

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE NORTH EAST TEXAS
REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 14-21

WHEREAS, the North East Regional Mobility Authority ("NET RMA") was created pursuant to the request of Gregg and Smith Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.1, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the NET RMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Panola, Van Zandt, Wood, Titus, and Kaufman joined the Authority and are represented on the Board of Directors; and

WHEREAS, the NET RMA is responsible for the operation of Toll 49; and

WHEREAS, the NET RMA previously determined that certain Toll 49 tolling equipment which was initially installed on Segments 1, 2, 3A, and 5 of Toll 49 on behalf of the Texas Department of Transportation ("TxDOT") prior to assumption of toll operations by NET RMA is technically incompatible with the NET RMA toll collection system; and

WHEREAS, pursuant to Chapter 370 of the Texas Transportation Code and the rules appearing in 43 Tex. Admin. Code §27.50 *et. seq.* (the "Toll Equity Rules"), a regional mobility authority may submit to the Texas Department of Transportation ("TxDOT") a request for financial assistance to be used in connection with the development, construction, operation, and maintenance of turnpike projects; and

WHEREAS, in accordance with Section 27.53 of the Toll Equity Rules, the NET RMA submitted a request to TxDOT for a grant from the State Highway Fund to finance the replacement of the tolling equipment on Segments 1, 2, 3A, and 5 of Toll 49; and

WHEREAS, on May 29, 2014 by Minute Order 113944 and June 26, 2014 by Minute Order 113981, the Texas Transportation Commission (the "Commission") gave preliminary and final approval to the award by TxDOT of a grant in the amount of up to \$3,545,000 from the State Highway Fund to be used for the purpose of replacement of tolling equipment on Segments 1, 2, 3A, and 5 of Toll 49.

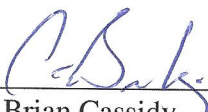
NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the NET RMA hereby accepts the award by TxDOT of a grant in the amount up to \$3,545,000 from the State Highway Fund to be used for the purpose of replacement of tolling equipment on Segments 1, 2, 3A, and 5 of Toll 49; and

BE IT FURTHER RESOLVED, the NET RMA Interim Executive Director is authorized to execute a Financial Assistance Agreement governing the use of the granted funds in the same or substantially similar form as is attached hereto as Attachment "A".

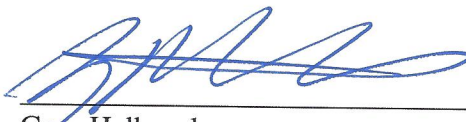
Adopted by the Board of Directors of the North East Texas Regional Mobility Authority on the 15th day of July, 2014.

Submitted and reviewed by:

Approved:



C. Brian Cassidy
General Counsel for the North East
Texas Regional Mobility Authority



Gary Halbrooks
Vice Chair, Board of Directors
Resolution Number 14-21
Date Passed: 07/15/14

Attachment A

Financial Assistance Agreement

FINANCIAL ASSISTANCE AGREEMENT

This Financial Assistance Agreement (Agreement) is made by and between the Texas Department of Transportation, an agency of the State of Texas (TxDOT), and the North East Texas Regional Mobility Authority, a political subdivision of the State of Texas (NETRMA), for the purpose of providing financial assistance in connection with the acquisition and construction of toll equipment for the Loop 49 facility in Smith County, part of an outer loop around the City of Tyler, Texas.

RECITALS

The parties acknowledge the following:

A. The NETRMA is a regional mobility authority operating pursuant to Chapter 370 of the Texas Transportation Code and 43 Texas Administrative Code (TAC) §26.1 *et seq.*

B. TxDOT, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code, is authorized to participate, through the expenditure of money from any source, in the acquisition, construction, maintenance, or operation of a toll facility of a public entity.

C. TxDOT has adopted rules at 43 TAC §27.50 *et seq.* (Toll Equity Rules) setting forth the policies and procedures by which it will participate in the financing of a toll facility which is not under its jurisdiction.

D. Pursuant to Texas Transportation Code §370.301, TxDOT may agree with a regional mobility authority to provide for or contribute to the payment of costs of the design, financing, and construction of a turnpike project of the NETRMA on terms agreed to by the Texas Transportation Commission (Commission) or TxDOT, as applicable, and the regional mobility authority.

E. TxDOT and the NETRMA have jointly developed the Loop 49 facility in Smith County, part of an outer loop around the City of Tyler, Texas. The Loop 49 facility is currently comprised of five segments (1, 2, 3A, 3B, and 5) that extend from SH 110 to I-20. Loop 49 is an approximately 26 mile tolled highway system that traverses the south and west sides of Tyler, and includes two lanes of an ultimate four lane toll road.

F. On February 28, 2013, by Minute Order 113483, the Commission approved the removal from the designated state highway system and transfer to the NETRMA of Segments 1, 2, 3A, and 5 of Loop 49, comprising the roadway facilities and underlying right of way, and the right of way underlying Segment 3B of Toll 49, from SH 110 to I-20, effective on the date of substantial completion of the work required to be performed by the NETRMA on Segment 3B. On March 17, 2014, the Governor of Texas approved the transfer in accordance with Texas Transportation Code §228.151.

G. The NETRMA has determined that certain tolling equipment which was initially installed on Segments 1, 2, 3A, and 5 of Loop 49 on behalf of TxDOT (prior to assumption of toll operations by NETRMA) is technically incompatible with the NETRMA toll collection system, and has submitted a request for a grant from the State Highway Fund (SHF), in accordance with 43 TAC §27.53, to finance the replacement of the tolling equipment on Segments 1, 2, 3A, and 5 as described in Attachment A (Project).

