

ORDER NO: 2012 0938

DATE: May 29, 2012

STATE OF TEXAS |

COUNTY OF DALLAS |

**BE IT REMEMBERED**, at a regular meeting of Commissioners Court of Dallas County, Texas, held on the 29<sup>th</sup> day of May, 2012, on a motion made by Mike Cantrell, Commissioner of District 2, and seconded by Dr. Elba Garcia, Commissioner of District 4, the following Court Order was adopted:

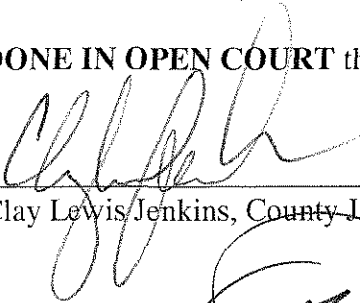
**WHEREAS**, the Dallas County Commissioners Court was briefed by the Office of Budget and Evaluation on May 22, 2012 concerning Dallas County's Interlocal Agreement with the North Texas Tollway Authority (NTTA) concerning Senate Bill (SB) 469; and

**WHEREAS**, Senate Bill (SB) 469, which revised the North Texas Tollway Authority's (NTTA) toll collection process for Non-TollTag customers, was passed by the 82<sup>nd</sup> Legislature and became effective September 1, 2011; and


**WHEREAS**, the Interlocal Agreement between the NTTA and Dallas County establishes the obligations of the NTTA in cooperation with the Department of Public Safety, the obligations of Dallas County and Dallas County Justice of the Peace Courts, and the mutual obligations of the NTTA and the County in cooperating in the implementation of the toll collection process established in SB 469.

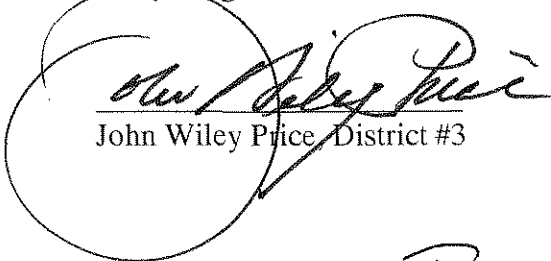
**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Dallas County Commissioners Court does hereby authorize the County Judge to sign the Interlocal Agreement between Dallas County and the North Texas Tollway Authority (NTTA) for the implementation of Senate Bill (SB) 469.

**DONE IN OPEN COURT** this the 29<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
Clay Lewis/Jenkins, County Judge

**ABSENT**  
\_\_\_\_\_  
Maurine Dickey, District #1

  
\_\_\_\_\_  
Mike Cantrell, District #2

  
\_\_\_\_\_  
John Wiley Price, District #3

  
\_\_\_\_\_  
Dr. Elba Garcia, District #4

Recommended by: Ryan Brown  
Ryan Brown, Budget Officer

**AGREEMENT BETWEEN  
DALLAS COUNTY, TEXAS  
AND THE NORTH TEXAS TOLLWAY AUTHORITY  
FOR IMPLEMENTATION OF SB 469**

This agreement (the "Agreement") is made between the Dallas County, Texas, a political subdivision of the State of Texas (hereinafter referred to as "Dallas County"), and the North Texas Tollway Authority, a political subdivision of the State of Texas (hereinafter referred to as the "NTTA"), as follows:

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with each other to perform governmental functions and services under the terms thereof;

**WHEREAS**, the NTTA is created under Chapter 366 of the Texas Transportation Code ("TTC") and authorized under TTC §366.173 to impose and collect tolls on its own turnpike and under TTC §366.038 to provide, for reasonable compensation, tolling services, as defined in that section, for toll projects within its boundaries operated by other entities;

**WHEREAS**, Dallas County is created under Texas Constitution, article 9, section 1, and Justice of the Peace Courts, including those for Dallas County, are created and authorized under Texas Constitution, article 5, sections 18 and 19, and Chapter 27 of the Texas Government Code;

**WHEREAS**, Dallas County and the NTTA are political subdivisions of the State of Texas and are engaged in the provision of governmental services for the benefit of their citizens;

**WHEREAS**, the parties desire to enter into an agreement under which Dallas County and the NTTA will develop procedures to optimize the implementation of SB 469, which was passed by the 82<sup>nd</sup> Texas Legislature and became effective on September 1, 2011; and

**WHEREAS**, Dallas County and the NTTA have current funds available to satisfy any fees and cost required pursuant to this Agreement.

**NOW, THEREFORE**, Dallas County and the NTTA, for and in consideration of the recitals set forth above and the individual and mutual obligations, terms and conditions below, agree as follows:

**I. TERM**

This Agreement shall be effective when signed by the last party whose signing makes the Agreement fully executed (the "Effective Date") and will remain in full force until terminated in accordance with Section V. TERMINATION.

