

**AGREEMENT BETWEEN THE CITY OF DALLAS,
THE NORTH TEXAS TOLLWAY AUTHORITY, AND
THE TEXAS DEPARTMENT OF TRANSPORTATION
CONCERNING DEVELOPMENT OF THE TRINITY PARKWAY**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS AGREEMENT is entered into as of the 1st day of January, 1999, by an
between **THE CITY OF DALLAS**, a home-rule municipal corporation (the "City"), and the
NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political
subdivision of the State of Texas (the "Authority") and, solely for the purposes described in
Section 8 hereof, the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State
of Texas;

WITNESSETH:

WHEREAS, the Trinity Parkway Major Transportation Investment Study (the "MTIS")
conducted by the Texas Department of Transportation ("TxDOT") evaluated an eight-lane
controlled-access reliever route around downtown Dallas extending for approximately ten miles from
its northern terminus at the Interstate Highway 35E / State Highway 183 interchange to its southern
terminus at the US Highway 175 / Spur 310 interchange (the "Trinity Parkway"); and

WHEREAS, the Dallas City Council approved the MTIS as the locally preferred plan on
September 10, 1997; and

WHEREAS, the City called an election on May 2, 1998 for the purpose of issuing general
obligation bonds (the "City Bonds") to effect certain improvements in the "Trinity River Corridor,"

including the Trinity Parkway, which proposal was approved by the voters, but additional sources of funds are required to undertake the Trinity Parkway; and

WHEREAS, public funding of major transportation projects continues to face significant obstacles, and the Trinity Parkway is competing for funding with many other worthwhile transportation projects; and

WHEREAS, pursuant to the provisions of Senate Bill 370 passed by the 75th Texas Legislature and codified, in part, as Chapter 366 of the Texas Transportation Code (the "Turnpike Act"), the Authority is authorized to build and operate "turnpike projects," as that term is defined in the Turnpike Act, throughout Collin, Dallas, Denton and Tarrant Counties, Texas; and

WHEREAS, there exists the potential for expediting the completion of the Trinity Parkway by financing a portion of that project's design and construction costs through the use of turnpike financing if the Authority can establish that the Trinity Parkway is a feasible turnpike project; and

WHEREAS, TxDOT (i) has determined that the Trinity Parkway is necessary to alleviate congestion and ameliorate air quality on IH-35E and Interstate Highway 30, (ii) has approved the Trinity Parkway for Long-Range Planning (LRP) status, and (iii) supports the development of the Trinity Parkway as a turnpike project if the applicable legal requirements and other conditions can be satisfied; and

WHEREAS, the Dallas City Council and the Dallas County Commissioners Court have adopted resolutions requesting that the Authority take such actions and conduct such studies as may be necessary to determine the viability of jointly developing and financing all or some portion of the Trinity Parkway with a combination of turnpike revenue bonds, the City Bonds, and federal and/or state transportation funds;

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

1. **City's Support for Turnpike.** The City acknowledges its approval of and support for the financing, design, construction, operation and maintenance by the Authority of the Trinity Parkway as a turnpike project pursuant to the Turnpike Act. The City will take all actions reasonably requested by the Authority which are consistent with this Agreement in furtherance of the purposes of this Agreement. Unless and until the Authority determines that the design, construction and operation of the Trinity Parkway as a turnpike project is not feasible, the City shall not advance any alternative to or conflicting proposal for the development of the Trinity Parkway.
2. **Status of Authority's Evaluation.** The Authority has provided for the preparation of a draft Proposed Trinity Parkway Preliminary Feasibility Analysis dated September 1998 by Wilbur Smith Associates (the "Draft Feasibility Report"). Based on the Draft Feasibility Report, the Authority and its consultants have concluded that the Trinity Parkway is potentially feasible as a turnpike project, assuming the following design features:
 - a. the Trinity Parkway will be designed and constructed as a limited access, high speed facility, which is necessary to ensure a sufficient time savings for motorists to select the project over non-tolled competing facilities; some of the necessary design features are:
 - i. access to adjacent properties shall be by arterial streets or frontage roads, and not directly from the turnpike project;

- ii. a 55 mph posted speed limit shall be substituted for the 45 mph limit anticipated in the original design; and
 - iii. the turnpike project would be restricted to passenger cars and light trucks only.
- b. the design of Trinity Parkway, including the location of interchanges and the general route alignment, would otherwise be based on the MTIS, and would include those specific features outlined on Exhibit A attached hereto.

