

INTERLOCAL AGREEMENT
BETWEEN THE NORTH TEXAS TOLLWAY AUTHORITY
AND THE TOWN OF ADDISON, TEXAS

This Interlocal Agreement is entered into as of the 30th day of May, 2000 by and between the North Texas Tollway Authority (the "Authority") and the Town of Addison, Texas ("Addison").

RECITALS:

1. The Authority is a regional tollway authority under Chapter 366, Tex. Transp. Code and a political subdivision of the State of Texas. The Authority is authorized to enter into contracts or agreements necessary or incidental to its duties and powers, and to cooperate and work directly with governmental agencies to support an activity required to promote or develop a turnpike project.
2. Addison is a home rule city possessing the full power of local self-government under Article 11, Section 5 of the Texas Constitution and its Home Rule Charter.
3. The Authority and Addison are authorized to enter into this Agreement pursuant to law, including without limitation Chapter 791, Tex. Gov. Code (the Interlocal Cooperation Act).
4. In 1996, the Authority (by and through its predecessor, the Texas Turnpike Authority) and Addison entered into an Interlocal Agreement (the "1996 Interlocal Agreement") which in part provided for the construction, maintenance and operation of the Addison Toll Tunnel (the "Toll Tunnel"), extending through and under the Addison Airport from Addison Road on the east to Midway Road on the west.
5. The Toll Tunnel construction has been completed, and the Authority and Addison desire to enter into this Agreement regarding the operation of the Toll Tunnel and to clarify certain provisions of the 1996 Interlocal Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the North Texas Tollway Authority and the Town of Addison, Texas do hereby contract and agree as follows:

I. LAW ENFORCEMENT, FIRE AND EMERGENCY MEDICAL SERVICES.

A. Fire suppression system.

1. The Toll Tunnel fire suppression system (the "fire suppression system") shall be modified by adding two (2) additional fire hydrants (the "additional fire hydrants"), one at the east face and one at the west face of the Tunnel.

2. The Authority shall prepare or cause to be prepared engineering design and construction standards and specifications for the additional fire hydrants, and agrees to allow Addison to review and comment upon the preparation and approval of such standards and specifications. Upon the completion of the standards and specifications, the Authority shall select a contractor to install the additional fire hydrants. The installation shall be finally completed on or before May 1, 2000. The engineer selected to design the construction standards and specifications shall be selected in accordance with any professional service procurement laws applicable to the Authority, and the contractor selected to install the additional fire hydrants shall be selected in accordance with any competitive bid laws applicable to the Authority. During the period of installation of the additional fire hydrants, the Authority agrees to allow authorized representatives of Addison to inspect, test, measure and verify the installation as Addison deems reasonably necessary.

3. The Authority shall use reasonable efforts to cause the additional fire hydrants to be installed in a timely manner in accordance with the construction contract documents, plans and specifications. The Authority shall reasonably inspect the work of the contractor to identify and to cause to be corrected defects and deficiencies in the installation of the additional fire hydrants, but without assuming responsibility for the means and methods used by the contractor. Addison, at its sole option, may inspect, or participate with the Authority in the inspection of, the contractor's work as generally provided in the concluding sentence of subparagraph A.2. of Section I above.

4. The Authority shall fully and completely pay or settle, by litigation or otherwise and without involving Addison, any claims of the engineer or contractor arising out of the design or installation of the additional fire hydrants.

5. The design and construction costs and expenses for the additional fire hydrants are estimated to be \$20,000.00. The Authority and Addison shall share equally in such costs and expenses up to \$20,000.00; any such costs and expenses in excess of \$20,000.00 shall be borne and paid for solely by the Authority. Addison shall pay its portion of such costs and expenses to the Authority in accordance with the following:

(a) Prior to Addison paying its portion of any invoice of the engineer selected to prepare the design and construction standards and specifications, and any invoice or pay estimate of a contractor retained to install the additional fire hydrants, the Authority shall forward a true and correct copy of the invoice or pay estimate to Addison together with any supporting documentation that Addison may reasonably request.

(b) With respect to any invoice or pay estimate from the construction contractor, Addison shall not be required to make a payment under any such invoice or pay estimate unless the Authority has certified in writing to Addison that the estimate of work completed for the relevant period is true and correct to the best of the Authority's information and belief, has been measured and verified in accordance with the construction contract documents, and that all construction contract preconditions to payment have been met. Copies of any material testing results shall be furnished with the certification.

The obligation of Addison to pay its proportionate share of the costs and expenses to design and install the additional fire hydrants shall be subject to the annual appropriation of funds necessary to pay such costs and expenses.

6. Upon the completion of the installation of the additional fire hydrants and the acceptance of the hydrants by the Authority, the Authority shall be responsible to maintain the fire suppression system with the additional fire hydrants in good working order.

