

## INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into this 26<sup>th</sup> day November, 2008, pursuant to the Interlocal Cooperation Act, Chapter 791, V.T.C.A., Government Code, by and between the **CITY OF FRISCO** (hereinafter "Frisco") and **NORTH TEXAS TOLLWAY AUTHORITY** (hereinafter "NTTA"), both being governmental entities of the State of Texas, and each acting by and through its duly authorized officials, and evidences the following purpose, terms, rights, obligations, and responsibilities of the contracting parties:

1. SALE OF FUEL

1.1 Frisco hereby agrees to sell to NTTA motor vehicle fuel.

2. PRICES & FEES

2.1 NTTA agrees to pay each month that fuel is purchased from the City of Frisco, a fifty dollars (\$50.00) administrative fee over and above the cost of the fuel.

2.2 The City of Frisco shall sell NTTA fuel at the contract price set forth in the Annual Supply Agreement, dated March 18, 2008, by and between the City of Frisco and Martin Eagle Oil Company ("Vendor"), as amended, which is incorporated herein for all purposes, and NTTA agrees to pay for the fuel at that contracted price, as amended.

3. CITY OF FRISCO'S RESPONSIBILITIES

3.1 Frisco's responsibilities with respect to this Interlocal Agreement shall be as follows:

3.1.1 Frisco shall maintain adequate fuel levels to meet NTTA's supply demands not to exceed six thousand (6,000) gallons of unleaded per month, and two thousand five hundred (2,500) gallons of diesel per month, unless as otherwise provided in paragraph 4 below.

3.1.2 Frisco shall provide and pay for all personnel, supplies, facilities, and environmental requirements to support all aspects of the fuel system.

3.1.3 Frisco shall be responsible for all payments to the vendor for the purchase of fuel.

3.1.4 Frisco shall provide NTTA with fuel keys as requested.

3.1.5 Frisco shall be responsible for maintaining all equipment related to the fuel system.

4. NTTA RESPONSIBILITIES

4.1 NTTA's responsibilities with respect to this Interlocal Agreement shall be as follows:

4.1.1 NTTA shall request and obtain approval from the City of Frisco for usage over and above six thousand (6,000) gallons of unleaded per month, and two thousand five hundred (2,500) gallons of diesel per month.

4.1.2 NTTA, through its Maintenance Department, shall be responsible for identifying NTTA personnel and vehicles authorized to purchase fuel from Frisco and shall notify Frisco, in writing, of the same.

4.1.3 NTTA shall be responsible for immediately notifying Frisco of any lost key, and for retrieving keys from NTTA personnel upon termination of employment or termination of this Interlocal Agreement.

4.1.4 NTTA shall be responsible for immediately reporting any problems encountered with the fuel system to the Frisco.

4.1.5 NTTA shall be responsible for reporting any lost or missing keys to Frisco and for any costs incurred in replacing the same.

4.1.6 NTTA agrees to pay for all fuel taken to date in the event of termination of this Interlocal Agreement.

5. BILLING AND PAYMENT

5.1 Frisco shall invoice NTTA on a monthly basis and such invoice shall be delivered to the NTTA no later than the tenth (10) day of each month. The invoice shall clearly identify each fueling transaction by vehicle identification number, and shall indicate date of purchase, gallons pumped and vehicle mileage. Payment by NTTA shall be made in accordance with the State of Texas Prompt Payment Act, Article 601f, V.T.C.A.

6. INDEMNITY

6.1 NTTA agrees to be responsible for its own acts of negligence and Frisco agrees to be responsible for its own acts of negligence which may arise in connection with the purchase of Fuel. In the event of joint and concurrent negligence, NTTA and Frisco agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the parties hereto, and not for the benefit of any third parties, nor to create liability of the benefit of any third

parties, nor to deprive the parties hereto of any defenses each may have against third parties under laws and court decisions of the State of Texas.