The City accepts and approves the foregoing design assumptions, as may be modified in response to the requirements of the EIS as described in Section 6 hereof, and acknowledges that the Authority may utilize those assumptions as it and its consultants further evaluate the feasibility of the Trinity Parkway as a turnpike project.

3. **Sharing of Costs.** The MTIS concluded that the total estimated cost of the Trinity Parkway is approximately \$394 million. Based on the Draft Feasibility Report and assuming the design features described in Section 2 above, the Authority estimates that the Trinity Parkway could generate sufficient revenues to support an issuance of \$140-150 million of turnpike revenue bonds. The City hereby commits \$84 million of the proceeds of the City Bonds to the evaluation, design and construction of the Trinity Parkway by the Authority, subject to the limitations set forth in Sections 9 and 10 hereof. The timing and distribution of funding is set forth in Exhibit B attached to and made a part of this Agreement. Subject to approval by the Texas Transportation Commission (the "Commission"), TxDOT may participate in achieving feasibility for the Trinity Parkway by providing for the construction of interchanges and providing other support, all to be specified subsequently in a written agreement between TxDOT, the City and the Authority (the "Subsequent Agreement"). The

City and the Authority agree to work collaboratively to address the remaining funding shortfall. The proposed reimbursement by the Authority of a portion of the \$84 million advanced by the City is described in Section 12 below.

4. **Authority's Remaining Evaluation.** The Authority, using (i) the MTIS, (ii) the Draft Feasibility Report, and (iii) environmental studies, reevaluations thereof and other reports pertaining to the "Trinity River Corridor" prepared by or on behalf of the U.S. Army Corps of Engineers (the "USACE") and other governmental and quasi-governmental bodies, shall undertake and complete those reports, evaluations and studies (the "Studies") required to determine the feasibility of the design, construction and operation of the Trinity Parkway as a turnpike project, utilizing turnpike revenue bond funding in combination with the City Bonds proceeds and other funding sources described in Section 3 above. The nature and extent of the Studies, as well as the engineers or other consultants retained to undertake those Studies and the contract terms pertaining thereto, shall be determined by the Authority after consultation with the City and in compliance with the requirements set forth below. The Authority shall keep the City updated on a regular basis (at least quarterly) on the progress of the evaluation work, the tentative conclusions suggested by that work, and its projected completion. Representatives of the Authority shall be available to meet with representatives of the City to discuss the work performed upon request. Without limiting the foregoing, the Authority agrees to promptly notify the City and TxDOT, in writing, if for any reason the Authority concludes that the Trinity Parkway is not feasible as a turnpike project or that the Authority is unable to undertake the design, construction and operation thereof. In that event, the Authority shall not incur any additional obligations or expenses regarding the evaluation of the Trinity Parkway which the City is obligated to pay pursuant to Section 5

hereof, and the Studies, whether in final or draft form, shall be delivered to the City. The Studies, although undertaken on behalf of the Authority to determine the feasibility of the Trinity Parkway as a turnpike project, shall be prepared so as to maximize their applicability and utility in evaluating or permitting a non-tolled version of the Trinity Parkway. If the Authority determines that it is unable to design, construct and operate the Trinity Parkway as a turnpike project, the Authority promptly shall assign to the City all of the Authority's interests under the Studies, and the Authority agrees to negotiate contracts with the providers of those Studies that permit and effectuate such an assignment.

