

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into effective this 13th day of November, 2006, by and between GREGG COUNTY, TEXAS (the "County") and the NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY (the "NET RMA" or "Authority"), political subdivisions of the State of Texas (collectively, the "Parties").

WITNESSETH:

WHEREAS, the NET RMA is a regional mobility authority created pursuant to the request of Gregg and Smith Counties and operating pursuant to Chapter 370 of the Texas Transportation Code (the "RMA Act") and 43 TEX. ADMIN. CODE § 26.01 *et seq.* (the "RMA Rules"); and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, and Upshur joined the Authority so that it is now comprised of six (6) counties; and

WHEREAS, Gregg County is a county and political subdivision of the State of Texas and is located within the jurisdiction of the NET RMA; and

WHEREAS, Chapter 791 of the Texas Government Code (the "Texas Interlocal Cooperation Act") provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, §370.033 of the RMA Act provides that regional mobility authorities may enter into interlocal agreements with other governmental entities for project development related services; and

WHEREAS, §222.104 of the Texas Transportation Code provides that the Texas Department of Transportation (“TxDOT”) and a public or private entity may enter into an agreement that provides for the payment of “pass-through” financing to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity; and

WHEREAS, the development of the George Ritchie Road expansion/extension from US 271 to US 259 and SH 149 expansion from IH 20 to SH 322 (the “Project”) in Gregg County would improve mobility and quality of life in Gregg County and throughout the North East Texas region; and

WHEREAS, the NET RMA has professional and technical expertise available to assist with development of the Project and Gregg County has financial and other resources necessary for Project development; and

WHEREAS, the Parties have agreed that the joint prosecution of the Project as a pass-through project under § 222.104 of the Texas Transportation Code would allow the Parties to consolidate their various resources and expedite the delivery of the Project to the region.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned parties agree as follows:

I.

FINDINGS

1. **Recitals.** The recitals set forth above are incorporated herein for all purposes and are found by the parties to be true and correct. It is further found and determined that the County and the Authority have authorized and approved this Agreement by resolution or order adopted

by their respective bodies, and that this Agreement will be in full force and effect when approved by each party.

II.

ACTIONS

1. **Obligations of the NET RMA.** Subject to the terms of this Agreement, the NET RMA shall provide certain financial advisory, legal and oversight services necessary to:
 - (1) assist the County in assessing options available to finance the development of the Project in connection with the Pass-Through financing to be made available by TxDOT;
 - (2) assist the County in structuring and marketing the issuance of bonds, if necessary to finance development of the Project;
 - (3) negotiate agreements with the developer chosen by the County to develop and construct the Project;
 - (4) work with the County and the developer to prepare and submit a Pass-Through Financing request to TxDOT;
 - (5) negotiate agreements with TxDOT and other third parties necessary to implement the Pass-Through financing; and
 - (6) provide oversight and advice concerning development of the Project through the authority's Project Manager and other resources.
2. **Obligations of the County.** Subject to the terms of this Agreement, the County shall do the following:
 - (1) select a developer to design, develop and manage construction of the Project;
 - (2) enter into an agreement with the developer to deliver the Project for a guaranteed maximum price by a date certain;

(3) work with the Authority to prepare and submit a Pass-Through Financing request to TxDOT; and

(4) secure all funding necessary to develop the Project, including the funding necessary for right-of-way acquisition; environmental studies, and compensation of the developer.

3. **Compensation for Services.** The County shall compensate the NET RMA for the legal and project oversight services associated with development of the Project and which are not otherwise recoverable by the authority from loan or grant funds made available by TxDOT on the basis, or at the rates, charged to the NET RMA. The NET RMA will invoice the County on a monthly basis; with payments of undisputed amounts due to the Authority within thirty (30) days of the County's receipt thereof.

4. **Termination.** Either Party may terminate this Agreement at any time upon five (5) business days written notice. Any outstanding amounts owed through the date of termination shall be paid in accordance with paragraph 3 above. Absent earlier termination, this Agreement will terminate upon the earlier of Project Completion or December 31, 2010.

III.

GENERAL AND MISCELLANEOUS

1. **Prior Written Agreements.** This Agreement is without regard to any and all prior written contracts or agreements between the County and the Authority regarding any other subject or matter, and does not modify, amend, ratify, confirm or renew any such other prior contract or agreement between the Parties.

2. **Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any

other, or to provide or to not provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

3. **Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claim on behalf of any third party. Neither the County or the Authority waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

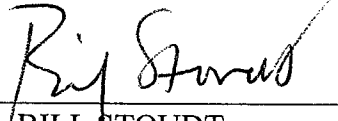
4. **Amendments and Modifications.** This Agreement may not be amended or modified except in writing executed by both the Authority and the County, and authorized by their respective governing bodies.

5. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, to give effect to the intent of this Agreement and be deemed to be validated and enforceable.

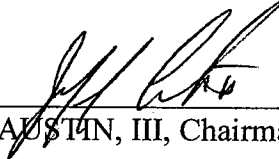
6. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date above first written, when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

GREGG COUNTY, TEXAS

By: 
The Hon. BILL STOUDT
County Judge
Gregg County, Texas

**NORTH EAST TEXAS REGIONAL
MOBILITY AUTHORITY**

By: 
JEFF AUSTIN, III, Chairman