THE · CITY · OF
COPPELL
TEXAS · 1890

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NORTH TEXAS TOLLWAY AUTHORITY

October 1, 2009

Gerry Carrigan
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

RE: Interlocal Agreement

Dear Mr. Carrigan:

Enclosed are the two executed Interlocal Agreements with the City of Coppell regarding landscape improvements and sound wall coating along the Sam Rayburn Tollway.

Thank you for your assistance in this matter.

Sincerely,

Clay Phillips
City Manager

CP/dgc

Enclosures

EP OS 10/6/09 OS

INTERLOCAL AGREEMENT BETWEEN THE NORTH TEXAS TOLLWAY AUTHORITY AND THE CITY OF COPPELL REGARDING LANDSCAPE AND SOUND WALL COATING IMPROVEMENTS ALONG THE SAM RAYBURN TOLLWAY WITHIN THE CITY LIMITS OF COPPELL

THIS INTERLOCAL AGREEMENT (this "ILA") by and between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas, acting by and through its Board of Directors (hereinafter identified as the "Authority"), and the **CITY OF COPPELL**, a home rule municipality and Texas municipal corporation, acting by and through its duly elected City Council (hereinafter identified as the "City"), is to be effective as of the 30th day of September, 2009.

RECITALS

WHEREAS, the Authority has entered into an agreement with the Texas Department of Transportation for the Authority to construct, operate, and maintain a turnpike project known as the Sam Rayburn Tollway (formerly called the 121 Tollway) and the State Highway 121 service roads that parallel the tollway (the "Project"), which are located between a point 1,200 feet north of the Business 121 interchange at Denton Creek in Denton County and Medical Center Drive, east of U.S. 75, in Collin County; and

WHEREAS, in 2006, based upon sustainability and environmental stewardship considerations, the Authority instituted an initiative to eliminate paint and other surface coatings on the concrete surfaces of its facilities; and

WHEREAS, in accordance with its established policy and design guidelines, the Authority began constructing sound walls with an uncoated finish in Segment 1 of the Project (Denton Tap Road to Old Denton Road), a portion of which segment is located within the City's municipal boundaries; and

WHEREAS, the City requested that the Authority consider approving an exception to its policy and design guidelines in order to permit the installation of standard landscaping elements and the application of colored surface coatings to "soften" the aesthetic appearance of the sound walls at designated locations adjacent to residential neighborhoods abutting the Project's service roads within the City's municipal boundaries; and

WHEREAS, the Authority's Board of Directors (the "NTTA Board") approved the City's request (by Resolutions 09-137 and 09-199) on the condition that the City and the Authority enter into an ILA that is acceptable to both the City and NTTA regarding the terms and conditions under which the standard landscape elements and surface coatings will be installed and applied and under which the City agrees to bear all application, maintenance, removal, and other costs associated with the coatings (or reimburse, or secure reimbursement of, such costs to the Authority); and

WHEREAS, the Authority and the City have determined that benefits and advantages will result to both entities by formally entering into this ILA; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local government and/or political subdivision to enter into agreements governing each entity's functions and services to the other under the terms thereof.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the City agree as follows:

1. **Landscape Elements and Wall Coating Work.** The Authority will modify its design plans for the Project regarding landscaping components to incorporate the installation of Authority-standard landscape elements at the six mutually agreed upon sound wall locations, and will contract for the coating of those soundwalls within the limits of the City of Coppell as identified in Attachment A attached hereto and made a part of this ILA (the "Subject Sites"),consistent with the provisions of Resolutions 09-137 and 09-199 approved by the NTTA Board.

2. **Contract(s) for Landscape Elements Work and Wall Coating Work.** The Authority has received a price quotation and will issue a change order to an existing contract which will incorporate the work associated with the application of the coatings to the sound walls at the Subject Sites. A notice to proceed for this work is currently anticipated to be issued in September, 2009. The Authority will subsequently procure and administer a separate contract for the installation and maintenance of the landscape improvements at the Subject Sites. A notice to proceed for this work is currently anticipated to be issued in the 1st QTR of 2010.

3. **Landscape Costs, Installation, and Maintenance**. The Authority will assume the costs of the installation and maintenance of the standard landscape elements at the Subject Sites. The City acknowledges and agrees that the only modifications to the Authority's design plans for the landscape elements pertain to those elements' location at the Subject Sites. Otherwise, the Authority will design, install and maintain the landscape elements according to its standard practices for similar landscape elements. The Authority makes no warranty of any kind concerning the landscape elements.

