

DNT 233

**AGREEMENT BETWEEN THE COUNTY OF DALLAS
AND THE TEXAS TURNPIKE AUTHORITY**

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THE STATE OF TEXAS
COUNTY OF DALLAS

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DNT- 233

**AGREEMENT BETWEEN THE COUNTY OF DALLAS
AND THE TEXAS TURNPIKE AUTHORITY**

THIS AGREEMENT is entered into as of the 19th day of July, 1994, by and between the COUNTY OF DALLAS, a political subdivision of the State of Texas (the "County"), and the TEXAS TURNPIKE AUTHORITY, an agency of the State of Texas organized and existing under the laws of the State of Texas (the "Authority");

WITNESSETH:

WHEREAS, the Authority is evaluating the improvement, extension, and enlargement of the Dallas North Tollway (the "DNT") by the construction and operation of an east-west Turnpike Project, as defined in the Turnpike Act (as hereinafter defined), extending westerly from the DNT along the route of Keller Springs Road to and including a two-lane tunnel and roadways from Addison Road to Midway Road, said improvement, extension, and enlargement to include the construction of tollway lanes, tunnel structures, approaches, interchanges, ramps, toll facilities, bridges, and buildings and, where appropriate, the modification of existing structures, of all said improvement, extension, enlargement, and modification being known as the Addison Airport Toll Tunnel (the "Airport Tunnel Project"), and all being conducted in conformance with the provisions of Acts 1953, 53rd Leg., Ch. 410, as amended (Article 6674v, Title 116, Texas Revised Civil Statutes) hereinafter referred to as the "Turnpike Act";

WHEREAS, the County has determined that the proposed east-west extension of the DNT to include the Airport Tunnel Project is in the best interest of its citizens, and the Commissioners' Court of Dallas County has ordered, adjudged and decreed Court Orders Nos. 90-642 and 90-1524 requesting that the Authority proceed in its joint effort with the County to evaluate, plan and develop the Airport Tunnel Project as set forth above;

WHEREAS, pursuant to Court Order No. 94-1149, the County has agreed to provide an amount of funds to the Authority for the Airport Tunnel Project to assist in the acquisition of the property and property interests that are required in connection with the construction thereof;

WHEREAS, the Authority is willing to continue its evaluation, planning, and design of the Airport Tunnel Project, all as more particularly described, and for the consideration expressed, in this Agreement; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one or more state agencies to perform governmental functions and services under the terms thereof, and the County and the Authority have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the matters addressed herein.

NOW, THEREFORE, in consideration of these premises and the mutual benefits and advantages accruing to the County and the Authority, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1.

Cash Obligation of the County

Section A. Funds. The County will advance Three Million and No/100 Dollars (\$3,000,000.00) to fund the acquisition of property and property interests necessary for the completion of the Airport Tunnel Project, including the cost of appraisals, attorneys' fees, negotiators' fees, title premiums and other closing costs, commissioners' fees and court costs, and other customary costs, expenses and charges incurred in connection with the acquisition of the right-of-way. The funds shall be disbursed within thirty (30) days following the receipt by the County from the Authority of (1) a fully executed contract of sale, commissioners' award, final order, agreed judgment, or similar document indicating that property or property interests necessary for the completion of the Airport Tunnel Project have been acquired and (2) a specific request from the Authority for disbursement of said funds which shall certify (i) the amount of the requested disbursement, (ii) that the property or property interests are necessary for the completion of the Airport Tunnel Project, and (iii) that the amount requested represents only sums actually paid or to be actually paid in connection with the acquisition of the necessary property or property interests. The County acknowledges that it has dedicated and set aside sufficient funds to satisfy the amounts to be funded hereunder, and that the County Auditor has determined that said funds are available.

Section B. Reimbursement of Previous Advances. Pursuant to that certain Agreement between the County and the Authority dated September 27, 1990, which was authorized by the County pursuant to Court Order No. 90-1524, the Authority and the County agreed, among other things that an initial feasibility study for the Airport Tunnel Project would be undertaken by the Authority, which study would be funded by the County up to Eighty Thousand and No/100 Dollars (\$80,000.00). The total amount advanced by the County pursuant to that obligation is Fifty-Three Thousand Four Hundred Twenty and No/100 Dollars (\$53,420.00). If the Authority issues bonds

or obtains other financing to undertake the Airport Tunnel Project, the Authority promptly shall reimburse the County in the amount of said \$53,420.00.

ARTICLE 2.

Alternative to Cash Obligation

Section A. Dedication of Property. In the event that the County and/or the Authority obtains the dedication of necessary property or property interests for the Addison Tunnel Project, the County will receive credit on a dollar-for-dollar basis equal to the fair market value of said property or property interest against the aforementioned \$3,000,000.00 obligation.

Section B. Valuation and Payment of Costs. The fair market value of the property or property interests dedicated in connection with the Addison Tunnel Project will be determined by one or more appraisals performed by State Certified General Real Estate Appraisers which are acceptable to the County and to the Authority. The cost of said appraisals, together with such other sums of the types described in Section I.(A.) above actually paid or to be actually paid by the Authority in connection with effecting the dedication of said property or property interests, shall be paid with advances from the County's \$3,000,000.00 obligation.

