

# INTERGOVERNMENTAL AGREEMENT

## SOUTH COLONY BOULEVARD EXTENSION at the SAM RAYBURN TOLLWAY

### BY AND BETWEEN

THE NORTH TEXAS TOLLWAY AUTHORITY,

THE COLONY LOCAL DEVELOPMENT CORPORATION,

AND

THE CITY OF THE COLONY, TEXAS

This agreement ("Agreement") is entered into this 28<sup>th</sup> day of June, 2013 ("Effective Date"), by and between the North Texas Tollway Authority ("NTTA"), a regional tollway authority under Chapter 366 of the Texas Transportation Code; The Colony Local Development Corporation, a Texas non-profit corporation, operating pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code and Chapter 394 of the Texas Local Government Code; and The City of The Colony, Texas, a Texas home-rule municipality (The Colony Local Development Corporation and the City of The Colony, Texas, are collectively referred to as "The Colony"), the foregoing parties are collectively referred to as the "Parties" and individually as a "Party".

### RECITALS

**WHEREAS**, NTTA operates the Sam Rayburn Tollway ("SRT"), including, without limitation, the main lanes ("SRT Main Lane" or "SRT Main Lanes") and frontage roads, pursuant to the Project Agreement: SH 121 Toll Project with the Texas Department of Transportation ("TxDOT") ("Project Agreement"). The Project Agreement, including any amendments thereto, is incorporated herein by reference for all purposes; and

**WHEREAS**, under the Project Agreement, TxDOT retains ownership of the frontage roads along the SRT during the term of that agreement; and

**WHEREAS**, at the end of the term of the Project Agreement, NTTA's rights under the Project Agreement shall automatically terminate, and title to the project made the subject of the Project Agreement, including all improvements/facilities, shall be deemed to have reverted and been transferred to TxDOT, said reversion and transfer being made in accordance with the specified requirements as to the condition and remaining useful life of those facilities/improvements set forth in the Project Agreement; and

**WHEREAS**, the Project Agreement requires NTTA to return certain SRT structures such as bridges to TxDOT with a residual useful life of up to fifty (50) years; and

**WHEREAS**, The Colony wishes to improve the South Colony Boulevard intersection at the SRT to accommodate development in the area, which will include, among other things, a bridge ("bridge") crossing over the SRT in a diverging diamond intersection configuration ("Project"), as more generally depicted on *Exhibit "A"*; and

**WHEREAS**, the Project will impact and require the use of NTTA and TxDOT property; and

**WHEREAS**, the Parties acknowledge and agree that the Project is anticipated being constructed in multiple phases, with the initial phase of the Project ("Initial Phase") consisting of the improvements more particularly described on *Exhibit "B"*; and

**WHEREAS**, the Project is not included in the Project Agreement; and

**WHEREAS**, the Parties have investigated and determined that the Project is in the best interest of all Parties; and

**WHEREAS**, each Party has the authority to enter into this Agreement and perform its obligations thereunder.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NTTA and The Colony agree as follows:

**ARTICLE I**  
**INITIAL PHASE CONSTRUCTION LICENSE/  
CONSTRUCTION COMPLETION DATE/OWNERSHIP OF BRIDGE  
UPON CONSTRUCTION COMPLETION DATE**

**I.A. License for Construction of the Initial Phase.**

NTTA gives The Colony a license ("Initial Phase Construction License") to enter and use NTTA property, to the extent allowed under the Project Agreement, solely for the design and construction of the Initial Phase. The Colony will exercise its Initial Phase Construction License rights only in accordance with the terms of this Agreement and as depicted on the Initial Phase schematics, plans and specifications prepared and approved in accordance with this Agreement ("Initial Phase Plans"). The Initial Phase Plans are incorporated herein by reference for all purposes.

**I.B. The Initial Phase Construction License Term.**

The term of the Initial Phase Construction License commences upon the Effective Date and expires upon NTTA's Construction Manager's Certification (hereinafter defined) of the Initial Phase ("Construction Completion Date"), but in no event shall exceed four (4)

years following the Effective Date of this Agreement ("Initial Phase Construction License Term").

**I.C. Responsibilities During Initial Phase Construction License Term.**

1. General. The Colony, at its sole cost and expense, will be responsible for designing and constructing the Initial Phase in accordance with this Agreement and the Initial Phase Plans, including but not limited to, all required engineering services for design, construction plans, bid documents, surveys, construction services, permitting, public involvement, utility relocation, communication infrastructure, geotechnical studies, record drawings, the satisfaction of all environmental obligations and compliance with all applicable laws, as they exist, may be amended or in the future arising. NTTA will provide, at NTTA's sole cost and expense, internal plan review, permits, project management and administration direct or indirect costs in-kind, said costs not being reimbursable under Subsection I.C.2 below.
2. Reimbursement of NTTA Expenses.
  - A. The Colony will reimburse ("Reimbursable Costs") NTTA up to an amount not to exceed **Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00)** for all reasonably documented third party costs NTTA incurs in connection with The Colony's design and construction of the original scope of work for the Initial Phase ("Initial Phase Scope of Work"), as more particularly described in **Exhibit "C"**, as well as for services, including but not limited to, design review, construction management and legal services. The Colony will reimburse NTTA for any additional expenses incurred by NTTA in connection with any refining, value engineering or redesign of the Initial Phase Scope of Work.
  - B. NTTA shall, from time to time, submit to The Colony invoices for Reimbursable Costs, including copies of the underlying documentation made the subject of each invoice. The Colony shall tender payment for each NTTA invoice submitted hereunder within thirty (30) calendar days of receipt of same.
3. Right-of-Way Supplied by The Colony. The Colony will provide, at its sole expense, all necessary right-of-way, in fee simple, as well as, any temporary construction easements or otherwise, along the northbound SRT frontage road for the Initial Phase (collectively, "Right-of-Way"). The Colony shall not be precluded from acquiring all of the Right-of-Way necessary to complete the Project. Any Right-of-Way acquired shall not be secured in NTTA's name, and NTTA shall not be responsible for, among other things, maintaining the same. The Colony will perform, among other things, all survey work and prepare all parcel plans and legal descriptions for the Right-of-Way pursuant to the Initial Phase Plans.

- A. Parcel plans and legal descriptions for the Right-of-Way required for the Project will conform to the TxDOT format and requirements for such plans and legal descriptions.
  - B. NTTA grants temporary easements, to the extent allowed under the Project Agreement, for the Project over, on or adjacent to the SRT, at no cost to The Colony, with said easements, automatically, and without any further notice or action by NTTA terminating upon the expiration of this Agreement.
  - C. NTTA will have access to the Project, at no cost, for its reasonable and customary operational needs, including but not limited to, maintenance of toll collection equipment and emergency response.
  - D. Right-of-Way costs will include, but not be limited to, the purchase price thereof, as well as, the costs of negotiations, appraisals, title evidence, relocation assistance payment, property management, expert costs, any and all costs and expenses associated with the institution of condemnation proceedings, if necessary, up through and including any appeals and such legal fees and expenses as may be necessary to acquire said Right-of-Way. The Colony will be responsible for all such costs in connection with the Project.
4. Maintenance During the Initial Phase Construction License Term. Except as otherwise provided in this Subsection I.C.4, during the Initial Phase Construction License Term, The Colony will maintain, at its sole cost and expense, those portions of NTTA and TxDOT property affected by the construction of the Initial Phase, including, but not limited to, the following: (a) litter pickup, (b) mowing, (c) temporary traffic safety items, (d) traffic control, (e) prompt pothole/pavement repair and (f) repair of damage of any kind resulting from The Colony's activities. The Colony's maintenance responsibilities shall include, among any other areas made a part of the Initial Phase, the portions of the frontage roads that fall within the Initial Phase limits or are, in any way, affected by the construction of the Initial Phase. During the Initial Phase Construction License Term, NTTA shall, at its sole cost and expense, remain responsible for the SRT Main Lanes and entrance and exit ramps, including responding to accidents, winter maintenance, maintenance of existing illumination, but not illumination changed, added, relocated or replaced by The Colony, and paying electricity costs for relocated or replaced (but not any additional) illumination for the SRT Main Lanes and ramps after The Colony has fully relocated, reinstalled and/or replaced same (including the completion of all connections to power sources).
5. Notice for Completion of the Initial Phase Construction License Term. The Colony will notify, in writing, NTTA not less than thirty (30) calendar days in advance of its proposed completion of the Initial Phase to permit NTTA and The Colony to perform a walk-through of the Initial Phase. NTTA and The Colony will reasonably cooperate in preparing and overseeing the satisfaction, at The Colony's sole cost and expense, of a punch list of incomplete items related to the

walk-through. NTTA shall have the authority for determining whether said punch list items have been satisfactorily completed, said determination not to be unreasonably withheld, delayed, conditioned or denied. NTTA and The Colony will reasonably coordinate the cessation and transitioning of certain of The Colony's maintenance activities on NTTA and/or TxDOT property pursuant to Subsection I.C.4 and the commencement of The Colony's Initial Phase Operational Obligations, defined in Article II. The commencement of The Colony's Initial Phase Operational Obligations will occur upon the date mutually agreed upon, in writing, by The Colony and NTTA, which date shall not occur before the delivery of NTTA Construction Manager's Certification, which must be provided by or before the Construction Completion Date.

