

SIGNALIZATION AND MAINTENANCE AGREEMENT

FOR SEGMENT V OF THE

PRESIDENT GEORGE BUSH TURNPIKE

(DNT 397)

Approved 12-13-01
Resolution #12-13-d-547

12/12/01

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SIGNALIZATION AND MAINTENANCE AGREEMENT
FOR SEGMENT V OF THE
PRESIDENT GEORGE BUSH TURNPIKE

(DNT 397)

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 IRVING, a Texas municipal corporation, hereinafter identified as the "City," is to be effective as of the ___ day of December, 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 "Segment V" of the President George Bush Turnpike, said Segment V being hereinafter referred to as the "Turnpike," following the planned route of SH161 from its northern/eastern terminus at IH635 to its southern/western terminus at Belt Line Road, 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) issued 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 of Turner Collie & Braden, Inc. and Brown & Root, Inc. (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 & 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 has requested that the Authority (1) provide funding for the installation of one temporary traffic signalization system and the adjustment of two permanent traffic signalization systems at the hereinafter specified intersections of City streets intersecting with the Turnpike within the City, (2) design and construct high mast lighting and under-bridge

illumination at hereinafter designated locations on the Turnpike, and (3) substitute Type T202 bridge railing in lieu of metal beam guard fence as more specifically described herein; and

WHEREAS, the Authority has requested that the City (1) 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 construction of the Turnpike, subject to certain reimbursement obligations of the Authority, (2) agree to maintain the under-bridge lighting, (3) pay all costs resulting from the use of electricity by the under-bridge lighting and the high mast illumination subsequent to its installation, and (4) reimburse the Authority for certain costs associated with the under-bridge lighting and Type T202 bridge railing; and

WHEREAS, the Texas Department of Transportation (“TxDOT”) has designed and constructed service roads, northbound and southbound along certain portions of the Turnpike route within the City, and the parties wish to clarify their respective maintenance obligations with respect to said service roads and the abutting turnpike lanes; 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 installation, adjustment, and subsequent operation and maintenance of the traffic signalization equipment, the high mast illumination and under-bridge lighting, and the

Type T202 bridge railing, as well as with respect to the maintenance and operation of the turnpike lanes and service roads and 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. SIGNALIZATION

A. The Signalization Work.

Permanent traffic signalization systems were in place prior to the construction of the Turnpike, so no such systems are to be installed pursuant to this Agreement. As more specifically provided herein, two (2) of these existing permanent signalization systems, located at the MacArthur Boulevard and Las Colinas Boulevard intersections, require adjustment because of bridge construction and/or traffic control activities related to the construction of the Turnpike, and a temporary signalization system is required at the MacArthur Boulevard intersection in order to properly stage construction activities regarding the Turnpike. The foregoing information is summarized on Exhibit A attached hereto and made a part hereof.

The City, in conformity with the Turnpike Plans, shall, as applicable, design, prepare and issue construction plans and specifications, take bids, award contracts and purchase orders and shall, as applicable, install, test, supervise and maintain traffic signalization systems at the City street intersections with the Turnpike described on Exhibit A and only with respect to the work specifically described thereon (all said work being hereinafter called the "Signalization Work"). The Signalization Work shall include:

- (1) the preparation of any plans and specifications required for the Signalization Work (the "City Signalization Plans") and the submission of said plans and specifications to the Authority for its review and approval, said City Signalization Plans, when approved in writing by the Consulting Engineer for the Turnpike, shall become part of the Turnpike Plans for the purposes of this Agreement; and
- (2) the letting of any construction contracts, the supervision of construction, the furnishing, installing, testing, regulating and adjusting of all traffic signals (complete with lamps, ballasts, ballast boxes, all conduit and interconnect cables required for the proper operation of the traffic signals, conductors between the traffic signals and the base of the tower or post supporting the traffic signal, mounting brackets, cables and guys, fastenings, hardware and internal connections), the procurement and installation of the signal control equipment software, the development and implementation of the traffic signal timing, the fabrication and installation of sign hardware associated with the signal operation, 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 features constituting betterment or enhancements to either standard signalization systems maintained by the City or the permanent signalization systems previously installed at the several intersections, 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.

