

**AGREEMENT
REGARDING THE
OUTER LOOP PROJECT
(Within Collin County)**

**Between
North Texas Tollway Authority
and
County of Collin**

Dated March 21, 2011

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**AGREEMENT
REGARDING THE
OUTER LOOP PROJECT
(Within Collin County)**

THIS AGREEMENT REGARDING THE OUTER LOOP PROJECT (WITHIN COLLIN COUNTY) (this "Agreement"), by and between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the state of Texas (the "Authority") and **COUNTY OF COLLIN**, a political subdivision of the state of Texas (the "County"), is executed to be effective the 21st day of March, 2011 (the "Effective Date"); the Authority and the County being sometimes hereinafter collectively referred to as the "Parties," or individually as a "Party."

WITNESSETH

WHEREAS, the Authority is authorized to study, evaluate, design, acquire, construct, maintain, repair, and operate turnpike projects within the counties of Collin, Dallas, Denton and Tarrant (the "Authority Service Area") pursuant to Chapter 366 of the Texas Transportation Code (said Texas Transportation Code, as amended from time to time, being referred to as the "Code") (said Chapter 366 of the Code being referred to as the "Regional Tollway Authority Act"); and

WHEREAS, the Authority (1) has constructed and operates (a) the Dallas North Tollway (the "DNT"), (b) the President George Bush Turnpike, (c) the Addison Airport Toll Tunnel, (d) the Mountain Creek Lake Bridge, (e) Segments 1, 2 and 3 of the Sam Rayburn Tollway, (f) Phases 2 and 3 of State Highway 161, and (g) the Lewisville Lake Toll Bridge, which collectively constitute the North Texas Tollway Authority System, and (2) is constructing (a) Segments 4 and 5 of the Sam Rayburn Tollway, (b) an eastern extension of the President George Bush Turnpike, and (c) Phase 4 of the State Highway 161 Project; and

WHEREAS, the County (1) is authorized to construct, acquire, improve, operate, maintain, or pool projects within the county of Collin (the "County Service Area"), pursuant to Chapter 284 of the Code (the "County Tollway Act") and (2) has established the Collin County Toll Road Authority (the "CCTRA") pursuant to the County Tollway Act; and the County, acting through the CCTRA, has, in connection with the Project (as hereinafter defined) and pursuant to Section 284.003(a)(6) of the County Tollway Act, adopted an order exercising the powers of a regional mobility authority operating under Chapter 370 of the Code; all agreements, representations, or covenants of any kind made in this Agreement by the County shall be deemed made on behalf of the County, the CCTRA, and any future toll road authority formed by or with the County; and

WHEREAS, the Texas Department of Transportation, an agency of the state of Texas ("TxDOT"), is a statewide transportation authority whose mission is to provide safe and efficient movement of people and goods, enhance economic viability, and improve the quality of life for the people that travel in the state of Texas; and

WHEREAS, the NCTCOG is designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of the state of Texas in accordance with federal law, and is a regional planning commission and a political subdivision of the state of Texas, authorized under Chapter 391 of the Texas Local Government Code, as amended; and

WHEREAS, the RTC is comprised primarily of local elected officials and a regional forum for cooperative decisions on transportation; and

WHEREAS, the Outer Loop is a proposed regional beltway extending around the DFW Metroplex that the RTC, through its regional planning process, anticipates identifying as an integral element of its transportation plan for the region; and

WHEREAS, approximately fifty-two (52) miles of the Outer Loop is anticipated to be located within the County Service Area, with said portion extending from the intersection of the Outer Loop and the DNT at the shared Denton and Collin county line, proceeding eastward north of the city of McKinney, and then south to a terminus on the shared Collin and Rockwall county line, said portion of the Outer Loop, identified as “Sections 1, 2, 3, 4, and 5,” located in the County Service Area and being depicted on Exhibit A attached hereto and made a part hereof (the “Project”); and

WHEREAS, because the Project is located within the Authority Service Area and the County Service Area, the Parties concluded it would be beneficial to agree upon a collaborative, comprehensive, and fully binding process by which the Project would be evaluated and advanced, and also to resolve certain other issues between the Parties; and

WHEREAS, pursuant to Resolution No. 11-62 passed on March 17, 2011, the Authority’s Board of Directors authorized the Authority’s Executive Director to execute this Agreement on behalf of the Authority; and

WHEREAS, pursuant to the Court Order No. 2011-176-03-21 passed on March 21, 2011, the County’s Commissioners’ Court authorized the County’s County Judge to execute this Agreement on behalf of the County; and

WHEREAS, pursuant to CCTRA Resolution No. 2011-3020-03-21 passed on March 21, 2011, the CCTRA’s Board of Directors authorized the CCTRA’s President to execute this Agreement on behalf of the CCTRA; and

WHEREAS, the three (3) foregoing resolutions, court orders, and minute orders are attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the Parties have received all authorizations, consents, and approvals, and have otherwise complied with all applicable laws, required to enter into and fully perform their obligations under this Agreement and to support the evaluation and advancement of the Project as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these premises, which each Party does hereby represent and warrant are true, correct, and complete with respect to such Party, and of the mutual covenants and agreements of the Parties hereto to be by them and respectively kept and performed as hereinafter set forth, the Authority and the County agree as follows:

1. **Support for Tollroad.**

a. Approval of Project Approach. The Authority and the County each acknowledge its approval of and support for the evaluation and advancement of the Project (including, without limitation, its feasibility assessment, environmental and other permitting, required public involvement, financing, design, construction, operation and maintenance) as expressly set forth in this Agreement. This Agreement shall not create rights for the Authority or obligations for the County with respect to any Segment or one or more sections of a Segment of the Project:

- i. that the County undertakes, completes, and operates in its entirety (including the portion that, if tolled, would constitute the controlled-access toll lanes) as a fully non-tolled roadway; and
- ii. for which the County waives any right to seek reimbursement from the Authority, all as further set forth in Section 2.f. hereof.

