drainage improvement

projects in instances where one party's drainage design interfaces and influences the other party's drainage design.

#### **4. Air Quality Mitigation**

- a) TxDOT will ensure that air monitors in each segment will begin operating one year in advance of the commencement of construction on the corresponding segment.
- b) TxDOT will provide one air monitor in each segment and will monitor for the same pollutants in Segment 1 as those as described in the FEIS and ROD for air monitors in Segments 2 and 3.
- c) TxDOT will continue to consult with the experts it has retained to assist with air monitoring and air monitor siting on an as needed basis as the air monitoring plan is implemented in each Segment.
- d) TxDOT will include a report on implementation of this paragraph in the Progress Reports required by Article VI of this VRA.

#### **5. Structural Caps**

The NHHIP recommended alternative provides for structural caps in four areas of the project. The structural caps provide an exciting opportunity for third party collaboration with TxDOT on the full integration of transportation infrastructure in an urban environment. Such collaboration allows for the development of partnerships between TxDOT, governmental entities and stakeholders and anticipates the creation of new spaces for community gathering and recreational use.

- a) TxDOT will design and construct a structural cap along the following:
  - i. IH 69 that is located to be centered on and carrying both the METRO light rail Red Line and Fannin Street over the interstate main lanes;
  - ii. IH 69 that is located to be centered on and carrying both Caroline Street and Wheeler Avenue, including their intersection over the interstate main lanes;
  - iii. The parallel alignments of IH 69 and IH 45 that is bounded by Lamar Street and Commerce Street and carrying Lamar Street, McKinney Street, Walker Street, Rusk Street, Capitol Street, METRO's Purple and Green Lines, Texas Avenue, Preston Street, Congress Street, Franklin Street and Commerce Street over the main lanes of both interstates and, New Hamilton Street over the IH 69 southbound main lanes and IH 45 southbound main lanes; and
  - iv. IH 45 that is located to be centered on and carrying North Main Street, the southbound frontage road and the northbound frontage road over the interstate main lanes and managed lanes.
- b) During design, TxDOT will consult with:

- i. METRO to integrate existing and planned transit across and surrounding each cap; and
  - ii. The City for bicycle and pedestrian transportation across each cap.
- c) TxDOT will fund the design, construction, operations and maintenance of the following elements of the structural caps as described in item (a):
  - i. Foundations for the structural caps to support the structural capacity needed to carry the roads and light rail facilities;
  - ii. The beams that provide the structural capacity needed to carry the roads and light rail facilities;
  - iii. The drainage elements that meet the applicable drainage criteria to convey stormwater runoff for the roads, light rail facilities, and interstates;
  - iv. The applicable ventilation system for the interstates; and
  - v. The applicable interior lighting and, fire and life safety systems for the interstates.
- d) In instances where a third party proposes to fund the design, construction, operations and maintenance of amenities to be integrated into the structural caps as described in item (a), TxDOT will collaborate with such third party by analyzing and providing the baseline structural loading calculations of the applicable elements in item (c) that could accommodate proposed third-party amenities without modification to the applicable elements in item (c).
- e) In instances where a third party proposes to fund the design, construction, operations and maintenance of amenities to be integrated into the structural caps as described in item (a), TxDOT will collaborate with such third party by analyzing and determining the additional amount of structural load calculations beyond the baseline calculations for the applicable elements in item (c) that would be needed to accommodate proposed third-party amenities.
- f) In instances where a third party proposes to fund the design, construction, operations and maintenance of amenities to be integrated into the structural caps as described in item (a) that exceed the baseline structural load calculations of any element in item (c), TxDOT will collaborate with such third party to determine the design, construction, maintenance and operation cost increase calculations necessary to modify the applicable baseline elements in item (c) to handle the additional amount of structural loads as calculated in item (e). Such design, construction, maintenance and operation cost increases would be third-party funded.

- g) TxDOT will establish a work group with other governmental entities to explore federal funding sources that would be eligible for third party design and construction of amenities to be integrated with the proposed structural caps.
- h) TxDOT will assist in identifying federal funding grant opportunities or other sources and required non-state match funding to design and construct open space amenities to be integrated with the proposed structural caps.
- i) TxDOT will provide engineering assistance for third party development of amenities to be integrated with the proposed structural caps.
- j) Upon mutual agreement, TxDOT will enter into agreements with other governmental entities for TxDOT to incorporate into its construction plans the design of third-party funded amenities that may be integrated into the proposed structural caps either with or after the completion of the accompanying interstate project.
- k) Upon mutual agreement, TxDOT will enter into agreements with other governmental entities for their operations and maintenance of amenities that may be integrated into the proposed structural caps either with or after the completion of the accompanying interstate project.

