

**MAINTENANCE AGREEMENT**

**FOR THE**

**PRESIDENT GEORGE BUSH TURNPIKE**

**(DNT 327)**

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**FOR THE**  
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(DNT 327)

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**MAINTENANCE AGREEMENT**  
**FOR THE**  
**PRESIDENT GEORGE BUSH TURNPIKE**

(DNT 327)

THE STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

THIS AGREEMENT, by and between the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and a political subdivision of the State of Texas, hereinafter identified as the "Authority," and the CITY OF DALLAS, a Texas municipal corporation, hereinafter identified as the "City," is to be effective as of the 10<sup>th</sup> day of January, 2001.

**WITNESSETH**

WHEREAS, the Authority constructs, operates, maintains, and periodically improves and modifies toll turnpike projects in certain counties in North-Central Texas, all in conformance with the provisions of Chapter 366, Texas Transportation Code, as amended, (the "Regional Tollway Authority Act"); and

WHEREAS, the Authority proposes to design, construct, and operate the President George Bush Turnpike, hereinafter referred to as the "Turnpike," following the planned route of SH190 from its eastern terminus at SH78 in eastern Dallas County to its western terminus at West Belt Line Road in Irving, with a portion of the Turnpike being situated within the municipal limits of the City, all in conformance with the terms of: (i) a Trust Agreement dated as of July 1, 1989, as supplemented by seven (7) Supplemental Trust Agreements, pertaining to the issuance of Dallas North Tollway System Revenue Bonds, Series 1995 and 1998 (President

George Bush Turnpike), to pay a portion of the costs of the construction of the Turnpike, and (ii) the provisions of the Regional Tollway Authority Act, said Turnpike being designed, constructed and operated as an extension and enlargement of the "Dallas North Tollway System"; and

**WHEREAS**, the Authority has retained HNTB Corporation to serve as general consulting engineer for the Turnpike, said HNTB Corporation being hereinafter called the "Consulting Engineer" (with that term being further defined in the Trust Agreement) to represent and assist the Authority in the planning, design, review and coordination of the design and construction phases of the Turnpike; and

**WHEREAS**, the Authority has retained the engineering firms listed in Exhibit A (said firms being hereinafter collectively referred to as "Section Engineers") to prepare plans and specifications for the construction of the Turnpike (the "Turnpike Plans"), which will provide for the construction of toll lanes, approaches, interchanges, ramps, toll facilities, bridges, buildings and the modification of existing pavement and structures, all to be operated and maintained by the Authority; and

**WHEREAS**, the Authority has retained the firm of Brown and Root, Inc., (hereinafter called the "Construction Manager") to provide the Authority with complete and comprehensive construction management engineering services as to the construction of the Turnpike; and

**WHEREAS**, the City is a Texas home rule municipal corporation with all of the authority and powers related thereto as prescribed by the laws of the State of Texas; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the Authority and the City have determined that mutual benefits and advantages can be obtained by formalizing their

agreement as to the maintenance of the turnpike lanes and certain City streets over and under said turnpike lanes, as well as with respect to other related matters.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Authority and the City agree as follows:

### **ARTICLE I. MAINTENANCE AGREEMENT**

**A. Summary of Terms and Limits of Maintenance Agreement.**

The Authority has designed and constructed eastbound and westbound service roads through portions of the Turnpike right-of-way situated within the City's municipal limits, as shown on Exhibit B (the "Service Roads"). The eastbound Service Road, where constructed within the City's limits, is situated on the south side of the Turnpike between the eastbound Turnpike toll lanes and the south Turnpike right-of-way limits. The westbound Service Road, where constructed, is situated on the north side of the Turnpike between the westbound Turnpike toll lanes and the north Turnpike right-of-way limits. Said eastbound and westbound Turnpike toll lanes are hereinafter referred to as the "Turnpike Lanes". Generally, the Authority shall be responsible for the operation, maintenance, policing, regulation and repair of the Turnpike Lanes, and the Authority and the City anticipate that the Texas Department of Transportation ("TxDOT") shall be responsible for the operation, maintenance, policing, regulation and repair of the Service Roads, all as more specifically set forth in this Article I. and as depicted in Exhibit B attached hereto. The City shall operate, maintain, police, regulate and repair any City streets over and under the Turnpike Lanes, as more specifically set forth in Section I.C. below.

At the conclusion of construction of the Turnpike, the Authority and TxDOT will prepare metes and bounds legal descriptions for the segment of the Turnpike between SH78 and IH35, which metes and bounds legal descriptions will describe what will become Authority right-of-way and TxDOT right-of-way.

**B. Authority Responsibilities.**

With respect to that portion of the Turnpike situated within the City's municipal limits, the City and the Authority acknowledge and agree that the Authority has the responsibility to:

- (1) Maintain all Turnpike improvements, including but not limited to the performance of all mowing, snow/ice control, and the collection and removal of debris, within the limits of Turnpike Lanes as further depicted on Exhibit B attached hereto.
- (2) Maintain all improvements constructed by the Authority as a part of the Turnpike on the Turnpike Lane exit and entrance ramps within the limits from the Turnpike Lanes to the ramp gore nose at the Service Road depicted on Exhibit B attached hereto.
- (3) Repair and maintain all screen walls and retaining walls and similar structures within the limits of the Turnpike Lanes.
- (4) Maintain the fence and guardrail, if any, placed along and between the Turnpike Lanes and Service Roads used to protect ramp toll plazas within the limits of the City, as depicted on Exhibit B attached hereto.
- (5) Maintain all Turnpike illumination structures, including under-bridge luminaries, but specifically excluding all Service Road illumination and street intersection illumination.
- (6) Maintain complete bridge structures that carry the Turnpike Lanes over City streets.