Additionally, the Authority's review and approval rights regarding the Project's service roads will be generally limited to those features that, in the Authority's reasonable judgment, could affect the safe and efficient operation of the controlled-access toll lanes, all as further set forth in Section 2.i. hereof. Without limiting the concluding sentence of Section 1.c. hereof, non-tolled roadways (other than service roads) in the vicinity, but not part, of the Project are not subject to this Agreement except to the degree they cross the Project and the design of the Project must take into account that crossing.

b. Further Actions. Each Party will take all actions reasonably requested by another Party that are consistent with this Agreement in furtherance of the purposes of this Agreement.

c. No Conflicting Proposal. Unless and until the Term (as hereinafter defined) of this Agreement expires or terminates pursuant to Section 7.g. hereof, no Party shall advance, advocate, promote, or support any alternative to or conflicting proposal for the evaluation and advancement of the Project in any way at variance with the terms of this Agreement. The Parties acknowledge that, except as expressly provided in subsection 7.a.i. hereof, the foregoing assurance and agreement applies only to the Project and neither constrains any Party as to the advancement of other mobility projects nor operates as a restriction commonly referred to as a "non-compete" clause regarding such other mobility projects.

d. Exercise of the Parties' Primacy or Project Allocation Rights. As more fully set forth in Section 7.e. hereof, each Party will exercise its statutory and other legal rights to evaluate and advance the Project, including, without limitation, any "primacy" or other project allocation or development rights under Section 228.0111 of the Code or any amendment or successor thereto, only in conformity with the terms of this Agreement, assigning those rights to,

or exercising those rights on behalf of, the Parties if and as necessary to effectuate the terms of this Agreement.

2. **Joint Evaluation and Advancement of the Project.**

a. Generally. The Parties acknowledge that close collaboration and the full sharing of information will best ensure that public funds are prudently spent on the Project. To that end, the Parties agree to fully cooperate and to collaboratively:

- i. evaluate the feasibility of the Project; and
- ii. identify and propose methods to advance the financing, permitting, design, construction, and operation of the Project.

Without limiting the foregoing, the Authority and the County agree to work closely together, with each Party fully informed of, and involved in, the work being conducted by the Parties regarding the Project.

b. Technical Work Group. The Authority and the County will form and maintain an advisory Technical Work Group for the Project which will:

- i. jointly develop a Project Development Plan for the Project (the "Project Development Plan"), including a timeline (or depiction of a typical project's development duration) and an enumeration of necessary steps and milestones;
- ii. be composed of representatives from the County, the Authority, TxDOT, the NCTCOG, and the RTC, as jointly determined by the Authority and the County from time to time, may involve the participation of non-members such as the professional engineering firms and other consultants providing design, right-of-way acquisition, surveying, engineering management, and financial advisory services, (such firms and consultants, whether or not participating in the Technical Work Group, being collectively, the "Consultants") together with such other members representing affected governmental bodies (e.g., the Federal Highway Administration) and other entities as the Authority and the County jointly designate; and
- iii. have regularly scheduled meetings for the purposes of facilitating:
 - (A) open and continuous dialogue between the various participants;
 - (B) the preparation, monitoring, and updating of the Project Development Plan, including the status of the projected timeline, steps, and milestones for the Project;
 - (C) the review of all pending procurements, contracts awarded, deliverables received, and other actions taken regarding the Project

by any Party prior to the date of this Agreement and described in Section 7.h. hereof, and the agreed-upon revision of those items and actions as necessary to conform them to the Project Development Plan and this Agreement, generally; and

- (D) the preparation, approval, and completion of the other necessary reports, studies, design, plans, work product, and other deliverables for the Project.

Utilizing the recommendations of the Technical Work Group, the Authority and the County shall, unless otherwise agreed, implement and adhere to a fully joint and concurrent review process by which all materials subject to review by any of the Parties will be concurrently distributed to and reviewed by the applicable Parties. This joint/concurrent review has been intentionally selected by the Authority and the County for the Project in lieu of the independent/serial review utilized on other projects.

c. Reliance on Approvals by the Designated Representatives. The representatives designated by the Parties to the Technical Work Group will be responsible for conveying information regarding the Project to their respective organizations and securing all necessary authorizations (e.g., by the Authority's Board of Directors or the County's Commissioners' Court, when applicable) as promptly as possible. Once approved in writing by the Authority's Designated Representative or the County's Designated Representative (as identified in Section 2.j. hereof), as applicable, the other Party may reasonably assume that the applicable deliverable, action, or other matter has been fully approved by that Party, and may rely on that approval in continuing its efforts regarding the Project. Except as explicitly provided in the preceding sentence, the Technical Work Group is advisory only, and may not bind the Parties without their specific written consent provided by the Authority's Designated Representative or the County's Designated Representative, as applicable; the written approval described in this and the preceding sentences may be accomplished by email.

d. No Assumption of Liability. The exercise of any Party's approval rights regarding a deliverable, action, or other matter pursuant to this Agreement will not constitute the assumption of liability by that Party regarding that deliverable, action, or matter, unless otherwise explicitly provided.

e. County Activities to Advance Feasibility. The County, or an entity selected by the County and operating on its behalf, may acquire right-of-way to preserve an alignment, obtain governmental approvals, conduct traffic and revenue studies, and undertake engineering to advance the feasibility of the Project, all as reviewed by the Technical Work Group or otherwise pursuant to this Agreement.

