

SIGNALIZATION AGREEMENT

**BETWEEN
CITY OF DALLAS
AND
NORTH TEXAS TOLLWAY AUTHORITY
(NORTHWEST HIGHWAY IMPROVEMENTS)**

(DNT 339)

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EXHIBIT A – Cost Estimate for the Signalization Work

SIGNALIZATION AGREEMENT
BETWEEN
CITY OF DALLAS
AND
NORTH TEXAS TOLLWAY AUTHORITY
(NORTHWEST HIGHWAY IMPROVEMENTS)

(DNT 339)

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 referred to as the “Authority,” and the **CITY OF DALLAS**, a Texas municipal corporation, hereinafter referred to as the “City,” is to be effective as of the 10th 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 (the “Regional Tollway Authority Act”); and

WHEREAS, the Authority operates the Dallas North Tollway, hereinafter referred to as the “DNT,” currently extending from downtown Dallas, Texas to SH 121 in north Collin County, Texas; and

the Authority in the planning, design, review, construction, extension, expansion, and modification of the Authority's toll turnpike projects, including the DNT; 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 certain construction and/or modification work regarding the Authority's toll turnpike projects, including the DNT; and

WHEREAS, the Authority has awarded a construction contract to Rebcon, Inc. for certain expansion and modification work at the intersection of the DNT and Northwest Highway, together with the construction of screen walls in that area (collectively, the "Northwest Highway Improvements"); and

WHEREAS, the City has requested, and the Authority has agreed, that the Authority reimburse the City for the cost of certain modification to the City's traffic signalization system at the intersection of Northwest Highway and the DNT resulting from the Northwest Highway Improvements; and

WHEREAS, the Authority has requested that the City assume responsibility for the design, issuance of plans and specifications, taking of bids, award of contracts and purchase orders and the installation, testing, maintenance and supervision of traffic signalization work required in connection with the Northwest Highway Improvements, subject to certain reimbursement obligations of the Authority; and

WHEREAS, the City is a 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 modification of the traffic signalization system at the aforesaid location resulting from the Northwest Highway Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto 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. SIGNALIZATION

A. The Signalization Work

The City, in conformity with sound engineering practices and the applicable design standards, shall, to the extent required, design, prepare and issue construction plans and specifications, take bids, award contracts and purchase orders, and shall install, test, supervise and maintain (or cause the same to be done) all necessary or prudent modifications to the traffic signalization system at the Northwest Highway/DNT intersection resulting from the Northwest Highway Improvements (all of said work being hereinafter called the "Signalization Work"). The Signalization Work is comprised of relocating one signal arm, installing and connecting new loops and installing, maintaining and removing any required temporary signalization systems, and shall further include:

- (1) the preparation of any plans and specifications required for the Signalization Work (hereinafter called the "City Signalization Plans") and submission of said plans and specifications to the Authority for its review and approval, which approval shall be deemed given fifteen (15) days after receipt of said plans and specifications by the Authority unless written objections or comments are furnished by the Authority; and
- (2) the letting of any construction contracts, the supervision of construction, the furnishing, installing, testing, regulating and adjusting of all traffic signals, and the furnishing of all labor, tools, equipment, and incidentals necessary to provide the traffic signals complete in place, in a neat and workmanlike finished appearance and ready for operation.

The Signalization Work shall not include any features constituting betterment or enhancements to standard signalization systems maintained by the City, provided, however, that the City may elect to procure or install any such features in connection with the Signalization Work at the City's sole cost and without reimbursement by the Authority. Additionally, and notwithstanding anything to the contrary set forth in this Agreement, the City shall not open cut any new pavement constructed by the Authority in connection with the Northwest Highway Improvements, and shall utilize other methods, as clearly indicated on the City Signalization Plans, to place conduit and cable and to perform other features of the Signalization Work.

