

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**INTERLOCAL AGREEMENT AND LICENSE AGREEMENT
BY AND BETWEEN THE COUNTY OF COLLIN AND
THE NORTH TEXAS TOLLWAY AUTHORITY
REGARDING AERIAL PHOTOGRAPHY FOR
THE PHASE 4 EXTENSION OF THE DALLAS NORTH TOLLWAY**

THIS AGREEMENT (herein so called) is entered into effective as of the 4th day of March, 2004, by and between the COUNTY OF COLLIN, a political subdivision of the State of Texas (the "County"), and the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and a political subdivision of the State of Texas (the "Authority");

WITNESSETH:

WHEREAS, the Authority currently is improving, extending, and enlarging, or is planning to improve, extend, and enlarge, the Dallas North Tollway ("DNT") from south of SH 121 northward to U.S. Highway 380 ("US 380"), said improvement, extension, and enlargement to include the construction of tollway lanes, service roads, approaches, interchanges, ramps, toll facilities, bridges, and buildings, and, where appropriate, the modification of existing structures, all of said improvement, extension, enlargement, and modification being known as the Dallas North Tollway Extension Project, Phase 3 (the "Phase 3 Extension"), all in conformance with the provisions of the Regional Tollway Authority Act, Chapter 366 of the Texas Transportation Code, as amended (hereinafter referred to as the "Act");

WHEREAS, the Authority has assisted corridor planning initiatives that provide for the possible future construction of the DNT as a toll project from US 380 to FM 428 in Collin County;

WHEREAS, the County has determined that the future northward extension of the DNT beyond US 380 is in the best interest of its citizens, and the Commissioners Court of Collin County has passed Resolutions requesting that the Authority continue in its joint effort with the County to evaluate, and preliminarily plan and develop, a proposed a 6-mile extension of the DNT, to be known as the Dallas North Tollway Extension Project, Phase 4 (the "Phase 4 Extension"), which, if constructed, will extend the DNT from US 380 to FM 428;

WHEREAS, in furtherance of the evaluation of the Phase 4 Extension, the County intends to design and construct a single, bi-directional and two-lane road (which shall be designed for ultimate construction of a three-lane road) from US 380 to FM 428 (the "East Service Road"), which will become the northbound frontage road for the Phase 4 Extension if the turnpike main lanes for the Phase 4 Extension ultimately are constructed;

WHEREAS, in order for the County to undertake the design and construction of the East Service Road, design-level digital orthophotography within the proposed Phase 4 Extension alignment is required;

WHEREAS, the County and the Authority determined that there would be significant cost savings if they collaboratively obtained the orthophotography services required by their organizations from a single contractor and shared the resulting costs, and, accordingly, the Authority has obtained and accepted a proposal (the "Proposal") dated of even date herewith from MARKHURD, a contractor with the demonstrated competence and qualifications to

provide the orthophotography needed by the County and the Authority, to provide a portion of such services to the Authority for the length of the Phase 4 Extension, which is required by the County for the design and construction of the East Service Road; and

WHEREAS, the County has agreed to reimburse the Authority for the resulting costs under the Proposal and for the Authority to license certain resulting deliverables to the County, all as more particularly described, and for the consideration expressed, in this Agreement; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the County and the Authority have determined that mutual benefits and advantages can be obtained by formalizing their agreement as set forth below;

NOW, THEREFORE, in consideration of these premises and the mutual benefits and advantages accruing to the County and the Authority, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

OBLIGATIONS OF THE AUTHORITY

1.1. The Proposal. The Authority shall procure under a professional services agreement with MARKHURD and in accordance with the Proposal (the "Professional Services Agreement"), certain aerial photography and ground control and targeting required by the County for the Phase 4 Extension (the "Aerial Photography") to support the design and

construction of the East Service Road. The Authority shall be solely responsible for the exercise of its rights and the performance of its obligations under the Professional Services Agreement and the County shall have no obligations, rights or interests thereunder, except as provided in this Agreement. The Professional Services Agreement shall allow the Authority to grant a sublicense to the County to use the Aerial Photography in accordance with the terms and conditions set forth in Section 1.2 below. The representations and warranties granted by MARKHURD under the Professional Services Agreement with respect to the Aerial Photography shall extend to the County.

