

Special Experimental Project No. 14 (SEP-14) Workplan to Evaluate the Use of Local Labor Hiring Preferences

Texas Department of Transportation

Location: US 175 from East of Bexar St. to IH 45

Federal-aid Project Number: NH1402(025)

Local Project Number: 0197-02-108

A. Introduction

The Texas Department of Transportation (TxDOT) submits this work plan for FHWA review and approval as a design-bid-build project incorporating a Local Labor Hiring Preference (LLHP) contract provision. This workplan is provided under the Notice: Contracting Initiative announced in the March 6, 2015 Federal Register.

Historically, FHWA prohibited its recipients from using LLHP provisions that do not directly relate to the bidder's performance of work. TxDOT is requesting FHWA's approval for the use of these provisions on a Federal-aid project for the construction of the S.M. Wright project under the experimental authorities under 23 U.S.C. 502 and SEP-14.

B. Purpose

Many local governments recognize the importance of encouraging local hiring through their capital program construction contracts. While FHWA has viewed such requirements as a constraint on competition, the Contracting Initiative announced in March 2015 provides Federal-aid recipients with an opportunity to evaluate such requirements on federally assisted construction projects on a pilot-project basis. These requirements have a variety of worthwhile local objectives, such as ensuring that the communities in which the projects are located benefit from the jobs that result from the investment of their funds, particularly for workers in low income areas.

This pilot project will enable TxDOT to evaluate the effectiveness and efficiency of the use of Federal-aid and local funds in achieving the desired objectives.

C. Scope

The S.M. Wright Project is a multiple phase project in Dallas, Texas that will first connect the US 175 C.F. Hawn freeway directly to Interstate 45, removing freeway traffic from the S.M. Wright freeway portion of US 175. Subsequent phases will reconstruct the S.M. Wright freeway portion to a boulevard street. This first project phase is the subject of this request. The project was previously let in September 2014 with a low bid of \$96,431,460.00. Due to right of way and utilities not being clear, TxDOT has terminated the original contract and will let the project a second time in February 2016. Approximately, \$89.4 million of the total project amount will be funded by FHWA. This project, having been let once without using LLHP provisions, is an ideal candidate for this initiative since there can be a direct comparison of bid prices with and without the LLHP provisions.

In addition, TxDOT proposes to use a contract provision that requires 15% of all contract labor hours be performed by residents of the area surrounding the project. The 15% requirement has been established based on an analysis of certified payroll data from recent TxDOT projects of comparable construction size, and by estimating the fraction of man hours that are performed by job classifications requiring

minimal prior construction experience and/or training. The local area is defined as the area to the South of downtown Dallas Texas bordered by Interstate 30 to the North, Loop 12 to the East and South and Interstate 35E to the West (See Attachment A). The Contractor will receive an incentive of \$4.50 per hour for each local labor hour used on the project with a not to exceed incentive amount of \$500,000. See Attachment B for additional details. Funding for this program will be as allowed by 23 U.S.C. 504(e).

D. Schedule:

An estimated schedule for the project follows:

- Advertisement: October 2015
- Letting: February 10, 2016
- Award: February 25, 2016
- Project completion: December 2019

E. Evaluation Measures:

The Texas Department of Transportation will evaluate the following criteria (as referenced in USDOT Q&A # 21), to determine the effectiveness and efficiency of this pilot project:

1) Describe the project(s), including the amount of FHWA funding involved in the as well as the estimated total project cost.

See the "Scope" section above.

2) Describe the proposed contracting requirement that may otherwise be found to be inconsistent with the general requirement for full and open competition.

The Texas Department of Transportation has traditionally not used LLHP provisions in its contracts since such provisions were limited by the competitive bidding requirements of Title 23 U.S.C.; however, TxDOT is interested in evaluating this requirement on a Federal-aid project on a pilot project basis under SEP-14. The project will utilize a requirement that 15% of all contract labor hours be performed by residents of the area surrounding the project (see Attachment B for details). The surrounding project area encompasses several Texas 'Enterprise Zones'. The 'Enterprise Zones' are considered 'economically distressed' by the state of Texas (Attachment C).