5. **Funding of Evaluation Costs.** The City shall fund the costs of preparing the Studies described in Section 4 above from the \$84 million of the City Bonds proceeds committed by the City under Section 3. Promptly following the execution by the Authority of a contract for the preparation of any such Study, the City, subject to Section 9 of this Agreement, shall deposit in an interest-bearing account maintained by a mutually acceptable escrow agent one hundred percent (100%) of the total contract amount, which amount shall be disbursed to the Authority as payments under the contract are requested by the applicable consultant and approved by the Authority in accordance with the contract terms. Upon completion of the contract, the City shall remit any additional amounts for change orders or supplemental agreements accepted by the Authority after consultation with the City, and thereafter all interest accrued on the escrowed amounts shall be remitted to the City. The obligations of the City with respect to the Studies is one of payment only, and the City assumes no other liability with respect thereto. The Authority shall use its established procurement procedures with respect to the award of contracts for the preparation of the Studies. All records and documents prepared by the Authority and relating to the preparation of the Studies or the

award of contracts therefor shall be made available to authorized representatives of the City during normal work hours for inspection and copying. All such records and documents relating to the City's payment of the costs described in this Section 5 must be maintained by the Authority for three (3) years. If this Agreement is terminated pursuant to Section 10 hereof, the Authority promptly shall authorize the release to the City of any funds deposited with the escrow agent pursuant to this Section 5 which have not been advanced to pay the costs of the Studies and which are not required to discharge costs for which the Authority became obligated prior to said termination. Amounts received from the City and advanced by the Authority pursuant to this Section 5 are not subject to reimbursement by the Authority.

6. **The EIS and Schematic Plans.** The City and the Authority agree that two of the Studies to be commenced as soon as practicable are (a) an Environmental Impact Statement for the Trinity Parkway (the "EIS") and (b) schematic plans for the Trinity Parkway (the "Schematic Plans"). The EIS shall conform to all federal and state laws, rules and policies, as well as to the policies and procedures of the Authority and, as appropriate, TxDOT. The EIS shall pertain to only those portions of the "Trinity River Corridor" improvements comprising or related to the Trinity Parkway and shall not address unrelated floodway, levee, park or other features of the "Trinity River Corridor" improvements to be undertaken by the City. The City agrees that the Authority may make such adjustments to the design and alignment of the Trinity Parkway as may be required by the EIS, provided such adjustments are generally consistent with the MTIS. The Schematic Plans shall include an updated layout of the Trinity Parkway utilizing the diagrammatic plans from the MTIS, revised to reflect the installation of toll collection facilities and other features resulting from the conversion of the

Trinity Parkway from a non-tolled project. The preparation of the Schematic Plans also will permit the Authority to develop preliminary budgets for engineering, construction, right-of-way and other project-related costs. As with all other Studies prepared by or on behalf of the Authority pursuant to this Agreement, the EIS and the Schematic Plans, to the greatest extent practicable, shall (i) utilize the MTIS, existing environmental studies, reevaluations thereof and other pertinent reports previously prepared by the USACE and other bodies and (ii) be prepared to maximize their usefulness in evaluating or permitting a non-tolled version of the Trinity Parkway if feasibility as turnpike project cannot be established. The Authority shall use all reasonable efforts to commence the preparation of the EIS and the Schematic Plans during the first calendar quarter of 1999 and to complete same within two (2) years thereafter.

7. **Public Involvement.** Without limiting the provisions of Section 1 above, any future public meetings or hearings involving the Trinity Parkway will be conducted with the City's support and involvement, working in full cooperation with the Authority toward expediting the evaluation and, if appropriate, subsequent construction by the Authority of that project. If requested by the Authority, any such meeting or hearing shall be jointly hosted and led by the City and the Authority.
8. **TxDOT's Agreement.** TxDOT joins in the execution of this Agreement solely to affirm the accuracy of the recitals hereof and to acknowledge its agreement and understanding as follows:
 - a. TxDOT supports (i) the development of the Trinity Parkway as a turnpike project and (ii) the execution and performance of this Agreement by the City and the Authority;

- b. if the Authority is unable to design, construct and operate the Trinity Parkway as a turnpike project, TxDOT could, subject to approval by the Commission pursuant to the terms of a Commission Minute Order:
 - i. utilize the EIS, or all completed portions thereof, and, to the greatest degree practicable, all other completed Studies in TxDOT's design and construction of the Trinity Parkway as a TxDOT project; and
 - ii. work in partnership with the City to pursue development and construction of the Trinity Parkway in a prudent manner.