**I.D. Initial Phase Standards; NTTA Construction Manager; Plan Review Process; Technical Working Group.**

1. Initial Phase Standards. The Initial Phase will be designed and constructed in compliance with the latest applicable edition and revisions of the American Association of State Highway and Transportation Officials ("AASHTO"), TxDOT's applicable specifications, manuals, and guidelines, as they exist, may be amended or in the future arising (collectively, "TxDOT's Specifications") and NTTA standards ("NTTA's Standards") as listed in *Exhibit "D"*. All existing highway elements within NTTA and/or TxDOT property affected by the construction of the Initial Phase will be replaced or repaired by The Colony, at its sole cost and expense, with items of equal or better quality if and to the extent required by TxDOT's Specifications and NTTA's Standards. The AASHTO, TxDOT's Specifications and NTTA's Standards are collectively referred to herein as "Initial Phase Standards".
2. NTTA Construction Manager. NTTA will appoint a construction manager ("NTTA Construction Manager"), whose services will be paid by The Colony pursuant to Subsection I.C.2. The NTTA Construction Manager will review the design and construction of the Initial Phase on behalf of NTTA. The NTTA Construction Manager is authorized to perform any right or obligation of NTTA under this Agreement. The Colony and its contractors will cooperate fully with the NTTA Construction Manager.
3. Plan Review Process. Before The Colony begins construction of the Initial Phase, The Colony will provide NTTA a reasonable opportunity to review, comment and approve ("Plan Review Process") the: (a) design of the Initial Phase (at sixty percent (60%) and one hundred percent (100%) completion), (b) construction plans and specifications (such as, among other things, shop drawing review and erection and demolition plans, if necessary) and (c) construction coordination plans for the Initial Phase, said approval not to be unreasonably withheld, delayed, conditioned or denied. The Colony will provide NTTA with copies of

those approved plans and specifications, which upon NTTA's written approval will constitute the Initial Phase Plans.

4. Technical Working Group. The Colony will establish a technical working group ("Technical Working Group") that will be available to meet with NTTA and/or TxDOT on a regular basis to review technical issues in advance of the 60% and 100% completion of the design of the Initial Phase. NTTA will review each submittal of the Initial Phase Plans for compliance with the requirements of this Agreement and use their best efforts to provide The Colony with written objections, if any, within fourteen (14) calendar days of their receipt thereof. Should NTTA be in receipt of more than five (5) submittals at any one time, the fourteen (14) calendar days review time shall be applicable only to the first five (5) submittals received, with NTTA having additional time that is reasonably necessary to review the submittals exceeding the first five (5) received by the respective entities. To the extent of a conflict between The Colony and another Party over the interpretation of the Initial Phase Plans, The Colony and the respective Party will attempt to mutually and reasonably agree, in writing, to a resolution for such interpretation. However, if they are unable to reach an agreement, NTTA's interpretation will control with respect to any feature: (a) affecting NTTA and/or TxDOT property, or (b) that will be maintained, at any time, by NTTA. The Colony's interpretation will control in all other cases.

#### **I.E. Construction; Change Orders; Inspection Rights.**

1. General. The Colony will, at its cost and expense, be solely responsible for the construction of the Initial Phase in accordance with the Initial Phase Plans, including, without limitation, all required construction management, coordination, inspection, construction materials testing and all utility relocation and adjustments.
2. Change Orders, Etc. Any change orders, supplemental agreements or additional work orders (collectively, "Change Orders") regarding any feature of the Initial Phase that: (a) affects NTTA and/or TxDOT property, or (b) will, at any time, be maintained by NTTA will be subject to NTTA's prior written approval. NTTA will provide comments on any proposed Change Orders within ten (10) calendar days of its receipt thereof. NTTA is under no obligation to approve any Change Order or other modification to the Initial Phase that increases the burden on either NTTA with respect to NTTA and/or TxDOT property or that impairs the safe and efficient operation of the SRT. Notwithstanding the foregoing, the Parties acknowledge that minor adjustments, as reasonably determined by NTTA, to the Initial Phase Plans will be required when construction starts and addressed on an expedited basis to the extent reasonably possible.
3. Audit and Inspection Rights. In addition to the regular exchange of information through meetings with the Technical Working Group, NTTA will have the right

to conduct field inspections and audit, inspect and copy all Initial Phase records and documents maintained by The Colony. NTTA may notify The Colony of any failure of materials, equipment or installation methods to insure compliance with this Agreement, and The Colony will take such measures as are reasonably necessary to address such failure(s) in a timely manner. The Colony will make available, without limitation, all quality testing and environmental records related to any feature of the Initial Phase that: (a) affects the NTTA and/or TxDOT property, or (b) will, at any time, be maintained by NTTA.

4. NTTA Construction Manager Duties and Certification. The NTTA Construction Manager will, among other things, conduct field inspections of materials, equipment and construction activities sufficient to determine and certify ("NTTA Construction Manager's Certification") that all features of the Initial Phase meet the applicable requirements of the Initial Phase Plans and this Agreement, including, but not limited to, The Colony providing the NTTA Construction Manager with an "Affidavit as to Debts and Liens", evidencing that all costs and expenses associated with the construction of the Initial Phase have been paid and that the Initial Phase is free of any liens and/or encumbrances. The Colony will provide the NTTA Construction Manager sufficient advance notice of upcoming work and otherwise schedule time and coordinate activities to support the NTTA Construction Manager's performance of its work. NTTA will promptly notify The Colony of any failure of materials, equipment or construction methods to meet requirements of the Initial Phase Plans and this Agreement, and The Colony will take such measures as reasonably necessary to promptly address such failure. NTTA will communicate all comments provided by the NTTA Construction Manager to The Colony and will not redirect or manage construction workers or site activities, except in response to a bona fide emergency, as reasonably determined by the NTTA Construction Manager. In order to prepare the NTTA Construction Manager for the effective performance of its duties, the NTTA Construction Manager will participate in the Plan Review Process and in the Technical Working Group.

#### **I.F. Notice of Construction Activities.**

1. General. Before initiating any work on the Initial Phase pursuant to the Initial Phase Construction License, The Colony will provide NTTA with reasonable notice, in writing, of its intent to perform any such activities.
2. Routine Inspection. For routine inspection activities on, under, over or in the vicinity of NTTA and/or TxDOT property, The Colony will give written notice to NTTA's Director of Maintenance, describing the extent and nature of such activities at least fourteen (14) calendar days before commencement of such activities.

3. Construction and Major Repair. For construction and major repair activities that involve more than a nominal use of NTTA and/or TxDOT property, including but not limited to, any activity that in NTTA's sole judgment requires the closure of or involves work in or adjacent to the SRT Main Lanes, or that otherwise affects NTTA's operation or use of the SRT or other portions of NTTA and/or TxDOT property, The Colony will provide NTTA with as much prior written notice as is practical, but in any event, no less than thirty (30) calendar days prior written notice of the construction and/or major repair activity, unless NTTA consents in writing to a shorter notice period for a particular activity.

