

North Central Texas Council Of Governments

September 7, 2016

Mr. Craig Hulse  
Director of Economic Development  
City of North Richland Hills  
7301 N.E. Loop 820  
North Richland Hills, Texas 76180

Dear Mr. Hulse:

Attached for your review and signature is an electronic copy of the proposed Funding Agreement between the Texas Department of Transportation, the North Central Texas Council of Governments (NCTCOG) and the City of North Richland Hills for the Snider Street Extension Project.

NCTCOG requests your assistance in securing appropriate signatures. Please print three plain white 8.5x11 copies of the signature page of the Agreement. Following signature, please return original hard copies of the signature pages to the attention of Therese Bergeon for further processing. A complete and fully executed copy of the Agreement will be returned for your files, electronically and in hard copy form. The City of North Richland Hills is not authorized to incur any expenses on this project until NCTCOG issues a Notice to Proceed.

NCTCOG looks forward to working with the City of North Richland Hills on this project. If you have any project related questions, please contact Karla Weaver, Program Manager, at (817) 608-2376 or [kweaver@nctcog.org](mailto:kweaver@nctcog.org).

Sincerely,

Dan Kessler  
Assistant Director of Transportation

SB:tmb  
Attachment

cc: Karla Weaver, Program Manager NCTCOG  
NRH/Snider Street Project File TRN1597

Correspondence sent via electronic mail.

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**FUNDING AGREEMENT  
FOR PROJECTS USING FUNDS HELD IN THE  
STATE HIGHWAY 161 SUBACCOUNT-  
SUSTAINABLE DEVELOPMENT INFRASTRUCTURE  
Off-System Projects**

This Funding Agreement, hereinafter referred to as the "Agreement", is made and entered into by and between the State of Texas, hereinafter referred to as the "STATE", the City of North Richland Hills, hereinafter referred to as the "LOCAL GOVERNMENT", and the North Central Texas Council of Governments, hereinafter referred to as "NCTCOG". The STATE, LOCAL GOVERNMENT, and NCTCOG may each be referred to as a "Party", and may be collectively referred to as "Parties" to this Agreement.

**WITNESSETH**

WHEREAS, the STATE has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County; and,

WHEREAS, pursuant to Transportation Code, 228.006 the STATE shall authorize the use of surplus revenue of a toll project for a transportation project, highway project, or air quality project within the district of the Texas Department of Transportation in which any part of the toll project is located; pursuant to Transportation Code §228.012 the STATE has created a separate subaccount in the State highway fund to hold such money (SH 161 Subaccount), and the STATE shall hold such money in trust for the benefit of the region in which a project is located, and may assign the responsibility for allocating money in the subaccount to a metropolitan planning organization; and,

WHEREAS, in Minute Order 110727, dated October 26, 2006, the Texas Department of Transportation Commission (the "Commission") approved a memorandum of understanding (MOU) with the Regional Transportation Council concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and,

WHEREAS, on June 3, 2010 the Regional Transportation Council (RTC) approved staff recommendations for selected projects for implementation of the Sustainable Development Program in the Dallas-Fort Worth Metropolitan Area for the implementation of transportation improvements related to sustainable development projects and local sustainable development planning programs; and,

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

WHEREAS, in Minute Order 113102, dated April 26, 2012, the Commission concurred with RTC's selection of projects for the Sustainable Development Program; and,

WHEREAS, on April 12, 2012, through development of the 2013-2016 Transportation Improvement Program (TIP) the Snider Street Expansion project was changed from Surface Transportation Program – Metropolitan Mobility (STP-MM) funds to Regional Toll Revenue (RTR) funds; and,

WHEREAS, on April 12, 2012, the Regional Transportation Council (RTC) approved the 2013-2016 Transportation Improvement Program; and,

WHEREAS, in Minute Order 113251, dated August 30, 2012, the Commission concurred with the RTC's approval of the 2013-2016 Transportation Improvement Program; and,

WHEREAS, the North Central Texas Council of Governments (NCTCOG) has been designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law and acts as RTC's fiduciary agent; and,

WHEREAS, the Government Code, Chapter 791, and Transportation Code §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and,

WHEREAS, the Local Government is a political subdivision and governmental entity by statutory definition; and,

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

**Article 1.0 Purpose.** The purpose of this Agreement is to set out the roles and responsibilities of the STATE, LOCAL GOVERNMENT, and NCTCOG to implement the Sustainable Development PROJECT.