## II. OBLIGATIONS OF THE NTTA

The NTTA agrees as follows:

- A. The NTTA will prepare, execute, and administer its toll collection activities in compliance with all applicable law, including TTC §366.178, as amended by SB 469.
- B. The NTTA, working with the Department of Public Safety (“DPS”), will ensure that only one offense arising out of an unpaid third notice of nonpayment is charged per citation. Except as provided in the following sentence, payment under a payment agreement will be defined as “the total owed on one or more third notices of nonpayment,” which shall consist of unpaid tolls and administrative fees permissible per applicable law. The NTTA agrees that collection fees will not be assessed as part of any offense subject to this Agreement.
- C. The NTTA will make every reasonable effort to communicate with each defendant/toll violator against whom a charge is filed under TTC §366.178 by the DPS in a Dallas County Justice of the Peace Court and, whenever reasonably possible, will meet personally with every defendant/toll violator who responds to citation prior to the defendant/toll violator appearing before the Court. The NTTA will endeavor to resolve the violation with a payment agreement that will obligate the defendant/toll violator to pay an amount sufficient to satisfy all outstanding tolls and administrative fees.
- D. The NTTA acknowledges and agrees that any payment agreement entered into by the NTTA and a defendant/toll violator shall evidence, constitute, and satisfy any requirement that the Court collect the unpaid tolls, administrative fees, and third-party collection service fees incurred on or before the date the fines and court costs are collected by the Court, as provided in TTC §366.178(g).
- E. To further ensure that the amount sought by the NTTA will not impede the Courts’ performance, including their ability to recover their fines and costs, the NTTA agrees that it will structure its contracts with third-party collection services to ensure that no fees will be recoverable by such services, or otherwise be the responsibility of the Courts to collect, regarding violations filed and pending in a Dallas County Justice of the Peace Court.
- F. To further ensure that cases filed by the NTTA and the DPS in the Dallas County Justice of the Peace Courts are being properly advanced and that those Dallas County resources are being utilized appropriately, the NTTA agrees to maintain its practices of (1) providing a double review of all images to ensure license plate accuracy, (2) waiving all fees if a license plate is found to be associated with a TollTag, (3) waiving all fees and recommencing the invoice process if an address used to invoice a registered

owner is later found to be incorrect, and (4) verifying by two separate sources all driver's licenses and addresses prior to citation.

### **III. OBLIGATIONS OF DALLAS COUNTY**

The County agrees as follows:

- A. In an effort to achieve consistency and predictability for its citizens regarding the disposition of toll violation cases, but in no event limiting to any degree judicial or prosecutorial discretion in all such cases,
  1. Consistent with the parties' existing practice, the court clerk or other representative of the applicable Justice of the Peace Court or Dallas County will inform the defendants/toll violators of their opportunity to resolve all unpaid toll and administrative fees owed the NTTA by either payment of such amounts and/or the execution of a restitution agreement and, under appropriate circumstances, will inform the defendants/toll violators that such an arrangement will typically permit the Assistant District Attorney or other authorized representative to recommend to the Court a lower fine.
  2. The Justice of the Peace Courts with toll violations cases pending may offer the defendants deferred disposition, which allows the judge to suspend sentence, withhold adjudication, and defer the final disposition of the case. Additionally, the judge may impose a special expense fee (not to exceed the amount of the fine to be imposed). Upon proof that the defendant/toll violator has complied with all conditions of the deferred disposition order, which may include having made full and complete satisfaction of the payment agreement, the Court shall dismiss the case in accordance with Texas Code of Criminal Procedure Art. 45.051.
- B. To the extent allowed by law and pursuant to a separate agreement, Dallas County will post certain NTTA violators and scofflaws identified by the NTTA to "Dallas County Wanted" list.

### **IV. MUTUAL OBLIGATIONS**

The parties will cooperate in the following endeavors:

- A. Explore means, processes, and programs that will expedite, enhance, and simplify the payment of assessed tolls and administrative fees through methods such as computerized payment kiosks.
- B. Discuss and cooperate on legislative initiatives designed to enhance the NTTA's toll enforcement process and remedies and lessen resulting burdens on the Dallas County Justice of the Peace Courts and Dallas County

generally, including the evaluation and possible implementation of vehicle registration blocks and other enforcement tools against scofflaws more generally.

- C. Discuss and cooperate on possible future warrant roundups with Dallas County's law enforcement agencies.

## **V. TERMINATION**

Either party may terminate this Agreement at any time upon thirty (30) days written notice of termination to the other party, and, if not earlier terminated pursuant to the foregoing, this Agreement will terminate upon the tenth (10<sup>th</sup>) anniversary of the Effective Date.

## **VI. LIABILITY AND RELEASE**

In the event that a claim is filed, each party shall be responsible for its proportionate share of liability. Each party waives all claims against the other party resulting from the early termination of the Agreement.

## **VII. IMMUNITY**

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

## **VIII. ASSIGNMENT AND SUBLETTING**

Each party agrees to retain control and to give full attention to the fulfillment of this Agreement. A party may not sublet or assign this Agreement without the prior written consent of the other party. Each party further agrees that the performance of that party's obligations under this Agreement by a sublessee, assignee, or other entity shall not relieve the party from its full obligations as provided by this Agreement.