The City shall perform the Signalization Work (a) through its utilization of one or more independent third-party contractors (collectively, the "Contractor") selected by the City through the competitive bid process or (b) by the City's use of labor and/or supervisory personnel employed by the City ("City Forces"). The Contractor and/or the City Forces shall perform all of the Signalization Work on behalf of the City. The City shall supervise and inspect the Contractor's work through the use of City-employed supervisory and inspection personnel utilizing City-owned machinery, equipment and vehicles. The City and/or its Contractor will provide all materials and equipment necessary to install the traffic signalization systems. With respect to such materials and equipment provided by the City, such items shall be furnished from City stock. The use of items of equipment and new and unused materials normally carried in stock by the City will be deemed satisfactory, and the Authority will reimburse the City for the cost of such new and unused items. Prior to the letting of construction contracts or the purchase of materials and equipment related to the City's performance of this Agreement, the Authority shall review and approve in writing all such 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 in excess of \$25,000.00, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, with respect to any portion of the Signalization Work performed by the City or its Contractor 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.

B. Tests and Inspection of Signalization Work.

The City shall provide opportunities and facilities as may be required to enable the Authority and its agents, contractors, consultants or representatives to carry on suitable inspections of materials, equipment and installation methods sufficient to permit the Authority to confirm that all installation methods, component materials and equipment comply with the Turnpike Plans and accepted requirements. The Authority will promptly notify the City of any failure of the materials, equipment or installation methods to meet accepted requirements, and the City will take such measures as are necessary to obtain acceptable system components and installation procedures without delay.

C. Protection of Turnpike From Damage Resulting From Signalization Work.

The City shall not suffer or permit the Signalization Work to damage, or to interfere with the construction or operation of, any portion of the Turnpike, and adequate provisions shall be taken to ensure minimum inconvenience to the traveling public, adjoining property owners, and other parties employed in connection with the construction or maintenance of the Turnpike.

D. 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 hereinafter described.
- (2) The Authority shall reimburse the City for all costs incurred in completing the Signalization Work for the intersections described in Exhibit A of this Agreement. Reimbursement shall be made by the Authority to the City for construction

contracts, labor, equipment, materials, supplies, labor additives, and warehouse or material handling charges incurred in conformity with this Agreement, subject to the limitations set forth in subsection I.D.(6) below.

- (3) The City shall maintain complete and accurate cost records for the intersections described in Exhibit A of this Agreement. 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 prepared for each intersection for which reimbursement is sought (the "Statements"), detailed to show (a) in the instance of work performed by City Forces, the employees, the rates of wage, the time worked, the equipment used, the time of its use and the materials used or (b) in the instance of work performed by the Contractor, the name of the contractor, the quantities or names, unit price and extensions, and similar information. The Statements also shall show the total dollar amount which is sought to be reimbursed. 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, as further described in subsection I.D.(6) below. The original and four (4) copies of the Statements shall be submitted to the Authority in accordance with Section IV.E.
- (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 for the intersections described in Exhibit A and the amount then due and payable to the City by the Authority. Five percent (5%) of all reimbursable amounts shall be withheld pending: (a) completion of construction of the Signalization Work, (b) satisfactory completion of final inspection of the Signalization Work and audit, and, (c) verification that the claims of all mechanics and materialmen have been resolved.

- (6) With respect to that portion of the Signalization Work performed by, including equipment or materials furnished by, the Contractor, 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 or processing costs or expenses relating to the Signalization Work performed by the Contractor, nor shall the Authority have any obligation to discharge any of the wages or other personnel expenses incurred by the City in connection with said portion of the Signalization Work. 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 thirty percent (30%) and a material handling charge not exceeding zero percent (0%) of the applicable labor or material cost. The Authority shall receive a credit for the value of all materials salvaged in connection with the Signalization Work. The Authority shall have no obligation to discharge any wages or personnel expenses incurred by the City in the preparation of this Agreement. The City certifies that it has used its best efforts in preparing the Cost Statement

(herein so called) for the Signalization Work in accordance with the provisions of this Article I, said Cost Statement being attached hereto as Exhibit B and made a part hereof for all purposes. The Authority and the City acknowledge and agree that the attached Cost Statement lists and includes all costs to be reimbursed, or which are otherwise owed, by the Authority in connection with the Signalization Work and constitutes, together with other itemized information separately provided by the City to the Authority, all of the Statements to be furnished pursuant to this Article I.