- 1.1 The STATE agrees to provide funding for the PROJECT awarded by the RTC and concurred by the Commission; on the terms and conditions set forth herein.
- 1.2 The LOCAL GOVERNMENT agrees to implement the PROJECT and provide necessary local match, according to the terms and conditions set forth herein.
- 1.3 NCTCOG agrees to coordinate with the STATE and LOCAL GOVERNMENT on the implementation of the PROJECT, including reviewing eligible costs and recommending to the STATE payment of such costs, if consistent with the terms and conditions set forth herein.

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

**Article 2.0 Definitions.** For the purpose of this Agreement the following words and phrases shall be defined as follows:

**CALL FOR PROJECTS:** shall mean the request for Sustainable Development Project applications issued by the RTC on March 23, 2009.

**OVERALL PROJECT:** shall mean the entire project as applied for in the Call for Projects, including the funded portion of the PROJECT and any additional improvements funded by the City or a private sector through local sources. Evidence of significant progress toward completion of the OVERALL PROJECT shall be demonstrated by the LOCAL GOVERNMENT submitting a building permit for a mixed-use development.

**PROJECT:** shall mean the project as funded under this Agreement and as further defined by the map included as Attachment A and the scope of work included as Attachment B.

**PROJECT BUDGET:** shall mean the budget or cost identifying all costs associated with and for the implementation of the PROJECT included in Attachment B.

**Article 3.0 Scope.** The LOCAL GOVERNMENT shall implement the PROJECT as described in Attachment B and in the Supporting Documentation as provided for in Article 11.1. Failure to complete the PROJECT may require the LOCAL GOVERNMENT to return funds received from the STATE for any expenses previously reimbursed within thirty (30) days. Any cost overruns are the responsibility of the LOCAL GOVERNMENT. Any modifications to the scope of work must be agreed to in advance and in writing by NCTCOG.

**Article 4.0 Project Award.** The PROJECT award for this Agreement is **\$2,800,050**. The LOCAL GOVERNMENT agrees to return funds received under this Agreement for reimbursed activities where the LOCAL GOVERNMENT has failed to comply with the requirements set forth in this Agreement, including but not limited to: failure to complete the PROJECT as identified in Attachment B, failure to show significant progress toward completion of the OVERALL PROJECT, and/or failure to comply with reporting requirements prescribed in Article 11.

**4.1 Match.** The LOCAL GOVERNMENT shall be responsible for a local match of **\$560,010**. The LOCAL GOVERNMENT shall document local match contribution in its requests for reimbursement. The LOCAL GOVERNMENT's contribution must be considered eligible expenses under this Agreement in order to constitute local match.

**Article 5.0 Notices.** All notices to each party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

STATE:

Texas Department of Transportation  
Attention: Director of Contract Services  
General Services Division  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701  
T: (214) 320-6100  
F: (214) 320-4488

LOCAL GOVERNMENT:

City of North Richland Hills  
Attention: Craig Hulse  
Director of Economic Development  
7301 NE Loop 820  
North Richland Hills, TX 76180  
T: (817) 427-6091

NCTCOG:

North Central Texas Council of Governments  
Attention: Director of Transportation  
616 Six Flags Drive  
P.O. Box 5888  
Arlington, Texas 76005  
T: (817) 695-9240  
F: (817) 640-3028

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Each party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**Article 6.0 Term.**

**6.1 Agreement Time.** This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

**6.2 Time of Performance.** The LOCAL GOVERNMENT shall not commence performance of any portion of the PROJECT, nor incur any costs or obligations associated with those services, until the LOCAL GOVERNMENT has received written authorization from NCTCOG, in the form of a pre-award authorization or a notice to proceed.

**6.3 Pre-Award Authorization.** The LOCAL GOVERNMENT may obtain a pre-award authorization for approved cost not to exceed the twenty (20) percent local match contribution for the PROJECT. The costs incurred by the LOCAL GOVERNMENT prior to the execution of this Agreement may count towards the twenty (20) percent local

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

match contribution provided such costs are for eligible expenses. Documentation of such expenditures must be provided to NCTCOG.

Costs incurred prior to execution of an Agreement are at the risk of the LOCAL GOVERNMENT and is not the responsibility of NCTCOG or the STATE to reimburse in the event an Agreement is not executed and/or the PROJECT is not completed as defined in Article 3.0.

NCTCOG will provide a copy of all pre-award authorizations to the Fort Worth District Engineer.