- (7) Maintain structural bridge components carrying City streets over the Turnpike Lanes (*i.e.*, the bridge columns, caps, beams, and the bridge deck, other than the wearing surface).
- (8) Maintain all Turnpike trailblazers, "Left Lane Must Enter Turnpike", "No Pedestrians, Bicycles or Motor Driven Cycles", and similar signs regarding the Turnpike within the municipal limits of the City.
- (9) License, permit, and regulate utility construction and maintenance along and across the Turnpike Lanes.

The Authority acknowledges and agrees that the City shall have no responsibility or obligation to operate, maintain, police, regulate and provide public safety functions for the Turnpike Lanes.

**C. City Responsibilities.**

With respect to that portion of the Turnpike situated within the City's municipal limits, the City and the Authority acknowledge and agree that the City has the responsibility to operate, maintain, police, regulate and provide public safety functions for City streets over and under the Turnpike Lanes situated within the municipal limits of the City (the "City Streets"), said responsibilities to include the following:

- (1) Repair and maintain all City Streets over and under the Turnpike Lanes (including the wearing surface of the bridge deck, railings, striping, signing, and all other elements above the bridge deck for any such City Streets), along with the performance of necessary pothole repairs, overlay work, sanding and other maintenance to be performed with such promptness and care so as to prevent any conditions in the wearing surface from causing damage to, or otherwise compromising the structural integrity of, the remainder of the bridge deck, together with the repair and maintenance of signalization in accordance with that

certain Signalization Agreement executed, or to be executed, by and between the City and the Authority.

- (2) Repair and maintain all storm water conduits and receivers, both open and closed, on, along, and across the City Streets and maintain any drainage, utility, right-of-way or other easements situated thereon for the purpose of serving the Turnpike.
- (3) Repair and maintain all screen walls and retaining walls and similar structures within the City Streets, provided, however, that the parties acknowledge and agree that no sound or screen walls will be constructed within the right-of-way of City Streets in connection with the Turnpike.
- (4) Keep the vegetation mown, maintain all landscaping and irrigation systems, and collect and dispose of debris and trash accumulated in the right-of-way of the City Streets.
- (5) Maintain and, as necessary, modify guardrail and fences, if any, along the City Streets crossing over and under the Turnpike as depicted in Exhibit B.
- (6) Maintain and, as necessary, modify or supplement all traffic regulatory and directional signs and all pavement traffic markings on the City Streets over and under the Turnpike, except Turnpike trailblazers, "Left Lane Must Enter Turnpike", "No Pedestrians, Bicycles or Motor Driven Cycles", and similar signs regarding the Turnpike.
- (7) Furnish all policing, sweeping, flushing, snow/ice control services, and other public safety services on the City Streets crossing over and under the Turnpike.
- (8) License, permit, and regulate all driveway and street connections to the City Streets.

The City and the Authority hereby acknowledge and agree that the Authority's maintenance obligations are limited solely to the Turnpike Lanes as specifically provided in Section I.B. and that the Authority shall have no responsibility or obligation to operate, maintain, police, regulate and provide public safety functions for (1) City Streets over and under the Turnpike Lanes, to be maintained by the City pursuant to this Section I.C., or (2) the Service Roads situated within the municipal limits of the City. The City likewise has no responsibility or obligation to operate, maintain, police, regulate and provide public safety functions for the Service Roads. Notwithstanding the foregoing, in the event the City enters into a separate agreement with TxDOT regarding the Service Roads, the City shall comply with the terms of such agreement.

## **ARTICLE II. MISCELLANEOUS PROVISIONS**

### **A. Definition of "Maintenance".**

For the purposes of this Agreement, "maintenance" shall mean the repair, replacement and/or correction, as appropriate, of defective conditions of materials, equipment or property in accordance with generally accepted safety, design, and construction standards. "Maintain" and other variants of the word "maintenance" shall be similarly defined.

### **B. Nonapplicability of Certain City Codes.**

The City acknowledges and agrees that the Authority is not subject to the various zoning, building and development codes promulgated and enforced by the City with respect to the Authority's activities within the limits of its turnpike lanes, ramps and toll plazas that will be constructed, regulated, operated, and maintained by the Authority. Further, the City shall not charge the Authority any development, impact, license, zoning, permit, building or construction fees with respect to the Turnpike. The City, when requested by the Authority, will make available electricity, water and sanitary sewer service to the Authority's facilities constructed in

connection with the Turnpike that are within the City's municipal limits. The City shall invoice the Authority only for the Authority's actual usage of said utilities at such standard rates as the City applies to other governmental entities, and the Authority shall promptly pay all invoices submitted therefor by the City.