## **IX. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating a joint enterprise or the relationship of principal and agent, partnership, or joint venture between Dallas County and the NTTA.

## **X. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement between Dallas County and the NTTA regarding the specific subject matter hereof and supersedes all prior negotiations, representations, and/or agreements, either written or oral, pertaining to such subject. This Agreement may be amended only by written instrument signed by the appropriate representative of Dallas County and the NTTA.

## **XI. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and shall constitute one single agreement between the parties.

## **XII. HEADINGS**

The articles and sections used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

## **XIII. NOTICES**

Unless otherwise agreed to in writing, all notices are required to be given to either party in writing and delivered in person or sent via certified mail to the other party at the following respective addresses:

**Dallas County, Texas**  
411 Elm Street, Second Floor  
Dallas, Texas 75202

**North Texas Tollway Authority**  
5900 W. Plano Parkway, Suite 100  
Plano, Texas 75093

Attn: County Administrator

Attn: Executive Director

## **XIV. AUTHORITY TO SIGN**

The undersigned officer and/or agents of the parties hereto are properly authorized by each party's respective governing body and have the necessary authority to execute this Agreement on behalf of the parties. Additionally, each party represents that it is individually authorized to perform the governmental functions and services that are the subject of this Agreement.

## **XV. SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to law or contrary to any rule or regulation having the force and effect of law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice of termination.

## **XVI. VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Dallas County, and exclusive venue shall lie in said jurisdiction.

## **XVII. INTERPRETATION OF AGREEMENT**

This Agreement shall not be constructed more or less favorably for any party because of that party's role, or presumed role, in drafting the Agreement.

**XVIII. REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

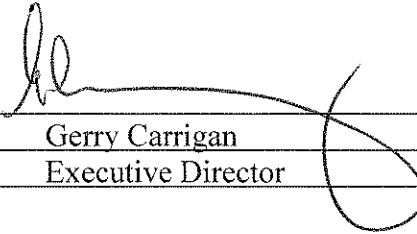
**XIX. SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors and assigns, to the other party to this Agreement.

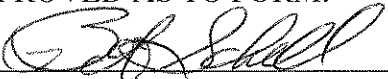
**EXECUTED** on the dates indicated below:

**NORTH TEXAS TOLLWAY AUTHORITY**

DATE: 4/26/2012

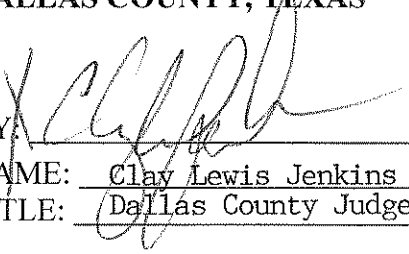
BY:   
NAME: Gerry Carrigan  
TITLE: Executive Director

APPROVED AS TO FORM:

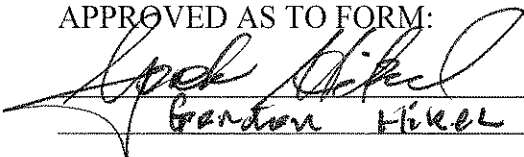
  
Bob Schell, Asst. Dir. Of Gen. Counsel

**DALLAS COUNTY, TEXAS**

DATE: May 29, 2012

BY:   
NAME: Clay Lewis Jenkins  
TITLE: Dallas County Judge

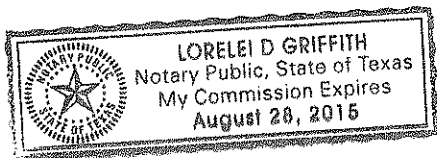
APPROVED AS TO FORM:

  
Gordon Hikel

**ACKNOWLEDGMENTS**

STATE OF TEXAS                   §  
   §  
COUNTY OF COLLIN               §

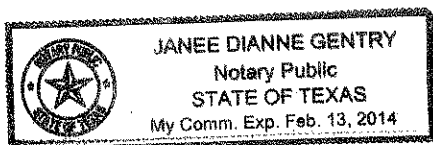
This instrument was acknowledged before me on the 26<sup>th</sup> day of April, 2012, by Gerry Carrigan, Executive Director for the **North Texas Tollway Authority**, a political subdivision of the State of Texas, on behalf of such political subdivision.



*Lorelei Griffith*  
Notary Public, State of Texas  
Print Name: Lorelei Griffith  
My commission expires: 8-28-2015

STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS               §

This instrument was acknowledged before me on the 29 day of May, 2012, by Clay Lewis Jenkins, County Judge of Dallas County, Texas, a political subdivision of the State of Texas, on behalf of such political subdivision.



*Janee Dianne Gentry*  
Notary Public, State of Texas  
Print Name: Janee Dianne Gentry  
My commission expires: 2-13-2014