

**INTERLOCAL AGREEMENT BETWEEN
THE NORTH TEXAS TOLLWAY AUTHORITY AND
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
REGARDING SERVICES FOR TRAVEL DEMAND MODELING
AND TRAFFIC FORECASTING ASSISTANCE**

THIS AGREEMENT, is made this 5 day of February, 2003 ("Effective Date"), by and between the North Texas Tollway Authority, a regional tollway authority and a political subdivision of the State of Texas, whose address is 5900 W. Plano Parkway, Suite 100, Plano, Texas 75093, hereinafter referred to as the "Authority," and the North Central Texas Council of Governments, a regional planning commission and political subdivision of the State of Texas pursuant to Chapter 391 of the Texas Local Government Code, whose address is 616 Six Flags Drive, Suite 200 Centerpoint II, Arlington, Texas 76011-6347, hereinafter referred to as the "COG."

WITNESSETH:

WHEREAS, the Authority as a regional tollway authority, is governed by Chapter 366 of the Texas Transportation Code (the "Regional Tollway Act"), and authorized to enter into agreements necessary or incidental to its duties and powers; and

WHEREAS, COG is designated by the governor of the State of Texas as the Metropolitan Planning Organization for the Dallas-Fort Worth metropolitan area (DFW); and

WHEREAS, COG develops and maintains *Mobility 2025 Update*, the current, adopted metropolitan transportation plan (MTP) for the DFW region; and

WHEREAS, the MTP, and subsequently approved MTPs, contains regional transportation improvements, including proposed toll road facilities, necessary to meet anticipated travel demands for the next 25 years; and

WHEREAS, COG maintains the official travel demand model for the region that is the only approved travel demand model for all metropolitan planning activities to ensure consistency with the MTP; and

WHEREAS, COG maintains the roadway and transit modeling networks, and the demographic information required as inputs to the regional travel demand model; and

WHEREAS, COG has the authority to develop and modify the MTP under 23CFR 450 in accordance with planning and feasibility studies, such as toll road feasibility studies; and

WHEREAS, the Authority is responsible for assessing the feasibility of new toll road projects, with the cost of said evaluations being discharged, in whole or in part, with monies from the Authority's Feasibility Study Fund; and

WHEREAS, the Authority relies on travel demand modeling and forecasting assistance from COG in conducting planning studies, feasibility studies, and environmental analyses on proposed toll facilities whether new location projects, capacity improvements to existing facilities, conversion of tax-supported to toll-supported roadways or, and congestion pricing initiatives; and

WHEREAS, COG has requested that the Authority fund additional forecasting assistance as required by the Authority for the planning studies, feasibility studies, and environmental analyses; and

WHEREAS, the Authority requires forecasting assistance for its planning studies, feasibility studies and environmental assistance which will require payment and additional funding to COG; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one or more state agencies to perform government functions and services under the terms thereof, and the Authority and COG have determined that it is in their best interests to assist each other in the preparation of these studies in accordance with the following terms and conditions.

NOW, THEREFORE, in consideration of mutual promises contained herein, the parties do hereby agree as follows:

1. **Definitions**

For purposes of this Agreement, the following terms shall have the meaning given herein:

The Authority – the North Texas Tollway Authority (the Authority)

COG – The North Central Texas Council of Governments (COG)

Environmental Analysis – Effort to document the impacts or potential impacts of proposed projects upon the natural, social, and built environment and appropriate mitigation measures which may follow the National Environmental Policy Act (NEPA) of 1969 as required in 23CFR 771.

Feasibility Study – A study aimed at assessing the feasibility of constructing or implementing a particular toll project. This could include environmental analysis, traffic demand analysis, engineering analysis, and/or financial assessment.

Metropolitan Planning Organization (MPO) – Federally mandated planning entity for all urban areas having a population over 50,000 as required under 23CFR 450.

Metropolitan Transportation Plan (MTP) – A federally required transportation planning instrument that is financially-constrained, conforms to a region’s air quality goals, and contains all regionally significant transportation improvements to be constructed or implemented within a minimum 20-year time frame as required under 23CFR 450.

Planning Study – A corridor or facility study looking at a wide range of potential multi-modal solutions for a specific transportation problem.

