

**AGREEMENT FOR A TOTAL STATION EQUIPMENT PROJECT BETWEEN THE  
STATE OF TEXAS AND THE NORTH TEXAS TOLLWAY AUTHORITY**

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This Agreement made between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called "State" or "TxDot" and the North Texas Tollway Authority, a Regional Tollway Authority, acting by and through its Board of Director, hereinafter called "NTTA".

**WITNESSETH**

**WHEREAS**, the Intermodal Surface Transportation Efficiency Act of 1991, ("ISTEA"), Title 23 U.S.C., Section 101 et seq. establishes the National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the preservation of the economy, and will move people and goods in an energy efficient manner; and

**WHEREAS**, Title 23 U.S.C., Section 149 establishes a Congestion Mitigation and Air Quality Improvement Program ("CMAQ") to contribute to the attainment of a national ambient air quality standard to be implemented by the States' Transportation Agencies; and

**WHEREAS**, the Dallas area of the State of Texas has been designated as a non-attainment area; and

**WHEREAS**, Title 23 U.S.C., Section 134, establishes that Metropolitan Planning Organizations ("MPO's") and the States' Transportation Agencies develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the appropriate federal agencies have determined that the Total Station Equipment Project, hereinafter referred to as "Project," is eligible for funding pursuant to Title 23 U S C Section 149, ISTEA. The Project has been designated as a federal-aid project and thus this Agreement shall be made in accordance with Federal Highway Administration (FHWA) procedures and regulations, and

**WHEREAS**, on the 16<sup>th</sup> day of DECEMBER, 1998, the NTTA board passed Resolution No. 98-094, attached hereto and identified as Exhibit "A", authorizing NTTA's participation in the development and implementation of the Project; and

**WHEREAS**, on the 29th day of July, 1993, the Texas Transportation Commission passed Minute Order No. 102542, authorizing the Project through the Transportation Improvement Program; and

**WHEREAS**, State and NTTA have agreed to participate in this said Project to aid in maintaining free and clear roadways, assist law enforcement in reducing congestion and improving traffic flow,

reducing air pollution, improving air quality, and improving clearance times for major accident investigation on streets, highways and freeways by collection of crash data at accident sites; and

**WHEREAS**, the Project shall be implemented by TxDot delivering to NTTA total station survey equipment.

**WHEREAS**, NTTA shall be working by and through the North Central Texas Council of Governments; and

**WHEREAS**, NTTA is a body, corporate, politic and a political subdivision of the State, organized and existing pursuant to Sec. 366.031 et seq., Transportation Code, V.T.C.A.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, State and NTTA do mutually agree as follows:

#### **Article 1. Objectives, Purposes and Services**

State and NTTA agree that the following objectives and purposes of the Project will result in a quick, efficient and timely manner of said purposes, to wit:

- (A) Improve clearance times for accident investigation sites
- (B) Reduce congestion and improve traffic flow
- (C) Reduce air pollution and improve air quality
- (D) Aid in maintaining free and clear roadways
- (E) Insure the quality of investigations
- (F) Reduce the time spent in investigation of accident sites

#### **Article 2. Contract Period**

This Agreement shall remain in full force and effect until December, 2001.

#### **Article 3. The State's Duties and Responsibilities**

- (A) State shall furnish the following equipment to NTTA:
  - (1) SOKKIA SET6E Total Station packages to include:
    - (a) Prism with target
    - (b) Prism Pole
    - (c) PFA 3 Tripod
  - (2) SOKKIA SDR - 31 Data Collector (1Mb)
  - (3) SOKKIA SDR Map Software
  - (4) Desktop Computer Package:

- (a) Pentium II 350 MHZ, 125 M RAM with Windows 95 and DOS
- (b) 17 SVGA Color Monitor
- (c) Color Inkjet or Bubblejet Printer
- (d) Cables and Surge Suppressor Outlet Strip

#### **Article 4. NTTA's Duties and Responsibilities**

- (A) NTTA shall use the equipment on a regular basis for accidents.
- (B) NTTA shall maintain the equipment in good working order during the contract period. Should any of the equipment be damaged or lost, NTTA shall promptly notify TxDot and shall replace said equipment with like kind at its sole expense within ninety (90) days after notification to TxDot; should NTTA fail to replace said equipment, State shall have the right to terminate this Agreement in accordance with Article 8.
- (C) NTTA shall provide this equipment to their enforcement agency house and maintain the equipment in the traffic section of the DEPARTMENT OF PUBLIC SAFETY to be used primarily by the traffic section.
- (D) NTTA shall make equipment available to accident investigators upon request.
- (E) NTTA shall provide TxDot with documentation of equipment use every six (6) months during the contract period to assist in evaluating the effectiveness of the Project as set forth in Article I.
- (F) NTTA shall insure their accident investigators are trained in the use of this equipment by partnering with local law enforcement agencies who have said equipment.