Section C. Method of Dedication. All property and property interests dedicated pursuant to this Article 2 shall be conveyed to the Authority by instruments, and subject to title exceptions, acceptable to the Authority. The County shall assist the Authority in satisfying the Authority's title objections. The Authority shall not be required to furnish any compensation, bind itself to any agreement, or provide other consideration to a party dedicating property or property interests pursuant to this Article 2.

ARTICLE 3.

Term of this Agreement

Section A. Term. This Agreement shall terminate upon the earlier to occur of (1) the satisfaction by the County of its \$3,000,000.00 obligation pursuant to Articles I and II, (2) the execution by the parties of an agreement terminating this Agreement, or (3) a termination pursuant to Section 3. (B.) below.

Section B. Early Termination. Notwithstanding any provision in this Agreement to the contrary, this Agreement shall terminate upon the determination of the Authority, as evidenced by the passage of a resolution of its Board of Directors, not to pursue or complete the Airport Tunnel Project. In that event, the Authority promptly shall convey to the County or its designee the property or property interests (1) acquired with the funds disbursed by the County pursuant to Article 1 or (2) dedicated pursuant to Article 2, pursuant to the same instruments, and subject to the same matters of title, as when the Authority acquired same. No other consideration or compensation of any kind shall be owed by either party to the other as a result of the termination of this Agreement pursuant to this Section 3.(B.).

ARTICLE 4.

Notices, Invoices and Payments

Section A. Requests for Payment. Requests for payment from the Authority to the County pursuant to Section 1.(A.) above may be submitted from time to time to:

County of Dallas
Department of Public Works
411 Elm Street, 4th Floor
Dallas, Texas 75202
Attn: Allen Bud Beene, P.E.

All said requests shall be accompanied by the materials, and shall be in the form, described in Section 1.(A).

Section B. Payments. As indicated above, the County shall make payment within thirty (30) days following its receipt of the complete request for payment materials from the Authority. If the County believes that the request materials are incomplete or unsatisfactory in any respect, the County shall so notify the Authority within ten (10) days of the County's receipt thereof. The County acknowledges that time is of the essence with respect to these 30 days and 10 days periods because when the County receives a request for payment, the Authority may have committed itself to close the purchase of a property or to fund a commissioners' award within a specified period of time, and the failure of the County to fund timely a requested payment may place the Authority in default of its obligations.

Section C. Notices. All requests, notices and communications required or permitted pursuant to this Agreement shall be deemed given (1) when delivered in hand or (2) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If transmitting a request for payment to the County, to the address set forth in Section 4.(A).

Otherwise, if intended for the County, to:

County of Dallas
411 Elm Street, 2nd Floor
Dallas, Texas 75202
Attention: Lee F. Jackson, County Judge

If intended for the Authority, to:

Executive Director
Texas Turnpike Authority
P.O. Box 190369
Dallas, Texas 75219-0369

Either party may change its address for requests, notices and other communications by providing notice thereof pursuant to this Section 4.(C.).

ARTICLE 5.

Miscellaneous

Section A. Reliance. The County irrevocably acknowledges and affirms that the Authority, its bond trustees, and underwriters shall be relying upon the provisions of this Agreement in connection with either the issuance of bonds or the provision of other financing to effect the Airport Tunnel Project. Notwithstanding the foregoing, the County acknowledges and agrees that the Authority, after evaluating the feasibility of the Airport Tunnel Project in accordance with the provisions of the Turnpike Act, may be unable to, or otherwise may elect not to, construct same because of financing or other considerations.

Section B. Design. The Authority's determination of the design, alignment, location, grade, composition, and construction methods employed for the Airport Tunnel Project, or any components thereof, shall be in its discretion and shall be final. The County shall have the opportunity to review the proposed design, alignment, location, grade, composition, and construction method as established in the plans and specifications prepared for the Authority for the Airport Tunnel Project. The Authority shall provide the County with a copy of the plans and specifications as issued for bid and, subsequently, a copy of the final "as-built" plans and specifications for the Airport Tunnel Project.

Section C. Authorization. Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and is authorized 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 Agreement, except as expressly set forth herein.

Section D. Entire Agreement. This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties, or any representations made, which are not expressly set forth herein. This Agreement may be amended only by a written instrument executed by the parties hereto.

Section E. Successors and Assign. This Agreement shall bind the County and the Authority, and their successors and assigns.

Section F. Headings. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

Section G. Interpretation. 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.


Section II. No Agency. This Agreement does not in any way create a principal/agent relationship between the parties hereto and under no circumstances shall the County or the Authority be considered as, or represent itself to be, an agent of any other party hereto.


Section I. Sole Benefit. This Agreement is entered into for the sole benefit of the Authority and the County, and their respective successors and assigns. Nothing contained herein, or in any approval subsequently provided or action taken by any 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.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on this 19th day of July, 1994, to be effective as of the day above stated.

COUNTY OF DALLAS

TEXAS TURNPIKE AUTHORITY


By: 
Lee F. Jackson,
County Judge

By: 
Luther G. Jones, Jr.
Chairman

Approved as to Form:

Attest:

Assistant District Attorney


Jimmie G. Newton,
Secretary

[SEAL]

Approved as to Form:

LOCKE PURNELL RAIN HARRELL
(A Professional Corporation)
General Counsel

By: 