**6.4 Limited/Full Notice to Proceed.** A limited or full Notice to Proceed will be issued upon completion of a design and/or project review meeting, final execution of the Agreement, and necessary Article 11.1 documentation. Any activities completed prior to the receipt of a Notice to Proceed will not be eligible for reimbursement, unless specifically approved in writing by the STATE or NCTCOG.

NCTCOG will provide a copy of all limited/full Notices to Proceed to the Fort Worth District Engineer.

**6.5 Project Schedule.** NCTCOG may in its sole discretion terminate this Agreement if it concludes that the LOCAL GOVERNMENT has failed to begin the PROJECT by May 2017 or has not made significant progress towards the OVERALL PROJECT within the timeline identified in the Article 11.1 supporting documentation or by December 31, 2017, whichever occurs sooner. All changes to the schedule must be agreed to in writing by all three parties.

**6.6 Agreement Term.** This Agreement shall terminate at the completion of the OVERALL PROJECT. The PROJECT shall be considered complete upon NCTCOG's receipt of a Closeout Report as identified in Article 11.3.

**6.7 Continuing Obligations.** Termination of this Agreement does not invalidate any continuing obligations imposed by this Agreement.

**6.8 Funding Availability.** Any or all of the terms of this Agreement may be suspended or terminated in the event the STATE terminates funding for any reason.

**6.9 Events of Default.** In the event of a default of any terms or conditions set forth in this Agreement, The LOCAL GOVERNMENT shall repay any funds received from the STATE for implementation of this PROJECT within thirty (30) days. The LOCAL GOVERNMENT will be considered to be in default including but not limited to the following reasons: any material representation or warranty provided in reports or as part of this Agreement shall prove to be false, funds identified in the PROJECT BUDGET are used for purposes other than those stated in Attachment B, the LOCAL GOVERNMENT assigns or transfers the obligations set forth in this Agreement to a third party without prior written consent of the STATE and NCTCOG; the LOCAL GOVERNMENT fails to

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

complete the PROJECT as required in Attachment B, or the LOCAL GOVERNMENT fails to cure a defect as outlined in Article 6.9.

**6.10 Termination.** Each party reserves the right to terminate this Agreement in whole or in part. Notice of termination must be provided in writing, shall set forth the reasons for termination, and shall provide for a minimum of forty-five (45) days to cure the defect. Termination is effective only in the event the party fails to cure the defect within the period stated in the termination notice including any written extensions. The Parties may terminate this Agreement at any time by mutual written concurrence.

## **Article 7.0 Amendments.**

**7.1 Sole Agreement.** The Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreements' subject matter.

The LOCAL GOVERNMENT shall include all appropriate provisions of this Agreement in any subcontractor or developer awards to implement the Scope of work, including but not limited to Articles 9, 10, 11, and 12.

**7.2 Severability.** In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.

**7.3 Changed Circumstances.** If future federal, State, or local statute, ordinance, regulation, rule, or action render this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the Parties agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical. Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this Agreement.

**7.4 Amendments to Agreement.** Modifications to this Agreement must be agreed to in writing.

## **Article 8.0 Rights.**

**8.1 Authority.** The LOCAL GOVERNMENT shall have no authority to act for or on behalf of the STATE or NCTCOG. No other authority, power, use, or joint enterprise is granted or implied. The LOCAL GOVERNMENT may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the STATE or NCTCOG.

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

**8.2 Assignment.** Without the prior written consent of the STATE or NCTCOG, the LOCAL GOVERNMENT may not transfer or assign any rights or duties under or any interest in this Agreement.

**8.3 Access.** The LOCAL GOVERNMENT shall permit the STATE and/or NCTCOG, and their designee's access to the property at reasonable times during the time of performance. NCTCOG will notify the LOCAL GOVERNMENT of a desire to access the property and arrangements will be made as needed.

**8.4 Right of Way.** Except for right of way owned by the STATE or to be acquired by the STATE according to the plans of the project as approved by the STATE, the LOCAL GOVERNMENT shall acquire all necessary right of way needed for the PROJECT. Right of Way acquisition is an eligible cost for reimbursement provided such cost is approved as shown in Attachment B.

**8.5 Maintenance.** The LOCAL GOVERNMENT agrees to construct, own (or secure appropriate perpetual easement to protect the project from future activities of landowners), operate (as applicable), and maintain all facilities developed or improved pursuant to this Agreement. The STATE and NCTCOG shall in no way be responsible for the maintenance of the PROJECT.