**I.G. Initial Phase Final Traffic Plans; Lane Closures; Revenue Loss Amounts.**

1. Initial Phase Final Traffic Plans. NTTA will review and agree in principle and in writing to the conceptual traffic plans for the construction of the Initial Phase. Utilizing the conceptual traffic plans, The Colony will develop and submit for NTTA's review and written approval, the final traffic plans ("Initial Phase Final Traffic Plans"), utilizing the Technical Working Group. NTTA will have no less than fourteen (14) business days after receipt of the Initial Phase Final Traffic Plans to either approve or reject, with comments, the Initial Phase Final Traffic Plans. No construction work will be conducted in the Initial Phase that affects the NTTA and/or TxDOT property and/or NTTA operations unless and until the Initial Phase Final Traffic Plans have been approved in writing by NTTA.
2. Lane Closures. All lane closures ("Lane Closure(s)") of any SRT Main Lanes or entrance or exit ramps or loops will be done: (a) in accordance with the Initial Phase Final Traffic Plans, NTTA's "Lane Closure Policy and Guidelines", as they exist or may be amended, and this Agreement, or as otherwise agreed in writing by NTTA and The Colony, and (b) so as to minimize impact to NTTA operations.
3. Revenue Loss Amounts. NTTA will incur revenue loss for any and all Lane Closure(s). The actual amount of NTTA revenue loss that will result from any Lane Closure is uncertain. Consequently, for every hour, or portion of an hour, that a Lane Closure occurs, The Colony will be assessed the amounts ("Revenue Loss Amounts") set forth in **Exhibit "E"**. The Colony will pay NTTA, on or before the thirtieth (30th) day of each month, any Revenue Loss Amounts incurred during the preceding calendar month. Beginning four (4) years after the Effective Date of this Agreement, NTTA may increase the Revenue Loss Amounts to reflect actual changes in its toll rates and traffic volumes.

**I.H. Warranties.**

The Colony hereby warrants to NTTA that the Initial Phase will be free from all defects in design, materials or construction for a period of one (1) year from the later of the date on which: (a) such portion of the Initial Phase is opened to traffic, or (b) the NTTA Construction Manager's Certification. The Colony further warrants to NTTA that the



portion of the Initial Phase to be maintained by NTTA will be free from all latent defects in design, construction or any other area for which The Colony is responsible for a period of five (5) years, as evidenced by a good and sufficient maintenance bond, from the later of the date on which: (a) such portion of the Initial Phase is opened to traffic, or (b) the NTTA Construction Manager's Certification.

**I.I. Phased Construction.**

The Colony may construct the Project in phases over several years. This Agreement covers only the Initial Phase. Any additional work done on a later phase from the Initial Phase will require an amendment to this Agreement.

**I.J. Condition Precedent.**

The Colony shall not proceed with construction of the Initial Phase until The Colony has established, to NTTA's reasonable satisfaction, that The Colony has secured adequate financial resources to fund to completion all of its Initial Phase construction-related obligations under this Agreement. The Colony will provide NTTA such information pertaining to its financial resources for the Initial Phase that NTTA may reasonably request. NTTA must provide a written statement that The Colony has met this requirement in order for this condition precedent to be satisfied.

**I.K. Ownership of Bridge Upon Construction Completion Date.**

Upon The Colony's completion of the Initial Phase, as provided herein, the Parties agree that NTTA shall own the bridge. NTTA will transfer ownership of the bridge to TxDOT in accordance with the Project Agreement.

**ARTICLE II  
INITIAL PHASE OPERATIONAL OBLIGATIONS**

**II.A. License for Operation of the Initial Phase.**

NTTA will provide, to the extent allowed under the Project Agreement, The Colony a license ("Initial Phase Operational License"), to commence on the termination of the Initial Phase Construction License to use, operate, inspect, maintain and repair the Initial Phase in accordance with this Article II (collectively, "Operational Obligations"), and terminate upon the termination of this Agreement ("Initial Phase Operational License Term").

**II.B. Responsibilities During Initial Phase Operational License Term.**

1. General. Commencing on the Construction Completion Date, NTTA will operate and maintain the bridge substructure of the Initial Phase in good and structurally

sound working order and in such a manner so as to not cause damage to, or interference with, the Initial Phase. The Colony will, at its sole cost and expense, furnish all policing, sweeping, flushing, snow/ice control services and other public safety services and shall provide litter collection, as well as, comply with all permits related to storm sewer and storm water drainage systems. In addition, The Colony will, at its sole cost and expense, maintain, among other things, the traffic signals, pedestrian access, pavement markings, illumination, railings, concrete deck and all architectural elements of the bridge and associated connecting ramps. All responsibilities and obligations described in this Paragraph II.B.1 shall be in: (a) conformance with all applicable federal, state and/or local laws, rules, regulations, requirements, codes and/or standards, as they exist, may be amended, or in the future arising, (b) good and structurally sound working order and (c) such a manner so as not to cause damage to, or interference with, NTTA and/or TxDOT property. The Colony's duties with respect to post-construction maintenance are set forth in ***Exhibit "F"***.

2. Notice for Commencing Initial Phase Operational License Term. The Colony will notify NTTA not less than thirty (30) calendar days in advance of its proposed commencement of the Initial Phase Operational License Term to permit: (a) the satisfaction of the conditions set forth in Subsection I.C.4, (b) the coordinated cessation and transitioning of certain of The Colony's activities on NTTA and/or TxDOT property as set forth in Subsection I.C.5, and (c) the commencement of the Initial Phase Operational Obligations, which will occur upon such date as The Colony and NTTA mutually agree in writing.

## **II.C. Notice of Inspection, Maintenance, or Repair Activities.**

1. General. Before initiation of any work related to its Initial Phase Operational License Obligations, The Colony will provide NTTA with reasonable notice of its intent to perform any such activities if those activities will affect any of NTTA's facilities or operations.
2. Routine Inspection. For routine inspection activities on, under, over or in the vicinity of NTTA and/or TxDOT property, The Colony will give written notice to NTTA's Director of Maintenance describing the extent and nature of such activities at least fourteen (14) business days before commencement of such activities.
3. Material Modifications or Major Maintenance and Repair. For material modifications or major maintenance and repair activities that involve more than a nominal use of NTTA and/or TxDOT property, including but not limited to, any activity that requires the closure of or involves work in or adjacent to the NTTA's traffic lanes, or that otherwise materially affects operations or use or operation of the facilities or other portions of NTTA and/or TxDOT property, The Colony will

provide NTTA with as much prior written notice as possible, but in any event, no less than thirty (30) calendar days prior written notice of the material modifications or major maintenance and repair activities, unless the Parties agree to a shorter notice period for a particular activity.

### **ARTICLE III OTHER PROVISIONS**

#### **III.A. Term of Agreement.**

Unless this Agreement is terminated earlier as provided herein, the term of this Agreement shall commence on the Effective Date and shall terminate simultaneously with the termination of the Project Agreement, which shall not be any later than September 1, 2058 regardless of any amendments to and/or extensions of the Project Agreement relating to the term thereof.

#### **III.B. Noninterference and Safety.**

1. General. The Colony will conduct all of its activities and operations on, over, under and across NTTA and/or TxDOT property, whether in connection with the construction, operation or use of the Initial Phase or otherwise, in such a manner so as not to interfere with or impede NTTA's operations or its use and maintenance of NTTA and/or TxDOT property and in accordance with NTTA's Lane Closure Policy and Guidelines.
2. Safety. Safety of personnel, property, SRT operations and the public is of paramount importance in the work performed by The Colony under this Agreement. The Colony, at its sole cost and expense, will be responsible for initiating, maintaining and supervising all safety operations and programs in connection with its activities performed under this Agreement. Without limiting the provisions of this Subsection III.B.2, The Colony will comply with all applicable highway safety laws and standards, as they exist, may be amended or in the future arising.
3. Protection of Facilities and Property. The Colony will take such steps as are necessary to prevent damage to NTTA and/or TxDOT property, the Initial Phase or other property by soil erosion and drainage resulting from the Initial Phase or the activities of The Colony. Notwithstanding the review of the Initial Phase Plans by NTTA and the activities of the NTTA Construction Manager, The Colony agrees that, save and except for the Lane Closure(s) and other accommodations explicitly set forth in this Agreement, the Initial Phase will be designed, constructed and maintained in a manner so as not to cause damage to NTTA and/or TxDOT property due to structural failure, upheaval, settlement, drainage, soil erosion or similar circumstances. The Colony agrees to be responsible for, and promptly repair, at its sole cost and expense, any such damage caused by structural failure, upheaval, settlement, drainage, soil erosion

or similar circumstances due to its activities performed under this Agreement.

