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STATE OF TEXAS §  
COUNTY OF DALLAS §

**AN INTERLOCAL COOPERATION AGREEMENT  
("Agreement")**

**BY AND BETWEEN**

**DALLAS COUNTY  
("County")  
ON BEHALF OF THE  
DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY  
("DA")**

**AND**

**THE NORTH TEXAS TOLLWAY AUTHORITY  
("NTTA")**

**WHEREAS**, the County, a political subdivision of the State of Texas, is interested in establishing a new prosecutor position dedicated to Justice of the Peace ("JP") court matters; and

**WHEREAS**, the NTTA, a political subdivision of the State of Texas established by Chapter 366 of the Transportation Code, desires to partially fund a prosecutor position dedicated to JP traffic court cases filed by the NTTA; and

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, authorizes interlocal cooperation agreements between local governments to perform governmental functions and services; and Section 791.011 of the Texas Government Code does permit interlocal agreements between local governments to perform governmental functions and services permitted under the law; and

**WHEREAS**, both parties agree to jointly fund a new full-time prosecutor position in the DA's office to prosecute all JP related matters, with half of the time dedicated to prosecute traffic cases filed by the Department of Public Safety ("DPS") on behalf of the NTTA; and

**WHEREAS**, both parties agree to appoint the DA's office full supervisory and administrative authority over this full-time prosecutor position

**NOW, THEREFORE**, it is agreed as follows:

**1. PURPOSE**

This Agreement is by and between the County and the NTTA. The County agrees to create an Assistant District Attorney ("ADA IV") prosecutor position to provide Prosecution Services in Justice of the Peace courts for traffic cases filed therein by law enforcement officers for offenses including those occurring on NTTA roadways and ramps (the "Facilities"). The DA shall retain full

supervisory and administrative authority over this ADA IV prosecutor and contribute one half of the salary and benefits to fund this position. The NTTA agrees to pay the County for one-half of the cost to fund this ADA IV prosecutor, subject to the terms and conditions herein.

## **2. PROSECUTION SERVICES**

- A. Prosecution Services shall include the prosecution of all JP related matters with half of the time dedicated to prosecute traffic cases filed by the DPS for offenses occurring on NTTA Facilities. The DA's office agrees to cooperate with the NTTA and diligently pursue prosecution of all traffic and misdemeanor citations occurring in Dallas County issued by the DPS in Dallas County.
- B. The ADA IV assigned to prosecute cases shall have the necessary experience and competency to adequately present evidence, question and cross-examine witnesses, and argue cases before the court, including non-jury, jury or appellant trials, whether the defendant is represented by legal counsel or is acting pro se.
- C. The ADA IV will (1) take into consideration any comments from the NTTA regarding disposition of pending cases; (2) meet and prepare witnesses; (3) be knowledgeable of applicable laws; and (4) keep the NTTA reasonably apprised of the disposition of cases.
- D. The ADA IV shall exercise its prosecutorial discretion in consideration of the obligations imposed under (1) Article 2.01 Duties of District Attorneys, the Code of Criminal Procedure; (2) Traffic violations under section 366.178 of the Texas Transportation Code; and (3) Other applicable traffic laws and rules of evidence.
- E. The ADA IV shall advise the NTTA of any efforts or procedures of the NTTA which may compromise the successful and just prosecution of a case filed on behalf of the NTTA.

## **3. TERM**

This Agreement shall be effective for one year from the date executed below, and can be renewed annually upon mutual, written consent of both parties for four additional periods of one (1) year each, unless terminated earlier pursuant to the provisions herein.

## **4. DELIVERY OF PROSECUTION SERVICES**

The ADA IV shall provide Prosecutor Services of all JP related matters with half of the time dedicated to prosecute traffic cases filed by the DPS which occur on the NTTA Facilities.

## **5. PARTY RESPONSIBILITIES**

- A. County Responsibilities: The County shall furnish all labor, equipment and supplies required to hire and employ an ADA IV to provide Prosecution Services to the NTTA as contemplated herein. The planning, organization, assignment, direction and supervision of the ADA IV shall be at the sole discretion of the DA.

- B. **NTTA Responsibilities:** The NTTA shall fund fifty percent (50%) of the ADA IV position, shall fully comply with its obligations herein and shall timely furnish upon request, without additional cost, any and all witnesses, records, reports or other items or persons necessary to aid in the prosecution of those cases filed by the NTTA.

#### **6. LIABILITY**

All parties agree to be responsible for their own negligent acts or omissions, or other tortious conduct, in the course of performance of this Agreement without waiving any sovereign immunity, governmental immunity or available defenses available to the parties under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. All parties agree that any such liability or damages occurring during the performance of this Agreement caused by the joint or comparative negligence of the parties, or their employees, agents or officers, shall be determined in accordance with comparative responsibility laws of Texas.

By its execution of this Agreement, the County and NTTA, each acknowledge and knowingly and voluntarily agree that neither the execution of this Agreement, nor the conduct, act or inaction by any person in the execution, administration or performance of this Agreement constitutes or is intended to constitute a waiver of NTTA's or the County's immunity from suit and liability.