## **Article 9.0 Audits or Evaluations.**

**9.1** The LOCAL GOVERNMENT shall provide to the STATE and NCTCOG, for its review, a copy of any audit received as a result of LOCAL GOVERNMENT policy or audits of federal and State governments relating to the expenditure of grant funds. Such audits shall include or be accompanied by any applicable audit management letter issued and applicable responses to the auditor's findings and recommendations. All audits shall be submitted to the STATE and NCTCOG within thirty (30) days of receipt of each issued report.

**9.2** The STATE and NCTCOG reserves the right to conduct financial and program monitoring of all awards to the LOCAL GOVERNMENT and to perform an audit of all records, related to this Agreement including but not limited to: contractor, developer, and/or other consultant Agreements related to the PROJECT. An audit by NCTCOG may encompass an examination of all financial transactions, all accounts and reports, as well as an evaluation of compliance with the terms and conditions of this Agreement.

**9.3 STATE Audit.** Within one hundred and twenty (120) days of completion of the PROJECT, the LOCAL GOVERNMENT shall perform an audit on PROJECT costs. Any funds due to STATE will be promptly paid by the LOCAL GOVERNMENT.

The State auditor may conduct an audit or investigation of any entity receiving funds from the STATE directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the 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



CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

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.

## **Article 10.0 Payments.**

**10.1 Conditions of Reimbursement.** At regular milestones, but not more frequently than monthly, the STATE shall reimburse the LOCAL GOVERNMENT for eligible cost related to the PROJECT up to eighty (80) percent or **\$2,240,040** after review and recommendation from NCTCOG. The LOCAL GOVERNMENT shall provide reimbursement request to NCTCOG for costs and expenses incurred in connection with the PROJECT. Each reimbursement request shall include:

- an invoice from the LOCAL GOVERNMENT detailing cost incurred
- progress reports
- copies of contractor and supplier invoices who support the PROJECT
- proof of payment to contractors and suppliers who support the PROJECT
- certification of activities as provided for in Article 10.2
- other documentation requested by NCTCOG

NCTCOG may deem a request for reimbursement incomplete if the data and/or documentation are incomplete or improper or if the LOCAL GOVERNMENT fails to submit necessary reports or provide other information requested by NCTCOG or the STATE under the terms of this Agreement. NCTCOG may reject request for reimbursements which fail to demonstrate that costs are eligible for reimbursement and/or which fail to conform to the requirements of this Agreement.

Final reimbursement shall not be made until the LOCAL GOVERNMENT provides a Closeout report for PROJECT activities as defined in Article 11.3 of this Agreement.

**10.2 Certifications.** The LOCAL GOVERNMENT shall implement the PROJECT using the LOCAL GOVERNMENT's established design standards, construction specifications, procurement processes, and construction management and inspection procedures. As part of any reimbursement request, the LOCAL GOVERNMENT shall certify to the STATE and NCTCOG the project has followed all standards and procedures previously established by the LOCAL GOVERNMENT's governing body. Upon request, the LOCAL GOVERNMENT shall make available documentation to support performance reports including but not limited to: insurance certificates, performance or payment bonds, required licenses and permits, and reports submitted by contractors and/or the Developer(s).

**10.3 Retainage.** The LOCAL GOVERNMENT shall receive reimbursement from the STATE in the amount of costs claimed and certified on each invoice, subject to approval of claimed costs by NCTCOG less ten (10) percent retainage up to **\$280,005**.

**10.4 Ineligible Expenses.** Funds obligated under this Agreement shall only be used for construction aspects of the PROJECT. The LOCAL GOVERNMENT will not be reimbursed for ineligible expenses which include but are not limited to: construction or

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

rehabilitation of private buildings, artwork, fountains, installation and/or rehabilitation and/or relocation of water and sewer lines, burying and/or relocating utilities, parking garages, local roads that provide no connection to the main transportation network, earthwork necessary to raise proposed buildings out of the floodplain, roadway reconstruction, and other items not directly related to mobility. Expenditures such as staffing, maintenance of improvements, design and/or construction management fees, legal fees, permitting, platting, travel, vehicles, lobbying, land acquisition unassociated with transportation improvements and/or land acquisition of condemned properties, advertising, billboards, consumables, and any other non-construction activities inconsistent with the intent of the Sustainable Development program are not eligible.

**10.5 Eligible Expenses.** Costs must be determined to be the reasonable, necessary, actual, and eligible costs of conducting an approved activity in accordance with the PROJECT to be eligible for reimbursement as provided for in the approved in the Article 11.1 Supporting Documentation.