The City shall perform the Signalization Work either (a) by engaging a competent and proven contractor selected through the City's competitive-bid contracting procedures (to the extent required by state law), or (b) by the City's use of labor and/or supervisory personnel employed directly by the City, utilizing City-owned machinery, equipment and vehicles. If the

City does not have the machinery, equipment and vehicles necessary to perform the Signalization Work, machinery, equipment and vehicles may be rented or leased by the City on commercially prudent terms as necessary. The City, through contracting with third-party contractors, vendors or suppliers, or alternatively, from City stock, will provide all materials (new and unused) and equipment necessary to perform the Signalization Work. The Authority shall review and approve in writing all construction contracts to be let by the City and shall review and approve all material and equipment purchases to be made by the City which cost greater than \$25,000, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, with respect to any portion of the Signalization Work performed prior to the execution of this Agreement, the Authority nonetheless shall reimburse those expenditures which are reasonable, otherwise consistent with the terms of this Agreement, and comparable to items or expenditures reviewed and preapproved by the Authority in accordance with the preceding sentence. The Authority's review and approval authority specified herein shall not impose any obligation or liability as to the Authority concerning the City's contracting or purchasing processes related to this Agreement or alter or abrogate any of the City's obligations pursuant to any construction or purchasing contract entered into by the City related to the City's performance of this Agreement, other than the Authority's obligation to reimburse the City under the provisions of this Agreement.

B. Interference With Work to be Performed by the City and the Authority

The City shall use all reasonable efforts to prevent the Signalization Work from interfering with the Authority's operation of the DNT or the performance of the Northwest Highway Improvements, and the Authority shall use all reasonable efforts to prevent the

performance of the Northwest Highway Improvements from interfering with the City's performance of the Signalization Work.

C. Payment

- (1) The Authority shall reimburse the City for costs actually and properly incurred and supported under the terms and conditions of this Agreement and in the manner and amounts, and subject to the limitations, hereinafter described.
- (2) As further described and limited below, the Authority shall reimburse the City for all costs incurred in completing the Signalization Work. As further described and limited below, reimbursement shall be made by the Authority to the City for design and construction contracts, labor, equipment, materials, supplies, labor additives, and warehouse or material handling charges incurred by the City in conformity with this Agreement.
- (3) The City shall maintain complete and accurate cost records for the Signalization Work. The Authority and its representatives shall be allowed to inspect said records during the City's regular business hours. All records relating to Signalization Work shall be maintained by the City for four (4) years after the City's receipt of final payment from the Authority.
- (4) Payments to the City pursuant to this Agreement shall be made no more frequently than monthly based upon itemized certified statements (the "Statements"), detailed to identify, in the instance of work performed by third-party contractors, the name of the contractor, the materials used (including the quantity or name and unit price and extensions, and similar information), amounts paid the contractor, the "notice to proceed" and "final acceptance" dates, and the

date(s) of the City's inspection. Work performed by City personnel and equipment will be detailed to identify the employees performing the work, their wage rate, the time worked, the equipment used, the time of its use, and the materials used. The Statements also shall identify materials furnished by the City and reimbursable by the Authority at the City's cost; the Authority shall not reimburse the City for used, salvaged or reconditioned materials. Labor additives or burden, overhead, and material handling charges will be shown as a percentage factor and applied to the total cost of labor or materials as applicable. The original and four (4) copies of the Statements shall be submitted to the Authority at the following address:

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

- (5) The Statements will indicate the total reimbursable amount that has become due for the Signalization Work actually performed throughout the term of this Agreement and the amount then due and payable to the City by the Authority. The Authority shall remit reimbursement to the City within twenty-one (21) days following the Authority's receipt of a Statement conforming with this Section I.C. Five percent (5%) of all reimbursable amounts shall be withheld for sixty (60) days following written notification from the City of the completion of construction of the Signalization Work in order to permit the Authority's satisfactory completion of final inspection of the Signalization Work and audit and verification that the claims of all mechanics, materialmen and suppliers have been resolved.

- (6) The Statements shall include only those costs that have been actually paid for the Signalization Work from City funds up to the date of the Statements. The Authority shall not reimburse the City for any of the City's overhead, administrative, processing, review or project management costs or expenses relating to the Signalization Work, nor shall the Authority have any obligation, except the express reimbursement obligations described in this Agreement, to discharge any of the wages or other personnel expenses incurred by the City in connection with the Signalization Work or with the preparation of this Agreement. Notwithstanding the foregoing, with respect to that portion of the Signalization Work performed by City forces or with materials and equipment furnished from City stock, the City may include in the Statements, as separate cost items, an overhead charge not exceeding twenty-five percent (25%) and a material handling charge not exceeding three percent (3%) of the applicable labor or material cost. The City certifies that it has used its best efforts in preparing the Cost Estimate (herein so called) for the Signalization Work, said Cost Estimate being attached hereto as Exhibit A and incorporated herein by reference for all purposes.
- (7) In addition to the limitations set forth in subsection I.C.(9) below, unsupported charges or charges made after final payment by the Authority shall not be considered eligible for reimbursement.
- (8) Except as otherwise expressly provided in this Agreement, the obligation of the Authority with respect to the Signalization Work is one of reimbursement only. This Agreement creates no other obligations on behalf of the Authority with

respect to the design, construction, testing, inspection, operation and/or maintenance of the Signalization Work, and the Authority makes no representations nor assumes any obligation with respect thereto. Further, all of the Authority's reimbursement obligations are subject to and limited by the provisions of subsection I.C.(9) below.