**C. Billboards.**

The Authority agrees that, with respect to billboards or similar outdoor signs within the Turnpike right-of-way, it will follow the policy, expressed in the Authority's Resolution No. 98-048, dated July 24, 1998, to remove existing billboards and similar outdoor signs from purchased right-of-way and terminate existing billboard/sign leases to the greatest extent practical and permissible under applicable law, and further agrees that it will not allow billboards or similar outdoor signs on the Turnpike right-of-way in the future. The City and the Authority agree to cooperate with one another in the City's development of a regulatory policy governing existing and future billboards and similar outdoor signs outside the Turnpike right-of-way that would be within the view of the traveled portion of the facility. The intent of the parties under this Section is to achieve a legal method to minimize or, if legally possible, to eliminate altogether the presence of billboards or similar outdoor signs that would or could be visible from the traveled portion of the Turnpike.

**D. Relationship of the Parties.**

Nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent, partnership or joint venture between the City and the Authority.

**E. Notices.**

In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (i) when delivered in hand, (ii) one (1)

business day after being deposited with a reputable overnight air courier service, or (iii) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

In the case of the City:

City of Dallas  
City Hall  
1500 Marilla Street  
Dallas, Texas 75201  
Attn: Teodoro J. Benavides, City Manager

In the case of the Authority, if mailed:

North Texas Tollway Authority  
Attn: Executive Director  
P.O. Box 260729  
Plano, Texas 75026

or, if delivered by air courier service:

North Texas Tollway Authority  
Attn: Executive Director  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093

Either party hereto may from time to time change its address for notification purposes by giving the other party prior written notice of the new address and the date upon which it will become effective.

**F. Successors and Assigns.**

This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Other than as provided in the preceding sentence, neither the City nor the Authority shall assign, sublet, or transfer their respective interests in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

**G. Severability.**

If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

**H. Written Amendments.**

Any change in the agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the City and the Authority.

**I. Limitations.**

All covenants and obligations of the City and the Authority under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of the City or the Authority shall have any personal obligations or liability hereunder.

**J. Sole Benefit.**

This Agreement is entered into for the sole benefit of the City and the Authority and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either 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.

**K. Authorization.**

This Agreement is entered into subject to the provisions of the City's charter and the ordinances of the City and all applicable state and federal laws and the applicable regulations of administrative agencies with jurisdiction over the subject matter of this Agreement. Each party

to this Agreement represents to the other that it is fully authorized to enter into this Agreement and 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. Each signatory on behalf of the City and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

**L. Venue.**

The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas, and exclusive venue for any legal actions arising hereunder shall be in Dallas County, Texas.

**M. Interpretation.**

No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

**N. Waiver.**

No delay or omission by either party hereto to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

**O. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings, or agreements relative hereto which are not fully expressed in this Agreement.

**P. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.

**Q. Headings.**

The article and section headings used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

**R. No Liability.**

Nothing in this Agreement shall be construed to place any liability on either the City, the Authority, the Consulting Engineer, the Construction Manager or the Section Engineers or any liability on any of the Authority's or City's respective employees, agents, servants, directors or officers for personal injury or property damage arising out of the City's operation, policing, regulation, maintenance or repair of the City Streets over and under the Turnpike Lanes. Furthermore it is not the intent of this Agreement to impose upon the City or the Authority any liability for injury to persons or damage to property arising out of any construction unrelated to the terms of this Agreement undertaken by any contractor employed or engaged by the Authority or the City. Nothing herein shall be construed as a waiver of any rights which may be asserted by either party hereto, including the defense of governmental immunity.

[end of page]

IN WITNESS WHEREOF, the City and the Authority have executed this Agreement on the dates shown below, to be effective on the date listed above.

**APPROVED AS TO FORM:**

MADELEINE B. JOHNSON  
City Attorney

By: *Lawrence G. Bell*  
Assistant City Attorney  
Submitted to City Attorney  
*LJB*

**CITY OF DALLAS,**  
a Texas municipal corporation  
TEODORO J. BENAVIDES  
City Manager

By: *Jill Jordan*  
Name: *Jill Jordan*  
Title: Assistant City Manager

Date: *2/2*, 2001

**ATTEST:**

*Ruby Franklin*  
Ruby Franklin  
Secretary

**NORTH TEXAS TOLLWAY AUTHORITY**

By: *Jerry Hiebert*  
Name: Jerry Hiebert  
Title: Executive Director

Date: January *31*, 2001



**EXHIBIT A  
PRESIDENT GEORGE BUSH TURNPIKE  
MAINTENANCE AGREEMENT  
FOR THE CITY OF DALLAS**

**Designated Section Engineers**

**Engineering Firms**

**Turnpike Sections**

Lockwood, Andrews & Newnam, Inc.	Turnpike Centerline Station 643 + 50 to 568 + 00
Halff Associates, Inc.	Turnpike Centerline Station 568 + 00 to 466 + 00
Mateo Consulting Engineers, Inc.	Turnpike Centerline Station 466 + 00 to 338 + 00
Boyle Engineering Corporation	Turnpike Centerline Station 338 + 00 to 237 + 00
Huitt-Zollars, Inc.	Turnpike Centerline Station 237 + 00 to 127 + 00