Scenario – modifications consisting of a set of changes to the network, such as, but not limited to, modifications of speed, capacity, access points, interchange configurations and/or changes in parallel facilities speeds, functional class, etc. Demographic changes may also be requested.

Travel Demand Model – A package of computer programs that is an essential planning tool used for forecasting vehicular and transit passenger traffic into the future and studying a variety of scenarios.

Year Requested – the set of changes comprising a ‘scenario,’ may be requested for an intermediate year, such as, but not limited to the facility’s proposed opening year.

2. **Proposed Projects**

Pursuant to Mobility 2025 Update, COG has identified potential toll road projects (the “Proposed Projects”) that are set forth in Exhibit A, attached hereto and incorporated herein by reference. Upon the written agreement of the Authority and COG, projects may be added to or deleted from the list set forth in Exhibit A. All references herein to the “Proposed Projects” shall be deemed automatically amended accordingly. Acknowledging that the compensation referred to in section 6 below is not sufficient to fund all the proposed projects, the Authority and COG

shall agree, in writing, on any subsequent prioritization of the Proposed Projects and on a prudent sequencing of the work to be performed pursuant to this Agreement.

3. **Scope of Services**

The scope of services of the work to be performed (the “Scope of Services”) is set forth in Exhibit B, attached hereto and incorporated herein by reference, with respect to each of the Proposed Projects determined to be of highest priority. Each such Scope of Services shall be reviewed and approved by the Authority, represented by its Director of Engineering or a subsequently designated officer. Each such Scope of Services will be initiated on a task order basis (the “Scope of Work”). The Authority and COG will develop a Scope of Work for each task order. Upon the written agreement of the Authority and COG, the Scope of Work will constitute a notice to proceed for that special work only. The Scope of Work must contain specific deliverables as well as deadlines for major milestones. The Scope of Work must also contain a labor estimate expressed as hours and costs. Reasonable overhead and direct expenses will be allowed and should be included in the total cost estimate.

Upon the written agreement of the Authority and COG, the Scope of Services may be added to or deleted from the list set forth in Exhibit B. All references herein to the Scope of Services shall be deemed automatically amended accordingly. All services rendered to the Authority by COG under this Agreement shall be performed in accordance with accepted professional standards and under the overall direction and instruction of the Authority. COG covenants and agrees that the services furnished hereunder shall be of high quality, complete in all respects, and comply fully with the terms of this Agreement.

4. **Term**

The term of this Agreement shall commence on the effective date on page one, and shall terminate on the 31st day of December 2004, unless terminated pursuant to section 8 below.

5. **Time of Performance**

Upon the written agreement of the Authority and COG, deliverables and estimated completion times will be determined and documented in writing prior to the commencement of each work task requested.

6. **Compensation**

The Authority agrees to pay COG for the performance of duties and services as detailed in the Scope of Services. In no event shall cumulative payments for the services provided by

COG during the term of this Agreement exceed Two Hundred Thirty Thousand and No/100 Dollars (\$230,000) without the written approval of the Authority.

Except as otherwise provided in this Agreement, said compensation shall constitute payment for all services, liaison, products, materials, and equipment required to deliver the professional services detailed in the Scope of Services, including, services, materials, training, equipment used, travel, overhead, and expenses.

Monthly invoices must be accompanied by detailed progress reports related directly to the agreed upon Scope of Work including percent work complete, percent time elapsed, and percent total cost billed and submitted directly to the attention of the Director of Engineering. The Authority shall disburse payment to COG within 30 days of receipt of the request unless the Authority, in good faith, disputes in writing the amount of any such statement. COG shall submit two (2) copies of its pay request in the form provided by the Authority.

No payment by the Authority shall relieve COG of its obligation to deliver timely the services required under this Agreement.

7. **No Obligation to Construct the Proposed Projects**

Except as otherwise expressly provided herein, this Agreement creates no obligations on behalf of COG or the Authority with respect to the ultimate construction, operation, and/or maintenance of the Proposed Projects, and the Authority makes no representation with respect thereto. COG unconditionally acknowledges that it is not relying, and shall not rely, in any manner upon the existence of this Agreement as indicating any commitment on behalf of the Authority or any other party to construct or operate any of the Proposed Projects. In entering into this Agreement, COG has not relied on any representation or warranty of the Authority concerning the feasibility of the Proposed Projects. Notwithstanding the foregoing, the parties hereto acknowledge that the purpose of this Agreement is to identify potential toll projects consistent with Mobility 2025 Update and other studies prepared by COG. All Proposed Projects must be feasible and otherwise suitable for construction and operation as determined by the Authority in its sole discretion pursuant to the Regional Tollway Act. If such turnpike projects are identified, COG shall cooperate fully with the Authority in securing the necessary governmental approvals and providing such other assistance and support reasonable requested by the Authority to construct and subsequently operate said projects.