4. Suspension of Activities. Upon notification from NTTA, The Colony will immediately suspend construction, maintenance or repair activities on NTTA and/or TxDOT property that violate the terms of this Agreement, including but not limited to, any such activities that impair the safe and efficient operation of, or NTTA's use of, NTTA and/or TxDOT property.
5. Reporting Obligations. The Colony will immediately notify NTTA following its first notice of any accident or other event on or adjacent to NTTA and/or TxDOT property that results in, or might result in, injury to person (including death) and/or damage to the property of any person or entity, including without limitation, damage to NTTA and/or TxDOT property, or the Initial Phase.
6. Noninterference With Compliant Activities. NTTA will conduct all of its activities and operations on, over, under and across NTTA and/or TxDOT property in such a manner so as not to endanger, interfere with or impede The Colony's construction, operation, maintenance or repair of the Initial Phase, but only to the extent The Colony's construction, maintenance or repair activities are being undertaken in accordance with this Agreement. NTTA reserves the right to enter any part of NTTA and/or TxDOT property, at any time, in which case NTTA will endeavor to avoid any disruption to The Colony's operations being conducted in accordance with this Agreement.
7. Diligent Prosecution of all Closures. If The Colony needs to impose a Lane Closure in the performance of its operational duties, The Colony will exercise all reasonable and customary diligence in the prosecution of the applicable work and will not unduly or unreasonably extend the duration of said closure. The Colony will comply with the Lane Closure requirements of Subsection I.G.2, and pay the Revenue Loss Amounts as set forth in Subsection I.G.3.

### **III.C. Access to NTTA and/or TxDOT Property and Facilities.**

NTTA will be responsible for providing The Colony with direct access points to the SRT and other NTTA property, as applicable, in order for The Colony to perform the work contemplated by this Agreement wherever NTTA determines that such access does not interfere with the safe and efficient operation of the SRT or other facilities on NTTA and/or TxDOT property. These direct access points will be defined in and made part of the Final Traffic Plans.

### **III.D. Insurance.**

1. General. The Colony agrees to maintain insurance in the form, manner and limits described in ***Exhibit "G"*** with respect to all work or other activities performed on or near NTTA and/or TxDOT property by The Colony. The Colony will provide

a Certificate of Insurance to NTTA before commencement of work as evidence of this coverage. The Certificate of Insurance will name NTTA and TxDOT as additional insureds. Further, The Colony will require its insurers to waive their rights of subrogation against NTTA and TxDOT. All waivers of subrogation will be indicated on the applicable Certificate of Insurance.

2. Contractors/Subcontractors. The Colony will require its contractors and subcontractors who perform work on NTTA and/or TxDOT property to supply, at a minimum, the insurance coverage described in *Exhibit "H"*. This coverage will: (a) be endorsed naming NTTA and TxDOT as additional insureds, and (b) be required to provide a waiver of subrogation against NTTA and TxDOT, which shall be noted on the Certificate(s) of Insurance. Before beginning construction work, The Colony will cause its contractors to deliver a Certificate of Insurance to NTTA evidencing the applicable insurance coverage.
3. General Liability. The General Liability insurance maintained by The Colony as required above will name NTTA and TxDOT, their respective directors, officers, representatives, agents, employees and consultants (identified in writing to The Colony before the Effective Date of this Agreement) as additionally insured parties with respect to The Colony's liability arising from, directly or indirectly, in whole or in part, its work on NTTA and/or TxDOT property under this Agreement. The Colony's policies of insurance will be primary insurance.
4. No Limitation on Liability. The fact that insurance is obtained by The Colony will not be deemed to release or diminish the liability of The Colony under any provision of this Agreement. Damages recoverable by NTTA and/or TxDOT as a result of The Colony's breach will not be limited by the amount of the required insurance coverage.
5. Modification of Requirements. NTTA and/or TxDOT may reasonably modify the insurance coverage required under this Subsection III.C and *Exhibits "G" and "H"* to reflect the then-current risk management practices in the turnpike industry and underwriting practices in the insurance industry.

### **III.E. Limitation on Rights Provided Hereunder.**

The Initial Phase Construction License, the Initial Phase Operational License and all other rights granted to The Colony under this Agreement are provided, subject to, among other reasonable requirements of NTTA: (a) the continuing right and obligation of NTTA to use NTTA and/or TxDOT property in the performance of its duties, (b) NTTA's operation, maintenance, improvement, extension and expansion of the SRT, and (c) NTTA's reservation to itself of the right to use and to grant to others the right to use NTTA and/or TxDOT property above, underneath and adjacent to the Initial Phase to, among other things, construct, upgrade, place, remove, inspect, maintain, repair and

operate lanes, ramps, utility lines, pipelines, communication lines and other structures above, below and on the surface of its property, and such other uses that NTTA deems appropriate, provided, however, that no such right, obligation, reservation, use or grant by NTTA will be made that materially interferes with, or prevents The Colony from the exercise of, the rights provided The Colony under this Agreement. The Colony may not attach pipelines, utility or communications lines or any other objects to the Initial Phase without NTTA's prior written approval, which will not be unreasonably withheld, delayed, conditioned or denied.

### **III.F. No Warranties.**

The Initial Phase Construction License, the Initial Phase Operational License, and the other rights provided The Colony under this Agreement are subject to, among other reasonable limitations and/or conditions: (a) those restrictions, covenants, conditions, reservations, easements, licenses, and utility rights of whatever nature relating to NTTA and/or TxDOT property and the SRT as of the Effective Date, and (b) all applicable federal, state and local laws, rules, regulations and requirements, as they exist, may be amended or in the future arising. The Colony accepts NTTA and/or TxDOT property, the Initial Phase Construction License, the Initial Phase Operational License and all other rights granted under this Agreement "AS-IS AND WITH ALL FAULTS". The Colony acknowledges and agrees that NTTA makes no warranties as to fitness for the purpose of which The Colony intends to use NTTA property or such licenses and rights granted herein.

### **III.G. Compliance With Laws.**

The Colony will conduct its operations and activities hereunder, and construct, operate, and maintain the Initial Phase, in compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over same, including, without limitation, all applicable design, operations, safety, and environmental laws, ordinances, rules and regulations of any federal, state, or local authority applicable to such facilities, NTTA and/or TxDOT property and this Agreement, as they exist, may be amended or in the future arising.

### **III.H. Environmental Matters.**

If a petroleum, chemical or other hazardous material spill or discharge that requires an emergency response results from The Colony's construction or operation of the Initial Phase, or its other activities undertaken pursuant to this Agreement, The Colony will be solely responsible for the repairs, cleanup, remediation and associated monitoring and further obligations at The Colony's sole cost and expense. The Colony will contact NTTA as soon as the need for the response is identified, and NTTA and The Colony will cooperate so that the repairs, cleanup, remediation and any other actions can be made or the response can be undertaken in a manner that causes as little disruption or damage as

possible to the use or operation of NTTA and/or TxDOT property, and/or any other NTTA facilities.

### **III.I. Meetings.**

The Parties agree to promptly meet with any other Party upon such other Party's request, but in no event later than five (5) business days following that request. All Parties will bring the documentation and personnel needed to expeditiously address the topic(s) identified for discussion and resolution at the meeting.

### **III.J. Handback.**

As of the Effective Date of this Agreement, NTTA, under the Project Agreement, does not have any handback obligations with respect to the entire Project; however, should any Project Amendment, as described in Section III.A., occur and become effective which would affect NTTA's handback obligations with respect to the entire Project ("Project Handback Obligations"), The Colony acknowledges and agrees that it will assume the Project Handback Obligations. Notwithstanding, The Colony's approval right described in Section III.A. ("approval right"), The Colony acknowledges and agrees that said approval right shall not, under any circumstance, apply to any Project Amendment relating to NTTA's handback obligations with regard to the entire Project, and The Colony hereby waives and relinquishes its approval right with regard to this Section III.J.