4. **City's Reimbursement.** The City will reimburse the Authority for all costs associated with the application of the coatings at the Subject Sites. The Authority currently estimates the cost to apply the wall coatings at the Subject Sites to be approximately $19,836 based upon change order pricing for the initial coating application only. The Authority shall not authorize any coating work which would exceed this estimate plus 10%, without additional concurrence from the City. However, the City acknowledges that the Authority's estimate shall not limit the City's obligation to be responsible to reimburse the Authority for all of the costs associated with the coatings. The City will also reimburse the Authority for the costs of any required interim coating maintenance (including, but not limited to, graffiti removal), all other costs incurred by the Authority in connection with the wall coatings, and the costs of the removal of the coatings at such time as the Authority elects to remove coatings from other Project

structures adjacent to or in the vicinity of the subject sound walls. The City shall remit any reimbursement payment within thirty (30) days of its receipt of an invoice for the completed work.

5. Notice of Intent to Remove Coatings. The City acknowledges that the Authority intends to remove surface coatings from other Project structures at an unspecified future date or dates. No sooner than 5 years from the execution of this document, and upon thirty (30) days prior written notice to the City of its intent to remove the wall coatings from the Subject Sites, the Authority may remove the wall coatings at the Subject Sites at such time as the Authority elects to remove surface coatings from other Project structures adjacent to or in the vicinity of the Subject Sites.

6. Miscellaneous

(a) Term. The term of this ILA shall be for such period as the wall coatings remain in place at the Subject Sites, unless otherwise amended or cancelled.

(b) Written Amendments. Any change in this ILA must be enacted through a written amendment. No amendment to this ILA shall be of any effect unless in writing and executed by the Authority and the City.

(c) Sole Benefit; No Waiver. This ILA is entered into for the sole benefit of the City, the Authority and their respective successors, and nothing in this ILA or in any approval subsequently provided by either party hereto 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. The Authority assumes no liability arising out of or resulting from the City's or its employees', agents', consultants', contractors', or independent contractors' performance of the any work under this ILA. Except for the costs assumed by the City under Section 4(b), the City assumes no liability arising out of or resulting from the Authority's or its employees', agents', consultants', contractors', or independent contractors' operation, maintenance, or repair of the Project. The parties agree that neither party is an agent of the other party and that each party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its respective officers, agents or employees in conjunction with the performance of this ILA, without waiving any governmental or sovereign immunity available to each party under Texas law and without waiving any defenses of each party under Texas law.

(d) Authorization. Each party to this ILA represents to the other that it is fully authorized to enter into this ILA and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery or performance of this ILA. Each signatory on behalf of the City and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this ILA.

(e) Interpretation. No provision of this ILA shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial

authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

(f) **Counterparts**. This ILA may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.

(g) **Headings**. The article and section headings used in this ILA are for reference and convenience only, and shall have no bearing on the interpretation hereof.

IN WITNESS WHEREOF, the Authority and City have executed this ILA on the dates shown below, to be effective on the date listed above.

NORTH TEXAS TOLLWAY AUTHORITY

ATTEST:

Kelly Franklin

By: Allen Clemson
Allen Clemson, Executive Director

Date: 9.22.2009

APPROVED AS TO FORM:

Locke Lord Bissell & Liddell LLP,
General Counsel to the Authority

By: James T. Rain
Name: JAMES T. RAIN

CITY OF COPPELL, a Texas municipal corporation

ATTEST:

Lindy Ball
City Secretary

By: Jayne Peters
Jayne Peters, Mayor

Date: 9/30/09

APPROVED AS TO FORM:

City Attorney

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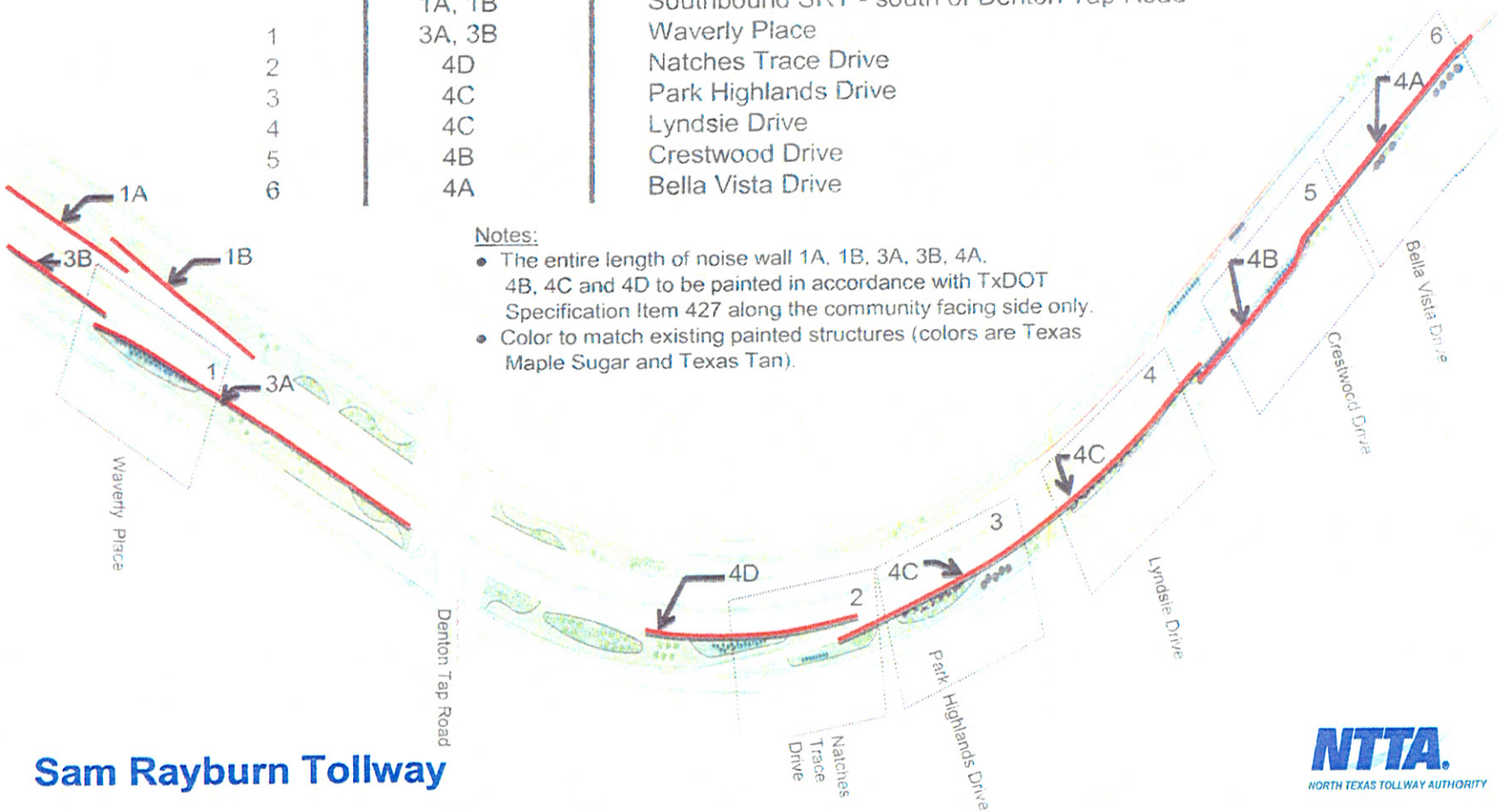
Coppell Noise Walls and Landscape
Attachment A

Landscape Site Number	Noise Wall Number	Location
	1A, 1B	Southbound SRT - south of Denton Tap Road
1	3A, 3B	Waverly Place
2	4D	Natches Trace Drive
3	4C	Park Highlands Drive
4	4C	Lyndsie Drive
5	4B	Crestwood Drive
6	4A	Bella Vista Drive

Notes:

- The entire length of noise wall 1A, 1B, 3A, 3B, 4A, 4B, 4C and 4D to be painted in accordance with TxDOT Specification Item 427 along the community facing side only.
- Color to match existing painted structures (colors are Texas Maple Sugar and Texas Tan).