3) Describe how the applicant will evaluate the effects of relevant contracting requirements on competitive bidding. In doing so, the applicant should, at a minimum, provide comparisons of bids received for the projects utilizing the relevant contract requirements to other projects of similar size and scope and in the same geographic area not utilizing such requirements. If a reduction in the pool of bidders is evident, explain the potential offsetting benefits resulting from the use of the requirement.

This project will provide a unique and rare opportunity to compare the effects of LLHP, since this project was let in September 2014, but had to be terminated due to right of way and utilities not being clear; and, TxDOT will let the project a second time in February 2016 with LLHP provision. These two lettings will provide a direct comparison of the effect of the LLHP provision since that will be the only significant change to the project between the two lettings. This comparison will be provided based on the following evaluation criteria:

- The number of bidders (including the location of the home office) - An explanation will be provided for the increase or decrease in the number of bidders. Specific competitive reasons (e.g. other bidding opportunities, apparent risk, etc.) will be provided for the increase / decrease in competition. The evaluation will discuss the impact on the number of bids received by local and non-local firms.
- A comparison of the first and second letting - An evaluation of the bid prices from each bidder will be compared to the bid prices received on the first letting. Average bid price will be compared for both lettings as well as changes in bid prices from bidders who bid in both the first and second lettings.
- The number of bidders submitting bids on the pilot project will be compared with the number of bidders submitting bids on projects with a similar size and scope. An explanation will be provided for the increase or decrease in the number of bidders.
- The impact of the LLHP requirement on the local area – An analysis will be performed on the economic benefit of the LLHP to the local economy. Wages paid to local laborers will be correlated to find the benefit to the local economy using methodologies developed for American Recovery and Reinvestment Act programs or similar methodologies.

4) Describe and quantify how the proposed contracting requirement would lead to increases in the effectiveness and efficiency of Federal funding for the project(s).

An analysis of the effectiveness and efficiency of the LLHP requirement will be made through an analysis of the following information:

- The prime contractor will be interviewed at the conclusion of the contract to obtain its opinion of the effectiveness and efficiency of the LLHP provision on its construction operations and to discuss any potential concerns or recommendations for the program. This will provide one measure of the relative efficiency of the contractor in meeting the contract requirements.
- TxDOT will provide an evaluation of the potential increase in the pool of skilled labor available to all contractors.
- A comparison of bid prices - An evaluation of the unit prices for ten bid items with the highest total value on the pilot project will be compared to unit prices for projects with a similar size and scope.

TxDOT at its discretion may utilize the services of professional researchers from state Universities of Texas to collect and analyze quantitative and qualitative data independently.

5) Describe and quantify how the proposed experimental contracting technique would protect the integrity of the competitive bidding process either in connection with the particular contract or when considered over the long term for that agency's program.

TxDOT is committed to maintaining the integrity of the competitive bidding process. To that end, TxDOT will use its standard letting process to let this project. TxDOT will also provide outreach to potential bidders prior to letting to familiarize them with the new requirement and provide any resources necessary for them to connect with the community including involving local community leaders, churches and advocacy organizations.

6) Describe whether or not the proposed contracting requirement has been the subject of litigation or whether litigation surrounding the use of the requirement has been threatened.

The proposed contracting requirement has not been used by TxDOT prior to this.