**EXHIBIT B  
PRESIDENT GEORGE BUSH TURNPIKE  
MAINTENANCE AGREEMENT  
FOR THE CITY OF DALLAS**

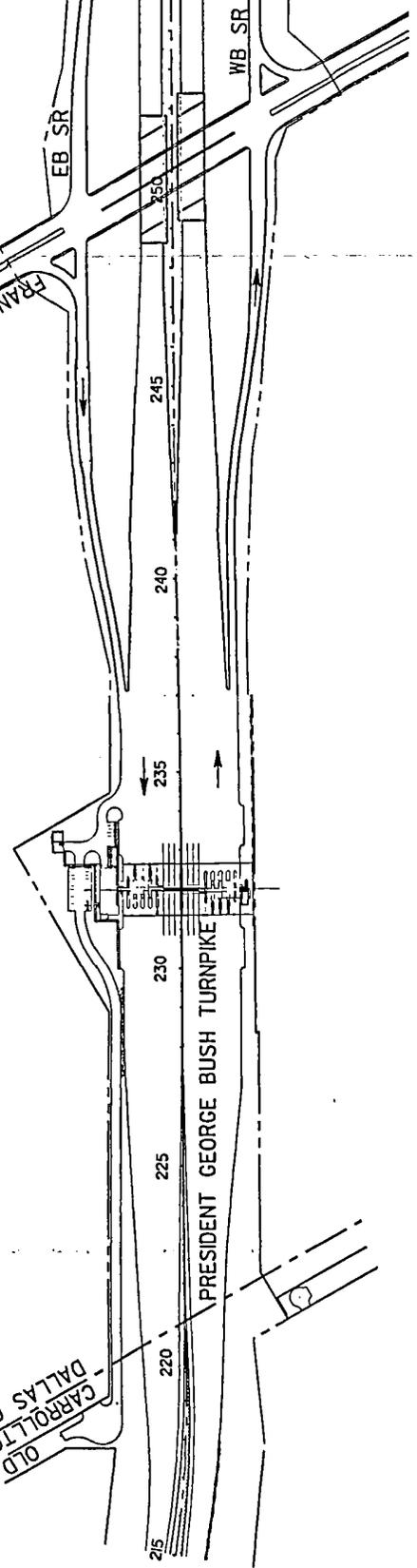
**Turnpike Lanes, Service Roads Entrance and Exit Ramps and Toll Plazas**

[attached]