### **III.K. Liability.**

1. No Liability for NTTA. Notwithstanding any of their activities under this Agreement, including, without limitation, review of the Initial Phase Plans, NTTA is not accepting, and will not have, any responsibility or liability whatsoever for any features of or other matters pertaining to the Initial Phase Plans, the Final Traffic Plans or any other plans, specifications or other deliverable provided by The Colony. The Colony, at its sole cost and expense, will adequately perform, police and supervise all of its Initial Phase-related work and activities, which responsibility will not be lessened or affected by NTTA's review rights referenced in the preceding sentence or by the presence at the Initial Phase jobsite of the NTTA Construction Manager or any other NTTA representative observing the work.
2. Liability for Acts of Other Parties. Without hereby waiving any governmental immunity generally available to any Party under Texas law with respect to any third parties, each Party is and will be responsible for its own acts and deeds and for those of its respective employees, agents, contractors, subcontractors, invitees and/or any other third party for whom such Party is legally responsible as related to that person or entity's respective activities in, around, across, under or over the Initial Phase, NTTA and/or TxDOT property and for the breach of its contractual obligations under this Agreement. Any breach of any terms of this Agreement by

any of the Parties' employees, agents, contractors, subcontractors (of any tier), invitees and/or any other third party for whom such Party is legally responsible will constitute a breach of the Party's obligations hereunder.

3. Damages. The Colony will compensate NTTA for all damages sustained by NTTA and/or TxDOT, as set forth in the Project Agreement, property and/or any other NTTA facilities or property caused, directly or indirectly, in whole or in part, by The Colony in its performance under this Agreement. Revenue Loss Amounts set forth in, or calculated pursuant to, this Agreement are reasonable estimates of the NTTA's revenue loss resulting from any Lane Closure, but do not include, or prevent the recovery of, compensation for any other damages that might be caused by the construction, operation, maintenance, repair or other activities of by The Colony.
4. No Third-Party Beneficiaries; No Waiver. This Agreement is solely for the benefit of the Parties and their successors and assigns. Nothing contained in this Agreement is intended, nor will be deemed or construed to, create or confer any rights, remedies, or causes of action in any person or entities that are not parties to this Agreement or their successors or assigns, save and except with regard to TxDOT as set forth herein.

## **ARTICLE IV GENERAL PROVISIONS**

### **IV.A. Agreement Fully Enforceable; No Conflict.**

Each Party to this Agreement represents and warrants that: (1) this Agreement is duly authorized and properly executed by that Party and constitutes the legal, valid, and binding obligation and agreement of that Party, fully enforceable in accordance with its terms, and (2) this Agreement and that Party's full performance of its terms will not: (a) result in a material breach of, nor constitute a default under, any contract, agreement or other instrument to which that Party is a signatory, including, without limitation, any other contract or agreement referenced in this Agreement, or (b) give rise to any defense to or claim regarding such Party's full performance under such other contract, agreement or other instrument.

### **IV.B. No Joint Enterprise.**

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 specifically disclaim such relationship. This Agreement does not constitute a joint enterprise, as there are no pecuniary interests, no common purpose and no equal right of control among the Parties.



#### **IV.C. Notices.**

All notices or other communication required or permitted hereunder will be presumed given when hand-delivered, one (1) business day after being deposited with a reputable overnight delivery service or three (3) business days after being mailed by certified mail, return receipt requested, addressed as follows:

If intended for The Colony, to:

The City of The Colony  
6800 Main Street  
The Colony, Texas 75056  
Attn: City Manager

If intended for NTTA, to:

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

With a copy to:

The Colony Local Development Corporation  
6800 Main Street  
The Colony, Texas 75056  
Attn: President

Any Party may change its address for notices and communications hereunder by providing notice pursuant to this Subsection IV.C.

#### **IV.D. Default and Termination.**

1. General. If a defaulting party ("Defaulting Party") continues in default in the performance of its obligations under this Agreement for a period of ten (10) business days after written notice from the notifying Party specifying such default (and for such additional time as is reasonably necessary for the Defaulting Party to effectuate a cure, provided the Defaulting Party promptly commences and thereafter diligently pursues such cure and the notifying Party does not incur liability, cost, delay, interference with the such Party's facility's safe and efficient operation, or other harm during or as a result of such additional time), the notifying Party may, at its option, immediately terminate this Agreement by written notice to the other Parties.
2. Unsafe Condition. Notwithstanding anything contained herein to the contrary, if any default by a Party in the performance of this Agreement causes or results, as reasonably determined by another Party, in an unsafe condition, such other Party may, but is not obligated to, immediately take such action on behalf of the Defaulting Party, at the Defaulting Party's sole cost and expense, in order to address such unsafe condition.

3. Continuing Liability. Notwithstanding any termination of this Agreement pursuant to this Subsection IV.D., the Defaulting Party will remain liable to the other Parties for any failure to perform under this Agreement before the date of such termination.

#### **IV.E. Miscellaneous.**

1. Complete Agreement and Amendment. This Agreement, including the exhibits hereto labeled "A"-**"H"**, all of which are incorporated herein for all purposes, embodies the entire agreement between the Parties and there are no oral or written agreements between the Parties, or any representations made, which are not expressly set forth herein. This Agreement may be amended only by a written instrument executed by the Parties.
2. Binding on Successors and Assigns. This Agreement will bind the Parties and their respective successors and assigns.
3. Interpretation. No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party by 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.
4. Multiple Successors. If two (2) or more entities subsequently succeed to the rights and obligations of any Party under this Agreement, all the covenants and agreements of that Party in this Agreement will be the joint and several covenants and agreements of such multiple entities.
5. No Waiver. The waiver by the Parties of the breach of any provision of this Agreement by a Party will in no way impair the Party or Parties right to enforce that provision for any subsequent breach thereof.
6. Choice of Law and Venue. The laws of the State of Texas govern this Agreement and venue for any lawsuit arising under this Agreement will be proper only in Denton County, Texas.
7. Governmental Functions. The parties acknowledge and agree that the performance by each Party of their respective obligations under this Agreement constitute governmental functions.
8. Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date of this Agreement; (b) form the basis upon which the Parties negotiated and entered into this Agreement; and (c) reflect the final intent of the Parties with regard to the subject matter of this Agreement. If it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be given full effect. The Parties have relied, to

their material detriment, upon the recitals as part of the consideration for entering into this Agreement and, but for the recitals, would not have entered into this Agreement.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. A facsimile signature will also be deemed to constitute an original if properly executed.
10. Sovereign Immunity. The Parties agree that none of the Parties have waived its respective sovereign immunity by entering into and performing its respective obligations under this Agreement.
11. Assignment. This Agreement is not assignable without the prior written consent of the Parties hereto.
12. Execution/Consideration. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
13. Headings. The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
14. Additional Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had the opportunity to confer with its counsel.
15. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
16. Warranties/Representations. All warranties, representations and covenants made by one Party to the other in this Agreement or in any certificate or other instrument delivered by one Party to the other under this Agreement shall be considered to have been relied upon by the other Party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made.
17. Reference to NTTA. When referring to "NTTA" herein, this Agreement shall refer to and be binding upon NTTA, and its officers, directors, employees, representatives, agents, consultants and any other third party for whom NTTA is

legally responsible.

18. Reference to TxDOT. When referring to "TxDOT" herein, this Agreement shall refer to TxDOT, and its officers, directors, employees, representatives, agents, consultants and any other third party for whom TxDOT is legally responsible.
19. Reference to The Colony. When referring to "The Colony" herein, this Agreement shall refer to and be binding upon The Colony, and its City Council Members, officers, employees, representatives, agents, invitees, contractors, subcontractors and any other third party for whom The Colony is legally responsible, as well as The Colony Local Development Corporation, its officers, directors, employees, representatives, agents and any other third party for whom The Colony Local Development Corporation is legally responsible.
20. Further Assurances. The Parties agree to execute and deliver to any other Party, at any time or times during which this Agreement shall be in effect, such further instruments as any Party reasonably and in good faith may deem necessary to make effective this Agreement.

**EXECUTED** this, the 28<sup>m</sup> day of June 2013, by NTTA, the City of The Colony, Texas and The Colony Local Development Corporation, acting through their duly authorized officers.