## **6. Parks, Open Space, Trails, and Pedestrian and Bicycle Facilities**

The NHHIP provides a once in lifetime opportunity to expand facilities for active transportation. Through close coordination with local agencies and stakeholders, the project will add trails and increase space for off-street pedestrian and cyclist paths within the project limits. These project elements improve the safety of active transportation users.

- a) TxDOT will provide design resources to assist third parties in the development of a map of potential new trail links within both the existing right-of-way and proposed right-of-way and connections terminating outside the state's proposed right-of-way.
- b) To the extent feasible, TxDOT will design the NHHIP to accommodate the City of Houston's bike plan ([Implementation – Houston Bikeways \(houstonbikeplan.org\)](https://www.houstonbikeplan.org)).
- c) TxDOT will fund, design, and construct new trails that are feasible within the state's right-of-way for the NHHIP. Upon mutual agreement, TxDOT will enter into agreements with a third party for the third party to maintain and operate such trails.
- d) TxDOT will work with third parties to identify funding to design and construct trail links outside of the state's right-of-way.

- e) TxDOT will reconnect Andrew Street over the proposed Downtown Connectors in Fourth Ward on the west side of downtown. The Andrew Street reconnection will be a pedestrian-bike only crossing.
- f) TxDOT has determined that maintaining the Cleburne Street connection across I-69 in Third Ward is feasible and will seek stakeholder and public input to retain this connection as part of the NHHIP.
- g) TxDOT will fund, design and construct a combination of a buffer and pedestrian sidewalk and bike path, commonly referred to as the pedestrian-bike realm, on all local streets that cross either over or under a highway facility of the NHHIP.
- h) Upon mutual agreement with the Houston Housing Authority, TxDOT will address the mitigation for the loss of open space resulting from the partial acquisition of Kelly Village. TxDOT commits to a 1:1 replacement of open space area within the remaining Kelly Village property and will replace all recreational facilities and elements located within the open space area that will be impacted by the Project.
- i) In conjunction with its commitment to supporting affordable housing initiatives as described in Article IV.2.f, TxDOT commits to provide \$1.5 million to the City of Houston Parks and Recreation Department for the development or rehabilitation of park facilities and amenities in City parks located in the vicinity of the project. Prior to the City's use of the committed funds, TxDOT will coordinate with the City of Houston to seek public input on how best to allocate and apply the committed funds. After obtaining such public input, the City must request and obtain concurrence from TxDOT before implementing any resulting projects.
- j) TxDOT will evaluate potential alternative pedestrian/bicycle routes to address the loss of the existing North Street bridge crossing over IH 45 between Greater Heights and Near Northside. TxDOT will provide this evaluation to FHWA in the next Progress Report after the evaluation is completed.
- k) The Emancipation National Historic Trail Study Act, sponsored by Congresswoman Sheila Jackson Lee and passed in January 2020, amended the National Trails System Act (16 U.S.C. 1244(c)) by adding the Emancipation National Historic Trail (Emancipation Trail).<sup>2</sup> The proposed Emancipation Trail "extend[s] approximately 51 miles from the Osterman Building and Reedy Chapel in Galveston, Texas, along Texas State Highway 3 and Interstate Highway 45 North, to Freedmen's Town, then to Independence Heights and Emancipation Park in Houston, Texas, following the migration route taken by newly freed slaves and other persons of African descent from the major 19th century seaport

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<sup>2</sup> Emancipation National Historic Trail Study Act, Pub. L. No. 116-111, § 2, 8 Stat. 134 (2020).



town of Galveston to the burgeoning community of Freedmen's Town, located in the 4th Ward of Houston, Texas.”<sup>3</sup>