**10.6 STATE Reimbursement.** Reimbursement of expenditures related to this Agreement may begin no earlier than thirty (30) days after execution of this Agreement. The STATE will reimburse the LOCAL GOVERNMENT for expenditures in RTC approved cost categories, as detailed in Attachment B, upon review and recommendation by NCTCOG to the STATE that expenditures are eligible and necessary. The STATE shall pay the LOCAL GOVERNMENT within thirty (30) days of receiving NCTCOG's payment recommendation.

**10.7 Cost Overruns.** The LOCAL GOVERNMENT agrees to keep project cost within the approved PROJECT BUDGET and shall not be eligible for reimbursement of any cost overruns. Cost overruns are the sole responsibility of the LOCAL GOVERNMENT. The STATE and/or NCTCOG are not responsible for any costs other than as outlined herein.

**10.8 Cost Underruns.** Cost underruns may not be used for additional Scope activities without prior written consent of NCTCOG.

**10.9 Availability of Funds.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the receipt and availability of funding. If funding is not available due to a default, this Agreement shall terminate.

**Article 11.0 Reporting Requirements.** All reports identified in this section shall be provided to NCTCOG in a format approved by NCTCOG.

**11.1** The LOCAL GOVERNMENT shall provide a list of Supporting Documentation for the PROJECT and OVERALL PROJECT at agreed upon Phases throughout the PROJECT. The Phases provided for and approved by NCTCOG in this document will determine the milestones at which the LOCAL GOVERNMENT will receive reimbursement and items eligible for reimbursement. This Supporting Documentation shall be received prior to issuance of a Pre-Award Authorization or a Notice to Proceed and at a minimum should include:

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

- supporting schedules
- project description
- project budget/reimbursable items
- site plans and parcel maps
- appraisal data
- infrastructure improvement illustrations
- details of right of way to be acquired, each with parcel information, photos, and maps (if applicable)
- project photos, each with directional notations
- private development phasing, acreage, and units

**11.2 Milestone and Invoice Reporting.** The LOCAL GOVERNMENT shall provide written progress reports of its actions under this Agreement at milestones as agreed upon in the Supporting Documentation identified in Article 11.1. Each progress report shall at a minimum include:

- any actions relative to the PROJECT during the current phase
- percentage of work complete
- activities of work complete
- all approved project modifications
- updated photos, each with directional notations
- identification of work delays
- actions taken to mitigate delays
- status of the schedule and budget

Milestone reports shall be included with each invoice submittal and sent to NCTCOG.

**11.3 Closeout Report.** The LOCAL GOVERNMENT shall prepare a closeout report to document actual project costs, final program activities of the PROJECT, and documentation of significant progress towards OVERALL PROJECT completion by evidence of a building permit or other approved document, to NCTCOG. This report shall be provided to NCTCOG no later than sixty (60) days from the completion of the PROJECT. Payment of the retainage is contingent upon completion of the closeout report.

**11.4 OVERALL PROJECT Closeout.** The LOCAL GOVERNMENT shall prepare a status report to update activities on the OVERALL PROJECT no later than three (3) years after execution of this Agreement.

## **12.0 Assurances.**

**12.1 Interest of Public Officials.** No member, officer, or employee of the public body or of a local public body during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**12.2 Noncollusion.** The LOCAL GOVERNMENT warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. If the LOCAL GOVERNMENT breaches or violates this warranty, the STATE and/or NCTCOG shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

**12.3 Debarment/Suspension.** The LOCAL GOVERNMENT is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The LOCAL GOVERNMENT and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.

The LOCAL GOVERNMENT shall notify NCTCOG if the LOCAL GOVERNMENT or any of the LOCAL GOVERNMENT's contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the LOCAL GOVERNMENT or any of the LOCAL GOVERNMENT's contractors may result in immediate termination of this Agreement.

**12.4 Restrictions on Lobbying.** The LOCAL GOVERNMENT is prohibited from using funds awarded under this Agreement for lobbying purposes. The LOCAL GOVERNMENT shall include a statement of compliance with this provision in applicable procurement solicitations and Third-Party contracts.

**12.5 Disadvantaged Business Enterprise.** It is the policy of the STATE and NCTCOG to maximize opportunities for Disadvantaged Business Enterprises to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The LOCAL GOVERNMENT agrees to ensure that DBE's have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds under this Agreement. Upon request, the LOCAL GOVERNMENT shall report DBE participation.