**NTTA:**

**NORTH TEXAS TOLLWAY AUTHORITY,**  
a Texas Regional Tollway Authority

By: \_\_\_\_\_

Gerry Carrigan, Executive Director

**CITY:**

**CITY OF THE COLONY, TEXAS,**  
a Texas home-rule municipality


By: \_\_\_\_\_

Joe McCourry, Mayor

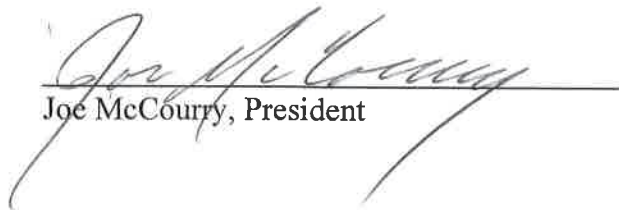
**ATTEST:**

Christie Wilson, Deputy  
Christie Wilson, City Secretary

**APPROVED AS TO FORM:**

*for*   
Jeff Moore, City Attorney

**THE COLONY LOCAL DEVELOPMENT  
CORPORATION,**  
a Texas non-profit corporation

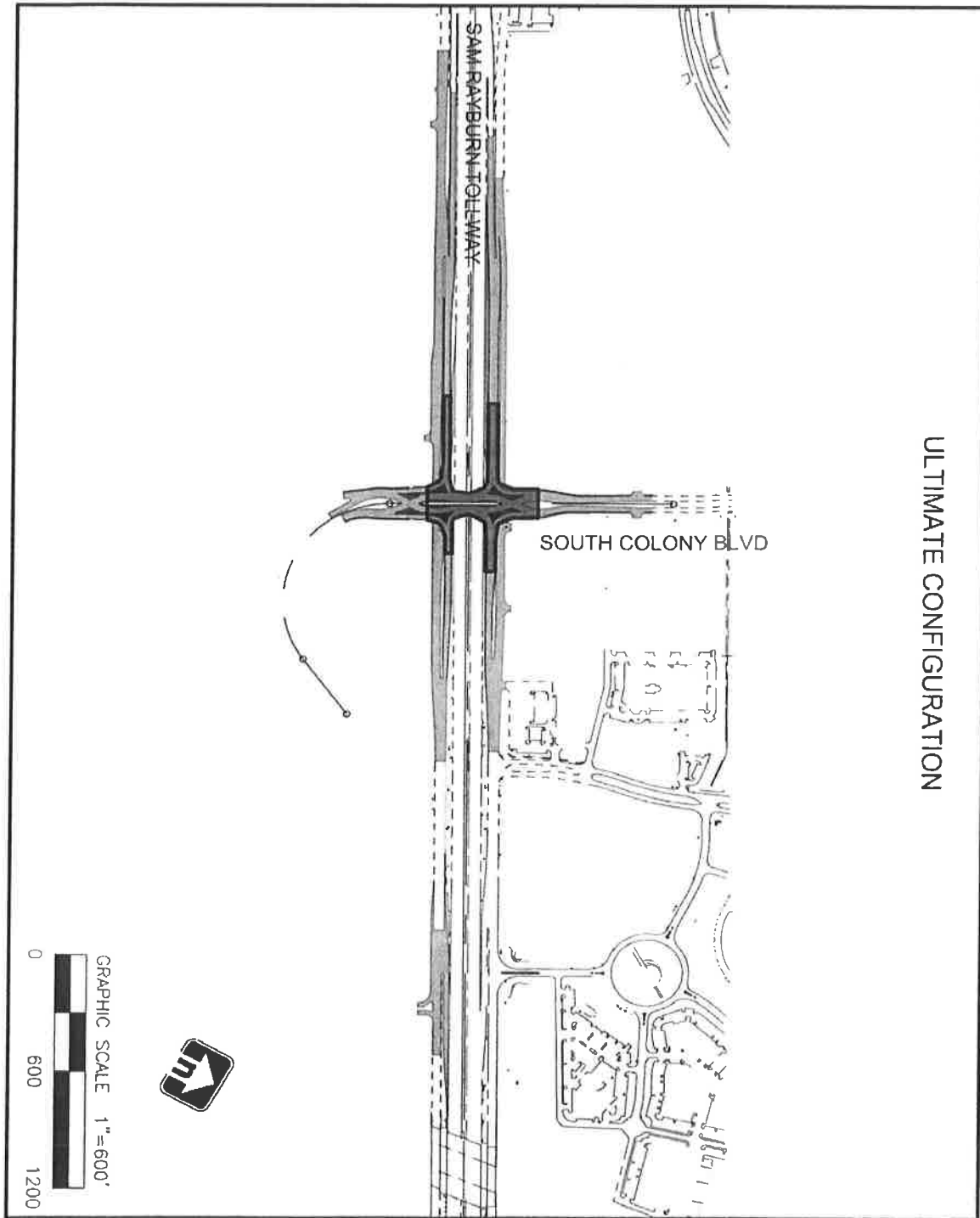
By:   
Joe McCourry, President

**ATTEST:**

  
Richard Boyer, Secretary

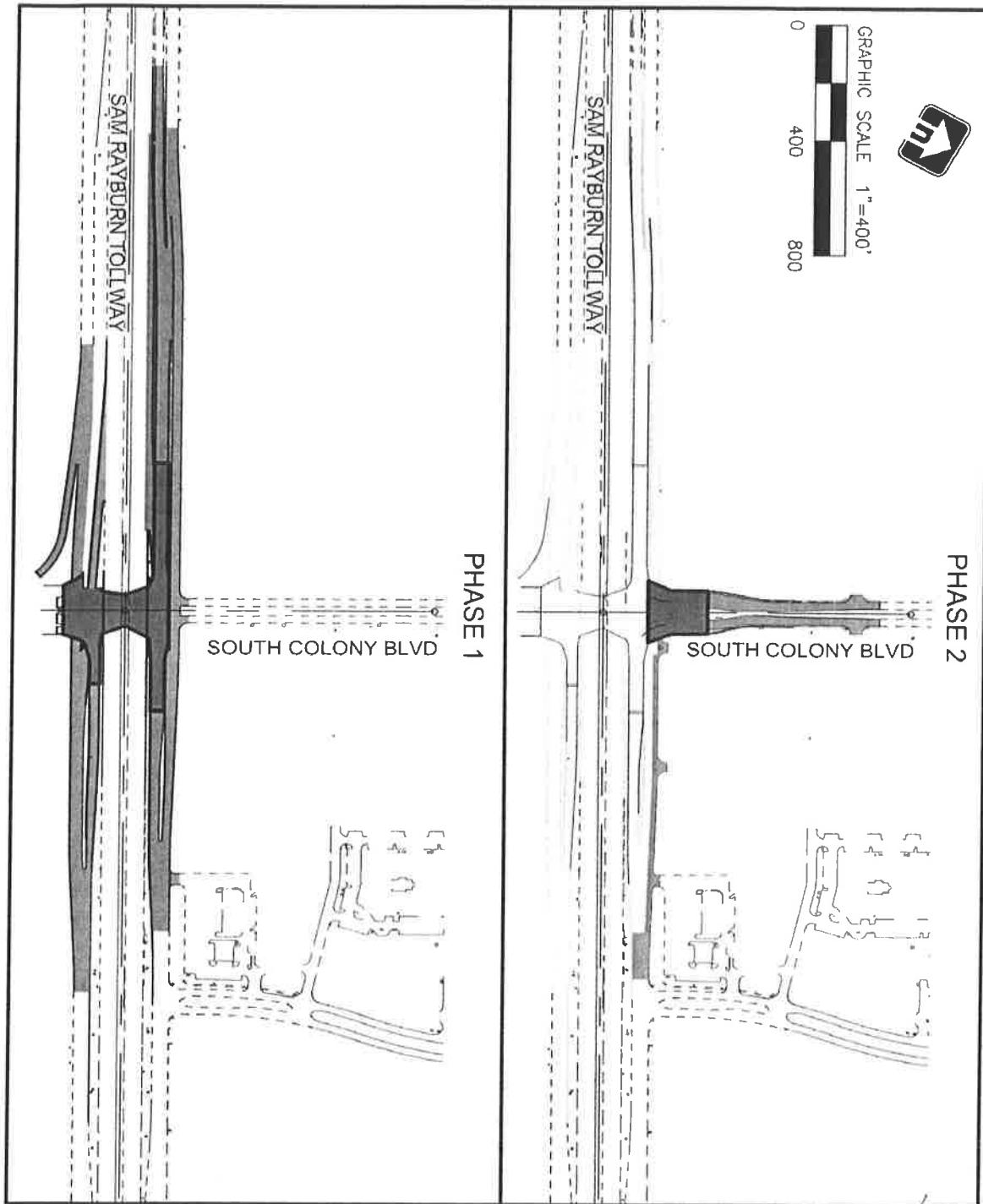
## EXHIBIT "A"