- (7) Unsupported charges, charges made after final acceptance by the Authority, or amounts in addition to those shown on the attached Cost Statement shall not be considered eligible for reimbursement.
- (8) The obligations of the Authority with respect to the Signalization Work is one of reimbursement only. This Agreement creates no obligations on behalf of the Authority with respect to the ultimate construction, operation and/or maintenance of the Signalization Work, and the Authority makes no representation, and assumes no obligations, with respect thereto.

E. No Waiver of Governmental Immunity.

Nothing in this Agreement shall be construed to place any liability on either the City, the Authority or the Consulting Engineer, Construction Manager or Section Engineers 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 for injury to persons or property arising out of or any construction unrelated to the terms of this Agreement undertaken by any contractor employed by the

Authority. 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.

F. Operation and Maintenance of Completed Signalization System.

Upon completion of the Signalization Work, the City agrees to operate and maintain the described traffic signalization systems at its sole expense and to assume the cost of all electrical power required for signal operations, including that required during construction and test periods, provided that the foregoing shall in no event be construed as altering the City's rights and obligations under any existing or future agreements with TxDOT regarding traffic signalization systems on State on-system roadways.

G. No Abrogation of City's Signalization Responsibility.

The Authority's rights and obligations contained in this Agreement shall in no way reduce or otherwise modify the City's responsibility for (1) the proper operation of traffic signalization along the Turnpike corridor within the City boundaries, or (2) the police enforcement required for securing compliance with the traffic signals described herein.

H. Safety Responsibility During The Work.

The City shall ensure that flagmen, construction barricades, lights, warning signs, detours and other safety devices are provided and maintained throughout the duration of the City's performance of the Signalization Work. 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. Requirements for these safety devices shall be included in the Signalization Plans.

I. Exhibit is Controlling.

With respect to the definition or extent of the Signalization Work covered by this Agreement, in the event of any conflict between the provisions of this Article I and the terms of Exhibit A, the latter shall control.

**ARTICLE II.
DESIGN CHANGES; SHARING OF COSTS**

A. Design Changes, Generally.

The City requested and the Authority agreed to modify the existing design for the Turnpike within the City's municipal limits with respect to (1) the provision of high mast illumination at specified locations along the Turnpike and the installation of under-bridge lighting at the Royal Lane and Gateway Drive intersections with the Turnpike (collectively, the "Illumination/Lighting Revisions"), (2) the substitution of Type T202 bridge railing in lieu of metal beam guard fence at specified locations (the "Railing Revision"), and (3) such other design revisions identified in Section II.G. below. For and in consideration of the Authority's agreement to modify the Turnpike Plans accordingly and to construct the Illumination/Lighting Revisions, the Railing Revision, and the other revisions described in Section II.G. below, the City has agreed to reimburse certain costs set forth in Section II.D. below and to provide the assurance stated in Section II.H. below.

B. Illumination/Lighting Revisions.

The Authority has caused the original design for the Turnpike and the Turnpike Plans to be revised by the Section Engineers to incorporate the following modifications at the referenced locations:

- (1) High mast illumination shall be provided at the locations indicated on Exhibit C attached hereto and made a part hereof for all purposes (the “High Mast Illumination”), and
- (2) Under-bridge lighting shall be provided at the intersections of Royal Lane and Gateway Drive with the Turnpike as indicated on Exhibit D attached hereto and made a part hereof for all purposes (the “Under-Bridge Lighting”).

The Authority shall provide for the construction of the High Mast Illumination and the Under-Bridge Lighting in accordance with the Turnpike Plans.

C. Railing Revision.

The Authority has caused the existing design for the Turnpike and the Turnpike Plans to be revised by the Section Engineers to incorporate the Railing Revision, more particularly described as the substitution of approximately 7,500 linear feet of Type T202 bridge railing in lieu of metal beam guard fence within the limits indicated on Exhibit E attached hereto and made a part hereof for all purposes. The Authority shall provide for the construction of the Railing Revision in accordance with the Turnpike Plans.

