

STAGING AREA AGREEMENT

STATE OF TEXAS §
 COUNTY OF DALLAS §

THIS AGREEMENT is by and between the City of Rowlett, Texas ("City"), a Texas municipal corporation, and the North Texas Tollway Authority ("Authority"), a regional tollway authority, and is to be effective as of the date of the last signatory set forth hereinbelow.

WHEREAS the Authority has proposed to design and construct the Eastern Extension of the President George Bush Turnpike (the "Eastern Extension"), through the City, and the construction of the Eastern Extension is to commence in the near future; and

WHEREAS, the City and the Authority have previously entered into an Interlocal Agreement ("Interlocal Agreement") between the parties regarding the Eastern Extension, which provides, *inter alia*, for the use of certain City-owned rights-of-way and property for staging areas for the construction of the Eastern Extension; and

WHEREAS, this Staging Area Agreement is intended to further define the obligations of the parties regarding the use of designated staging areas. Now, Therefore

To more fully specify the parties' obligations under the Interlocal Agreement with respect to the matters described below, and in recognition of the consideration represented by the mutual obligations set forth in the Interlocal Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

The City reaffirms its covenant under the Interlocal Agreement to make available its rights-of-way and other properties, if any, located along the Eastern Extension for the Authority's exclusive use as temporary staging areas before and during construction of the Eastern Extension. The Authority agrees to submit to the City an exhibit identifying a proposed staging area prior to the Authority's using such staging area together with a list of proposed materials to be stored on site, and the proposed uses of the staging area. As provided in Section 3 of the ILA, if the City demonstrates that a property requested by the Authority cannot be utilized for such purposes without materially interfering with the City's current or committed future use for that property and the City identifies a substitute property offering substantially identical utility as a temporary staging area, the substitute property shall be utilized. In general, such areas may be used for the placement and operation of construction trailers, for temporary material disposal, for temporary embankments, for the operation of concrete and/or asphalt batch mixing plants, and for any other use or purpose that may be related to the construction of the Eastern Extension.

During its use of the staging areas, the Authority shall use all reasonable efforts to maintain the areas in an orderly condition, free from excessive debris and clutter and with no unlawful contamination. Neither the Authority nor its contractors shall impede other rights-of-way or roadways adjacent to or near the staging areas but may do so within the areas.

EXHIBIT B

During its use of the staging areas, the Authority shall pay and remit to the City the sum of \$ 0 per month for each month or part thereof in which the staging area is reserved by the City for the Authority's use, which sum shall be due and payable in advance on the first day of each month. If additional staging areas are designated by the Authority and reserved by the City for the Authority's use, the Authority shall remit an additional monthly sum to be determined by the parties, but which shall in no event be less than the foregoing amount, pro rated based on the square footage of the staging area. The Authority shall be deemed in default and material breach of this Agreement if any monthly amount is not paid in full by the 15th day of any month in which due, without notice to the Authority by the City. The failure to timely remit any monthly amount shall entitle the City to declare the Authority in breach and the City may, at its sole option, declare this Agreement terminated, may immediately remove all materials, supplies, equipment and other items of the Authority from the staging area, or may waive the breach and allow the continued use of the staging area by the Authority. Any such waiver shall not be deemed a waiver for any future breach or event of default. Notwithstanding, the Authority shall at all times be bound and obligated to remit the monthly amounts for any month or part thereof in which the staging area is reserved by the City for the Authority's use or in which any of the Authority's materials, equipment, supplies or other items occupy the staging area. Any amounts not paid to the City by the 31st day after the first day of the month in which due shall be deemed to be overdue and shall on that date begin to accrue interest at the rate specified in Section 2251.021, Texas Government Code. The City shall be entitled to recover all costs and attorney's fees incurred in enforcing the provisions of this paragraph and this Agreement, and the Authority hereby waives all immunities from suit and liability for this purpose. The Authority hereby warrants and affirms that it has appropriated sufficient funds from the Authority's current fiscal year to satisfy the monetary obligations imposed in this paragraph and shall, for any and all future fiscal years in which the staging areas are occupied by the Authority, allocate sufficient funds to satisfy all obligations in this paragraph.

Upon completion of construction activities or the cessation of use thereof, whichever comes first, the Authority shall, at its sole expense, return the staging areas to the City in the same or better condition than that received.