f. Joint Approval by the Authority and the County. Unless and until the Authority or the County undertakes the controlled-access toll lanes of the entire Project, or of one or more entire Segments, or of one or more sections of a Segment (insofar as the Project may be accomplished by Segments or sections of Segments, and not in a single endeavor, as reviewed and approved pursuant to this Agreement) pursuant to this Agreement, and except as limited by Section 2.i. hereof, ~~both of those Parties will have review and approval rights regarding the~~

letting of contracts to either party (including, without limitation, any comprehensive development agreement [a “CDA”] or any request for qualifications, proposals, competing proposals, or other procurement document for a CDA or evaluation or response to an unsolicited CDA proposal), acquisition of right-of-way, satisfying public involvement requirements, selection of an alignment, and other matters related to the evaluation and advancement of the Project. In addition to ensuring the collaborative aims of this Agreement, these joint review and approval rights are essential because costs incurred by a Party under or in connection with a contract, right-of-way acquisition, public involvement requirement, alignment selection process (except as provided in Section 2.h. hereof), or other matter may later require reimbursement, in whole or in part, by another Party pursuant to Article 4 or Sections 5.b. and c. or 6.f. hereof. To ensure against any dispute arising as to the amount of a subsequently required reimbursement, the reimbursable portion of anticipated costs arising from the approved contract, acquisition, requirement, or selection will be specified in the prior approval provided by the Authority or the County. Provided, however, as indicated in Section 1.a. hereof, if (i) the County undertakes, completes, and operates the Project, one or more Segments, or one or more sections of a Segment, in its entirety (including that portion which, if tolled, would constitute the controlled-access toll lanes) as a fully non-tolled roadway and (ii) the County waives in advance its right to seek reimbursement from the Authority, this Section 2.f. shall not apply to that applicable portion of the Project.

g. Sharing of Expertise and Means of Project Support. The Parties will freely share their respective expertise and experience, as well as all means available to each of them to provide support to the Project. Without limiting the foregoing, the County will fully share any commitments from landowners, solicited or unsolicited CDA proposals, or any potential credit-enhancing tools available to advance the Project’s feasibility (e.g., tax pledge, guaranty, sales tax, credit wrap, and/or tax increment financing or reinvestment zones), and the Authority shall do the same.

h. Alignment Selection Process. Notwithstanding the joint review and approval rights provided in Section 2.f. hereof and elsewhere in this Agreement, the Authority acknowledges that the alignment for “Section 1” of the Project has been selected and the selection process for the “Section 3” alignment is close to completion. The Authority concurs in the selected alignment for “Section 1” and will exercise its joint review and approval rights regarding the selection of the “Section 3” alignment in a manner that does not result in any delay.

i. The Authority’s Review and Approval Rights Regarding Service Roads. Generally speaking, the Authority will exercise its review and approval rights provided in Section 2.f. hereof and elsewhere in this Agreement regarding the Project’s service roads with a focus (i) largely limited to design features and other matters that in the Authority’s reasonable judgment could affect the safe and efficient operation of the controlled-access toll lanes and (ii) directed primarily on the acceptability of deliverables rather than on the selection of the consultants retained to prepare those deliverables. The Authority acknowledges the County’s belief that the economic development of the County in the area of the Project is in part dependent on service road access to the property adjacent to the Project, and the Authority agrees to cooperate with the County, in accordance with the collaborative provisions of this Agreement, in the Authority’s evaluation of service roads desired by the County to support the goal of positive economic development of the regions of the County adjacent to the Project. If the Authority and

the County cannot reach agreement regarding the inclusion of service roads regarding any portion of the Project, the County reserves the right, exercisable prior to final design of that portion being achieved, to commit to construct service roads at its cost, and the Authority will not unreasonably withhold its consent to approving entrance and exit ramps to and from the controlled-access toll lanes and those service roads (such ramps to be built at the Authority's expense), provided that (i) such entrance and exit ramps are consistent with the approved schematic and with generally accepted design and safety standards for similar facilities and (ii) any effect on the feasibility of that portion of the Project resulting from those entrance and exit ramps shall be determined and evaluated by the Parties in accordance with this Agreement.

j. Identification of the Designated Representatives. The Authority's Designated Representative shall be its Executive Director and the County's Designated Representative shall be its County Administrator. Either Party may change its Designated Representative upon written notice to the other Party.

3. **Standards and Criteria.**

a. Generally. The evaluation and advancement of the Project will be conducted in conformity with customary and generally accepted toll-industry standards and practices, including in accordance with customary feasibility and design standards.

b. The Authority's Standards and Practices; Exceptions Thereto. The Parties acknowledge that the Authority's practices and standards conform to those toll-industry standards and have been accepted by TxDOT, Federal Highway Administration, regional stakeholders, and the public debt market. Nevertheless, the Authority and the County acknowledge that to advance feasibility or funding, it may be necessary or advantageous for the Authority and the County to adopt practices not typically utilized by the Authority, to construct features of the Project to different standards, or to utilize alternative project delivery methods.

c. Title Review. The Authority and the County will approve title to, and the means of conveying, right-of-way to ensure that the Party or Parties undertaking the Project have clear title, free of unacceptable reverts, restrictions, or other encumbrances.

4. **Reimbursement to the County or the Authority.**

a. Generally. Regardless of whether it is the Authority or the County that ultimately undertakes the controlled-access toll lanes of any section of the Project, that Party will reimburse the other for certain specified costs pertaining to deliverables used by the Party undertaking those toll lanes and incurred in compliance with this Agreement. In each case under this Agreement of one Party being entitled to reimbursement, that Party must submit to the other a certified invoice, together with fully legible and properly supporting materials, for the reimbursed amount.

b. Specific Reimbursement Scenarios. The Parties' reimbursement obligations and rights are more specifically set forth in Sections 5.b. and c. and 6.f. hereof.

c. Exclusive of Overhead and Similar Amounts. Regardless of whether the Authority reimburses the County or vice versa, in no event will a reimbursement amount under

this Agreement include any Party's overhead, other internal soft costs, or charges attributable to staff time.

