

MEMORANDUM OF UNDERSTANDING
Between
THE TEXAS DEPARTMENT OF TRANSPORTATION
And
THE NORTH TEXAS TOLLWAY AUTHORITY
Regarding
COOPERATIVE PLANNING AND DEVELOPMENT
of
TOLL ROADS

THIS MEMORANDUM OF UNDERSTANDING dated as of Oct 25, 2006 is entered into by and between **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas ("TxDOT"), and **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority authorized under Chapter 366 of the Texas Transportation Code (the "NTTA") whose service area is composed of Dallas, Tarrant, Collin and Denton Counties (the "NTTA Service Area"). This Memorandum of Understanding shall hereinafter be referred to as the "Cooperative Planning and Development MOU".

WHEREAS, the Proposed TxDOT/NTTA Regional Protocol ("the Protocol") was approved by the NTTA Board of Directors on August 10, 2006, and was approved by TxDOT on August 24, 2006, with the underlying purpose of cooperatively achieving a number of important short-term and long-term goals that TxDOT and the NTTA agree are vital to the communities in the NTTA Service Area and to all of Texas; and

WHEREAS, a Memorandum of Understanding between TxDOT and the NTTA pertaining to Comprehensive Development Agreement ("CDA") Projects and Procurements (the "Original MOU") was approved by TxDOT and the NTTA Board of Directors and finally executed on August 24, 2006; and

WHEREAS, TxDOT and the NTTA have amended the Original MOU to more clearly address CDA projects and other toll road projects in the NTTA Service Area, which amendment is entitled "Amended and Restated Memorandum of Understanding (CDA Projects and TxDOT Toll Projects Procurements)," executed of even date herewith, and shall hereinafter be referred to as the "CDA MOU"; and

WHEREAS, TxDOT is authorized to construct and operate toll projects and is currently in the process of pursuing CDAs authorized under Chapter 223 of the Texas Transportation Code with private entities for toll road and other projects throughout the State of Texas, including toll projects and other CDA projects within the NTTA Service Area; and

WHEREAS, the NTTA owns and operates various toll roads in the NTTA Service Area and has experience in toll road operations and management; and

WHEREAS, TxDOT and the NTTA have effectively cooperated on highway and toll road projects in the NTTA's service area in the past; and

WHEREAS, TxDOT and the NTTA desire to execute this Cooperative Planning and Development MOU in order to evidence their joint commitment to pursue the goals underlying the Protocol;

NOW, THEREFORE, for and in consideration of these premises, TxDOT and the NTTA agree to this Cooperative Planning and Development MOU as follows:

1. PURPOSE

The Protocol and this Cooperative Planning and Development MOU have been developed by TxDOT and the NTTA in order to provide a framework for pursuing the following goals:

- (a) to permit TxDOT to proceed with its CDA procurements for
 - (i) SH 121 (Collin and Denton Counties); and
 - (ii) SH 161 (Dallas County); and
 - (iii) managed lane projects on IH 635/IH 35E (Dallas County); and
 - (iv) SH 121/SH 114/ IH 635 "Funnel" project (Tarrant, Dallas and Denton Counties); and
 - (v) SH 183/IH 820/IH 35W (Tarrant County); and
- (b) to allow TxDOT and the NTTA to work together to implement a timely interim tolling solution for SH 121 (Denton County), thereby accelerating its opening to traffic; and
- (c) to confirm TxDOT's and the NTTA's existing obligations regarding several specified toll projects; and
- (d) to commit TxDOT and the NTTA to discuss and implement procedures by which TxDOT and the NTTA, working with the Regional Transportation Council ("RTC") of the North Central Texas Council of Governments ("NCTCOG"), can allocate and thereby speed the delivery of transportation projects identified on the NCTCOG's regional plan; and
- (e) to commit TxDOT and the NTTA to identify projects for which the NTTA and TxDOT will begin conducting feasibility analyses for the review of, and future action by, TxDOT, the RTC and the NTTA; and
- (f) to clarify for the region and potential private-sector partners the role the NTTA will perform in delivering high-performance toll collection services for North

Texas toll roads and managed lanes, ensuring seamless experiences for North Texas toll road customers; and

(g) to move toward expanded regional control and responsibility for toll road procurement and oversight, in which NTTA acts as the region's implementing agent in partnership with the RTC and TxDOT. While the actions below begin this effort, it is fully recognized additional actions will be necessary.

2. SUPPORT OF PENDING CDAs

(a) The NTTA and TxDOT commit to continue supporting the CDA delivery by TxDOT of the SH 121 Toll Project (Collin and Denton Counties), the SH 161 Project (Dallas County), the managed lanes project on IH 635/IH 35E (Dallas County), the SH 121/SH 114/IH 635 "Funnel" Project (Tarrant, Dallas and Denton Counties), and the SH 183/IH 820/IH 35W Project (Tarrant County), in accordance with the CDA MOU executed by those parties.