- i. TxDOT will assist with federal efforts to develop the Emancipation Trail and will evaluate the feasibility of accommodating trail links within the state’s right-of-way within the project limits. The estimated completion date of the study is Fall of 2023.<sup>4</sup> A map showing the draft routes of the Emancipation National Historic Trail is attached to this Agreement as Exhibit B.<sup>5</sup>
- ii. TxDOT will accommodate proposed designated trail links that result from the Emancipation National Historic Trail Study to the extent such proposed trail links are feasible within the state’s right of way for the NHHIP.
- iii. TxDOT will place signage and historical marks within the State’s right of way for the NHHIP for the proposed designated trail links that result from the Emancipation National Trail Study to extent such placement is feasible.
- iv. The reconnection of Andrews Street by the NHHIP over the proposed downtown connectors would accommodate the Emancipation Trail within the project limits. The reconnection of Andrews Street by the NHHIP is proposed to be a pedestrian-cyclist only bridge.
- v. The proposed pedestrian-bike realm on Alabama Street, Elgin Street, Tuam Street, McGowen Street and Cleburne Street as part of the NHHIP will enhance accessibility to Emancipation Park which is outside and one block away from the project boundary.
- vi. TxDOT will participate in the National Park Service’s feasibility study for the Emancipation National Historic Trail Study to share how the NHHIP pedestrian-bike realm can complement the potential study outcomes and any other transportation-related aspects of the Emancipation National Historic Trail.
- vii. Upon mutual understanding with the Descendants of Olivewood Inc., TxDOT will provide assistance with applying and submitting the Olivewood Cemetery for listing in the National Register of Historic Places.

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<sup>3</sup> *Id.* See also *Emancipation National Historic Trail Feasibility Study*, National Park Service, <https://parkplanning.nps.gov/projectHome.cfm?parkID=456&projectID=95793>.

<sup>4</sup> *Emancipation National Historic Trail Feasibility Study Newsletter*, National Park Service, file:///C:/Users/JGray1/Downloads/Emancipation%20Newsletter%20Final.pdf.

<sup>5</sup> *Maps – Draft Routes Under Study – Emancipation National Historic Trail Feasibility Study*, National Park Service, <https://parkplanning.nps.gov/document.cfm?parkID=456&projectID=95793&documentID=111157>.

## 7. Access During Construction

TxDOT is committed to ensuring safe access to schools and reducing impacts to public transit, pedestrian, and bike access within the project area throughout the construction phase. TxDOT will continue to communicate with schools, parents, neighborhood and community stakeholders, and METRO regarding the construction schedule to ensure continued safe pedestrian, bike and transit access during construction of the Project.

- a) School access during construction:
  - i. In order to ensure that pedestrian and bike access to schools is maintained during construction, during the detailed design phase TxDOT will develop plans for traffic control detours of pedestrian and cyclist movements, as depicted in Exhibit C, showing the locations of schools adjacent to the project footprint, existing routes traveled by children to these schools, routes during construction, and the anticipated finished condition of pedestrian and cyclist routes after construction on the project is completed.
  - ii. Where construction of the Project will require pedestrian and bicycle detour routes to maintain access to schools, TxDOT commits to bring such designated detour routes up to current standards prior to beginning the associated construction in order to ensure that students, staff, and the public continue to have safe and accessible pedestrian and bicycle paths of travel to those schools.
  - iii. TxDOT will design and direct its contractor to maintain non-circuitous sidewalks to maintain safe pedestrian and cyclist access to schools during and after construction.
  - iv. TxDOT will work directly with schools to develop parent and school bus drop-off and pick-up routes, direct TxDOT contractors to maintain the safe operations of these routes during construction, and inform decisions about appropriate detour routes with the goal of safety and minimizing increased commute times.
  - v. TxDOT will maintain communication with school officials for the design of access accommodations during the construction phase.
  - vi. TxDOT will provide an ombudsman for the schools to communicate concerns that arise during construction to TxDOT in order for timely resolution of concerns.
  - vii. During construction, TxDOT will establish and maintain a public website to inform the public about bicycle and pedestrian access. The website will include maps and ways to contact the ombudsman.

- b) Transit access during construction:
  - i. TxDOT will obtain METRO's review and comment of the construction work phasing and sequencing of light rail facilities and operations that are impacted by construction.
  - ii. TxDOT will obtain METRO's review and comment in instances where a bus stop needs to be temporarily relocated during construction.
- c) Traffic management during construction:
  - i. TxDOT has established the Innovative Traffic Steering Committee, consisting of local government representatives and other stakeholders, to gather input in advance of the project on potential traffic phasing and mitigation activities to minimize adverse impacts of construction. TxDOT will coordinate with this Committee to identify and pursue Federal funds to support such activities and will incorporate the input into the construction plan when feasible to effectively manage mobility.
  - ii. TxDOT will provide fourteen (14) calendar days public notices of bus and light rail service disruptions due to construction activities.
  - iii. TxDOT will post notices of bus and light rail service disruptions on the project website.