### GENERAL DEPICTION OF THE PROJECT



## EXHIBIT "B"

### THE INITIAL PHASE



## ***EXHIBIT “C”***

### **GENERAL DESCRIPTION OF PROJECT**

#### **General Description of Project:**

The Project is located along SH 121/SRT within the city limits of The Colony between Paige Road and Spring Creek Parkway and includes improvements along approximately 1.05 miles of SH 121/SRT generally centered around the existing connection of South Colony Boulevard. The ultimate completed Project consists of improvements to the existing frontage roads, relocation of existing access ramps, installation of new ramps to provide access between South Colony Boulevard and SH 121/SRT, installation of the bridge over SH 121/SRT, toll gantry improvements, relocation/signage improvements along SH 121/SRT and new signal installations with the South Colony Boulevard connections. The Project will provide direct access to and from South Colony Boulevard to the main SRT lanes and the frontage road system through a Diverging Diamond Interchange, allowing access off-system to the north and south or access back to the SRT through U-turn movements provided on the bridge. The Project will be phased with the Initial Phase to include the complete bridge structure over the SRT, providing access from the south bound lanes of the SRT and frontage roads to the south side of the SRT along South Colony Boulevard and continuing south along Grandscape Boulevard, a public roadway.

#### **1. General Description of the Initial Phase Scope of Work of the Project:**

The Initial Phase Scope of Work will consist of a grade separated crossing of South Colony Boulevard over SH 121 by virtue of the bridge. The Initial Phase will also include the ramp improvements connecting the south bound frontage road for access to and from the bridge along with north bound and south bound improvements maintaining the existing frontage road capacity through this area.

#### **2. General Description of the Remaining Phases of the Project:**

##### **a. Second Phase:**

The second phase will consist of extending the bridge structure to complete the connection to the existing South Colony Boulevard north of the SRT. The construction of this second phase is anticipated to commence prior to the completion of construction of the Initial Phase in order to provide full connectivity for South Colony Boulevard from both the north and south sides of the SRT.

##### **b. Final Phase:**

The final phase of the Project will complete the ultimate design by



connecting the north bound lanes of the SRT and frontage road access to the bridge structure and extending the frontage road improvements associated with this connection. This final phase will also provide improvements to the existing north bound entrance ramp and toll gantry structure located east of South Colony Boulevard and prior to the existing Spring Creek Boulevard connection.

## ***EXHIBIT “D”***

### **INITIAL PHASE STANDARDS**

For purposes of this Agreement, the Initial Phase Standards will include, but not be limited to, the following:

#### **A. Pavement**

- Widening of pavement – in kind (same thickness, material, etc.)
- Concrete Pavement Junctures (CPJ-201-2012)

#### **B. Striping**

- Use NTTA striping standard (MRK-001-2004, MRK-002-2004, MRK-003-2004, MRK-004-2004); tape instead of thermo
- Attenuator – SMART, TRACC or SGT

#### **C. Rail**

- Single Slope Concrete Barrier (SSCB(2)-10 (Mod)
- Single Slope Transition SSB to SSTR (SST-210-2010)
- NTTA Standard for Delineation (LDS-201-2009)

#### **D. Signage**

- Bridge Mounted Clearance Sign Assembly (BCS-001-2007)
- Sign Details – Small Signs (SGN-005-2009)
- Sign Mounting Detail (SMD-001-2010)

#### **E. Columns**

- Aesthetic Bent Guidelines Multi-Column Bent (ABG-201-2009) for columns of South Colony
- Aesthetic Bent Guidelines Interchange Bent (ABG-202-2009) for columns on ramps to/from South Colony

#### **F. Walls**

- Texture – Grande Flagstone
- MSE Wall Design Requirements (MSE-201-2009)
- MSE Wall Underdrains (MSE-202-2009)
- Retaining Wall Details (RWD-201-2009, RWD-202-2009, RWD-203-2009, RWD-204-2009, RWD-205-2009, RWD-207-2011)
- Retaining Wall Guidelines (RWG-201-2010)
- Retaining Wall Rail (RWR-201-2009)

**G. Lighting**

- SRT lighting – match existing
- South Colony underpass lighting (RID-204-2011)
- South Colony- The Colony to maintain
- Bridge Lighting Details (BLD-201-2011)

**H. Overhead Signs** -Use TxDOT Standard for sign supports to match existing sign structures

**I. Drainage**

- MSE Wall Inlet (DRA-004-2007)
- Miscellaneous Drainage Details (DRA-005-2007)

**J. Mow strips** -along walls and under MBGF (MSD-001-2007)

**K. Riprap** –

- Riprap should be placed on non-mowable areas less than 6' wide and slopes steeper than 4 to 1
- Concrete Riprap with Retaining Wall at Overpass Bridges (STR-001-2007)
- Underbridge Riprap Detail (URD-201-2009)

**L. Guard rail** - steel post

**M. Communication Infrastructure**

- Electrical Service Center (ESC-001-2009 and ESC-003-2009)
- Fiber Optic Cable (ITS-001-2009 and ITS-002-2009)
- CCTV Camera Pole Details (ITS-006-2009)

**N. Aesthetics**

- Uncoated finish – NTTA Special Specification Item 850Rail-Mounted Fence (RMF-201-2010)
- Recessed Logo Detail Retaining Wall Logo (LGO-201-2009)
- Recessed Logo Detail Column Logo (LGO-202-2009)
- Landscape Details at MSE Walls (LSP-201-2009)