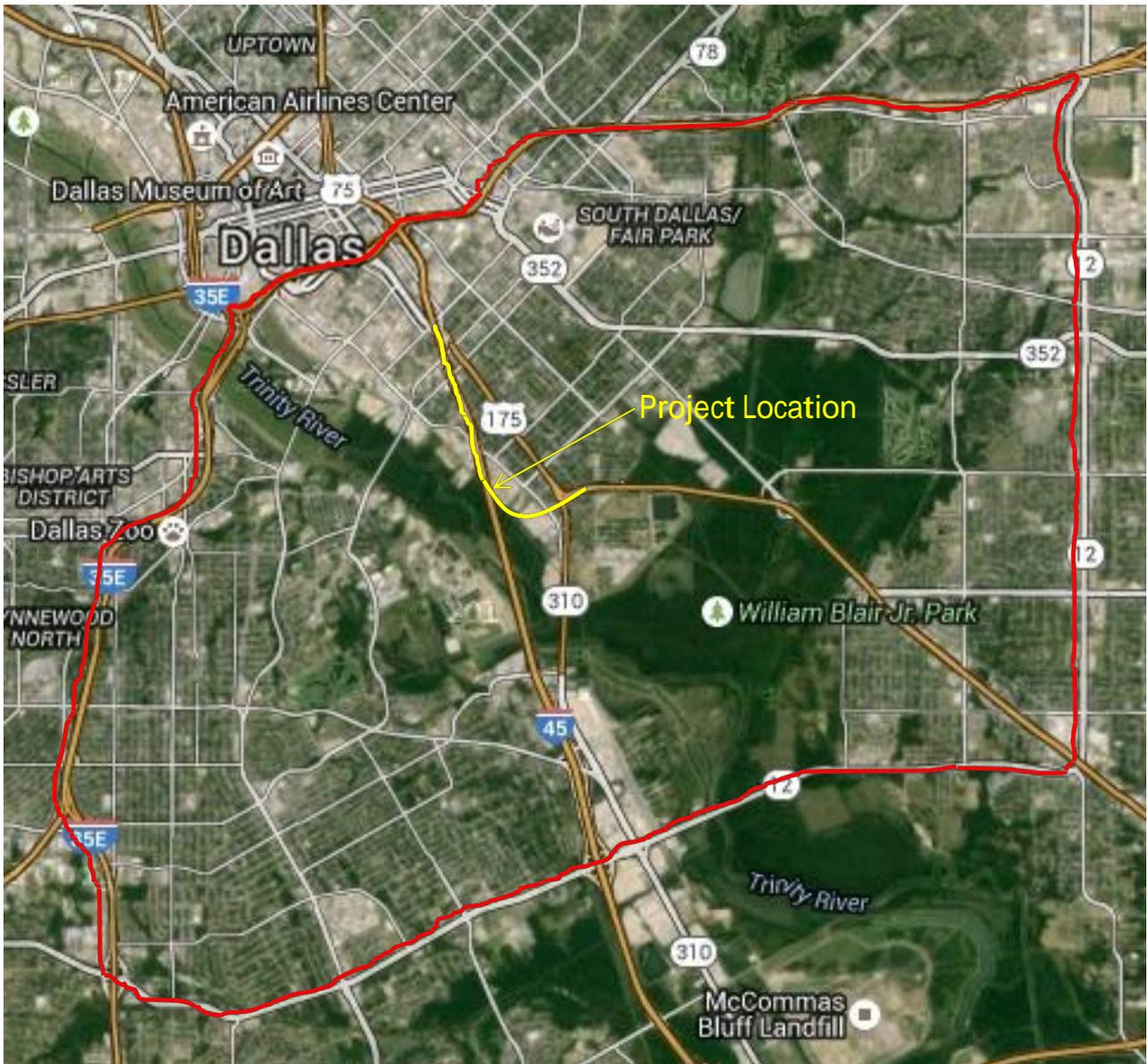
F. Reporting

The Texas Department of Transportation will prepare and submit initial, quarterly and final evaluation reports for the project to the FHWA Texas Division. The initial report will be prepared shortly after the award of contract. The initial report will include a description of any concerns raised by stakeholders following approval of the proposal and any identifiable effects on the bids received.