5. The County Undertaking the Project's Service Roads.

a. Generally. The County may design, construct, maintain, operate, and (as an exception to and notwithstanding the Authority's or any other Party's primacy rights) toll the Project's service roads whenever it wishes, as set forth in this Article 5.

b. Purpose of Reimbursement and Authorization; Ramps. The intent of this Article 5 is to assure the County it will be reimbursed for any previously unreimbursed third-party costs it incurs for deliverables and right-of-way used by the Authority if and when the Authority builds the remainder of any section of the Project (*i.e.*, the controlled-access toll lanes). Consequently, the County may:

- i. advance the service-road portion of the Project as an economic development tool and reap the resulting sales/property tax and other benefits, as well as any toll revenue generated by that portion;
- ii. speed feasibility for the complete build-out of the Project; and
- iii. be guaranteed reimbursement of all its costs for deliverables related to and used by the Authority for the Project's controlled-access toll lanes.

The County may elect to forego any reimbursement to which it is entitled under this Agreement in order to advance feasibility of any uncompleted portion of the Project. Entrance and exit ramps connecting any service roads constructed under this Article 5 to the subsequently constructed controlled-access toll lanes shall be the expense and responsibility of the Party constructing those controlled-access toll lanes.

c. Specific Procedure for Undertaking Project Service Roads. Upon 120 days notice to the Authority, the County may design, construct, maintain, repair, operate, and toll the service road feature of all, a section, or part of a section of the Project (a "Service-Road Project Portion") to the full extent provided by applicable law, retaining all resulting revenues, provided that:

- i. the acquisition of right-of-way and the design, construction, and operation of the Service-Road Project Portion are undertaken in collaboration with the Authority as provided in this Agreement and comply with the criteria, standards, processes, and specifications determined in accordance with this Agreement;
- ii. if any part of the Service-Road Portion is tolled by the County, customer service and other toll collection and enforcement services shall be provided by the Authority pursuant to Section 366.038 of the Code or other valid and applicable law, if any;

iii. the Authority may thereafter notify the County that the Authority intends to construct the controlled-access toll lanes pertaining to the Service-Road Project Portion, and prior to commencement of that construction (but no later than 60 days following the Authority's financial close), the Authority will pay the County the actual third-party cost incurred by and unreimbursed to the County for deliverables used by the Authority for the controlled-access toll lanes, in accordance with this Agreement, specifically:

- (A) engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary to, and used by the Authority in, the construction of the controlled-access toll lanes;
- (B) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property necessary for the controlled-access toll lanes;
- (C) the actual construction of the controlled-access toll lanes; and
- (D) the achievement of compliance with laws, regulations, and administrative rulings necessitated by the controlled-access toll lanes;

said reimbursement to be calculated on a pro rata basis for deliverables or actions resulting in both reimbursable and non-reimbursable costs.

- iv. upon the Authority's payment of the sum determined pursuant to subsections 5.c.iii.(A) through (D) above, the County shall transfer and convey to the Authority such right-of-way and improvements as the Authority deems necessary or desirable to own, construct, maintain, or operate the Project, free of any indebtedness, lien, or other adverse encumbrance, and assign to the Authority (or, at the Authority's option, provide a royalty-free license for) any permit, agreement, contract, plans, specifications, or other deliverable pertaining to the Project as the Authority requests; and
- v. prior to the opening to traffic of the controlled-access toll lanes and without any additional payment or assumption of monetary or other obligations by the Authority, the County shall cease all tolling of the Service-Road Project Portion.

6. The County May Undertake Entire Section of the Project.

a. Generally. As a broader exception to the Authority's or any other Party's primacy rights, if any, when feasibility is established for the controlled-access toll lanes of a section or sections of the Project in accordance with the terms of this Agreement, if the Authority fails to

advance the development of that section of the Project in accordance with a specified timetable, the County may do so pursuant to this Article 6.

b. Preconditions to the County Undertaking the Project. After the controlled-access toll lanes (together with any other yet-to-be-constructed feature) of a section or more of the Project are determined to be feasible (whether pursuant to a traditional design/bid/build, design/build, CDA, or other delivery method) using the standards, practices, and process provided in this Agreement (the "Feasible Project Section"), and provided that the Authority and the County do not enter into a written agreement regarding the Feasible Project Section within 120 days setting forth an alternative approach, then the Authority shall have the right to own, construct, maintain, or operate the Feasible Project Section, but only if:

- i. the Authority advertises for the procurement of any remaining design services for the Feasible Project Section within 180 days of the later of the expiration of the 120-day period referenced above or the date on which all environmental approvals necessary for the development of the Feasible Project Section are secured and all legal challenges to development are concluded;
- ii. the environmental approval process is commenced promptly upon, or prior to, the determination that the applicable section or sections of the Project are feasible, and is diligently pursued to completion; and
- iii. the Authority enters into a construction contract for the Feasible Project Section within two (2) years of the later of the expiration of the 120-day period referenced above or the date on which all environmental approvals necessary for the development of the Feasible Project Section are secured and all legal challenges to development are concluded.

c. The County's Exercise of its Right to Undertake the Project. If the Authority fails to comply with the requirements of subsection 6.b.i. or ii. above, then the County shall have the right to own, construct, maintain, or operate the Feasible Project Section, but only if:

- i. the County advertises for the procurement of design services for the Feasible Project Section within 180 days after the date the Authority fails to comply with the requirements of subsection 6.b.i. or ii. above; and
- ii. the County enters into a construction contract for the Feasible Project Section within two (2) years after the date the Authority fails to comply with the requirements of subsection 6.b.i. or ii. above.

d. Effect of the County's Exercise of Right to Undertake the Feasible Project Section. If the County complies with the requirements of subsection 6.c.i. and ii. above, then the County shall have the right to design, construct, maintain, repair, and (subject to Section 366.038 of the Code or other valid and applicable law) operate the Feasible Project Section to the full extent provided by applicable law, retaining all resulting revenues.

e. Reinitiating the Process. If the County fails to comply with the requirements of subsection 6.c.i. or ii. above, then either the Authority or the County may reinitiate the process under this Agreement by submitting notice to the other Party.

f. Reimbursement. Whichever Party undertakes the Project pursuant to this Article 6 will reimburse the other(s) in the same manner as set out in subsections 5.c.iii.(A) through (D) above.