B. Addison Police Video Monitoring.

1. The Authority shall provide, install, and make operational video cameras (the "Video System") in, and in the immediate vicinity of, the Toll Tunnel in order to monitor activity in, and in the immediate vicinity of, the Tunnel. The Authority and Addison agree to cooperate in the placement of the Video System in, and in the immediate vicinity of, the Toll Tunnel to allow such monitoring.

2. Addison will monitor activity in, and in the immediate vicinity of, the Toll Tunnel through the Video System. The design and installation of the equipment which will allow Addison to monitor such activity shall be in accordance with the following:

(a) The Authority, at its sole cost, shall provide and install fiber optic cable from the Toll Tunnel to the Addison Emergency Dispatch Center (the "Dispatch Center") located at the Addison Police Department, 4799 Airport Parkway, Addison, Texas. Addison shall be responsible for providing all easements or other rights-of-way necessary to install and maintain the fiber optic cable from the Toll Tunnel to the Dispatch Center.

(b) Addison shall design and install the wiring, cabling and related video and other equipment (including, without limitation, television monitors) (the "Dispatch Center Monitoring Equipment") in the Dispatch Center as the parties agree is necessary to allow Addison to monitor Toll Tunnel activities through the Video System (such video and other equipment is set forth in Exhibit 1 attached hereto). The actual costs for the design and installation of the Dispatch Center Monitoring Equipment shall be paid for as follows: (i) the Authority shall pay to Addison design costs up to \$10,000.00, and Addison shall pay any such costs in excess of \$10,000.00; (ii) the Authority shall pay to Addison installation costs up to \$15,000.00, and Addison shall pay any such costs in excess of \$15,000.00. The Authority shall promptly pay to Addison such amounts upon Addison providing to the Authority true and correct copies of any invoices or other documentation reflecting the actual costs incurred by Addison.

3. Upon the completion of the placement and installation of the Video System and the Dispatch Center Monitoring Equipment, the Authority shall be responsible to maintain the same in good working order and to upgrade the Video System and the Dispatch Center Monitoring Equipment, if and as the parties may subsequently agree. Addison shall contact the Authority when maintenance or repair work is required and the Authority shall elect to undertake any necessary work itself and/or to retain an outside contractor or vendor. The Authority shall not be responsible for maintenance, repair or upgrade costs incurred by Addison for the Video System or the Dispatch Center Monitoring Equipment unless said costs were specifically authorized by the Authority.

4. The Authority and Addison shall cooperatively establish procedures for the conduct of Addison's monitoring of the Toll Tunnel and for Addison's transmission of and response to information obtained through such monitoring.

C. DPS Video Monitoring.

1. The Texas Department of Public Safety ("DPS") operates and maintains a station adjacent to the Dallas North Tollway south of the intersection of Keller Springs Road and the Dallas North Tollway (the "Keller Springs Station"). The DPS will provide law enforcement services for the Toll Tunnel and desires to be able to monitor activities in and around the Toll Tunnel from the Keller Springs Station through the use of video equipment.

2. In order to allow the Authority, by and through the DPS, to provide such video-monitoring service to the Keller Springs Station, Addison hereby grants to the Authority a fully paid and irrevocable right and license for a period of twenty (20) years to construct, maintain, use and operate in, along, across, on, over, through, above and under the public streets and rights-of-way (and solely along the route) identified and depicted in Exhibit 2 (the "Cable Route"), fiber optic cable necessary to operate and maintain such service (the "Cable"); provided, however, that the installation, reinstallation, placement or removal of Cable from the Cable Route shall be subject to the reasonable review and approval of the Addison Public Works Director or his designee. To the extent available and subject to the approval of the Addison Public Works Director or his designee, in placing the Cable the Authority shall use utility poles already located along the Cable Route.

3. The construction, reconstruction, excavation, use, maintenance and operation of the Cable and other property used in connection therewith shall be subject to all lawful police regulations of Addison and performed in accordance with Addison's regulations for utility location and coordination. In addition to any other City regulations or requirements, at least thirty (30) days prior to the commencement of construction or maintenance (other than emergency repairs) within Addison's rights-of-way, the Authority shall provide Addison's Engineer (or such other officials as Addison may designate from time to time) with a copy of the construction work plans and drawings. The Authority shall not proceed with construction within Addison's rights-of-way until the plans and drawings have been approved in writing by the proper City officials, such approval not to be unreasonably withheld or delayed.

4. Upon request of Addison, the Authority shall remove and abate any portion of the Cable that is dangerous to life or property, and in case the Authority, after notice, fails or refuses to act, Addison may remove or abate the same, at the sole cost and expense of the Authority, all without compensation or liability for damages to the Authority. The Authority shall promptly restore the public streets, alleys and rights-of-way to their condition prior to the Authority's construction, maintenance, or excavation, to the reasonable satisfaction of Addison Engineer. The Authority shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the Cable.

5. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be reasonably deemed necessary by Addison to alter, change, adapt or conform a portion of the Cable thereto, such alterations or changes shall be promptly made by the Authority when ordered in writing by Addison. If such requirements impose a financial hardship, the Authority may present alternative proposals to Addison, and Addison shall give due consideration to such alternative proposals. Addison shall have the right to require the Authority to adapt or conform its Cable, or to alter, relocate or change its Cable, to enable Addison to use, or to use with greater convenience, any public street, alley or right-of-way, provided that Addison shall not exercise the foregoing right absent a bona fide and material need to do so.

6. To the extent permitted by law, the Authority shall indemnify Addison, its officials, officers, employees and agents against, and hold Addison, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees, for any injury to or the death of any person or damage to or destruction of any property to the extent attributable to or resulting from any act or omission of the Authority, its officers, employees, agents, contractors, assignees, licensees, permittees, or subcontractors under the provisions of paragraph C of Section I of this Agreement. The provisions of this paragraph shall survive the termination of this Agreement. The terms and provisions contained in this Section are intended to be for the benefit of Addison and the Authority and are not intended to be for the benefit of any third party.

II. KELLWAY CIRCLE CONNECTION.

A. The 1996 Interlocal Agreement provides in part that the Authority, at its sole cost, must construct an extension from existing Kellway Circle to Dooley Road (the "Kellway Circle Connection") as described in the 1996 Interlocal Agreement and as depicted on Exhibit F attached thereto.

B. Since the execution of the 1996 Interlocal Agreement, the Authority has acquired a tract of land located adjacent to the Toll Tunnel and Addison Airport and described and depicted in Exhibit 3 attached hereto (the "Adjacent Land").

C. For the consideration set forth in paragraphs D and E of this Section II, as well as for the granting of the fully paid and irrevocable right and license provided in paragraph C of

Section I, the Authority agrees to convey to Addison, free and clear from all leases, liens, encumbrances, and other rights, except such as may be deemed acceptable to Addison, and in a form reasonably acceptable to Addison, good and marketable fee title to the Adjacent Land (but in no event including any Toll Tunnel right-of-way). Such conveyance shall occur on or before December 31, 1999.

D. From and after the date of the conveyance of the Adjacent Land by the Authority to Addison, the Authority shall have no duty or obligation to construct the Kellway Circle Connection, and all related obligations of the Authority regarding Kellway Circle and/or Dooley Road as described in Section II B of the 1996 Interlocal Agreement shall be deemed satisfied.

E. The Authority may elect to construct an additional two-lane toll tunnel at the Addison Airport immediately adjacent to the Toll Tunnel. If the Authority (1)(a) elects to construct the additional two-lane toll tunnel, or (b) makes a bona fide determination that, in order to protect the integrity of the Toll Tunnel and the public health, safety and welfare, significant repairs to the Toll Tunnel are required and the Addison City Engineer reasonably concurs with such determination, (2) has conveyed the Adjacent Land to Addison as described in paragraph C of this Section II, and (3) gives Addison not less than 120 days notice of such proposed construction or need for significant repairs, Addison shall provide to the Authority a construction staging area for such construction or repairs comprising at least 65,000 square feet within a reasonable distance (not greater than one-half mile) from the area of actual construction of the additional toll tunnel or repairs.

III. GENERATOR.

Addison agrees to provide to the Authority an easement as described and depicted in Exhibit 4 attached hereto in order to allow the Authority to locate thereon certain electrical equipment which is necessary to operate and maintain the Toll Tunnel. Such equipment is described in Exhibit 5 attached hereto.

IV. NOTICES. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed delivered three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Addison:

P.O. Box 9010
Addison, Texas 75001-9010

Attn: City Manager

To the Authority:

P. O. Box 190369
Dallas, Texas 75219

Attn: Executive Director

V. INCORPORATION OF RECITALS; EXHIBITS. The recitals set forth herein are intended, and are hereby deemed, to be a part of this Agreement. The Exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

VI. SEVERABILITY. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially.

VII. AUTHORITY TO EXECUTE. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

VIII. THE 1996 INTERLOCAL AGREEMENT. Except as expressly modified and amended hereby, the 1996 Interlocal Agreement shall remain in full force and effect as originally written.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

**NORTH TEXAS TOLLWAY
AUTHORITY**

By: R. Whitehead
Ron Whitehead, City Manager

By: Jerry N. Hiebert
Jerry N. Hiebert, Executive Director

ATTEST:

By: C. Moran
Carmen Moran, City Secretary