H. As required by 43 TAC §27.53, on December 1, 2009, the NETRMA Board of Directors passed a resolution adopting an ethics and internal compliance program that addresses standards of conduct for the NETRMA officers and employees. These policies meet the requirements set forth in 43 TAC §10.51.

I. The executive director has waived the requirement to complete a study of the social, economic, and environmental impacts because the study is inapplicable or unnecessary due to the nature of the requested assistance, under 43 TAC §27.54(b)(2). The NETRMA has committed that the Project will comply with all applicable environmental laws, and has committed that the NETRMA will assume all liability and responsibility for identifying and securing all federal and state environmental permits, issues, commitments, and approvals necessary for the development of the Project.

J. On May 29, 2014, by Minute Order 113944, the Commission granted preliminary approval of an application for financial assistance from the NETRMA for a grant of up to \$3,545,000 from the State Highway Fund for the costs of acquisition and construction of toll equipment for Segments 1, 2, 3A, and 5 of Loop 49.

K. On June 26, 2014, in Minute Order No. 113981 the Commission, pursuant to its constitutional and statutory authority and the Toll Equity Rules, gave final approval of the grant by TxDOT of financial assistance in the amount of \$3,545,000 from the State Highway Fund, to be used for the purposes identified herein, and authorized the Executive Director of TxDOT to enter into a financial assistance agreement with the NETRMA.

L. On _____, the NETRMA Board of Directors, via Resolution No. _____, authorized the Interim Executive Director of the NETRMA to enter into a financial assistance agreement with TxDOT.

AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

1. TxDOT will provide financial assistance to the NETRMA, in the form of a grant in the amount of \$3,545,000, to be used to pay or provide reimbursement for the costs of the replacement of the tolling equipment which was initially installed on Segments 1, 2, 3A, and 5 of Loop 49 on behalf of TxDOT. This funding is committed by TxDOT and is not subject to future discretionary actions of TxDOT or the Commission. Costs payable through the financial assistance are limited to the costs described in Attachment A to this Agreement that were either

incurred prior to, and in anticipation of, receipt of those funds, or that are incurred during the course of the Project.

2. Provided that the NETRMA is in compliance with all terms of this Agreement, TxDOT shall disburse up to \$3,545,000 from the State Highway Fund to the NETRMA's depository bank _____ in _____, Texas, within 30 days of the effective date of this Agreement.

3. The NETRMA will maintain transaction level expenditure information relating to expenditures paid or reimbursed with funds provided under this Agreement, and will provide, upon request, a written report prepared by its General Engineering Consultant detailing the specific use of the granted funds, including without limitation the use of those funds to reimburse costs incurred in anticipation of the receipt of those funds. Costs paid or reimbursed by the NETRMA using funds granted under this Agreement shall be paid or reimbursed in accordance with applicable policies of the NETRMA and other applicable state and federal laws, including the applicable requirements of OMB Circular A-87. TxDOT shall have the right to request and the NETRMA shall provide written documentation, including copies of invoices, reports or notices, evidencing previously incurred costs being reimbursed or in support of the need for the disbursed funds and the use of those funds.

4. To the extent funds disbursed hereunder are utilized to procure tangible work product or equipment consistent with the authorized purposes under this agreement, TxDOT shall have the right to review such work product or equipment.

5. Amounts disbursed to the NETRMA from TxDOT pursuant to this Agreement shall be considered a grant of funds and shall not be subject to repayment to TxDOT, provided that, upon completion of the Project the NETRMA shall return to TxDOT all unexpended funds granted and under the possession and control of the NETRMA under this Agreement that are in excess of costs incurred for the Project.

6. In the event that operation of the Project is terminated by the NETRMA prior to completion of the replacement of equipment, then: (i) all work product and equipment procured with funds granted under this Agreement shall, at TxDOT's request, be transferred to TxDOT, along with all right, title and interest in and to such work product or equipment, and (ii) all unexpended funds granted and under the possession and control of the NETRMA under this Agreement in excess of costs incurred prior to the date of termination shall be returned to TxDOT.

7. The NETRMA will comply with applicable state and federal law in the performance of its work under the Agreement and will comply with any other applicable provision of the Toll Equity Rules relating to the performance of work.

8. The parties shall comply with the cost principles established in OMB Circular A-87. The parties shall adhere to the procurement standard established in 49 CFR 2118.36 and with the property management standard established in 49 CFR §418.32.

9. The NETRMA will maintain its books and records relating to the Project, the financial assistance provided under the Agreement in accordance with the requirements of the Toll Equity Rules, and will comply with the audit requirements and other requirements relating to project records in accordance with the Toll Equity Rules.

10. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

11. If either party defaults in the performance of any obligation described in this Agreement, the other party may exercise any rights and remedies granted by law or this Agreement.

12. The NETRMA must comply with all environmental permits, issues and commitments necessary for construction and operation of the Project.

13. The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When requested, the NETRMA shall furnish TxDOT with satisfactory proof of this compliance. The NETRMA shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

This Agreement shall be effective as of the _____ day of _____, 2014.

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
LtGen J.F. Weber, USMC (Ret)
Executive Director

Draft

7/11/2014

**THE NORTH EAST TEXAS REGIONAL MOBILITY
AUTHORITY**

By: _____
Everett Owen
Interim Executive Director