7. **Other Agreement Terms and Issues.**

a. Resolution of Disagreements.

- i. The Authority and the County agree that this Agreement sets forth the agreed-upon process to proceed, or not proceed, with the Project and, generally speaking, future toll projects within the County, regardless of any existing or subsequent law placing that authority in one or both of the Parties in a manner at odds with the terms of this Agreement. As provided in Sections 7.d. and e. hereof, both of the Parties shall exercise their legal rights to develop future toll projects within the County only as set forth in this Agreement. Future toll projects in addition to the Outer Loop will each be addressed in a separate agreement between the Parties, provided that except as agreed by the Parties, no such separate agreement will vary materially from this Agreement. Neither this Agreement nor any future separate agreement shall apply to the DNT or any extensions or expansions thereof.
- ii. The execution of this Agreement evidences that all previous disagreements between the Authority and the County regarding (A) the delivery of the Outer Loop and (B) existing or proposed legislation conferring or affecting the toll project development rights of the Authority or the County have been resolved.

b. Joint Selection of Consultants.

- i. As more specifically set forth in Section 2.f. hereof, unless and until the Authority or the County undertakes the entire Project (*i.e.*, the controlled-access toll lanes) pursuant to this Agreement, all Consultants must be approved by both of those Parties, with that approval (A) being not unreasonably withheld or delayed, and (B) limited regarding the Project's service roads as provided in Section 2.i. hereof.
- ii. Consultant services must be procured in a manner that legally permits either Party to utilize those services under each Party's procurement guidelines, including applicable business diversity policies.
- iii. And regardless of which Party lets a contract, any Party, at its option, may be a beneficiary thereunder, subject to reasonable liability protections.

c. Federal Support. Commencing upon the Effective Date, and absent the agreement of both the Authority and the County to the contrary, no Party will take or fail to take any action that will foreclose or limit the eligibility of the controlled-access toll lanes of the Project for federal funding. The Authority and the County will work collaboratively to bring into compliance with federal eligibility requirements any actions or deliverables that preceded the Effective Date, if such collaborative effort is necessary and beneficial.

d. Successors, Assigns, and Other Parties. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the Parties and their legal successors. No Party shall assign its interest in this Agreement without the prior written consent of the other Parties, unless otherwise provided by law. Without limiting the foregoing, this Agreement binds the Authority and the County acting under any applicable authority or law, including the Authority acting through a corporation it has organized pursuant to Chapter 431 of the Code or the County acting as a county toll authority under the County Tollway Act or Chapter 370 of the Code, as those Chapters or Act may be amended or superseded. This Agreement does not limit the County in the design and construction of non-tolled roads, as more particularly set forth in Section 1.a. hereof.

e. Authorization, Enforceability, and Intended Operation. Each Party represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that, once fully executed by the Parties, this Agreement will constitute the fully binding obligation of each Party, enforceable in accordance with its terms. To further ensure this Agreement's operation as intended by the Parties, and without in any manner limiting the provisions of Section 1.d. hereof, each of the Parties agrees to exercise those primacy or other project allocation or development rights it is conferred from time to time regarding the Project only in accordance with this Agreement, which may necessitate one or more Parties assigning, or exercising on another Party's behalf, such rights. Without limiting the foregoing, this Agreement requires that, in the case of any legislative provision conferring "primacy" on the Authority or the County and specifying that the Party with primacy may exercise its primacy option and other right on behalf of the other Party, the Party possessing primacy must exercise its primacy option and other right to effectuate the terms of this Agreement. As a result, the Parties intend that so long as one of the Parties to this Agreement has the legal authority to undertake the Project, this Agreement should be enforceable and operative. Additionally, this Agreement will be amended by the Parties after the current Legislative Session concludes, but only if, and to the minimum extent, needed to further ensure the enforceability of the Parties' rights under this Agreement under then-existing law.

f. No Obligation by any Party to Deliver the Project; Timing of Actions. This Agreement does not constitute a commitment by, nor does it create any obligations on behalf of, any of the Parties to construct, operate, or otherwise undertake the Project or any part thereof, which in the case of the Authority can only be effectuated by an explicit action by its Board of Directors. Both the County and the Authority agree that actions of their respective governing boards relating to this Agreement shall be taken within ninety (90) days of the request of the other Party. In the event no action is taken, the Party requesting the action must receive within that 90-day period a written explanation from the other Party clearly and fully explaining why the action was not taken, the basis under this Agreement for that lack of action, and the curative action(s), if any, the Party requesting the action can take to obtain the requested action.

g. Term and Defaults.

- i. Unless earlier terminated pursuant to subsection 7.g.ii. below, the term of this Agreement will be forty (40) years commencing upon the Effective Date (the "Term").
- ii. The Agreement may be terminated upon the agreement of the Authority and the County; or by the Authority (if the County defaults) or the County (if the Authority defaults), solely at the non-defaulting Party's option and following the expiration of ninety (90) days after the non-defaulting Party delivers to the defaulting Party written notice of the default and opportunity to cure.
- iii. Without limiting the foregoing, any non-defaulting Party shall be entitled to exercise any remedy at law or equity in connection with any default under this Agreement, including, without limitation, an action in mandamus against the defaulting Party.

h. Status of Parties' Efforts and Existing Deliverables. All pending procurements, contracts awarded, deliverables received, and other actions taken regarding the Project by any Party are set forth on Exhibit C, attached hereto and made a part hereof, in order to ensure that the Parties explicitly and effectively address and, when necessary, modify those actions to conform with this Agreement pursuant to subsection 2.b.iii.(C) hereof. To that end, any Party will be provided copies of any materials identified pursuant to this Section 7.h. upon such Party's request.

i. Revenue-Sharing. The Parties have reached no agreement regarding revenue sharing on the Project and that issue will be addressed pursuant to the collaborative process set forth in this Agreement.