The Authority accepts permission to use the staging areas on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis without representation or warranty by the City of any kind as to the physical condition of the staging areas, its suitability for intended use, or its compliance with any applicable laws, rules, regulations or ordinances. THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, OF SUITABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS AGREEMENT.

During its use of a staging area, the Authority shall at all times assume all risk of damage or injury to persons or property arising in any way from its use of that staging area. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AUTHORITY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL DAMAGES, CLAIMS, LOSSES, DEMANDS, SUITS, SUBROGATION CLAIMS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES CAUSED BY THE NEGLIGENCE

OR WILLFUL MISCONDUCT OF THE AUTHORITY'S DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, OR CONSULTANTS IN THEIR USE OF THE STAGING AREAS, INCLUDING THOSE ARISING FROM THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE CITY; HOWEVER, THE AUTHORITY SHALL NOT BE LIABLE UNDER SUCH INDEMNIFICATION TO THE EXTENT SUCH DAMAGES, CLAIMS, LOSSES, DEMANDS, SUITS, SUBROGATION CLAIMS, JUDGMENTS, OR COSTS RESULT FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AUTHORITY SHALL INDEMNIFY, DEFEND AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LOSS, LIABILITIES, DAMAGES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE COSTS OF DEFENSE AND ATTORNEY'S FEES) ARISING OUT OF OR ASSOCIATED, IN ANY WAY, WITH THE AUTHORITY'S NON-COMPLIANCE WITH ENVIRONMENTAL LAWS IN, ON, OR ABOUT ANY OR ALL OF THE STAGING AREAS, INCLUDING THOSE ARISING FROM THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE CITY; HOWEVER, THE AUTHORITY SHALL NOT BE LIABLE UNDER SUCH INDEMNIFICATION TO THE EXTENT SUCH LOSS, LIABILITY, DAMAGE, CLAIM, COST OR EXPENSE RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR ITS NON-COMPLIANCE WITH ENVIRONMENTAL LAWS.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CITY SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ALL LOSS, LIABILITIES, DAMAGES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE COSTS OF DEFENSE AND ATTORNEY'S FEES) ARISING OUT OF OR ASSOCIATED, IN ANY WAY, WITH THE CITY'S NON-COMPLIANCE WITH ENVIRONMENTAL LAWS IN, ON, OR ABOUT ANY OR ALL OF THE STAGING AREAS, INCLUDING THOSE ARISING FROM THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE AUTHORITY; HOWEVER, THE CITY SHALL NOT BE LIABLE UNDER SUCH INDEMNIFICATION TO THE EXTENT SUCH LOSS, LIABILITY, DAMAGE, CLAIM, COST OR EXPENSE RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE AUTHORITY OR ITS NON-COMPLIANCE WITH ENVIRONMENTAL LAWS.

Environmental Law means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes together with all administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case relating to environmental, health, safety and land use matters.

The City may terminate this Agreement for any or no reason, on thirty (30) days' prior written notice to the Authority, or upon breach of this Agreement on the Authority's default. If terminated without cause, the Authority may request a substitute property to be used as a staging area or the City may identify a suitable property that is substantially identical, if available.

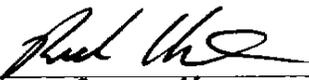
EXHIBIT B

Nothing herein shall be deemed or construed to grant or confer any rights, benefits, remedies or claims to any person not a party to this Agreement and each of the parties hereby expressly retains without waiver all immunities and defenses.

The Authority shall at all times comply with all laws, regulations and ordinances applicable to its use of the staging areas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any action arising under this Agreement shall be in the state courts of appropriate jurisdiction of Dallas County, Texas.

EXECUTED on the dates set forth below, to be effective on the last date of signing below.

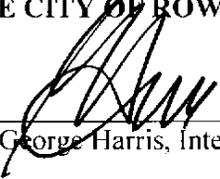
NORTH TEXAS TOLLWAY AUTHORITY

By: 
Name: RICK HERRINGTON
Title: DEPUTY EXECUTIVE DIRECTOR
Date: 11/11/2008

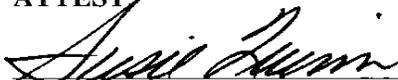
ATTEST:


Secretary: RUBY FRANKLIN

THE CITY OF ROWLETT, TEXAS

By: 
George Harris, Interim City Manager
Date: 10-24-08

ATTEST:


Susie Quinn, City Secretary