OLD MILL RD  
CARROLLTON CITY LIMIT  
DALLAS CITY LIMIT



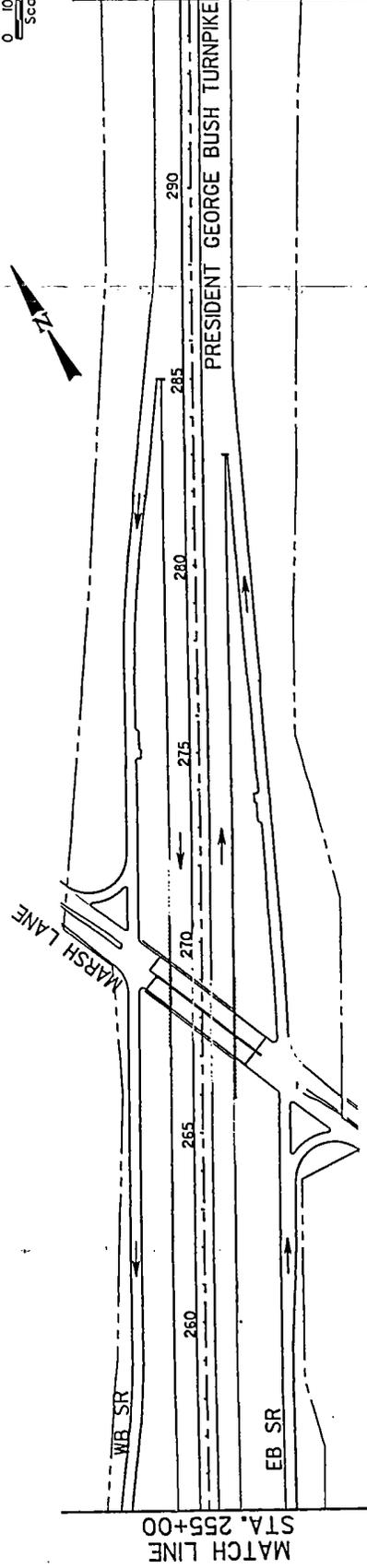
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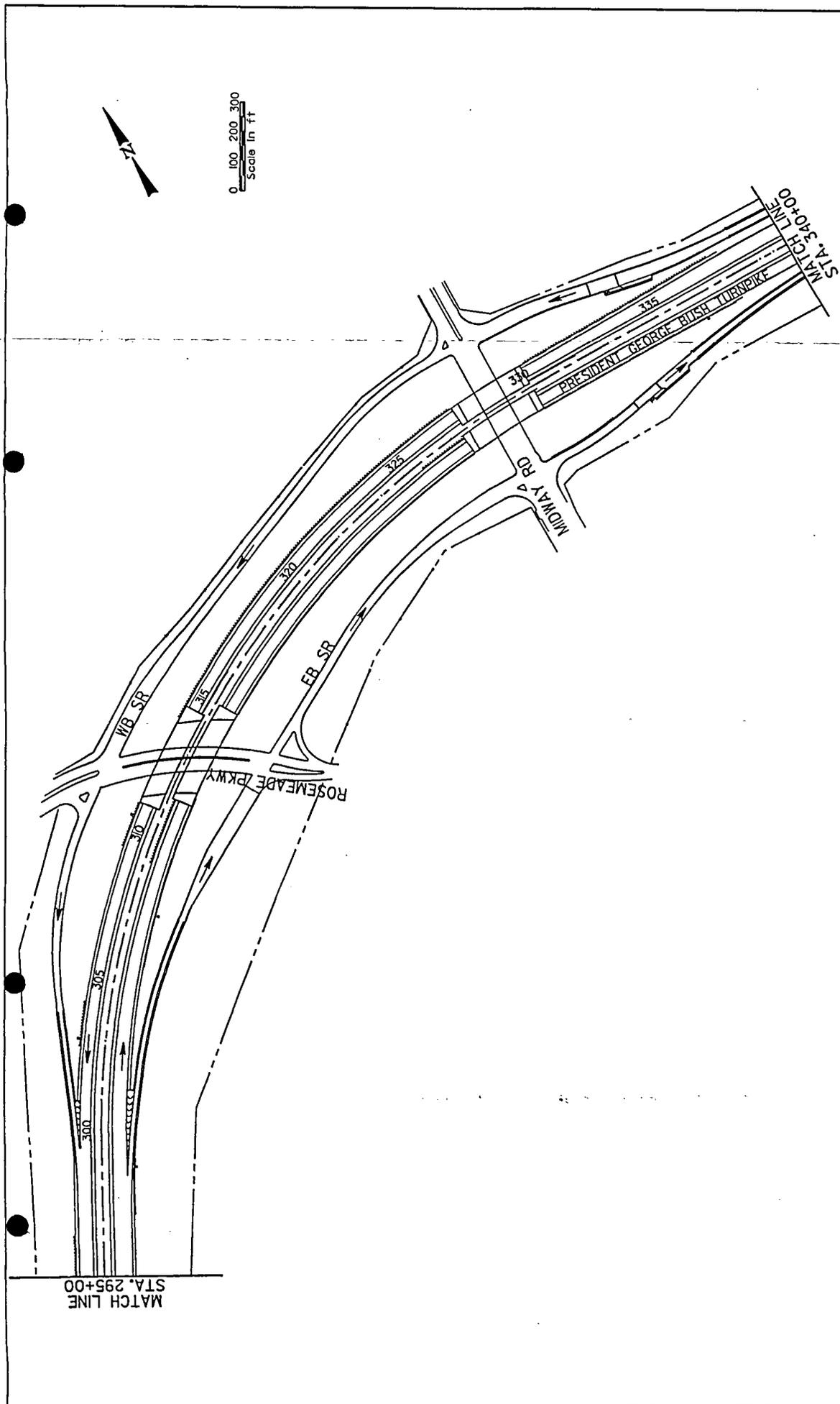
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**NTTA**  
NORTH TEXAS TOLLWAY AUTHORITY