- (9) Notwithstanding anything to the contrary set forth in this Agreement, the City acknowledges and agrees that in no event shall the Authority's reimbursement obligation hereunder exceed in the aggregate Eighty-Two Thousand Five Hundred and No/100 Dollars (\$82,500.00), said amount being the total amount for the Signalization Work shown on the Cost Estimate (approximately \$66,000.00) *less* the cost of temporary signals which already have been installed (approximately \$11,100.00) *times* 1.30 (a 30% contingency) *plus* \$11,100.00 (the cost of the temporary signals). Further, the Authority shall have no obligation to reimburse the City for any portion of the Signalization Work performed after January 1, 2003.

D. Operation and Maintenance of Completed Signalization System

Upon completion of the Signalization Work, the City agrees to operate and maintain the described traffic signalization system at no cost to the Authority and to assume the responsibility for provision of all electrical power required for signal operations, including that required during construction and test periods.

E. No Signalization Responsibility for the Authority

The Authority's rights and obligations contained in this Agreement shall in no way impose upon or create for the Authority any responsibility for (i) the proper operation of traffic signalization along the DNT corridor within the City boundaries, or (ii) the police enforcement required for securing compliance with the traffic signals described in this Agreement.

F. Safety Responsibility During the Work

The City shall provide flagmen, construction barricades, lights, warning signs, detours and other safety devices during the City's performance of the Signalization Work as reasonably necessary. The flagmen shall be utilized, and all safety devices shall be installed and maintained, in accordance with the "Texas Manual on Uniform Traffic Control Devices" adopted by the Texas Transportation Commission pursuant to Section 544.001, *et seq.*, of the Texas Transportation Code.

G. Indemnification.

- (1) To the extent permitted by law and except as limited in subsection I.G.(2) below, the City agrees to indemnify the Authority and the Authority's agents, directors and employees against any and all damages, including, claims for personal injury or for damages to abutting or other property, which the Authority may be liable arising out of, incident to or in any way connected with the installation, construction, existence, use and/or maintenance of the traffic signalization system which is the subject of this Agreement, and the City does hereby agree to defend, indemnify and hold the Authority harmless against any and all court costs, attorneys' fees, and all expenses in connection with any claims or lawsuits brought against the Authority relating to said traffic signalization systems.

- (2) Nothing in this Agreement shall be construed to place any liability on either the City, the Authority, the Consulting Engineer, or the Construction Manager for personal injury or property damage arising out of the Signalization Work. Furthermore it is not the intent of this Agreement to impose upon the City or the Authority any liability, pursuant to the indemnity contained in subsection I.G.(1) or otherwise, for injury to persons or property arising out of any construction unrelated to the terms of this Agreement undertaken by any contractor employed 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.

**ARTICLE II.
MISCELLANEOUS PROVISION**

A. Definition of "Maintenance"

For 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 the safety, design, and construction standards of the party responsible for said maintenance, all as determined by the responsible party. "Maintain" and any other variants of the word "maintenance" shall be similarly defined.

B. No Liability

Nothing in this Agreement shall be construed to place any liability on either the City, the Authority, the Consulting Engineer, or the Construction Manager 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 Signalization Work or for personal injury or

property damage arising out of the City's operation, policing, regulation, maintenance or repair of the service roads or the City streets, including Northwest Highway, along, over and under the DNT.