#### **Article 5. Disposition of Equipment**

In accordance with Title 49, CFR, Section 18.32 and 18.36, as they relate to property management, the disposition of said equipment purchased for purposes of implementing this Project shall be determine at the end of the contract period.

#### **Article 6. Representatives**

State's representative shall be Mr. Andrew R. Oberlander, Freeway Management Project Engineer, Dallas District, or his successor in the position.

NTTA's representative shall be Mr. Jerry Shelton, Director of Operations & Maintenance or his or her successor in the position.

#### **Article 7. General Provisions**

##### **[A] Amendments**

Any amendment to this Agreement must be executed in writing by both parties.

**[B] Legal Construction**

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.

**[C] Governing Texas Laws and Venue**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties obligations under this Agreement must be filed in Travis County, Texas, and any obligations of the parties created hereunder are performable in the State of Texas.

**[D] Non-Discrimination**

State and NTTA agree that employment in connection with this Project will be provided without regard to race, color, creed, national origin, marital status, age, disability or sex. In addition, State and NTTA for themselves, agents and employees covenant and agree that no person, on grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be excluded from participation in, be denied the benefits of, or be otherwise unlawfully subjected to discrimination in the performance of any work under this Agreement or in connection with this Agreement. NTTA shall comply with all regulations of the Department of Transportation and all Equal Employment Opportunity laws.

**[E] Prior Agreements Superseded**

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

**[F] Notices**

Any notice provided for or permitted to be given hereunder must be given at the addresses designated below by (i) depositing same in the United States Mail, postage prepaid, registered or certified, return receipt requested; (ii) delivering the same to the party to be notified; and (iii) sending a prepaid telex or telegram or (iv) by fax transmittal, i.e. facsimile. Such notice shall be effective upon receipt, as evidenced by the executed postal receipt or other receipts for delivery:

If to State: **Texas Department of Transportation**  
Attention: District Engineer  
P.O. Box 3067  
Dallas, TX 75221-3067

If to NTTA: **North Texas Tollway Authority**

Attention: \_\_\_\_\_

3015 Raleigh Street

Dallas, Texas 75219

The parties may change their respective notice addresses to any other location within the United States by giving a notice of the change in accordance with this Section.

### Article 8. Termination

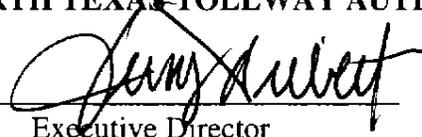
This Agreement may be terminated by any of the following conditions:

- (1) By written mutual agreement and consent of both parties hereto upon thirty (30) days written notice;
- (2) By State, upon the failure of the other party to fulfill its obligations as set forth in this Agreement;
- (3) By successful completion of the Project as shown in Article II.
- (4) By either party, upon thirty (30) days written notice, in the event funding is not appropriated.

The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the State and NTTA under this Agreement.

IN TESTIMONY WHEREOF, the State of Texas and NTTA have executed duplicate counterparts of this Agreement. To become effective on the date last executed.

**NORTH TEXAS TOLLWAY AUTHORITY**

By:   
Executive Director

January 8, 1999  
Date

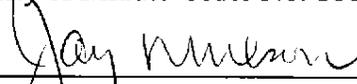
APPROVED AS TO FORM:

A. Scott Young  
General Counsel

Date: January 8, 1999

**STATE OF TEXAS**

Executed for the Executive Director approved by the Texas Transportation Commission under the authority of Minute Order No. 102542, for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order No. 100002.

By:   
Jay R. Nelson, P.E.  
Dallas District Engineer

Date: 2/16/99

**EXHIBIT "A"**

RESOLUTION NO. 98-094

**A RESOLUTION OF THE BOARD OF DIRECTORS NORTH TEXAS TOLLWAY  
AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN  
AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTION FOR THE USE  
OF TOTAL STATION EQUIPMENT**

WHEREAS, the North Texas Tollway Authority ("NTTA") and the Texas Department of Transportation ("TxDOT") desire to enter into an agreement for a Total Station Equipment Project (the "Project"); and

WHEREAS, the use of the Project will aid in maintaining free and clear roadways, assist law enforcement in reducing congestion and improving traffic flow, reducing pollution, improving air quality, and improving clearance times for major accident investigation on streets, highways and freeways by collection of crash data at accident sites; and

WHEREAS, the Project shall be implemented by TxDOT delivering to the NTTA total station survey equipment; and

WHEREAS, the NTTA's primary duties and responsibilities are to use and maintain, the total station equipment, and to provide this equipment to the NTTA's enforcement agency for their use.

NOW THEREFORE BE IT RESOLVED, on this the 16<sup>th</sup> day of December, the Board of Directors of the NTTA hereby authorizes the Executive Director of the NTTA to negotiate and execute the agreement with TxDOT for the development and implementation of the Total Station Equipment Project.

ATTEST:

\_\_\_\_\_  
Jere W. Thompson, Jr., Chairman

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Susan A. Buse, Assistant Secretary