**12.6 Compliance with Regulations- Environmental Review and Public Involvement.** Each party shall comply with all federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it. The LOCAL GOVERNMENT shall ensure that the PROJECT complies with all environmental review and public involvement requirements applicable to the LOCAL GOVERNMENT under State and federal law in connection with the PROJECT. The LOCAL GOVERNMENT shall obtain the opinion of legal counsel showing the LOCAL GOVERNMENT's environmental review and public involvement for the PROJECT complies with State law and regulations, and with local laws, regulations, rules, policies, and procedures applicable to the LOCAL GOVERNMENT. The LOCAL GOVERNMENT shall maintain a

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

copy of the certification in the project files. When required, the LOCAL GOVERNMENT shall furnish the STATE and NCTCOG with satisfactory proof of compliance.

## **Article 13.0 Miscellaneous Provisions.**

### **13.1 Responsibilities of Parties.**

a. The STATE, LOCAL GOVERNMENT, and NCTCOG agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

b. To the extent permitted by law, the LOCAL GOVERNMENT agrees to indemnify and save harmless the STATE and NCTCOG, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the PROJECT by the LOCAL GOVERNMENT, its contract(s), subcontract(s), agents and employees, and from any claims or amounts arising or recovered under the "Worker's Compensation laws"; the Texas tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.

c. The Parties expressly agree that the PROJECT is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the LOCAL GOVERNMENT, to the extent provided by law, agrees to pay any liability adjudicated against the STATE for acts and deeds of the LOCAL GOVERNMENT, its employees or agents during the performance of the PROJECT.

d. To the extent provided by law, the LOCAL GOVERNMENT shall also indemnify and save harmless the STATE and NCTCOG from any and all expenses, including, but not limited to, attorney's fees which may be incurred by the STATE in litigation or otherwise resisting said claim or liabilities which may be imposed on the STATE as a result of such activities by the LOCAL GOVERNMENT, its agents, or employees.

**13.2 Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within reasonable time of the existence of such force majeure.

**13.3 Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

construed to create a partnership of joint venture or agency relationship between the parties. Nor shall any party be liable for any debts incurred by the other party in the conduct of such other party's business or functions.

**13.4 Insurance.** If this Agreement authorizes the LOCAL GOVERNMENT or its contractors to perform any work on State right of way, before beginning work the entity performing the work shall provide the STATE with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**13.5 Procurement and Contracting Process.** The STATE and NCTCOG may review the LOCAL GOVERNMENT's procurement of professional services for professional services for engineering, surveying, right of way acquisition, letting of construction contracts, and construction management and inspection. The LOCAL GOVERNMENT shall certify compliance with State law and regulations, and with local laws, regulations, rules, policies, and procedures. Copies of these certifications must be maintained in the PROJECT files and made available upon request.

**13.6 Utilities.** The LOCAL GOVERNMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with State laws and regulations and local laws, regulations, rules, policies, and procedures application to the LOCAL GOVERNMENT. The LOCAL GOVERNMENT must obtain advance approval for any variance from established procedures. This Agreement may not cover cost associated with utility relocation, if any reimbursement is deemed eligible the utility must have a property right as shown in a recorded deed or easement.

**13.7 Disputes and Remedies.** The LOCAL GOVERNMENT and NCTCOG shall negotiate in good faith toward resolving any disputes that arise under this Agreement. The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either party and are cumulative.

**13.8 Records and Project Documents.** All records must be maintained for a minimum of four (4) years after PROJECT closeout. In the event that any litigation or claim is still pending before the expiration of the four-year period, these records shall be retained until resolution of the litigation or claim. This section shall not be interpreted to require maintenance of multiple exact duplicate copies of any record or document.

NCTCOG, STATE, and their duly authorized agents shall have reasonable access to all records that are directly applicable to this Agreement for the purpose of making audit(s) examinations.

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

Upon completion or termination of this Agreement, all documents prepared by the STATE shall remain the property of the STATE. All data prepared under this Agreement by the LOCAL GOVERNMENT shall be made available to the STATE and NCTCOG without restriction or limitation on their further use. All documents produced or approved or otherwise created by the LOCAL GOVERNMENT shall be transmitted to the STATE in the form of photocopy reproduction as required by the STATE. The originals shall remain the property of the LOCAL GOVERNMENT. At the request of the STATE or NCTCOG, the LOCAL GOVERNMENT shall submit any information required by the STATE or NCTCOG in the format directed by the STATE or NCTCOG.