1.2. The License. Upon the County's full performance of its obligations under this Agreement, including the payment of the "Reimbursement Amount" described in Section 2.1 below as a royalty, the Authority shall be deemed to have granted the County a fully paid, non-exclusive, perpetual license (the "License") to use, reproduce, adapt, modify or enhance the Aerial Photography in the completion of certain orthophotography deliverables described in Section 2.3 below, and in the subsequent design and construction of the East Service Road. Without limiting the foregoing, the County shall not use the Aerial Photography for any commercial purpose. In accordance with and in consideration of the Authority's obligations under the Professional Services Agreement, (a) MARKHURD shall retain copyright ownership of the Aerial Photography and (b) the County shall provide the assurances set forth in Section 2.2 below.

ARTICLE 2

OBLIGATIONS OF THE COUNTY

2.1. The Reimbursement Amount. For and in consideration of the Authority entering into the Professional Services Agreement with MARKHURD and as the royalty for the License, the County shall reimburse the Authority for the cost of the Aerial Photography in the amount of Fourteen Thousand One Hundred Twenty and No/100s Dollars (\$14,120.00), as more particularly described in the attached Exhibit A (the "Reimbursement Amount"). The County shall remit the Reimbursement Amount within thirty (30) days following the last to occur of the County's receipt of (a) an invoice from the Authority for that amount and (b) the Aerial Photography.

2.2. No Liability to the Authority. The Authority shall not be liable for any and all property loss, property damage and/or personal injury, including death, and all claims, demands and judgments therefor arising from the County's use of the Aerial Photography, including its use in accordance with Section 2.3 below. The Authority, its officers, agents, servants and employees, shall not be liable to the County or any third party for any direct, indirect, special, incidental or consequential damages, or damages for loss of profits, revenue, data or use, incurred by the County or any third party, whether in an action in contract or tort, even if advised of the possibility of such damages.

2.3. Separate Agreement With MARKHURD. The County shall procure under a professional services agreement with MARKHURD (the "County Professional Services Agreement") additional services and deliverables utilizing the Aerial Photography, including scanning and autotriangulation services, planimetric and DTM compilation services, and digital

orthophotography services, all required by the County for the Phase 4 Extension and to support the design and construction of the East Service Road (the "County Orthophotography"). The County shall be solely responsible for the exercise of its rights and the performance of its obligations under the County Professional Services Agreement and the Authority shall have no obligations, rights or interests thereunder, except as provided in this Agreement. The County Professional Services Agreement shall allow the County to grant a sublicense to the Authority to use the County Orthophotography in accordance with the terms and conditions set forth in Section 2.4 below.

2.4. The Authority License. The County shall grant the Authority a fully paid, non-exclusive, perpetual license (the "Authority License") to use, reproduce, adapt, modify or enhance the County Orthophotography in the evaluation, and possible design and construction, of the Phase 4 Extension. Without limiting the foregoing, the Authority shall not use the County Orthophotography for any commercial purpose. In accordance with and in consideration of the County's obligations under the County Professional Services Agreement, (a) MARKHURD shall retain copyright ownership of the County Orthophotography and (b) the Authority shall provide the assurances set forth in Section 2.5 below.

2.5. No Liability to the County. The County shall not be liable for any and all property loss, property damage and/or personal injury, including death, and all claims, demands and judgments therefor arising from the Authority's use of the County Orthophotography. The County, its officers, agents, servants and employees, shall not be liable to the Authority or any third party for any direct, indirect, special, incidental or consequential damages, or damages for

loss of profits, revenue, data or use, incurred by the Authority or any third party, whether in an action in contract or tort, even if advised of the possibility of such damages.

ARTICLE 3

GENERAL PROVISIONS

3.1. Term of Agreement. The term of this Agreement shall commence on the effective date set forth above and end on the complete performance by the parties hereto of all provisions of this Agreement.

3.2. No Liability. Nothing in this Agreement shall be construed to place any liability on the County, the Authority, the Authority's General Engineering Consultant or any of the Authority's or the County's respective employees, consultants, contractors, agents, servants, directors or officers for any alleged personal injury or property damage arising out of the Phase 4 Extension evaluation, design, construction or operation. Furthermore, it is not the intent of this Agreement to impose upon the County or the Authority any liability for any alleged injury to persons or damage to property arising out of any matters unrelated to the terms of this Agreement or with respect to any actions undertaken by any consultant or contractor employed or engaged by the Authority or the County, including without limitation MARKHURD. Nothing herein shall be construed as a waiver of any rights which may be asserted by the County, the Authority, and/or their officials, including the defense of governmental immunity, official immunity or qualified immunity.

3.3. Conditioned on Feasibility. The County acknowledges that the Authority must establish the feasibility of the Phase 4 Extension as a turnpike project before the Authority can

commit to design, construct and operate that project in accordance with the Act. Consequently, unless and until said feasibility is established, this Agreement creates no obligations on behalf of the Authority with respect to the ultimate construction, operation and/or maintenance of the Phase 4 Extension.