8 **Authority's Option to Terminate**

In addition to the rights and options to terminate for COG's default, the Authority has the right to terminate this Agreement at its sole option at any time, and with or without cause, by giving thirty (30) days written notice of termination to COG, and to make settlement with COG upon an equitable basis as determined by the Authority. COG shall not receive any compensation for any work performed or services provided by COG after the Optional Termination Date, and any work performed shall be at the sole risk and expense of COG.

9. **Inspection of COG's Records**

The Authority, or any duly authorized representative of the Authority, may inspect and examine the books and records of COG for the purpose of confirming COG's compliance with the terms of this Agreement. COG shall maintain said books and records and other evidence pertaining to costs, and shall make such materials available at its office during the term of this Agreement and for a period of three (3) years after the date of final payment hereunder.

10. **Confidentiality**

COG acknowledges that any information it or its employees, agents or subcontractors obtain regarding the operation of the Authority, its products, services, policies, patrons, customers, personnel and any other aspect of its operation is confidential, and shall not be revealed, sold, exchanged, traded or disclosed to any person, company or other entity without the express written permission of the Authority. COG hereby acknowledges and agrees that each of its employees, agents or subcontractors performing work or services on behalf of the Authority shall agree to be bound by the terms of this Agreement, which shall survive the term of this Agreement.

11. **Personnel, Equipment, and Material**

Except as otherwise specified, COG shall furnish and maintain, at its own expense, adequate and sufficient personnel, equipment, supplies, transportation and material, to perform the services when and as required.

12. **Relationship of the Parties**

The parties do not intend that this Agreement be construed as finding that the parties have formed a joint enterprise. The purposes for which each party has entered into this Agreement are separate and distinct. It is not the intent of any of the parties that a joint enterprise relationship is being entered into and the parties hereto specifically disclaim such relationship.

13. **Compliance with Laws**

COG shall comply with all applicable laws, statutes, ordinances, rules, regulations, codes and with the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance under this Agreement, including, without limitation, worker's compensation laws, anti discrimination laws, environmental laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, licensing laws and regulations, the Regional Tollway Authority Act, Authority Policies, and all amendments and modifications to any of the foregoing, if any.

14. **Subcontracting**

COG shall not subcontract, assign, or transfer any part of the work or obligations included in this Agreement without the written approval of the Authority, such approval to be granted or withheld at the Authority's sole discretion. In any event, the responsibility for subcontracted, assigned, or transferred work shall remain with COG.

15. **Waiver of Default or Remedy**

Failure of the Authority to declare a default immediately upon its occurrence, or any delay by the Authority in taking any action in connection with any default, shall not constitute a waiver of the default, but the Authority shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement. Pursuit of any one or more of the remedies set forth herein shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law. Payment by the Authority to COG following a default hereunder shall not be construed as a waiver of such default.

16. **Delivery of Notices, Etc**

Unless otherwise designated by written notice, all written notices, demands, and other papers or documents to be delivered to the Authority and COG, respectively, under this Agreement shall be delivered to their respective addresses as set forth on page 1 above. All written notices, demands, and other papers or documents, including, but not limited to change of addresses for delivery served upon the Authority or COG in the aforesaid manner shall be deemed served or delivered for all purposes hereunder either (a) three (3) days following the U.S. Postal Service's postmarked date if mailed or (b) immediately upon actual delivery or refusal of delivery if transmitted by courier or overnight delivery service.