j. Notices. In each instance under this Agreement in which a Party is required or permitted to give notice to another, such notice shall be deemed given (i) when delivered in hand, (ii) one (1) business day after being deposited with a reputable overnight air courier service, or (iii) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

In the case of the Authority:

By hand delivery or air courier:

North Texas Tollway Authority
Attn: Executive Director
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093

By mail:

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

In the case of the County:

County of Collin
Attn: County Judge
Courthouse, Suite 626
210 S. McDonald Street
McKinney, Texas 75069

With a copy to:

Collin County Toll Road Authority
Attn: President
825 N. McDonald Street
McKinney, Texas 75069

Either Party may from time to time change its address for notification purposes by giving the other Party prior written notice of the new address and the date upon which it will become effective.

k. Relationship of the Parties; No Joint Enterprise. Nothing in this Agreement is intended to create, nor shall be deemed or construed by the Parties or by any third party as creating, (i) the relationship of principal and agent, partnership or joint venture between any of the Parties or (ii) a joint enterprise between any of the Parties. Without limiting the foregoing, the purposes for which each Party has entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes, and/or equal rights of control among the Parties.

l. Maintenance of Records. All records and documents prepared by a Party under this Agreement will be made available to authorized representatives of the other Party for purposes of review and audit during normal work hours, and must be maintained by the Party preparing same for four (4) years (or such longer period as may be required by law) from the later of (i) the Effective Date or (ii) their date of preparation.

m. Compliance with Applicable Laws. The Parties shall comply with all federal, state, and local laws applicable to them in accordance with this Agreement.

n. Written Amendments. Any changes in the character, agreement, terms and/or responsibilities of the Parties must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the Authority and the County.

o. Sole Benefit. This Agreement is entered into for the sole benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by any Party shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

p. Interpretation; Meaning of "Toll Project". No provision of this Agreement shall 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. As used in this Agreement, and in light of its lengthy Term over which technological and other changes may occur, "toll project," "tolled," "controlled-access toll lanes," and similar terms shall be interpreted liberally and, at a minimum, be broadly defined to include a public or private tollway, turnpike, toll highway, tolled managed lane facility, or other roadway facility over which a fee is charged or payment made for use.

q. Effective Date; Execution and Delivery. The Effective Date shall be the date on which the last Party to execute this Agreement does so.

r. Previous Agreements; Conflicts. This Agreement supersedes any prior understandings or written or oral agreements between the Parties regarding the matters expressly addressed herein.

s. Ratification. The Authority and the County may subsequently agree to seek the ratification of this Agreement by one or more other parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the County and the Authority have executed this Agreement by six (6) multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

THE AUTHORITY:

**NORTH TEXAS TOLLWAY
AUTHORITY**

By: Allen Clemson
Allen Clemson,
Executive Director

Date: _____

THE COUNTY:

COUNTY OF COLLIN

By: Keith Self
Keith Self,
County Judge

Date: 7/18/11

ATTEST:

Ruby Franklin
Ruby Franklin,
Secretary

ATTEST:

Georgia Shepherd
Name: Georgia Shepherd
Title: Administrative Secretary

APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL LLP
Outside General Counsel to the Authority

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

CCTRA:

**COLLIN COUNTY TOLL ROAD
AUTHORITY**

By: Keith Self
Keith Self,
President

ATTEST:

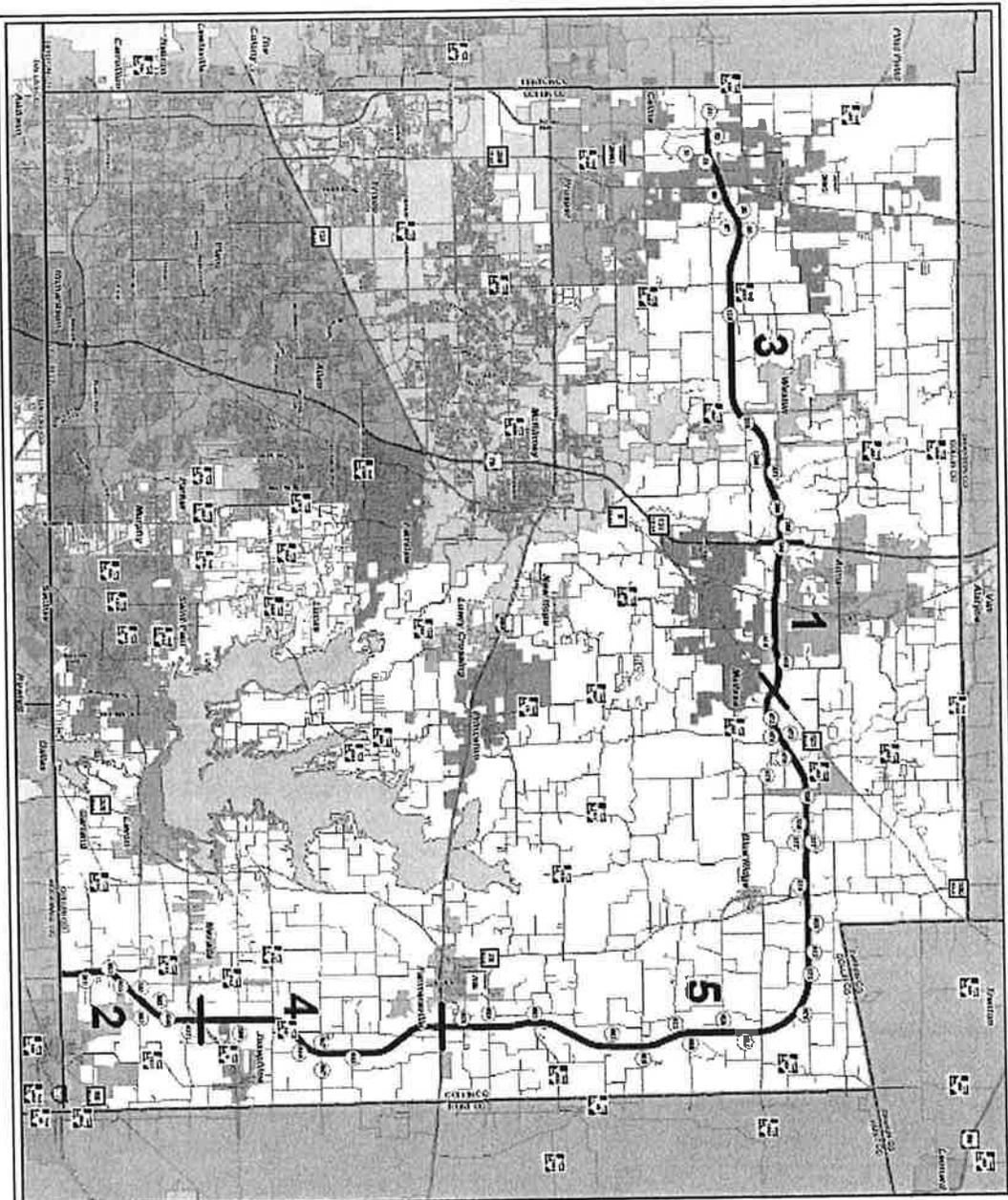
Georgia Shepherd
Name: Georgia Shepherd
Title: Administrative Secretary