**EXHIBIT B**  
Turnpike Lanes, Service Roads Entrance  
and Exit Ramps and Toll Plazas





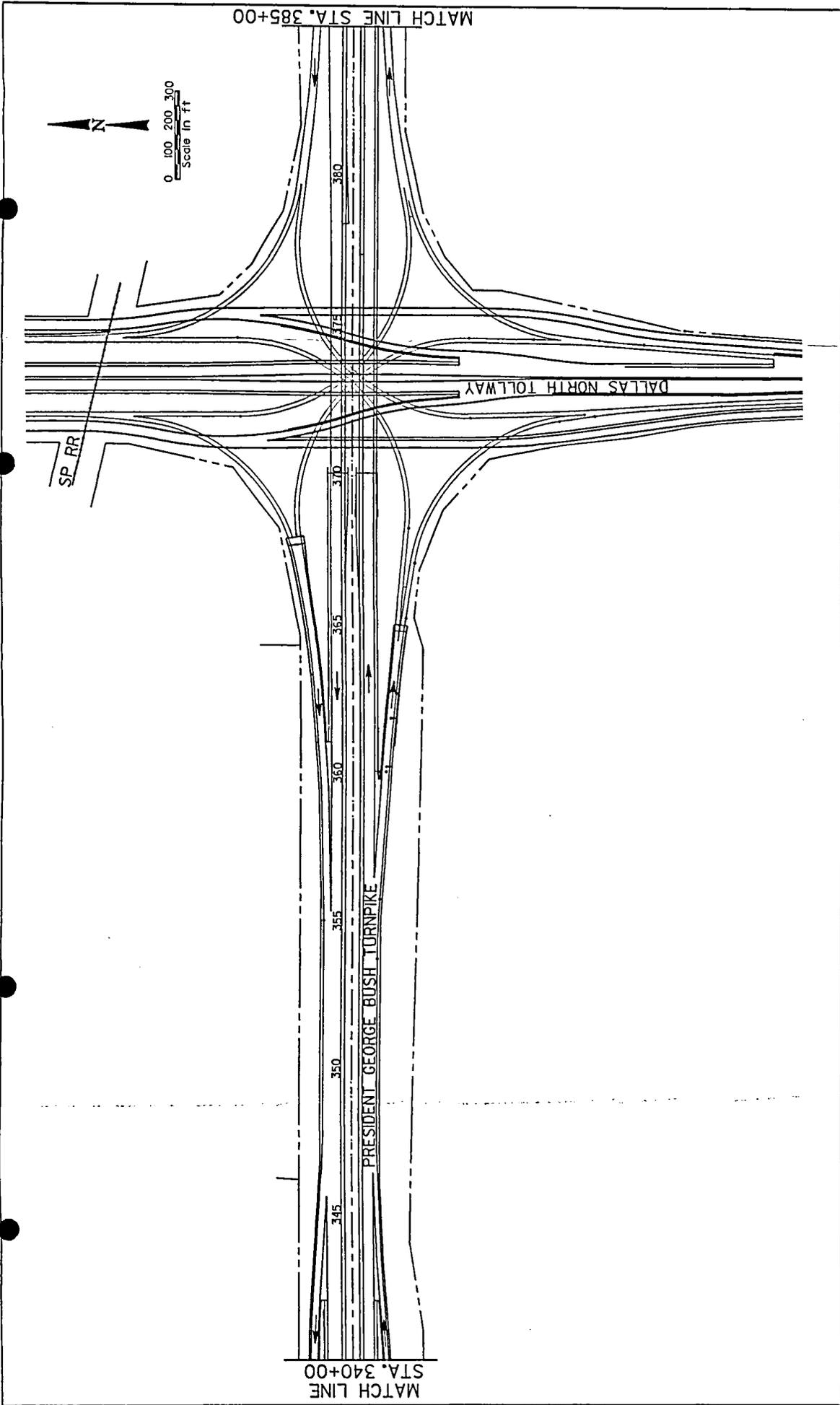
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**NTTA**  
NORTH TEXAS TOLLWAY AUTHORITY

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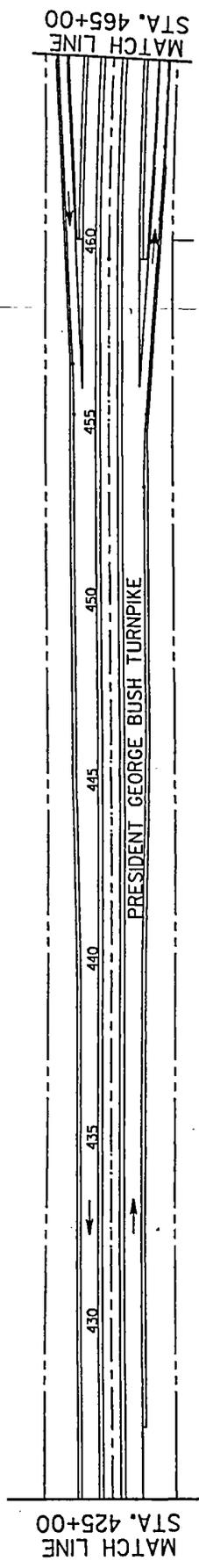
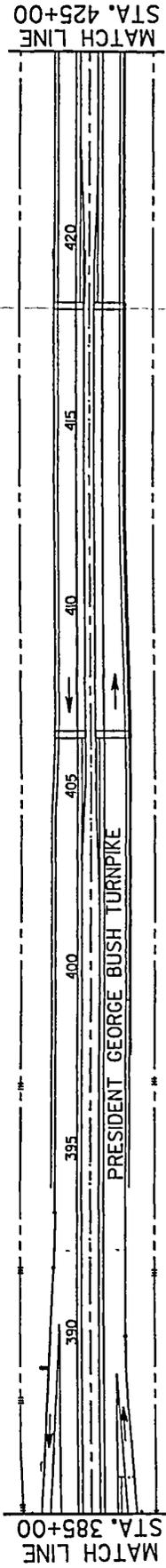