**8. Meaningful Access for Persons with Limited English Proficiency (LEP)**

The purpose of this provision is to ensure that TxDOT fully complies with Title VI meaningful access requirements on the Project. TxDOT commits to the specified actions listed in this provision with respect to all individuals with LEP who need or request language assistance services, which include interpretation and translation. Specifically, TxDOT is committed to communicating clearly and thoroughly with all affected individuals about projects from the beginning of scoping through the end of construction. This commitment includes providing ready and accurate language assistance services to those individuals who need or request it at no cost. Additionally, TxDOT commits to ensuring that individuals with LEP are provided with timely language assistance services throughout the right-of-way acquisition and relocation process for the NHHIP. TxDOT further commits to develop or update internal LEP policies, plans, and training for staff and consultants as specified in this provision in order to ensure that language assistance services are adequately provided and documented on future projects. To effectuate these commitments, in addition to the specific required actions below, the Parties will negotiate and finalize an updated TxDOT Language Assistance Plan and Policy, consistent with the U.S. Department of Justice's 2002 LEP guidance on updating recipient LEP plans, within one year of the effective date of this Agreement. TxDOT will first conduct a language access self-assessment to evaluate and improve its current language access program and ensure

that the Language Assistance Plan, Policy, and related procedures are consistent with Title VI.

- a) TxDOT will implement its language access program in accordance with Title VI and DOT regulations and consistent with Title VI guidance issued by DOT, in addition to the actions required by this section.
- b) TxDOT will not rely solely on the use of automatic translation services to translate vital print or digital communications.
- c) TxDOT will document, track, and monitor the LEP needs of anyone still to be displaced, including displaced residential owners, residential tenants, business owners, and business tenants.
- e) TxDOT will make language assistance services available in a timely way for relocation and acquisition activities. If language assistance services are delayed such that individuals with LEP are not receiving the information, benefits, or other aspects of the relocation and acquisition activities on a timeframe consistent with individuals with non-LEP, then TxDOT will document in the Progress Reports as required by Article VI of this VRA instances where the delivery of language assistance services were delayed. Such documentation will also include the circumstance(s) for the delay, when the requested language assistance services were actually provided, and whether the delay resulted in the person with LEP being limited in their access to, or missing, any deadlines, benefits, or other important aspects of the program.
- f) TxDOT will document future interactions between TxDOT's resource providers and relocation contractors and persons with LEP, including, but not limited to: the person's name, the specific language(s) and dialects needed, how spoken and written language needs are identified, date language assistance services are requested, date language assistance services are provided, and how language assistance services were provided to that person.
- g) No later than 45 calendar days after signing this VRA, TxDOT will provide to FHWA for review and comment a Standard Operating Procedure (SOP) for TxDOT resource providers, relocation contractors, and TxDOT staff that describes the roles and responsibilities for each regarding interactions with persons with LEP. The SOP will include procedures for documentation, communication, notice of free language assistance services to persons with LEP, language access complaints, and issue resolution. FHWA shall provide comments within 15 calendar days of receipt of the TxDOT SOP. Within 30 days of receipt of FHWA's comments, TxDOT and FHWA will resolve outstanding comments.
- h) In situations where individuals with LEP prefer to bring interpreters of their choosing, after they are told that TxDOT can provide a competent interpreter at

no cost, TxDOT will have an agency-sponsored interpreter present to ensure accuracy and completeness of the information presented.