Quarterly reports will be submitted documenting the progress of project, including efforts made to hire local labor and the number of local labor hours utilized to date.

A final report will be submitted upon completion of the contract. The final report will contain an overall evaluation of the contracting technique along with any suggestions and recommendations for improving the process.

Attachment A - Local Area Map



Attachment B – LLHP Special Provision

2004 Specifications

SPECIAL PROVISION

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Local Labor Hiring Program

1. **Description.** The primary objective of this Special Provision is to promote the use of local labor forces in the execution of this project. The Local Labor Hiring program applies only to workers covered by the prevailing wage requirement and whose work hours are documented in the Certified Payroll Reports.
2. **Program Requirements.** Fulfill all of the requirements of the Local Labor Hiring Program including the maintenance of records, submittal of periodic reports and supporting data documenting the program performance. Employ Local Labor for at least 15% of the total labor used on the project. The labor force will be calculated based on the number of man-hours worked by Local Laborers on the project compared to the total number of man-hours worked for the project.
3. **Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.
 - a. Contractors may receive credit toward the Local Labor Hire goal for work performed by his/her own forces and work subcontracted. The Contractor must make a good faith effort to meet the goal.
 - b. A Contractor who cannot meet the contract goal of at least 15% Local Labor, in whole or in part, shall make adequate good faith efforts to obtain Local Labor participation. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - Soliciting through all reasonable and available means (e.g. advertising, written notices or job fairs).
 - Negotiating in good faith with interested Local Laborers. Evidence of such negotiations includes the names, addresses, and telephone numbers of Local Laborers that were considered; a description of the information provided regarding the employment; and evidence as to why an agreement could not be reached for a Local Laborer to be employed.
 - A Bidder using good business judgment would consider a number of factors in negotiating with Local Laborers, and would take the wage rate and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using Local Laborers is not in itself sufficient reason for a bidders' failure to meet the Contract Local Labor Hire goal as long as such costs are reasonable. Also, the ability or desire of the Contractor to perform the