ARTICLE 4

MISCELLANEOUS

4.1. **Notices.** In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (a) when delivered in hand, (b) one (1) business day after being deposited with a reputable overnight air courier service, or (c) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

In the case of the County:

County of Collin
Attn: County Judge
Courthouse, Suite 626
210 S. McDonald Street
McKinney, Texas 75069

and

County of Collin
Attn: Director of Engineering
825 N. McDonald Street
McKinney, Texas 75069

In the case of the Authority:

By hand delivery or air courier:

North Texas Tollway Authority
Attn: Jerry Hiebert, Executive Director
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093

By mail:

North Texas Tollway Authority
Attn: Jerry Hiebert, Executive Director
P.O. Box 260729
Plano, Texas 75026

Either party hereto may from time to time change its address for notification purposes by giving the other party prior written notice of the new address and the date upon which it will become effective.

4.2. Relationship of the Parties; No Joint Enterprise. Nothing in this Agreement is intended to create, nor shall be deemed or construed by the parties or by any third party as creating, (a) the relationship of principal and agent, partnership or joint venture between the County and the Authority or (b) a joint enterprise between the County, the Authority and/or any other party. Without limiting the foregoing, the purposes for which the County and the Authority have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

4.3. Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Neither the County nor the Authority shall assign, sublet or transfer its respective interests in this Agreement without the prior written consent of the other parties to this Agreement, unless otherwise provided by law.

4.4. Severability. If any provision of this Agreement, or the application thereof to any entity or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other entities or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

4.5. Written Amendments. Any change in the agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the County and the Authority.

4.6. Limitations. All covenants and obligations of the County and the Authority under this Agreement shall be deemed valid covenants and obligations of said entities, and no officer, director, or employee of the County or the Authority shall have any personal obligations or liability hereunder.

4.7. Sole Benefit. This Agreement is entered into for the sole benefit of the County, the Authority and their respective successors, and nothing in this Agreement or in any approval subsequently provided by any party hereto shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

4.8. Authorization. Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval or authorization from any third party is required to be obtained or made in connection with the execution, delivery or performance of this Agreement. Each

signatory on behalf of the County and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Agreement.

4.9. Choice of Law; Venue. The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas, and exclusive venue for any legal actions arising hereunder shall be in Collin County, Texas.

4.10. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured or dictated such provision.

4.11. Waiver. No delay or omission by any party hereto to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by any of the parties hereto of any of the covenants, conditions or agreements to be performed by any other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

4.12. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings or agreements relative hereto which are not fully expressed in this Agreement.

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

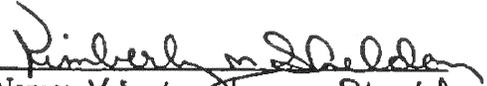
4.14. Headings. The article and section headings used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day above stated.

THE COUNTY:

COUNTY OF COLLIN

ATTEST:


Name: Kimberley M. Sheldon
Title: Court Coordinator

By: 
Ron Harris,
County Judge
2004-636-08-23

Date: 8-31-2004

APPROVED AS TO FORM:

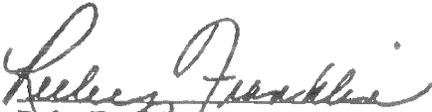
County Attorney

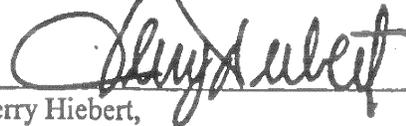
By: _____
Name: _____

THE AUTHORITY:

NORTH TEXAS TOLLWAY AUTHORITY,
a regional tollway authority

ATTEST:


Ruby Franklin,
Secretary


Jerry Hiebert,
Executive Director

Date: 2/20/04

APPROVED AS TO FORM:
Locke Liddell & Sapp LLP

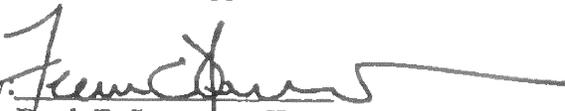
By: 
Frank E. Stevenson, II

EXHIBIT A

THE REIMBURSEMENT AMOUNT

TASK	THE AERIAL PHOTOGRAPHY US 380 TO FM 428 REIMBURSED BY THE COUNTY
Aerial Photography	\$4,470
Ground control and targeting	\$9,650
Scanning & Aerotriangulation	\$0*
Planimetric & DTM compilation	\$0*
Digital Aerial Photography	\$0*
TOTAL	\$14,120.00

*To be provided under the County Professional Services Agreement.