D. Reimbursement of Revisions Costs, Generally.

The City shall reimburse the Authority for certain additional costs resulting from the Under-Bridge Lighting and the Railing Revision (collectively, the “Revisions Costs”), all in the manner more specifically described in Section II.E. below. The Under-Bridge Lighting costs are set forth on Exhibit F attached hereto and the Railing Revision costs are set forth on Exhibit G attached hereto, which equal \$22,554.00 and \$348,737.00, respectively. The City shall not have any reimbursement obligations with respect to the design and construction of the High Mast Illumination.

E. Payment of the Revisions Costs Net of the Cost Statement Amount.

Payment of the Revisions Costs, net of the Signalization Work reimbursement described in Section I.D.(6), shall be made by the City to the Authority within thirty (30) days following the final execution of this Agreement in the amount of One Hundred Eighty-Five Thousand Five Hundred Twenty-Two and No/100 Dollars (\$185,522.00), said payment amount being the sum of certain additional costs and charges to be incurred in constructing the Under-Bridge Lighting and as set forth on Exhibit F (\$22,554.00) and the Railing Revision as set forth on Exhibit G (\$348,737.00) *minus and net of* the reimbursement amount owed by the Authority to the City for the Signalization Work as set forth on the Cost Statement attached as Exhibit B (\$185,769.00).

F. Operation and Maintenance of the Illumination/Lighting Revisions.

Upon completion of the Under-Bridge Lighting, the City agrees to operate and maintain the Under-Bridge Lighting described above and on Exhibit D in an efficient, safe and sightly condition, including all subsequent adjustment and aiming, and the maintenance, repair or replacement of all hardware, lighting units, ballasts, lamps, electrical equipment, electrical cord, conduit, junction boxes and enclosures, mounting brackets, fasteners, and other features at its sole expense, and to pay the cost of all electrical power required for the operation of the High Mast Illumination, the Under-Bridge Lighting, and all other "roadway illumination" structures for the Turnpike as depicted on Exhibit C, including that required during construction and test periods, and the Authority and the City shall transfer, or otherwise cause, service to be placed in the name of the City with the electricity provider. The City shall obtain the prior written approval of the Authority before making any significant changes in the design and/or operation of the Under-Bridge Lighting as designed and constructed by the Authority or before the removal of any part of said structures except for the purpose of replacement with identical or accepted

equivalent equipment, provided, however, that the Authority agrees not to withhold or delay any such approval except and unless the Authority's review of the plans, drawings, specifications and/or other materials describing the City's proposed changes or removal indicate that damage to the Authority's structures or an unsafe condition affecting the Turnpike may result. The Authority shall operate and maintain the High Mast Illumination, and shall be solely responsible for any changes in the design and/or operation thereof and for any resulting costs, other than the cost of electrical power as provided above.

G. Other Design Changes.

The City requested and the Authority agreed to modify the existing design for the Turnpike within the City's municipal limits with respect to the painting of the beams and rails on certain bridges crossing the Turnpike. The foregoing revisions have been incorporated into the Turnpike Plans. The City has no reimbursement obligation with respect to the design revisions described in this Section II.G.

H. Approval of Design: Relocation of City-Owned Utilities; Cross Street Work.

Insofar as the Turnpike Plans have been specifically revised to incorporate the Illumination/Lighting Revisions, the Railing Revision and the revisions described in Section II.G. above, the City acknowledges and agrees that the design and alignment of the Turnpike as described in the Turnpike Plans is fully acceptable to the City in all respects. Further, the City agrees to timely relocate City-owned utilities or, at the City's option, reimburse the Authority for the cost of relocating and adjusting all utilities owned by the City that are situated in the Turnpike right-of-way or are otherwise affected by, or in conflict with, the Turnpike. Finally, the City, at its sole cost, shall install all permanent striping and all signage on the City streets intersecting the Turnpike.