APPROVED AS TO FORM:

SHEPHERD LAW FIRM
General Counsel to the County

By: _____
James E. Shepherd

Exhibit A
Depiction of the Project
(Recitals)



Legend

- Numbered Segments**
- 1 US 75 - SH 121
 - 2 FM 6 - Rockwall Co.
 - 3 DNT - US 75
 - 4 US 380 - FM 6
 - 5 SH 121 - US 380



Source data supplied from GIS Database and the Engineering Department.
 This map is a graphic representation of Collin County and should only be used
 for illustrative purposes. No warranty is made by the County for any
 secondary disputes or boundary conflicts.
 August 2009

Exhibit B
Authorizing Resolutions, Court Orders, and Minute Orders
(Recitals)



NORTH TEXAS TOLLWAY AUTHORITY

RESOLUTION NO. 11-62

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN
AGREEMENT WITH COLLIN COUNTY REGARDING THE OUTER LOOP AND
OTHER TOLL PROJECTS IN THAT COUNTY**

March 17, 2011

WHEREAS, the North Texas Tollway Authority (the "NTTA") is a regional tollway authority created and operating pursuant to Chapter 366 of the Texas Transportation Code, known as the "Regional Tollway Authority Act"; and

WHEREAS, a form of "Agreement Regarding The Outer Loop Project (Within Collin County)" between the NTTA and Collin County (the "Agreement") and applicable to the Outer Loop and other future toll projects within Collin County was presented to the NTTA's Board of Directors and reviewed by counsel;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the NTTA approves the Agreement in the form presented and reviewed, and authorizes the NTTA's Executive Director to execute and deliver the Agreement.

ATTEST:


Victor T. Vandergriff, Chairman


Ruby Franklin, Secretary

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Interlocal Agreement, NTTA – County Judge

On March 21, 2011, the Commissioners Court of Collin County, Texas, met in regular session with the following members present and participating, to wit:

Keith Self
Matt Shaheen
Cheryl Williams
Joe Jaynes
Duncan Webb

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, Precinct 4

During such session the court considered a request for approval of an Interlocal Agreement with North Texas Tollway Authority (NTTA).

Thereupon, a motion was made, seconded and carried with a majority vote of the court for approval of an Interlocal Agreement with North Texas Tollway Authority (NTTA) regarding the Outer Loop. Same is hereby approved as per the attached documentation.

~ No Vote ~

Keith Self, County Judge

~ No Vote ~

Matt Shaheen, Commissioner, Pct. 1

Cheryl Williams, Commissioner, Pct. 2

Joe Jaynes, Commissioner, Pct. 3

Duncan Webb, Commissioner, Pct. 4



ATTEST:

Stacey Kemp, Ex-Officio Clerk
Commissioners Court
Collin County, T E X A S

COLLIN COUNTY TOLL ROAD AUTHORITY
CCTRA RESOLUTION NO. 2011- 3020 -03-21

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Interlocal Agreement, NTTA – County Judge

On March 21, 2011, the Collin County Toll Road Authority Board of Directors of Collin County, Texas, met in regular session with the following members present and participating, to wit:

**Keith Self
Matt Shaheen
Cheryl Williams
Joe Jaynes
Duncan Webb**

**President
Director
Director
Director
Director**

During such session the Collin County Toll Road Authority Board of Directors considered a request for approval of an Interlocal Agreement with North Texas Tollway Authority (NTTA).

Thereupon, a motion was made, seconded and carried with a majority vote of the Board for approval of an Interlocal Agreement with North Texas Tollway Authority (NTTA) regarding the Outer Loop. Same is hereby approved in accordance with the attached documentation.

~ No Vote ~

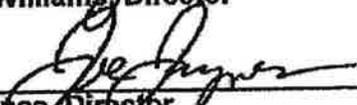
Keith Self, President

~ No Vote ~

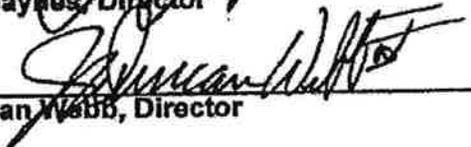
Matt Shaheen, Director



Cheryl Williams, Director



Joe Jaynes, Director



Duncan Webb, Director

Exhibit C
Pending Procurements, Contracts Awarded,
Deliverables Received, and Other Actions Taken
(Section 7.h.)

The following Court Orders, together with the procurements, contracts awarded, deliverables received, and other actions taken regarding the Project that are described in those referenced Court Orders, are intended by the Parties as a representative, but not necessarily comprehensive, listing of the Parties' efforts and existing deliverables described in Section 7.h.