(b) NTTA agrees that it will not make a proposal as a public sector comparator for the projects listed in Section 2(a).

(c) TxDOT and the NTTA agree to work together to implement an interim tolling solution for SH 121 in Denton County.

3. SUPPORT OF NTTA PROJECTS

TxDOT and the NTTA commit to support the delivery of the Eastern Extension of the President George Bush Turnpike in Dallas County, the Lewisville Lake Bridge (and portions of SHS FM 720 Widening projects) in Denton County, and the Southwest Parkway (SH 121) in Tarrant County as NTTA projects, subject to regional toll revenue sharing.

4. FUTURE PROJECTS

(a) The NTTA, the RTC and TxDOT will agree on the project delivery mechanism offering best value to the region for the Trinity Parkway Project in Dallas County and the SH 121 Project in Johnson County, after final environmental clearance, to recommend to the Texas Transportation Commission.

(b) TxDOT and the NTTA commit to work with the RTC to determine appropriate financial plans, regional revenue sharing, and delivery methods for each transportation project within the region, for recommendation to the Texas Transportation Commission. This includes freeways, tollways and managed lane projects and will follow appropriate goals and strategies.

5. JOINT DEVELOPMENT OF REGIONAL TOLL PROJECTS

(a) The NTTA and TxDOT commit to work with one another to determine which agency will undertake appropriate feasibility analysis and project development functions

on toll roads in the NCTCOG's regional plan. The following steps will generally be followed in this project development process for toll projects in the NCTCOG plan:

- (i) TxDOT and the NTTA will apply TxDOT sketch-level project evaluation models under jointly agreed conditions and assumptions to determine early estimates of project feasibility.
- (ii) TxDOT and the NTTA will apply TxDOT models to estimate a project's possible returns if developed pursuant to a CDA.
- (iii) Based on early analyses, TxDOT and NTTA staff will make every effort to jointly recommend to their governing bodies whether the project is timely to proceed, and then agree on a lead agency to manage necessary environmental reviews for the project.
- (iv) As a project proceeds, TxDOT and the NTTA will jointly determine when more thorough project feasibility analyses should be performed.
- (v) TxDOT and the NTTA shall work together in an effort to make joint recommendations to the NCTCOG and the Texas Transportation Commission regarding project delivery methods and timing. These recommendations shall be based on, but not limited to, the following considerations:

- Results of models and estimates on project feasibility and possible CDA applicability;
- TxDOT and NTTA staff resources available to manage various procurement methods given other projects under development;
- Project construction schedule with respect to other surface transportation projects in the region; and
- Financial capacity of the NTTA, TxDOT and private-sector investors.

(b) TxDOT and the NTTA both acknowledge the benefit to the region of a financially strong NTTA system of toll roads, and a financially strong CDA program. Therefore, project implementation decisions will be made so that maximum financial benefits can be realized for the region.

(c) Subject to the Texas Transportation Commission's concurrence, the NTTA, TxDOT and the RTC shall determine at a later time whether TxDOT or the NTTA shall undertake the delivery of those projects. The party ultimately delivering the project shall reimburse the other party for its previously incurred feasibility and project development costs (if any) and assume all such future costs.

6. COLLABORATION ON REGIONAL PLAN

TxDOT and the NTTA, working in concert with the RTC, will cooperatively advance the projects in the NCTCOG regional plan by meeting regularly and sharing feasibility studies and other project development tasks.

7. REVENUE SHARING

- (a) The NTTA acknowledges the need for, and adopts the concept of, revenue sharing with the region on future NTTA projects supported by TxDOT and/or the RTC.
- (b) The NTTA and TxDOT will develop project-specific or programmatic revenue sharing methods that reflect the relative and actual contributions of project sponsors (right-of-way, infrastructure and toll equity).
- (c) The terms of this Section 7 do not affect existing project agreements between TxDOT and the NTTA, which will remain in effect and are affirmed as written.

8. TOLL COLLECTION AND CUSTOMER SERVICES

- (a) TxDOT and the NTTA acknowledge the convenience for North Texas toll road users to have consistent and seamless toll collection and customer services on all toll road projects in the NCTCOG regional plan. In furtherance of that goal, TxDOT and the NTTA have executed the CDA MOU concurrently with this Cooperative Planning and Development MOU.
- (b) Both the NTTA and TxDOT disclaim any intention to limit the NTTA to merely be a toll road operator pursuant to this Section 8 or otherwise.

9. MANAGED LANES

The NTTA and TxDOT will agree on cooperative approaches (including funding participation) to managed lane development, particularly those projects that connect to or influence other revenue-producing facilities.