**13.9 Confidentiality.** The LOCAL GOVERNMENT, NCTCOG, and the STATE shall ensure that all information, both written and verbal, deemed confidential by law that is obtained through implementation of the PROJECT will remain confidential, subject to the Texas Public Information Act.

**13.10 Gratuities.** Any person doing business with or who, reasonably speaking, may do business with NCTCOG under this Agreement, may not make any offer of benefits, gifts or favors to employees of NCTCOG. Failure on the part of the LOCAL GOVERNMENT to adhere to this policy may result in termination of this Agreement.

**13.11 Equal Employment Opportunity.** The LOCAL GOVERNMENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The LOCAL GOVERNMENT shall take affirmative action's to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**13.12 Nondiscrimination on the Basis of Disability.** The LOCAL GOVERNMENT agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The LOCAL GOVERNMENT shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 CFR, Part 27 and any amendments thereto.

**13.13 Title VI.** The LOCAL GOVERNMENT shall work cooperatively with NCTCOG to implement appropriate PROJECT activities to address environmental justice in minority and low-income populations, and to address needs from persons with limited English proficiency.

**13.14 Drug Free Workplace.** The LOCAL GOVERNMENT shall establish a drug-free workplace in accordance with the Drug-Free Workplace Act.

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

**13.15 Compliance with Texas Accessibility Standards and ADA.** The LOCAL GOVERNMENT shall ensure the plans for and the construction of the PROJECT is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes.

**13.16 Signatory Warranty.** The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party they represent.

#### **Attachments**

The following appendices are attached and made part of this Agreement.

- A. Project Location Map
- B. Scope of Work and Payment Provisions



CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

**IN WITNESS HEREOF**, the parties have executed this Agreement in triplicate originals.

**The LOCAL GOVERNMENT**

City of North Richland Hills

By \_\_\_\_\_ Date \_\_\_\_\_  
Mark Hindman  
City Manager

**The NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**

By \_\_\_\_\_ Date \_\_\_\_\_  
Mike Eastland  
Executive Director

**The STATE**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

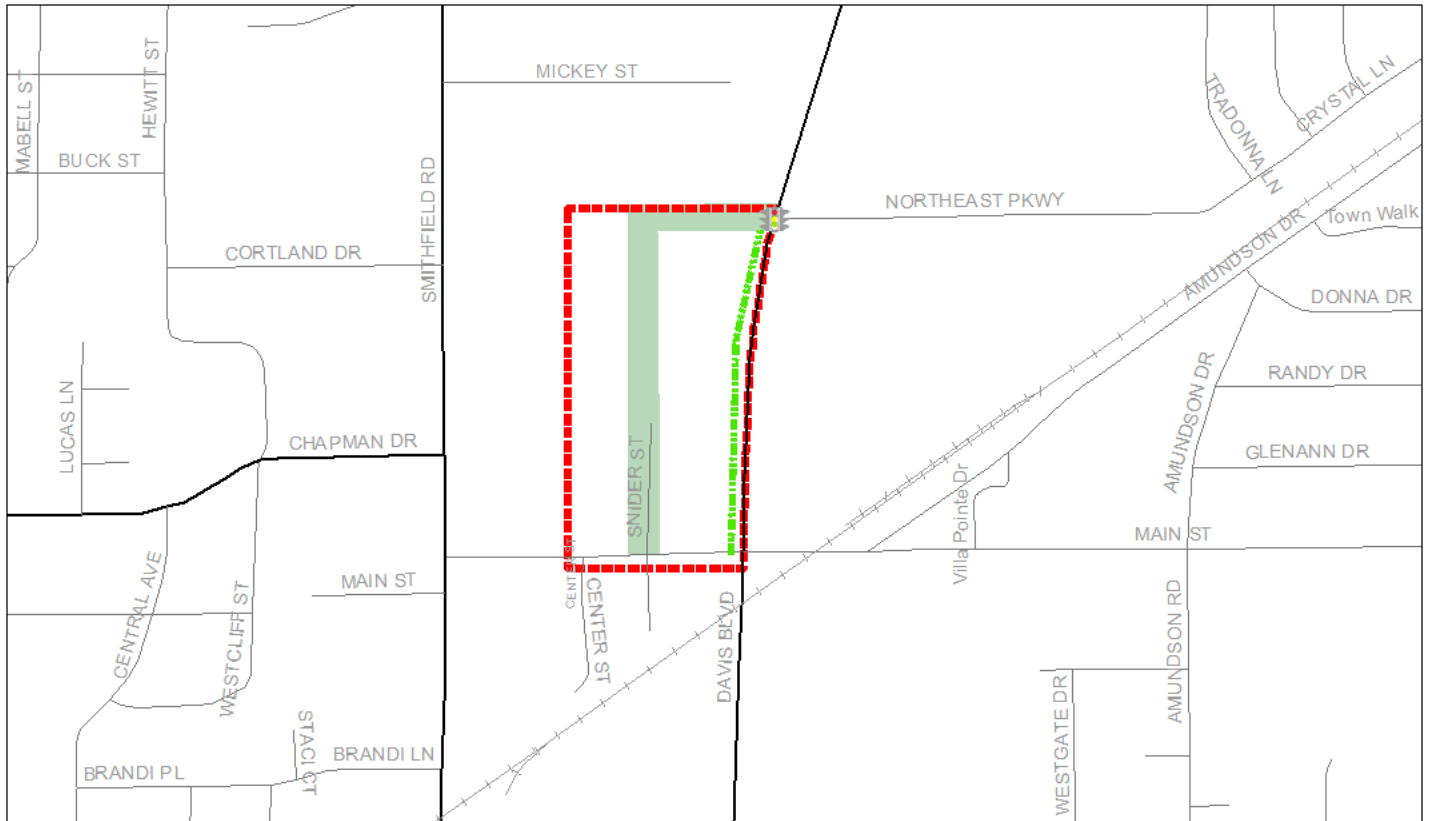
By \_\_\_\_\_ Date \_\_\_\_\_  
Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