- i) TxDOT will ensure that LEP service resources and relocation contractors provide all translated relevant documents and materials, including but not limited to legal documents, in the displacee's preferred language prior to requesting signatures or other legal commitments from the displacee.
- j) Within 120 calendar days of signing this VRA, TxDOT will develop and conduct LEP training for relevant staff, contractors, and anyone providing language assistance services related to the NHHIP on TxDOT's behalf regarding the implementation of the agency's written language assistance plan. The training will include, but not be limited to, language access requirements, the roles and responsibilities of consultants, documentation, and communication. The training will be reviewed and updated when the SOP required under this VRA is completed, and as needed at least every other year. TxDOT will report on the training materials provided and the number of TxDOT staff, contractors, or others trained in the Progress Reports required by VRA Article VI.
- k) Within 120 days of signing this VRA, TxDOT will conduct a survey to identify displaced residents and businesses who have already been relocated under the Project in order to assess the sufficiency of translation, interpretation, and other language assistance services. Based on the results of that survey, TxDOT will notify, both verbally (by phone or in person) and in writing in the respondent's preferred language, those who responded that they did not receive sufficient language assistance services that they have the right to supplemental language assistance services, and TxDOT will provide such supplemental language assistance services to those respondents who request them. Within 60 days of signing this VRA, TxDOT will provide to FHWA a draft survey of displaced residents and businesses. FHWA will provide comments back to TxDOT within 15 days of receipt of the draft survey. Within 15 days after receiving FHWA's comments, TxDOT and FHWA will resolve all comments and finalize the survey. Within 90 days of identifying through the survey those displaced residents and businesses who requested supplemental language assistance services, TxDOT will provide such identified displacees with remedial assistance to reduce the potential for any disparate impacts. Beginning 150 days after signing this VRA, TxDOT will provide a report to FHWA on its efforts detailing its compliance with this provision every 60 days until the provision of supplemental LEP services to all who request them and any additional activities resulting therefrom are completed.
- l) TxDOT shall provide competent language assistance services to any person who had been identified as needing language assistance services or otherwise requesting language assistance services to ensure contemporaneous interpretation during all public engagement opportunities. Language assistance services will be

made available proactively, at no cost, and in a timely manner for that engagement to support the facilitation of meaningful public engagement.

## **V. Section 508 Compliance**

TxDOT will submit all required plans, reports, and other information required by this VRA in a format that complies with the Information and Communication Technology Accessibility Standards under Section 508 of the Rehabilitation Act of 1973 (available at [Revised 508 Standards and 255 Guidelines \(access-board.gov\)](#)).

## **VI. Progress Reports**

Beginning 180 days after signing the VRA and every 180 days thereafter, TxDOT will submit a Progress Report to FHWA detailing the implementation of TxDOT required actions under Article IV of this VRA. Each Progress Report must include an update on all required TxDOT Actions: Reducing the NHHIP Footprint During Detailed Design; Displacements, Relocations, Housing, and Other Community Impacts; Flooding; Air Quality Mitigation; Structural Caps; Parks, Open Space, Trails, Pedestrian and Bicycle Facilities; Access During Construction; and Meaningful Access for Persons with Limited English Proficiency (LEP). The Progress Reports must include any required information specified in this Agreement as outlined in Exhibit D. TxDOT will submit all Progress Reports and any other information required by the VRA to the FHWA Texas Division Office. TxDOT and FHWA will agree on the Progress Report format prior to submission of TxDOT's first required report. FHWA will review and provide timely comments on each progress report to TxDOT.

## **VII. Progress Meetings**

Each year, TxDOT and FHWA shall meet at least once to discuss the progress of the implementation of this VRA.

## **VIII. Abeyance**

The FHWA will hold in abeyance further actions regarding the complaints filed in the matter (described above) during the performance of this Agreement. At any time, should TxDOT not perform, or ensure performance, under this Agreement, FHWA will notify TxDOT as stated in Article IX of this VRA.

## **IX. Enforcement**

TxDOT agrees to implement the provisions of this VRA according to the timelines in this agreement as summarized in Exhibit D. If TxDOT, through its actions or inaction, fails to implement any part of this VRA or fails to cooperate with FHWA documentation and information requests, FHWA may invoke its authority pursuant to 49 C.F.R. § 21.13, et seq., for failure or threatened failure to comply with Title VI of the Civil Rights Act of 1964. If at any time FHWA makes such a determination, then FHWA shall notify TxDOT in writing. The notice shall include a statement of the basis for FHWA's determination and shall allow TxDOT thirty (30) days to either; (a) explain in writing the

reason for the actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement or (b) dispute the accuracy of FHWA's findings. If TxDOT does not respond to the notice, or if, upon review of TxDOT's response, FHWA determines that TxDOT has not complied with the terms of the Agreement, FHWA may pursue remedies authorized by law, including, but not limited to, issuing a Letter of Finding regarding the Title VI complaints described in Article I of this VRA, the withholding of Federal highway funds, and referral to the Department of Justice for enforcement action. 49 C.F.R. § 21.13(a); 28 C.F.R. § 42.413(c).

FEDERAL HIGHWAY ADMINISTRATION

/s/ Shailen P. Bhatt

Dated: March 6<sup>th</sup>, 2023

Shailen P. Bhatt

Administrator

TEXAS DEPARTMENT OF TRANSPORTATION

/s/ Marc D. Williams

Dated: March 3<sup>rd</sup>, 2023

Marc D. Williams, P.E.

Executive Director