10. EXPANSION OF NTTA SERVICE AREA

- (a) Texas Transportation Code §366.031 provides that a county commissioners court may by resolution petition an established regional tollway authority such as the NTTA for inclusion in the authority if the county is contiguous to a county that initially created the tollway authority and further provides that on approval of the board of an authority receiving such a petition, the county becomes part of the authority.
- (b) The counties of Cooke, Grayson, Wise, Parker, Johnson, Ellis, Kaufman, Rockwall, Hunt and Fannin are contiguous to the four counties that comprise the NTTA.
- (c) Whenever one of the counties listed in Section 10(b) becomes part of the NTTA the definition of "NTTA Service Area" shall be deemed expanded accordingly.

11. AMENDMENT

This Cooperative Planning and Development MOU may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

12. TERMINATION

(a) If TxDOT or the NTTA determines that the other party has materially violated this MOU, written notice to the other party shall be given, with a full explanation of the perceived violation and an explanation of what action is needed to cure the violation. TxDOT and the NTTA agree to negotiate diligently and in good faith to effect a mutually acceptable resolution of the matter that will preserve the cooperative working relationship that underlies the intent of this Cooperative Planning and Development MOU.

(b) A party aggrieved by the default alleged in the notice described in Section 12(a) can give the other party written notice of intent to terminate this Cooperative Planning and Development MOU if all of the following conditions are satisfied:

- (i) At least 30 days have passed since the party alleged to be in default received the notice described in Section 12(a); and
- (ii) TxDOT and the NTTA have negotiated diligently and in good faith to resolve the issue identified in the notice described in Section 12(a); and
- (iii) No complete agreement has been achieved.

(c) TxDOT and the NTTA shall continue to negotiate diligently and in good faith for at least 5 business days after the party alleged to be in default receives the written notice of intent to terminate described in Section 12(b). If no complete agreement has been achieved after the 5th business day, the party that delivered the notice of intent to terminate may effect termination by informing the other party in writing that this Cooperative Planning and Development MOU is terminated pursuant to this Section 12.

(d) A party that terminates this Cooperative Planning and Development MOU pursuant to Section 12(c) may also terminate the CDA MOU by informing the other party of that election in writing. However, if written notice of a decision to terminate the CDA MOU is not received by the other party before the 10th day after the termination date for this Cooperative Planning and Development MOU, then the terminating party loses the right to, and may not unilaterally, terminate the CDA MOU pursuant to this Section 12(d).

13. NOTICES AND COMMUNICATIONS

(a) Notices under this Cooperative Planning and Development MOU shall be in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such person):

All correspondence with the NTTA shall be addressed to:

North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026
Attn: Allan Rutter
Executive Director
Telephone: (214) 461-2000
Facsimile: (214) 528-4826
E-mail: arutter@ntta.org

With a copy to:

Locke Liddell & Sapp LLP
2200 Ross Avenue
Suite 2200
Dallas, Texas 75201-6776
Attn: Frank E. Stevenson, II
Telephone: (214) 740-8469
Facsimile: (214) 756-8469
E-mail: fstevenson@lockeliddell.com

All correspondence with TxDOT shall be addressed to:

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attn: Phillip E. Russell, P.E.
Director, Texas Turnpike Authority Division
Telephone: (512) 936-0903
Facsimile: (512) 305-9518
E-mail: prussell@dot.state.tx.us

With a copy to:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Attn: John J. Ingram
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: jingram@dot.state.tx.us

In addition to the foregoing, with each Project, TxDOT intends to designate a Project manager. Upon notification of the same, the NTTA shall also include that Project

manager in all communications and correspondence under this Cooperative Planning and Development MOU relating to the applicable Project.

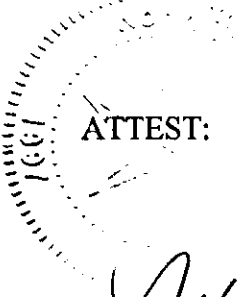
14. HEADINGS

The captions of the sections of this Cooperative Planning and Development MOU are for convenience only and shall not be deemed part of this Cooperative Planning and Development MOU or considered in construing this Cooperative Planning and Development MOU.

15. COUNTERPARTS

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties to this Cooperative Planning and Development MOU have executed it by their duly authorized representatives to be effective as of date first set forth above.



ATTEST:

NTTA:

NORTH TEXAS TOLLWAY AUTHORITY,
a regional tollway authority

Debra K. Smith
Debra K. Smith
Secretary

By: Allan Rutter
Allan Rutter,
Executive Director

DATE: 10/20, 2006

APPROVED AS TO FORM:

Locke Liddell & Sapp LLP
General Counsel to the NTTA

By: Frank E. Stevenson, II
Frank E. Stevenson, II

TxDOT:

TEXAS DEPARTMENT OF TRANSPORTATION

By: Michael W. Behrens
Michael W. Behrens, P.E.
Executive Director

DATE: October 25, 2006