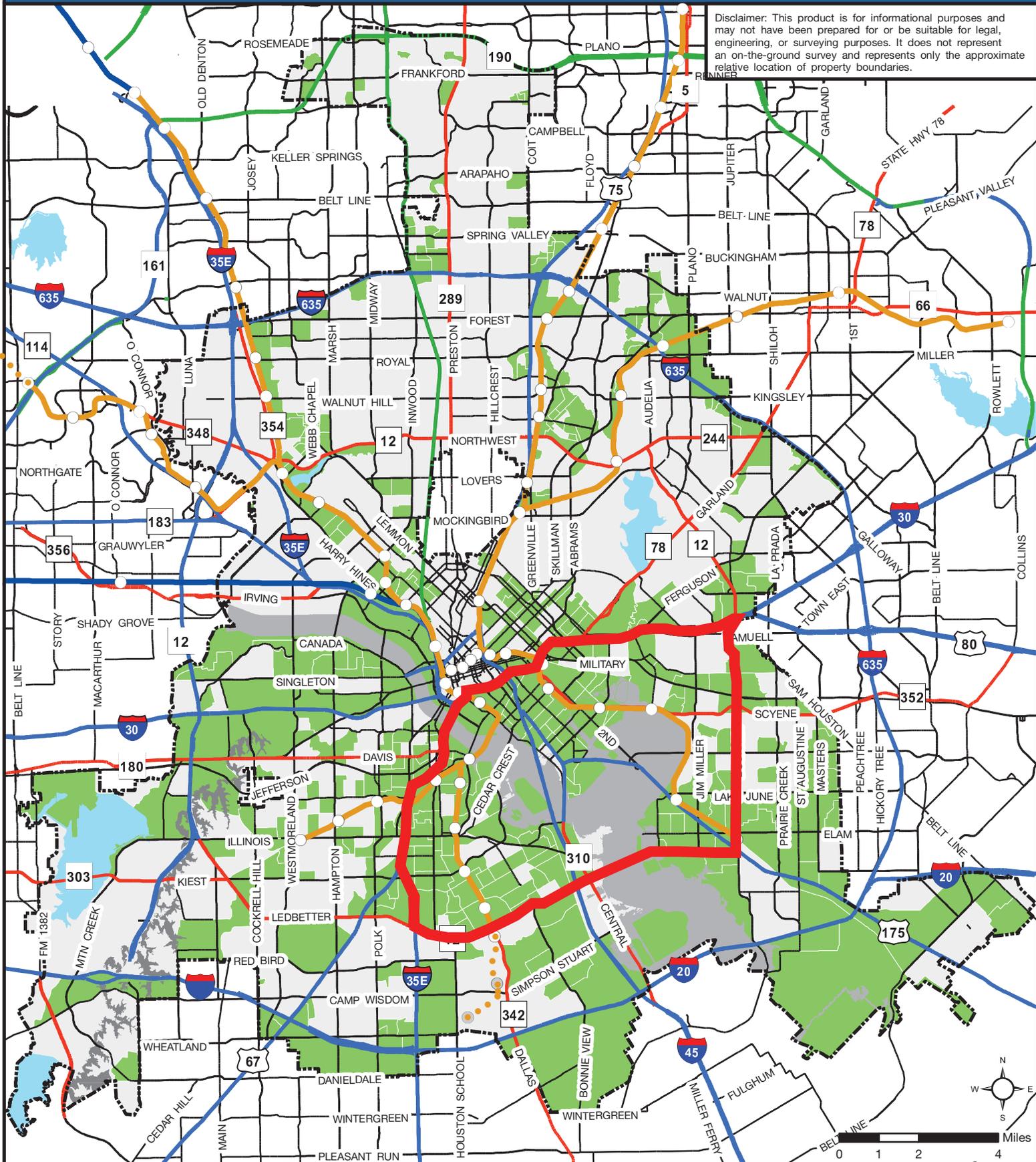
work of the Contract with its own existing work force does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to provide higher wage rates to Local Laborers if the wage rate difference is excessive or unreasonable.

- Effectively using the services of available community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of Local Laborers.

- 4. Eligibility of Local Laborers.** A Local Laborer is an individual that resides within the area bounded by I-30 to the North, Loop 12 to the East and South and I-35 to the West as illustrated on the Local Area Map provided as an attachment to this Special Provision. Local laborers may be employed by the prime contractor or any tier subcontractor. Local Laborers whose wage is paid in part or whole by another governmental program will not be eligible for reimbursement, but will be counted toward the percentage of total local labor used. Local Laborers must provide a valid Texas Driver's License or a comparable form of identification for address verification. In addition, a utility bill or a comparable form of proof of residency must be provided that proves the worker resides at the stated address. The Contractor must provide this documentation with the first request for reimbursement for each new local laborer.
- 5. Reimbursement.** The Contractor will be reimbursed \$4.50 per hour of Local Labor paid. Local Laborers must be employed and work on this contract in order to be reimbursed. Reimbursement will be made monthly based on the payrolls submitted for the previous month. The Contractor must provide an electronic spreadsheet monthly showing names, daily hours worked, rate of pay and total amount paid for each laborer on the project. The spreadsheet should also indicate which laborers are certified as Local Labor and which are not. The total reimbursement will be no more than \$500,000.
- 6. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided the required amount of Local Labor or by documenting good faith effort as described above. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract."

City of Dallas: Enterprise Zones

Disclaimer: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



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Legend

Enterprise Zones	DART Light Rail	Tollway	Flood Plain
City of Dallas	Trinity Railway Express	Highway	Lake
Rail Station	Future DART Light Rail	Arterial	
Future Station	Freeway	Escarpment	

Source: Enterprise Zone Designations - Texas Office of the Governor, 2012; All Other Data - City of Dallas, 2013