Sam Rayburn Tollway

NTTA
NORTH TEXAS TOLLWAY AUTHORITY

NORTH TEXAS TOLLWAY AUTHORITY

RESOLUTION NO. 09-137

A RESOLUTION RECOMMENDING INSTALLATION OF
LANDSCAPING ALONG SOUND WALLS
ON THE SAM RAYBURN TOLLWAY, SEGMENT 1

May 18, 2009

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

WHEREAS, in accordance with the Act, the NTTA has entered into an agreement with the Texas Department of Transportation for the NTTA to construct, operate, and maintain a turnpike project known as the Sam Rayburn Tollway (formerly called the 121 Tollway) and the State Highway 121 service roads that parallel the tollway (the "Project"), which is located between a point 1,200 feet north of the Business 121 interchange at Denton Creek in Denton County and Medical Center Drive, east of U.S. 75, in Collin County; and

WHEREAS, in 2006, based upon sustainability and environmental stewardship considerations, the NTTA instituted an initiative to eliminate paint and other surface coatings on the concrete surfaces of its facilities; and

WHEREAS, in accordance with its established policy and design guidelines, the NTTA is currently constructing sound walls with an uncoated finish in Segment 1 of the Project; and

WHEREAS, the City of Coppell (the "City") has requested that the NTTA consider approving exceptions to its policy and design guidelines in order to permit the installation of standard landscaping elements and the application of colored surface coatings to "soften" the aesthetic appearance of the sound walls at designated locations adjacent to residential neighborhoods abutting the Project's service roads; and

WHEREAS, NTTA staff developed and presented for the City's review a design of landscape elements that, except for their installation at locations that do not conform to the NTTA's design guidelines, otherwise conform to the NTTA's standard design guidelines; and

WHEREAS, NTTA staff and the NTTA Board of Directors (the "Board") have carefully considered the City's request, and the Board is willing to approve the request regarding the installation of the landscaping elements in accordance with the designs prepared by the NTTA at the designated non-standard locations;

NOW, THEREFORE, BE IT RESOLVED that the NTTA Board of Directors instructs staff to finalize the design of and to install landscape elements to "soften" the aesthetic appearance of the surfaces at six sound wall locations identified by the City of Coppell in Segment 1 of the Project, with the cost to install and maintain such landscape elements to be paid from the Project construction or operations and maintenance funds, as applicable.

ATTEST:

Paul N. Wageman, Chairman

Ruby Franklin, Secretary

future time as the NTTA elects to remove coatings from other Project structures adjacent to or in the vicinity of the subject sound walls; and

WHEREAS, the installation of the standard landscape elements at the six mutually agreed upon sound wall locations may be paid out of the Project's existing budget for landscaping improvements; and

WHEREAS, on May 13, 2009, the Board adopted resolution no. 09-137, approving the above-described installation of landscaping improvements, but such resolution did not include a provision regarding the application of surface coatings to sound walls; and

WHEREAS, the Board desires to amend resolution no. 09-137 to include authorization for the application of surface coatings on the terms described above and as further provided in the ILA with the City;

NOW, THEREFORE, BE IT RESOLVED that the NTTA Board of Directors hereby amends the resolution no. 09-137 to add the following:

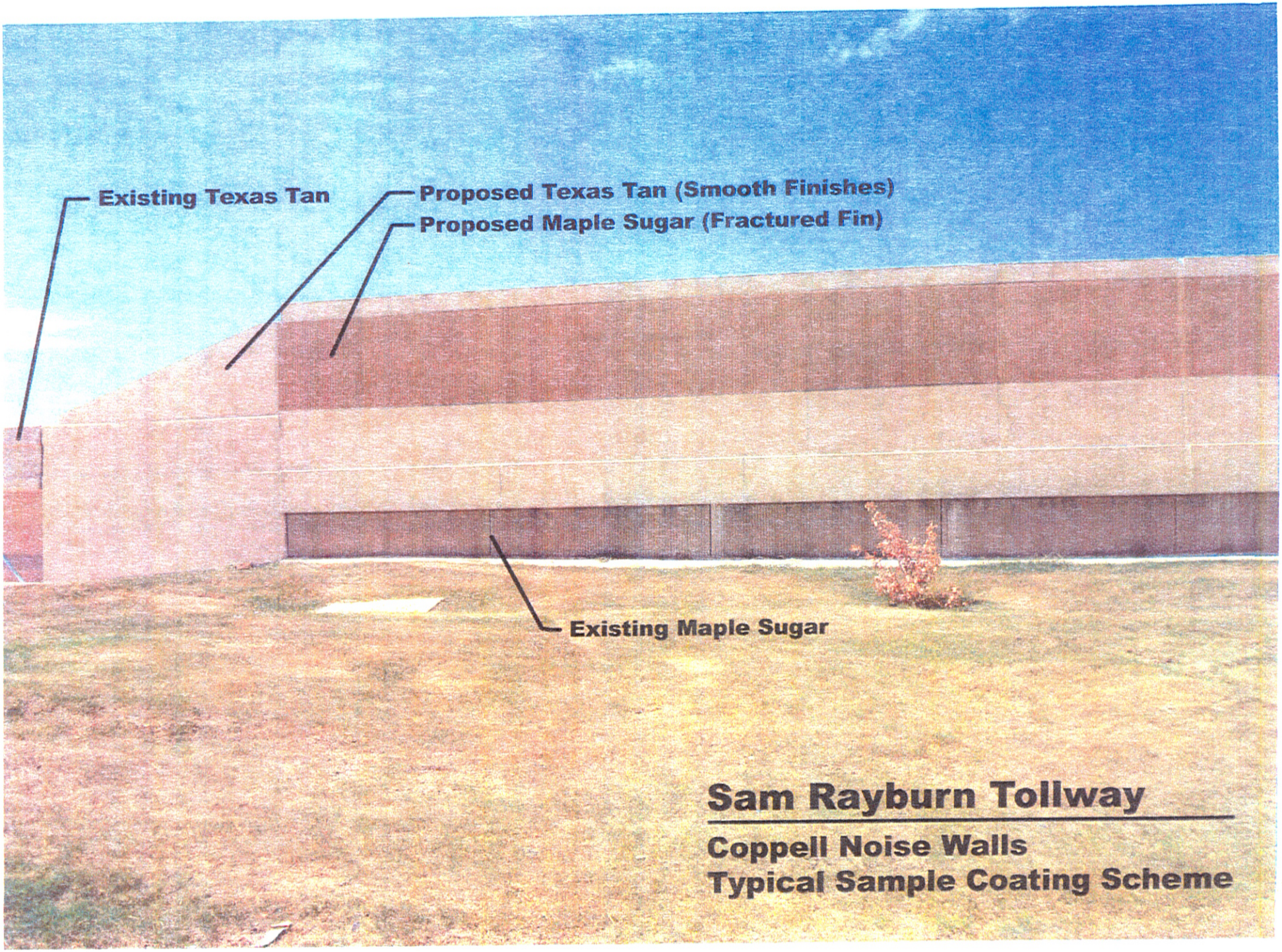
> BE IT FURTHER RESOLVED, that the Board authorizes the application of colored surface coatings to sound walls at designated locations adjacent to residential neighborhoods abutting the Project's service roads, subject to the City's agreement to (1) bear all application, maintenance, removal, and other costs associated with the coatings (or to reimburse, or secure reimbursement of, such costs to NTTA, as the terms of the ILA may dictate), and (2) permit the NTTA, upon 30 days prior written notice to the City, to remove the surface coatings at the City's cost at such time as the NTTA elects to remove coatings from other Project structures adjacent to or in the vicinity of the subject sound walls; and
>
> BE IT FURTHER RESOLVED that the Board authorizes the Executive Director to negotiate and execute an ILA with the City of Coppell on the terms set forth above and on such other consistent terms as the Executive Director deems to be advisable; and
>
> BE IT FURTHER RESOLVED that the application, maintenance, removal, and other costs associated with the surface coatings shall be paid by the City of Coppell under the terms of the ILA set forth above and the costs of installing and maintaining the standard landscape elements at the six mutually agreed upon sound wall locations shall be paid from the Project construction or operations and maintenance funds, as applicable.

BE IT FURTHER RESOLVED that except as amended hereby, resolution 09-137 remains in full force and effect as originally adopted.

Paul N. Wageman, Chairman

ATTEST:

Ruby Franklin, Secretary


Existing Texas Tan
Proposed Texas Tan (Smooth Finishes)
Proposed Maple Sugar (Fractured Fin)
Existing Maple Sugar
Sam Rayburn Tollway
Coppell Noise Walls
Typical Sample Coating Scheme