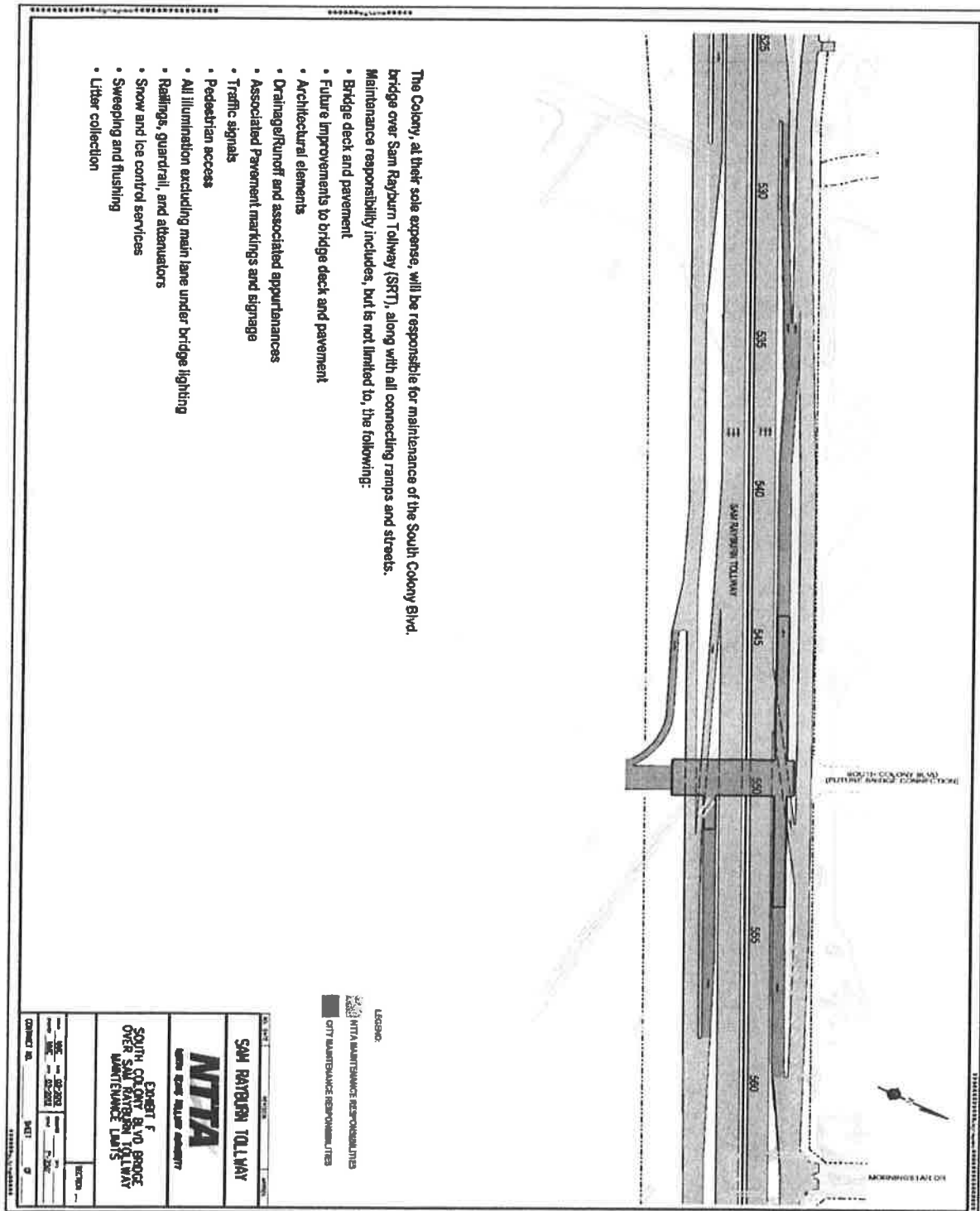
***EXHIBIT "E"***

**REVENUE LOSS AMOUNTS**

			Ramp*	Mainlane*
Weekday	6am	10am	\$ 255	\$ 1,850
	10am	3pm	\$ 65	\$ 450
	3pm	10pm	\$ 255	\$ 1,850
	10pm	6am	\$ 25	\$ 110
Weekend	10am	10pm	\$ 65	\$ 400
	10pm	10am	\$ 25	\$ 140
* \$ figures shown are for one lane per hour				

## EXHIBIT "F"

### THE COLONY'S POST-CONSTRUCTION MAINTENANCE DUTIES



## ***EXHIBIT "G"***

### **INSURANCE REQUIREMENTS**

The Colony shall procure and keep in full force and effect throughout the term of this Agreement, the following insurance policies in the minimum coverages and limits set forth below:

(A) COVERAGE PROVISIONS                      LIMITS  
(in addition to III.C.1 above)

(B) WORKERS' COMPENSATION (WC)                      \$1,000,000

- (1) Coverage must include USL&H, Jones Act, Outer Continental Shelf Land Act, Maritime & Federal Employers Liability Act coverage & Defense Base Act, if applicable.
- (2) Coverage must include all Partners, Proprietors, and Executive Officers.
- (3) Waiver of subrogation in favor of NTTA and TxDOT.

(C) EMPLOYER'S LIABILITY (EL)

- |                             |             |
|-----------------------------|-------------|
| (1) Each Accident           | \$1,000,000 |
| (2) Disease – Policy Limit  | \$1,000,000 |
| (3) Disease – Each Employee | \$1,000,000 |

Coverage must include all Partners, Proprietors, and Executive Officers.

(D) COMMERCIAL GENERAL LIABILITY (CGL)

- |                                    |             |
|------------------------------------|-------------|
| (1) General Aggregate              | \$2,000,000 |
| (2) Products/Comp-Op Aggregate     | \$2,000,000 |
| (3) Personal/Advertising Injury    | \$1,000,000 |
| (4) Each Occurrence                | \$1,000,000 |
| (5) Fire Damage (any 1 fire)       | \$50,000    |
| (6) Medical Expense (any 1 person) | \$5,000     |

Policy must be endorsed to provide that aggregate limits apply on a per South Colony Boulevard Extension basis.

Waiver of Subrogation in favor of NTTA and TxDOT.

Coverage must include:

Broad form property damage, product/completed operations (minimum three (3) years past completion of South Colony Boulevard Extension), independent contractor's liability, blanket contractual liability covering the indemnity obligations under this Agreement coverage for hazards commonly referred to as XCU.

(E) BUSINESS AUTOMOBILE LIABILITY (AL)

- |                                  |             |
|----------------------------------|-------------|
| (1) Bodily injury (per person)   | \$1,000,000 |
| (2) Bodily injury (per accident) | \$1,000,000 |
| (3) Property Damage              | \$1,000,000 |
| or                               |             |
| (4) Combined Single Limit        | \$1,000,000 |

Coverage will include all owned, non-owned and hired vehicles.

Waiver of Subrogation in favor of NTTA and TxDOT.

(F) EXCESS (UMBRELLA) LIABILITY

- |                                      |              |
|--------------------------------------|--------------|
| (1) In excess of WC, CGL, & AL above | \$10,000,000 |
|--------------------------------------|--------------|

(G) Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD.

(H) Endorsement applicable to each policy provided.

(I) Insurance Company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

## ***EXHIBIT "H"***

### **SUBCONTRACTOR INSURANCE REQUIREMENTS**

All Subcontractor's shall procure and keep in full force and effect throughout the term of this Agreement, the following insurance policies in the minimum coverages and limits set forth below:

(A) COVERAGE PROVISIONS (in addition to III.C.2 above)	<u>LIMITS</u>	<u>AGREEMENTS</u>	
	UNDER	IN EXCESS OF	IN EXCESS OF
	150,000	\$150,000	\$1MM
(B) WORKERS' COMPENSATION (WC) \$1,000,000		\$500,000	\$1,000,000

- (1) Coverage must include USL&H, Jones Act, Outer Continental Shelf Land Act, Maritime & Federal Employers Liability Act coverage & Defense Base Act, if applicable.
- (2) Coverage must include all Partners, Proprietors, and Executive Officers.
- (3) Wavier of subrogation in favor of NTTA and TxDOT.

#### **(C) EMPLOYER'S LIABILITY (EL)**

(1) Each Accident	\$ 500,000	\$1,000,000	\$1,000,000
(2) Disease – Policy Limit	\$ 500,000	\$1,000,000	\$1,000,000
(3) Disease – Each Employee	\$ 500,000	\$1,000,000	\$1,000,000

Coverage must include all Partners, Proprietors, and Executive Officers.

#### **(D) COMMERCIAL GENERAL LIABILITY (CGL)**

(1) General Aggregate	\$1,000,000	\$2,000,000	\$2,000,000
(2) Products/Comp-Op Aggregate	\$1,000,000	\$2,000,000	\$2,000,000
(3) Personal/Advertising Injury	\$1,000,000	\$1,000,000	\$1,000,000
(4) Each Occurrence	\$1,000,000	\$1,000,000	\$1,000,000
(5) Fire Damage (any 1 fire)	\$50,000	\$50,000	\$50,000
(6) Medical Expense (any 1 person)	\$5,000	\$5,000	\$5,000

Policy must be endorsed to provide that aggregate limits apply on a per South Colony Boulevard Extension basis.



Waiver of Subrogation in favor of NTTA and TxDOT.

Coverage must include:

Broad form property damage, product/completed operations (minimum three (3) years past completion of South Colony Boulevard Extension), independent contractor's liability, and coverage for hazards commonly referred to as XCU.

(E) BUSINESS AUTOMOBILE LIABILITY (AL)

(1) Bodily injury (per person)	\$ 500,000	\$ 1,000,000	\$ 1,000,000
(2) Bodily injury (per accident)	\$ 500,000	\$ 1,000,000	\$ 1,000,000
(3) Property Damage	\$ 500,000	\$ 1,000,000	\$ 1,000,000
or			
(4) Combined Single Limit	\$1,000,000	\$1,000,000	\$1,000,000

Coverage will include all owned, non-owned and hired vehicles.

Waiver of Subrogation in favor of NTTA and TxDOT.

(F) EXCESS (UMBRELLA) LIABILITY

(1) In excess of WC, CGL, & AL above	N/A	\$1,000,000	\$2,000,000
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