**EXHIBIT B**  
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**NTTA**  
 NORTH TEXAS TOLLWAY AUTHORITY

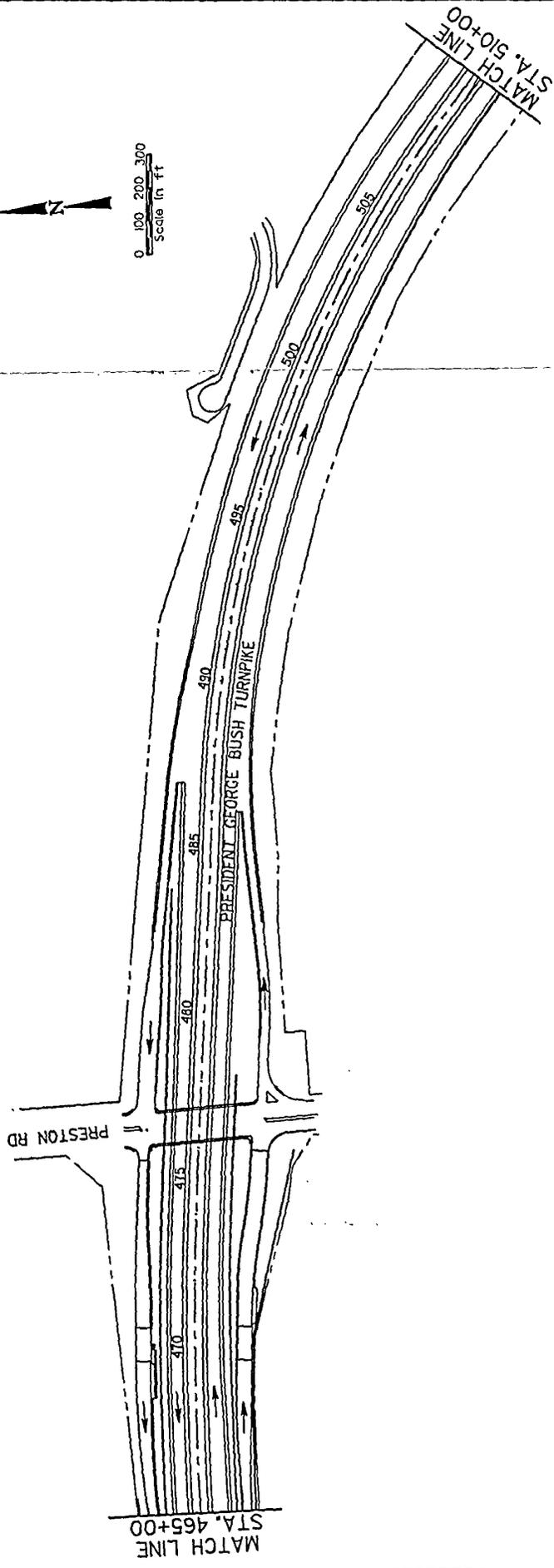




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NORTH TEXAS TOLLWAY AUTHORITY

**EXHIBIT B**  
Turnpike Lanes, Service Roads Entrance  
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**HNTB**



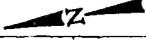
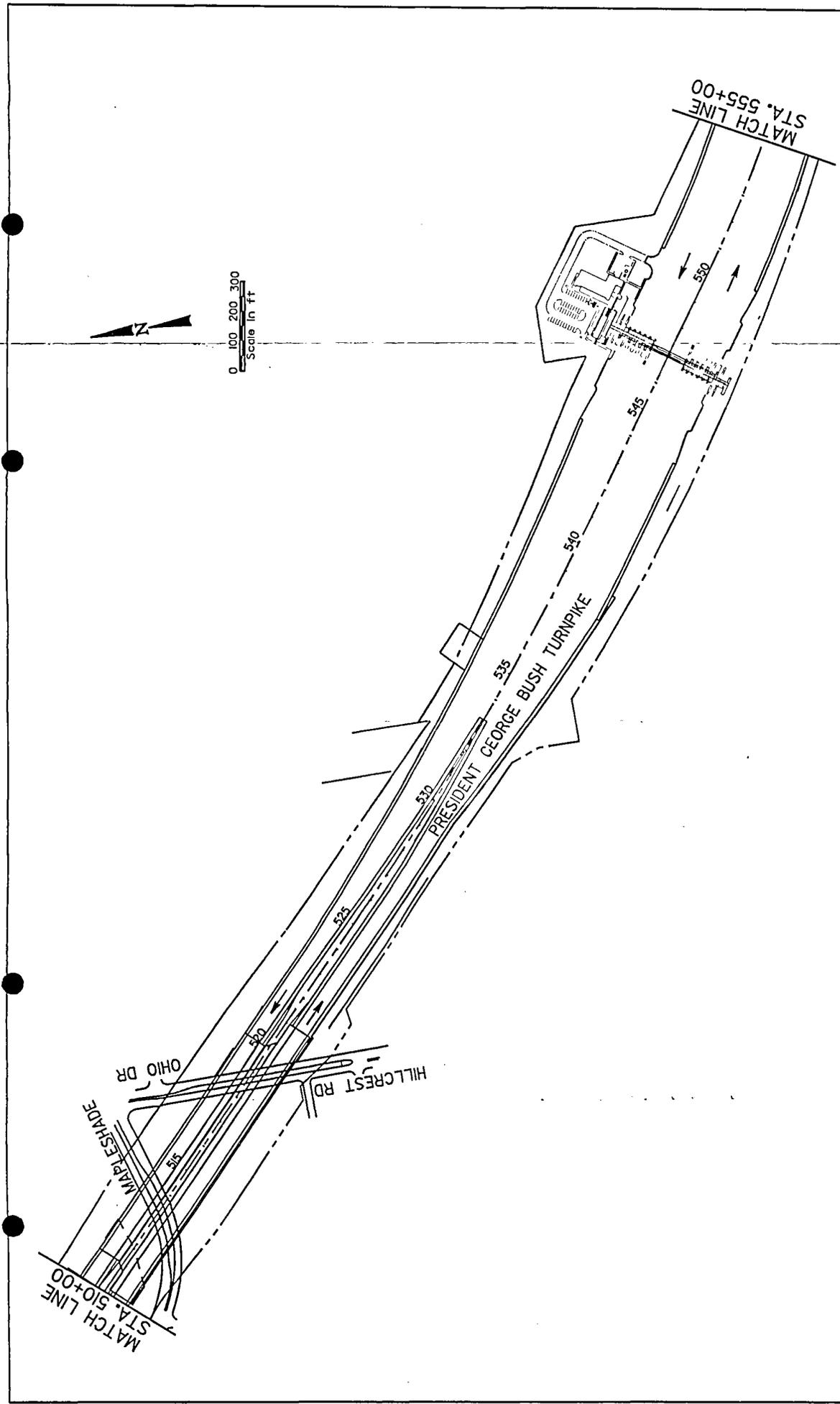
**HNTB**