#### **7. PERSONNEL**

- A. **Employee Status:** The ADA IV employed by the County to provide Prosecution Services shall be considered a full-time County employee.
- B. **Payments:** NTTA shall not be liable for direct payments of salary, wage, benefits or compensation to the ADA IV.

#### **8. FEES**

- A. **Payment:** The NTTA shall pay an amount, not to exceed \$37,000, for one half the cost of one (1) ADA IV prosecutor, which costs shall include but not be limited to, salary, benefits and other expenses for year one of this Agreement. The fee shall be paid in one annual lump sum to County within thirty (30) days of notification to the NTTA that an ADA IV prosecutor has been hired and the cost for this prosecutor in fulfillment of this Agreement. Upon renewal of this Agreement, NTTA shall pay one half of the costs to fund the position within thirty (30) days of receipt of an invoice which shall detail the costs of the ADA IV prosecutor position for that upcoming year. In the event that the County terminates this Agreement, the NTTA shall be entitled to reimbursement of those funds not expended toward the cost of funding one ADA IV prosecutor for the remainder of the current term. All fee payments shall be paid from current revenues of the responsible governmental entity.
- B. **Increased Costs.** If the cost of providing Prosecution Services to the NTTA, including one half of the cost of funding one ADA IV prosecutor, increase during the term of this Agreement, the NTTA shall be responsible for one half of such increased costs. County shall provide the NTTA with thirty (30) days written notice of any such increase and

shall expect payment from the NTTA within thirty (30) days from invoice.

**9. TERMINATION**

This Agreement may be terminated at any time without cause by either party upon sixty (60) days prior written notice to the other party.

**10. NOTICE**

Any notice required or permitted herein shall be deemed to have been given when hand delivered or three (3) days after being sent US Mail, certified, return receipt requested, to the following addresses:

**COUNTY**

Attn: Kimberly Key Gilles  
Assistant District Attorney  
Dallas County Criminal DA's Office  
Frank Crowley Courts Building  
133 N. Industrial Blvd., LB 19  
Dallas, TX 75207  
214-653-3600

**NTTA**

Attn: Marcelle Sattiewhite Jones  
General Counsel  
North Texas Tollway Authority  
5900 W. Plano Parkway, Suite 100  
Plano, Texas 75093  
214-461-2000

**11. MISCELLANEOUS PROVISIONS**

- A. Binding Agreement and Authority. This Agreement has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties. Each person executing this Agreement on behalf of each party represents and warrants that they have full right and authority to enter into this Agreement.
- B. Amendment. This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.
- C. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue of any legal action filed by either NTTA or the County shall lie exclusively in Dallas County, Texas. Nothing herein is intended to benefit any third party beneficiaries.
- D. Immunity. This Agreement shall be expressly subject to NTTA's Governmental Immunity and the County's Sovereign Immunity, Title 5 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE, and all other applicable federal and State law.
- E. Severability. In the event that one (1) or more of the provisions herein shall be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
- F. Default/Waiver. It is not a waiver of default if the non-defaulting party fails to

immediately declare a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or as provided by law.

- G. **Entire Agreement.** This Agreement, including all exhibits and addendum, constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.
- H. **Assignment.** The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer this Agreement or any interest in this Agreement without prior written authorization from the other.
- I. **State Funded Project.** If this Agreement is funded in part by the State of Texas, any statute, rule, regulation, grant, contract provision or other law, rule, regulation or provision that imposes additional or greater requirements than stated herein, and that is directly applicable to the services rendered herein, shall be complied with by the responsible party without additional cost or expense to the County.
- J. **Fiscal Funding Clause.** Notwithstanding any provisions contained herein, the obligations of County under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the term. Except as provided in Section 8 of this Agreement, the NTTA shall have no right of action against the County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, shall provide funds from a separate source or may terminate this Agreement by written notice to NTTA at the earliest possible time prior to the end of its fiscal year.
- K. **Independent Parties.** The County and the NTTA each acknowledge that neither party is an agent, employee nor joint enterprise of the other, and that each party is responsible for its own actions, forbearance, negligence and deeds, and for those of its elected officers and/or employees, in conjunction with this Agreement and in accordance with Texas law.

EXECUTED this the 18<sup>th</sup> day of OCTOBER, 2002.

COUNTY OF DALLAS:

BY: *Margaret Keliher*  
Margaret Keliher  
County Judge

NTTA:

BY: *Jerry Hiebert*  
Jerry Hiebert  
Executive Director

RECOMMENDED:

BY: *Bill Hill*  
Bill Hill  
Criminal District Attorney  
Dallas County

ATTESTED:

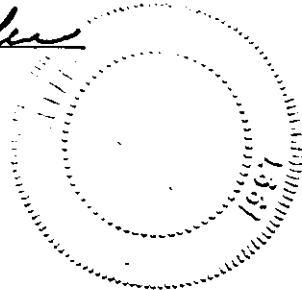
BY: *Ruby Franklin*  
Ruby Franklin  
Secretary

APPROVED AS TO FORM\*:

BY: *Janet R. Ferguson*  
Janet R. Ferguson  
Chief, Civil Section  
Assistant District Attorney

APPROVED AS TO FORM:

BY: *Marcelle S. Jones*  
Marcelle S. Jones  
General Counsel



\*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

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