7. TERM

7.1 The term of this Interlocal Agreement shall be for sixty (60) months, from the date of its execution, unless terminated earlier as provided herein. This Interlocal Agreement may be renewed annually thereafter by mutual written agreement of the parties.

8. NOTICES

8.1 Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained below:

**If to Frisco:** City of Frisco Purchasing Dept.  
Attn: Tom Johnston  
6101 Frisco Square Blvd.  
Frisco, Texas 75034

**If to NTTA:** North Texas Tollway Authority  
Attn: Doyle Graham, Jr. CFM

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9. TERMINATION

9.1 Frisco, acting through its Purchasing Agent, or NTTA, acting through its Maintenance Department, may terminate this Interlocal Agreement upon thirty (30) days prior written notice, with the understanding that all obligations being performed under this Interlocal Agreement, except those identified herein, shall cease upon the date specified in such notice.

10. IMMUNITY

10.1 The parties agree that neither party has waived its sovereign immunity by entering into and performing its respective obligations under this Interlocal Agreement.

11. VENUE

11.1 This Interlocal Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

12. MISCELLANEOUS

- 12.1 This Interlocal Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual written agreement of the parties hereto.
- 12.2 This Interlocal Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 12.3 This Interlocal Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.4 Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 12.5 Both FRISCO and NTTA have determined by their execution of this Agreement that this Agreement and the obligations of the parties contained herein are in discharge of a governmental function as set forth in the Interlocal Cooperation, Chapter 791, Texas Government Code, and the participation by either party in the terms of this Agreement shall not make such party an agent or representative of the other party.
- 12.6 The individuals executing this Interlocal Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Interlocal Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Interlocal Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Interlocal Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.7 This Interlocal Agreement is not assignable by either entity without the prior written consent of the other party. This Interlocal Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives and successors.
- 12.8 In case any one or more of the provisions contained in this Interlocal 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 Interlocal Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

- 12.9 Each signatory represents this Interlocal Agreement has been read by the party for which this Interlocal Agreement is executed and that such party has had an opportunity to confer with its counsel.
- 12.10 This Interlocal Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Interlocal Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Interlocal Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 12.11 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No third party shall have any rights herein.

**THIS INTERLOCAL AGREEMENT** shall be effective upon passage of enabling resolutions or orders by the governing bodies of the parties hereto and the execution hereof by each of the authorized representatives of the political subdivisions who are parties hereto.

**CITY OF FRISCO:**

By: George Purefoy  
George Purefoy, City Manager  
Date: Oct. 29, 2008

**ATTESTED TO AND  
CORRECTLY RECORDED BY:**

LeBaron for Ron Patterson  
Ron Patterson, Interim City Secretary

**APPROVED AS TO FORM:**

By: Claire E. Swann  
Abernathy Roeder Boyd & Joplin P.C.  
Claire E. Swann, City Attorneys

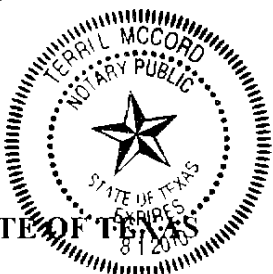
**North Texas Tollway Authority:**

By: Clayton Howe  
Print Name: Clayton Howe  
Date: 11/26/08

STATE OF TEXAS       §  
                                  §  
COUNTY OF COUNTY   §

BEFORE ME, the undersigned authority, on this day personally appeared **George Purefoy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **CITY OF FRISCO, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29<sup>th</sup> day of Oct. 2008.



Terril L. McCord  
Notary Public in and for Texas  
My Commission Expires: 8/1/10

STATE OF TEXAS       §  
                                  §  
COUNTY OF COUNTY   §

BEFORE ME, the undersigned authority, on this day personally appeared Clayton House, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for the **NORTH TEXAS TOLLWAY AUTHORITY**, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26<sup>th</sup> day of November 2008.

Ruby Franklin  
Notary Public in and for Texas  
My Commission Expires: 08-23-09