CSJ: 0902-48-960  
Project Name: Snider Street Extension Project  
District 02- Fort Worth  
Code Chart 64# 30500 and 61920  
Funding Category: RTR (SH 161 Subaccount)

## Attachment A

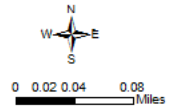
### Project Map

#### Snider Street Extension Project



#### Legend

- Traffic Signalization
- Project Boundary
- Street Construction, Landscaping, Pedestrian Amenities
- Rail
- Sidewalks and Pedestrian Amenities



Map Produced on:  
9/1/2016



North Central Texas  
Council of Governments  
Transportation Department  
<http://www.nctcog.org/transport>

CSJ: 0902-48-960  
 Project Name: Snider Street Extension Project  
 District 02- Fort Worth  
 Code Chart 64# 30500 and 61920  
 Funding Category: RTR (SH 161 Subaccount)

## ATTACHMENT B

### SCOPE OF WORK AND PROJECT BUDGET

The STATE will pay **\$2,240,040** from the 161 RTR-TC1 Subaccount for City of North Richland Hills Snider Street Extension Sustainable Development Infrastructure Project to construct pedestrian amenities, landscaping, traffic signalization, and street construction to support the Snider Street Extension Mixed Use Development. The project is located on Snider Street, Northeast Parkway and Davis Boulevard. It is bound by Main Street on the South; Northeast Parkway on the North; and Davis Boulevard on the East. The project deliverables are pedestrian amenities, landscaping, traffic signalization, and street construction to extend Snider Street North to connect to Northeast Parkway and Northeast Parkway West to connect to connect to Snider Street and sidewalks and pedestrian amenities on Davis Boulevard between Northeast Parkway and Main Street.

"In accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will make the payments for the following work 30 days after recommendation from NCTCOG, but not prior to the Fiscal Years shown:"

RIGHT OF WAY AND CONSTRUCTION COSTS						
Description	Fiscal Year	Total Estimate Cost	Regional Toll Revenue (RTR) Tarrant County Account 1- 161 Subaccount Funds Participation		Local Government Participation	
Right of Way	2013	\$0.00	80%	\$0.00	20%	\$0.00
Engineering (Design capped at 10%)	2013	\$254,550	80%	\$203,640	20%	\$50,910
Construction	2014	\$2,545,500	80%	\$2,036,400	20%	\$509,100
<b>TOTAL</b>		<b>\$2,800,050</b>	<b>80%</b>	<b>\$2,240,040</b>	<b>20%</b>	<b>\$560,010</b>

The LOCAL GOVERNMENT shall be responsible for a required local match of **\$560,010**.

Upon completion of the PROJECT, NCTCOG will issue a signed "Notification of Completion" document to the STATE. The notice shall certify that the PROJECT has been completed, all necessary inspections have been conducted, and the PROJECT is open to traffic.

This is an estimate only; final participation amounts will be based on actual charges to the project.