C. 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.

D. 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 hand or 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. Authorization

This Agreement is entered into subject to the provisions of the Regional Tollway Authority Act, the City's charter and ordinances, 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. Headings

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

[signature pages follow]

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: *Laura G. Scott*
Assistant City Attorney
Submitted to City Attorney
[Signature]

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

[67318:40610:DALLAS:721554.4]

EXHIBIT A
SIGNALIZATION AND MAINTENANCE AGREEMENT

Cost Estimate for the Signalization Work

QUANTITY ESTIMATE SHEET FOR DALLAS NORTH TOLLWAY AT LOOP 12

MATERIALS AND LABOR TO BE PROVIDED BY THE CONTRACTOR FOR PERMANENT SIGNAL

DESCRIPTION	UNIT OF MEAS.	UNIT COST	QUANTITY	EXTENDED COST
MOBILIZATION	LF	\$3,316.25	1	\$3,316.25
PROC & INST 3 SECTION TRAFFIC SIGNAL HEAD	EA	\$460.00	13	\$5,980.00
PROC & INST SINGLE SECTION TRAFFIC SIGNAL HEAD	EA	\$150.00	2	\$300.00
PROC & INST PEDESTRIAN SIGNAL HEAD	EA	\$340.00	5	\$1,700.00
PROC & INST PEDESTRIAN PUSH BUTTON	EA	\$110.00	5	\$550.00
PROC & INST GALV SIG POLE ASSEMBLY W/15' ARM & NO LUM EXT	EA	\$2,300.00	3	\$6,900.00
PROC & INST 5' INCREMENTAL MAST ARM LENGTH	EA	\$300.00	15	\$4,500.00
PROC & INST LUM EXT FOR GALV MAST ARM SIGNAL POLE ASSEMBLY	EA	\$400.00	3	\$1,200.00
PROC & INST DAMPENING PLATE ON MAST ARM	EA	\$170.00	3	\$510.00
PROC & INST GALVANIZED PEDESTAL SIGNAL POLE	EA	\$600.00	2	\$1,200.00
INST MAST ARM POLE FOUNDATION	EA	\$2,300.00	3	\$6,900.00
INST PEDESTAL POLE FOUNDATION	EA	\$600.00	2	\$1,200.00
PROC & INST 1 IN RIGID METAL CONDUIT	LF	\$4.00	50	\$200.00
PROC & INST ELECTRICAL POWER SERVICE	EA	\$650.00	1	\$650.00
PROC & INST PULL BOX	EA	\$345.00	1	\$345.00
PROC & INST LOOP DET SAWCUT, WIRE AND SEALANT	LF	\$3.80	650	\$2,470.00
PROC & INST MULTICONDUCTOR SIGNAL CABLE	LF	\$2.30	600	\$1,380.00
PROC & INST ELECTRICAL POWER WIRE	LF	\$0.70	500	\$350.00
PROC & INST SHIELDED 2 CONDUCTOR LOOP DETECTOR	LF	\$0.65	3500	\$2,275.00
INST TRAFFIC SIGN	EA	\$90.00	10	\$900.00
REM VEHICULAR AND PEDESTRIAN TRAFFIC SIGNAL HEAD	EA	\$35.00	3	\$105.00
REM PEDESTRIAN PUSH BUTTON	EA	\$10.00	1	\$10.00
REM MAST ARM POLE ASSEMBLY	EA	\$350.00	1	\$350.00
REM STRAIN WIRE	LF	\$0.30	500	\$150.00
REM STEEL DOWN GUY	EA	\$300.00	3	\$900.00
REM DOWN GUY ASSEMBLY	EA	\$20.00	3	\$60.00
REM WIRE IN CONDUIT	LF	\$1.00	600	\$600.00
REM TRAFFIC SIGN	EA	\$33.10	3	\$99.30
PROC & INST PAINT FOR EXISTING MAST ARM SIG POLE	EA	\$200.00	3	\$600.00
PROC & INST PAINT FOR EXISTING PEDESTAL POLE	EA	\$180.00	3	\$540.00
Total				\$46,240.55

MATERIALS TO BE PROVIDED BY THE CITY OF DALLAS FOR PERMANENT SIGNAL

SIGNS	\$1,000
Subtotal	\$1,000
2% handling	\$20
Total	\$1,020

LABOR TO BE PROVIDED BY THE CITY OF DALLAS FOR PERMANENT SIGNAL

SIGN FABRICATION	\$800
CITY FORCES WORK	\$1,500
ENGINEERING	\$4,000
Subtotal	\$6,300
22% overhead	\$1,386
Total	\$7,686

TEMPORARY SIGNALS PROVIDED BY THE CITY OF DALLAS

TEMPORARY SIGNALS	Subtotal	\$11,095
Total		\$11,095

EXHIBIT A

Grand Total **\$88,042**