17. **Warranties**

COG warrants that all services performed under this Agreement shall be performed consistent with the highest prevailing professional or industry standards. In addition, COG warrants that any and all equipment it may provide in the exercise of this contract is suitable for the services to be provided and is appropriate and adequate to accommodate the service level demands of the Authority. In order to receive warranty remedies, the Authority agrees to report in writing any deficiencies in COG's services or equipment to COG within 60 days of the Authority's reasonable discovery of a deficiency. As a result of the breach of warranty, Authority shall be entitled to the expeditious cure of any deficiencies in a manner least disruptive to the operation of the Authority's business. If COG is unable to perform the services necessary to cure the deficiencies, the Authority shall be entitled to recover the fees paid to COG and to recover any additional costs incurred by the Authority as a result of the deficiency. Nothing contained in this section, nor the Authority's making of a warranty claim under this section, shall be deemed to constitute an election of remedies by the Authority for a breach by COG under this Agreement, nor shall this section or the making of a claim under this section limit or otherwise impair the Authority's ability to pursue any and all remedies available under this Agreement or under applicable law for a breach by COG under this Agreement.

18. **Captions Not a Part Hereof**

The captions and headings of the several sections, paragraphs, and divisions of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its sections, paragraphs, divisions, or other provisions.

19. **Successors and Beneficiaries**

This Agreement is entered into for the sole benefit of the Authority and COG and, where permitted, their respective successors and assigns and shall be binding upon the Authority, COG, and their respective heirs, executors, administrators, successors, and permitted assigns, including any successor agency to the Authority. Nothing in this Agreement or in any approval subsequently provided by either 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 or any member thereof, or to authorize anyone not a party to this

Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

20. **Non-discrimination Policy**

No person, business or organization doing business with or on behalf of the Authority, shall discriminate against any person because of race, age, color, religion, sex, disability, ancestry, national origin or place of birth.

21. **Controlling Law, Venue**

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Collin County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

22. **Complete Agreement**

This Agreement (including all exhibits, schedules and other attachments hereto) sets forth the complete agreement between the Authority and COG. Any changes in the character, 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 Authority and COG.

23. **Severability**


If any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of said provision and of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law, unless such provision or the application of such provision is, in the sole determination of the Authority, essential to its rights hereunder, in which event the Authority may terminate this Agreement in accordance with the Optional Termination provisions herein.

24. **Interpretation**


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

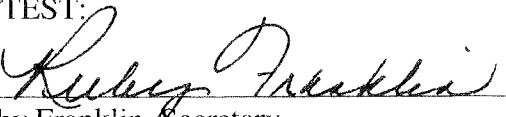
IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to duplicate counterparts hereof on the date first above written.

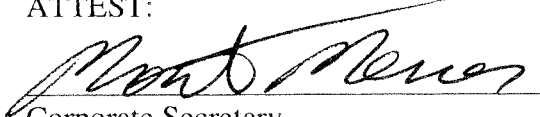
NORTH TEXAS TOLLWAY AUTHORITY

By: 
Name: Jerry Hiebert
Title: Executive Director

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

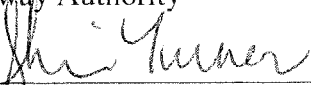
By: 
Name: Mike Eastland
Title: Executive Director

ATTEST:

Ruby Franklin, Secretary

ATTEST:

Corporate Secretary

APPROVED AS TO FORM:

Assistant General Counsel to the North Texas
Tollway Authority

By: 
Sherri M. Turner

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to duplicate counterparts hereof on the date first above written.

NORTH TEXAS TOLLWAY AUTHORITY

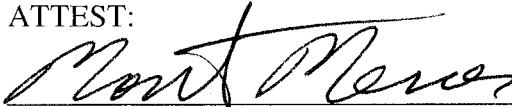
NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

By: _____
Name: Jerry Hiebert
Title: Executive Director

By: 
Name: Mike Eastland
Title: Executive Director

ATTEST:

Ruby Franklin, Secretary

ATTEST:

Corporate Secretary

APPROVED AS TO FORM:

Assistant General Counsel to the North Texas
Tollway Authority

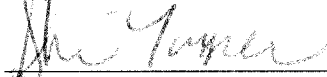
By: 
Sherri M. Turner

EXHIBIT A

LIST OF POTENTIAL PROJECTS

Following is a list of facilities that are currently proposed as potential toll roads or are being analyzed for the potential of being considered as a future toll facility for which COG assistance may be required:

- President George Bush Turnpike (PGBT) – Eastern Extension, SH 78 to IH 30
- Dallas North Tollway (DNT) Extension Phase 3, SH 121 to US 380
- DNT Extension, US 380 to Grayson County
- SH 121-T Collin County, DNT to US 75
- SH 121-T Southwest Parkway, IH 30 to US 67.
- Lake Lewisville Toll Bridge and the non-tolled approach roadways
- Trinity Parkway, IH 35E to IH 45 or SH 342
- Trinity Parkway-West Fork, IH 820 to Proposed Trinity Parkway
- DFW Airport East-West Connector, SH 360 to SH 161
- Collin County Outer Loop
- IH 35E Managed-HOV, Hickory Creek to SH 121
- IH 35E Managed-HOV, IH 635 to Loop 12
- IH 635 Managed-HOV, PGBT to Skillman
- Loop 12 Managed-HOV, IH 35E to Spur 408
- SH 183 Managed-HOV, SH 360 to SH 161
- SH 183 Managed-HOV, Belt Line Rd. to IH 35E

This list is not exhaustive of all potential toll facilities or toll-related roadway improvements. The list is also not presented in any sort of order of priority or importance. It is merely included here as a guide for possible projects for which assistance may be requested. Project list revisions, as required, may be made by mutual agreement by the Authority and COG.

EXHIBIT B

SCOPE OF SERVICES

COG will work with the Authority to identify and evaluate proposed new roadways, transportation improvements, or HOV/Managed lanes designated as potential toll facilities within Mobility 2025 Update, the metropolitan transportation plan (MTP), and subsequent updates to the MTP. COG will provide planning-level assistance in support of toll road feasibility/viability assessments, corridor studies, and environmental studies. Upon request from the Authority, COG will perform travel demand model runs and analysis that may include the following activities as necessary for each request:

- Roadway and transit network review
- Roadway and transit network coding of modifications for:
 - Alignment scenarios
 - Toll schemes
 - Access scenarios
 - Corrections
 - Speed and/or Capacity scenarios
- Review of population and employment assumptions in the vicinity of the facility
- Modification of population and employment assumptions for sensitivity analyses. Travel demand model runs using the approved and validated Dallas Fort Worth Regional Travel Model including:
 - Base year run (to assess model validity, current situation, and establishment of a benchmark for comparison)
 - Do nothing run (for the horizon year requested for comparison purposes)
 - Horizon year runs with various alignment, toll, access, speed, and capacity scenarios as required
 - Intermediate year model runs such as opening day or other important milestone event between the base year and the model horizon year
- Deliverables will be specified in each individual work request, and may include:

- Draft network plots for coding verification and mutual agreement of network assumptions prior to model runs including number of lanes, posted speed, access, toll amounts and locations, and centroid connector assumptions
- Zonal maps and spreadsheets displaying population and employment base year information and projections for each future year requested
- Validation plots and statistics including modeled volumes, actual traffic counts, percent error by functional class in the study area, R-squared, root mean squared error (RMSE), and other statistics normally produced for validation purposes
- Modeled volume plots for each scenario requested in standard COG format displaying volumes in thousands and number of lanes on each roadway link
- Link attribute datafiles in *.dbf, *.xls, or compatible format. File should include, at a minimum, linkname traffic counts, modeled volumes, speeds, capacities, etc.
- ArcView shape file of links with linkname or other link-specific unique identifier to facilitate joining with link attribute datafile
- Any COG analysis, observations, concerns, cautions, discoveries and/or recommendations regarding what was modeled after reviewing the model results (this should include a statement of consistency with the current MTP and air quality conformity analysis where appropriate)
- Meetings with the Authority staff and/or the Authority designated consultants:
 - In order to discuss the initial request and refine where appropriate
 - Whenever questions arise regarding the request that cannot be resolved by phone or email
 - To review model results and discuss observations
 - To outline additional needs required to complete the analysis
 - May also include presentations to the Authority Board of Directors as requested
- Whenever appropriate, process modifications to the MTP if the Authority's concluding analysis result in significant and substantial inconsistencies with the approved MTP and air quality conformity analysis.

COG will be reimbursed for actual expenses incurred in the performance of agreed upon tasks up to but not to exceed the amount included in the attached agreement. Qualifying expenses may include direct salaries for COG personnel, indirect costs associated with same personnel, travel expenses for meetings, applicable computer processing and storage charges, and reasonable product and/or materials charges (e.g., plotter paper).