CCTRA List of Court Orders

Court Order 2002-880-10-28	Court Order 2009-605-08-10
Court Order 2004-208-03-23	Court Order 2009-3004-02-23
Court Order 2004-261-04-19	Court Order 2009-3006-03-23
Court Order 2004-338-05-10	Court Order 2009-3007-04-06
Court Order 2004-486-07-13	Court Order 2009-3008-05-11
Court Order 2004-632-08-23	Court Order 2009-3013-06-22
Court Order 2005-673-08-23	Court Order 2009-3014-07-13
Court Order 2005-786-10-14	Court Order 2009-3020-08-10
Court Order 2005-928-11-22	Court Order 2009-3024-09-14
Court Order 2006-092-01-24	Court Order 2009-3030-10-26
Court Order 2006-171-02-28	Court Order 2009-3031-11-09
Court Order 2006-279-03-28	Court Order 2009-3032-12-07
Court Order 2006-1171-12-12	Court Order 2010-183-03-01
Court Order 2007-050-01-23	Court Order 2010-366-05-24
Court Order 2007-307-04-10	Court Order 2010-416-06-28
Court Order 2007-1103-11-27	Court Order 2010-3002-01-25
Court Order 2007-1159-12-18	Court Order 2010-3006-03-01
Court Order 2008-025-01-08	Court Order 2010-3016-04-19
Court Order 2008-072-01-22	Court Order 2010-3035-07-12
Court Order 2008-416-06-10	Court Order 2010-3036-07-12
Court Order 2008-446-06-23	Court Order 2010-3041-07-26
Court Order 2008-447-06-23	Court Order 2010-3046-08-16
Court Order 2008-448-06-23	Court Order 2010-3053-09-13
Court order 2008-710-09-09	Court Order 2010-3055-09-20
Court Order 2008-1052-11-18	Court Order 2010-3056-09-20
Court Order 2008-1059-11-18	Court Order 2010-3073-12-06
Court Order 2008-1079-11-18	Court Order 2010-3075-12-13
Court Order 2008-1128-12-09	Court Order 2011-130-02-28
Court Order 2009-022-01-12	Court Order 2011-176-03-21
Court Order 2009-156-02-23	Court Order 2011-3009-02-07
Court Order 2009-169-03-12	Court Order 2011-3020-03-21
Court Order 2009-191-03-12	Court Order 2011-3027-04-11
Court Order 2009-200-03-12	Court Order 2011-3049-08-01
Court Order 2009-222-03-23	Court Order 2011-3050-08-01
Court Order 2009-257-04-06	Court Order 2011-3051-08-01



NORTH TEXAS TOLLWAY AUTHORITY

5900 West Plano Parkway • Plano, Texas 75093 • (214) 461-2000 • Fax (214) 528-4826 • www.ntta.org

March 21, 2011

Collin County Commissioners' Court
Collin County Administration Building
2300 Bloomdale Rd., Suite 4192
McKinney, TX 75071

Re: Agreement Regarding the Outer Loop Project (Within Collin County) (the "ILA")

Dear County Judge and Commissioners,

The form of ILA transmitted to the County last Thursday, March 17, was approved unanimously by the NTTA's Board of Directors at its monthly meeting earlier that day. We understand that subsequent to the delivery of that form, one or more members of the Commissioners Court raised concerns regarding the use of the phrase "or desirable" in the subsection 5.c.iv. set forth below:

- iv. upon the Authority's payment of the sum determined pursuant to subsections 5.c.iii.(A) through (D) above, the County shall transfer and convey to the Authority such right-of-way and improvements as the Authority deems necessary *or desirable* to own, construct, maintain, or operate the Project, free of any indebtedness, lien, or other adverse encumbrance, and assign to the Authority (or, at the Authority's option, provide a royalty-free license for) any permit, agreement, contract, plans, specifications, or other deliverable pertaining to the Project as the Authority requests; and

We understand that the County is concerned that the use of "desirable" could permit the NTTA to require the County to transfer right-of-way that is unnecessary for the Project and simply "desirable" for reasons unrelated to the NTTA's effective operation of the roadway. On behalf of the NTTA, and recognizing that the County will be relying upon this letter in considering the ILA, I assure you that is not the NTTA's intention regarding the term "desirable" nor would the NTTA advance such an interpretation.

The phrase "necessary or desirable" routinely appears in the NTTA's project agreements with TxDOT – typically in the phrase "necessary or desirable for the proper operation of the Project." So, the NTTA's use of "desirable" is by no means unique to the ILA.

The purpose for the "desirable" language is only to prevent a needless argument in the future about what is absolutely, strictly, or unequivocally "necessary" for the NTTA's road. While the County wishes to avoid an overbroad definition of "desirable," the NTTA fears an overly constrained definition of "necessary."

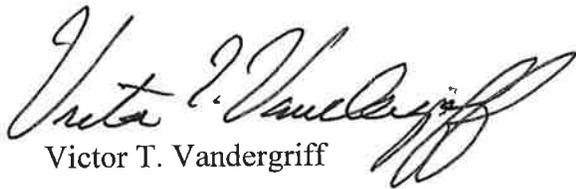
All that "desirable" is intended to affirm in this context is that right-of-way reasonably considered part of and useful to the Project in accordance with standard toll industry practices could be requested by the NTTA. Some specific examples include right-of-way upon which entrance and exit ramps, slopes, or retaining walls are constructed.

Right-of-way that is (1) not typically considered part of the NTTA's facility or (2) desirable for some purpose unrelated to the safe and efficient operation of the NTTA's facility is specifically disclaimed.

Assuming the Court approves the ILA in form the NTTA submitted last Thursday, this letter shall be deemed an integral interpretive element of the ILA, and both it and its assurances shall fully survive the complete execution of the ILA and not be deemed superseded thereby.

I hope that this letter provides a helpful clarification of the issue you raised.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Victor T. Vandergriff".

Victor T. Vandergriff

Chairman

cc: Board of Directors
Allen Clemson
Bob Schell
Frank Stevenson