**ARTICLE III.
MAINTENANCE AGREEMENT**

A. Summary of Terms and Limits of Maintenance Agreement.

As referenced previously in this Agreement, TxDOT has designed and constructed northbound and southbound service roads through the Turnpike right-of-way situated within the City's municipal limits, as shown on Exhibit H (the "Service Roads"). The northbound Service Road is situated on the east side of the Turnpike between the northbound Turnpike toll lanes and the east Turnpike right-of-way limits. The southbound Service Road is situated on the west side of the Turnpike between the southbound Turnpike toll lanes and the west Turnpike right-of-way limits. Said northbound and southbound 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 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 III and as depicted in Exhibit H attached hereto. The City and the Authority hereby acknowledge and agree that the Authority's maintenance responsibilities are limited solely to the Turnpike Lanes, and that the Authority shall have no responsibility or obligation to operate, maintain, police, regulate or provide public safety functions for City streets which cross over or under the Turnpike Lanes or the Service Roads situated within the municipal limits of the City. It is acknowledged that maintenance, repair, replacement, improvement, and construction of the Service Roads, City streets, and all related traffic systems including signs, signals, illumination, traffic management facilities, and landscaping outside of the Turnpike Lanes will be performed by either the City or TxDOT in accordance with agreements and practices in effect prior to the final execution of this

Agreement, as said agreements and practices may be modified subsequently by the City and TxDOT.

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 H 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 H 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 H attached hereto.
- (5) Maintain all Turnpike illumination structures, including the High Mast Illumination described on Exhibit C, but specifically excluding electrical power required therefor and the Under-Bridge Lighting described on Exhibit D (which are to be maintained by the City as set forth in Section II.F. above) and further 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.
- (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, subject to the City’s approval as to the size and location of any such signage placed on City streets outside of the limits of the Turnpike right-of-way.
- (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, provided that the City shall be responsible to (1) respond to fires and environmental or “haz-mat” incidents and (2) provide paramedic service when requested, all in connection with an occurrence on or affecting the Turnpike Lanes or other facility operated by the Authority and situated within the City’s municipal limits.

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, said responsibilities to include the following:

- (1) Repair and maintain all City streets over and under the Turnpike Lanes, including all traffic signal systems on City streets (and on State on-system roadways pursuant to existing agreements with TxDOT) within the area depicted on Exhibit H, luminaires and other illumination, structures, and foundations therefor, including the Under-Bridge Lighting pursuant to Section II.F. hereof and not specifically excluded under Section III.B.(5), and the riding surfaces, curbs, drainage, walkways, and railing of bridge superstructures crossing over the Turnpike Lanes.
- (2) Keep the vegetation mown, maintain all landscaping and irrigation systems, and collect and dispose of debris and trash accumulated in City streets crossing over and under the Turnpike Lanes.
- (3) Maintain and, as necessary, modify guardrail and fences, if any, along the City streets crossing over and under the Turnpike as depicted in Exhibit H which are not installed by the Authority.
- (4) Install, maintain and, as necessary, modify or supplement all traffic regulatory and directional signs and all pavement traffic markings on 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.
- (5) Furnish all policing, sweeping, flushing, snow/ice control services, and other public safety services on City streets crossing over and under the Turnpike.

- (6) Pay the cost of electricity for the High Mast Illumination and the Under-Bridge Lighting pursuant to Section II.F.
- (7) Approve, permit, and regulate (in conjunction with TxDOT) all driveway and street connections to the Service Roads.

The City agrees to comply with its maintenance and other obligations under any current or future agreement with TxDOT regarding the Service Roads and to enforce its rights regarding TxDOT's performance of its obligations under any such agreements.

ARTICLE IV. 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, and the City acknowledges, that, with respect to billboards or similar outdoor off-premises 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 off-premises signs from purchased right-of-way and terminate existing billboard/off-premises sign leases to the greatest extent practical and permissible under applicable law, and the Authority further agrees that it will not allow billboards or similar outdoor off-premises 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 off-premises 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 off-premises 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 (1) when delivered in hand, (2) one (1) business day after being deposited with a reputable overnight air courier service, or (3) 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 Irving
825 West Irving Boulevard
Irving, Texas 75060
Attn: City Manager

In the case of the Authority:

If by United States Mail:

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

If by hand or air courier:

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 Service Roads or 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:

CITY OF IRVING,
a Texas municipal corporation

David Caylor,
City Attorney

By: David Caylor
Name: David Caylor
Assistant City Attorney

By: Joe Putnam
Joe Putnam,
Mayor

Date: December 13, 2001

ATTEST:

Ruby Franklin
Ruby Franklin
Secretary

NORTH TEXAS TOLLWAY AUTHORITY

By: Jerry Hebert
Name: Jerry Hebert
Title: Executive Director

Date: December 13, 2001