Sheet 5 of 7

**EXHIBIT B**  
 Turnpike Lanes, Service Roads Entrance  
 and Exit Ramps and Toll Plazas



**NCTA**  
 NORTH TEXAS TOLLWAY AUTHORITY



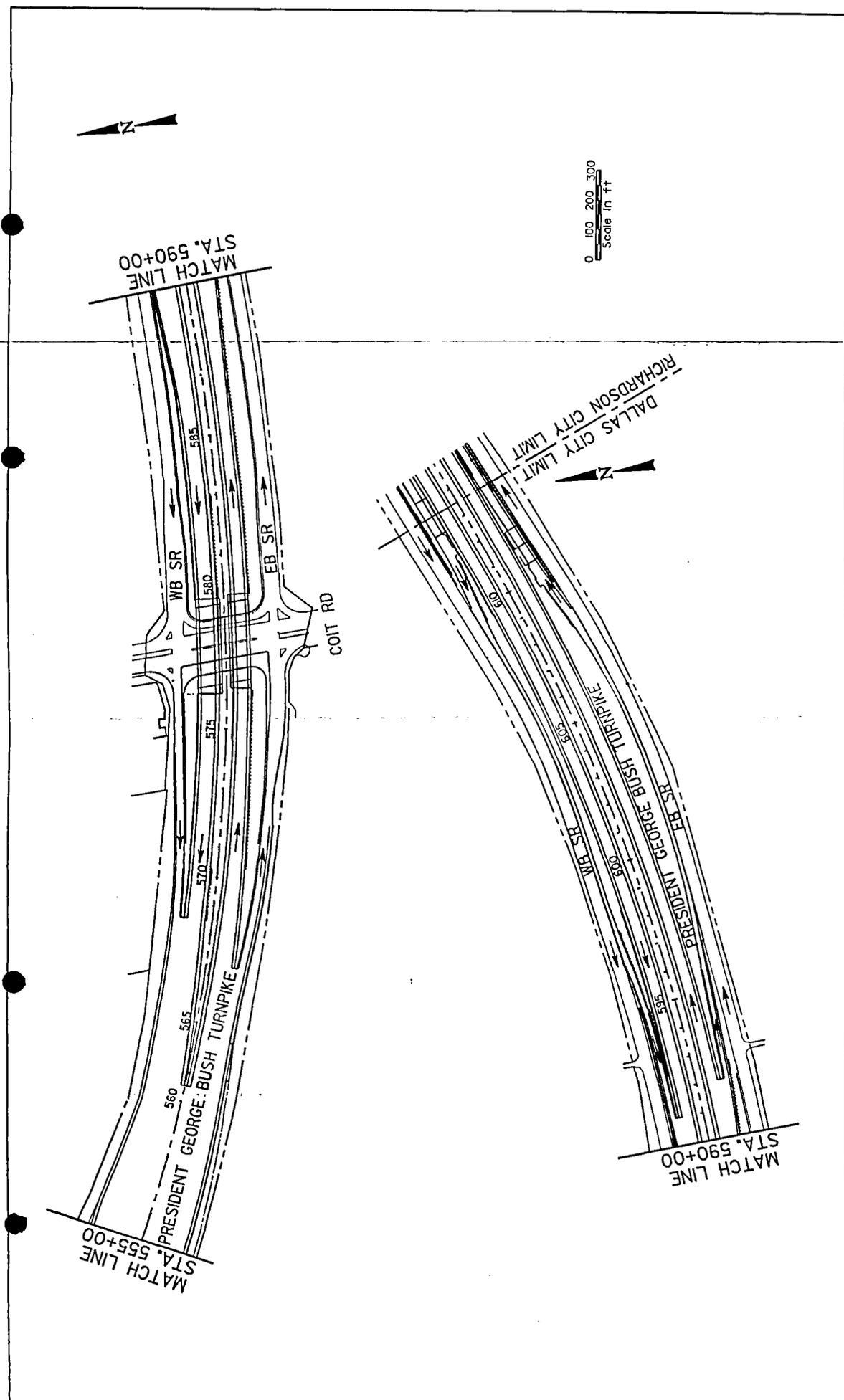
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**EXHIBIT B**  
Turnpike Lanes, Service Roads Entrance  
and Exit Ramps and Toll Plazas



**NTTA**  
NORTH TEXAS TOLLWAY AUTHORITY

**HNTB**



**EXHIBIT B**  
 Turnpike Lanes, Service Roads Entrance  
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**NTTA**  
 NORTH TEXAS TOLLWAY AUTHORITY