The City and the Authority acknowledge that because the Trinity Parkway is a designated route on the National Highway System, any contemplated use of federal funding for any portion of the project would establish certain approval and inspection rights and responsibilities in the Federal Highway Administration ("FHWA"), and would make TxDOT responsible for all coordination with the FHWA and for obtaining any necessary approvals from the FHWA for the Trinity Parkway. The City and the Authority also acknowledge that in the event of any Commission approval of TxDOT participation in the cost of the Trinity Parkway, certain statutory and regulatory requirements must be complied with, which the parties expect will include: (1) acquiring right-of-way in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; (2) making project records and documents available to TxDOT, FHWA, and the U.S. Comptroller General; and (3) entering into a toll agreement containing the provisions required by 23 U.S.C. §129. The City and the Authority finally acknowledge any new or revised access points to any Interstate Highway resulting from the development of the Trinity Parkway are subject to FHWA approval. The City and the Authority agree to address those

and all related issues if and when the Subsequent Agreement described in Section 3 is negotiated between the parties.

- 9. Applicable Law; Expenditures Restricted to Current Revenues.** This Agreement is entered into pursuant to the provisions of Subchapter G of Chapter 366, TEX. TRANSPORTATION CODE ANN. The City, which is paying for the performance of governmental functions and services hereunder, shall make such payments from current revenues available to the City. Any financial obligation of the City is subject to appropriation of funds by the City Council in accordance with applicable law. The City agrees that its City Manager will annually recommend funding to perform the obligations described in this Agreement for inclusion in the annual proposed budget submitted for consideration by the Dallas City Council; this shall not be construed, however, to require appropriation of funding by the Dallas City Council.
- 10. Term of Agreement; Termination.** The term of this Agreement shall begin on the date of its execution by all parties and end on the earlier to occur of (a) the complete performance by the parties hereto of all provisions of this Agreement, or (b) the termination of this Agreement as provided below. As provided in Section 4 above, the Authority shall notify the City and TxDOT in writing if the Authority concludes that the Trinity Parkway is not feasible as a turnpike project, and this Agreement shall terminate immediately upon the City's and TxDOT's receipt of said notification. Termination shall not affect the City's obligation under Section 5 to discharge the costs of the Studies incurred prior to said termination, nor the Authority's obligations to (i) release to the City the remaining balance of funds escrowed by the City pursuant to Section 5 or (ii) deliver and assign the Studies, whether in draft or final form, to the City in accordance with Section 4.

11. **Notices.** All notices or other communication required or permitted hereunder shall be presumed given when hand-delivered, or three (3) business days after being mailed by U.S.

Mail and postage prepaid, addressed as follows:

If intended for the City, to:

Teodoro J. Benavides
City Manager
City of Dallas
City Hall
1500 Marilla Street
Dallas, Texas 75202

If intended for the Authority, to:

Jerry N. Hiebert
Executive Director
North Texas Tollway Authority
3015 Raleigh Street
P. O. Box 190369
Dallas, Texas 75219-0369

If intended for TxDOT, to:

Texas Department of Transportation
Dallas District Office
Attention: District Engineer
4777 East Highway 80
Mesquite, Texas 75150

Either party may change its address for notices and communications hereunder by providing notice pursuant to this Section.

12. **Reimbursement to the City.** The City has requested that a portion of the \$84 million of City Bonds proceeds it has committed to the Trinity Parkway be reimbursed by the Authority. The Authority is receptive to the City's request and will agree to reimburse the City in an amount based upon the portion of the \$84 million the City shall expend on the Trinity Parkway that is not attributable to the cost of right-of-way acquisition, said reimbursement being dependent and conditioned upon a finding that the Trinity Parkway is financially feasible as a turnpike project and being in an amount which, in the reasonable judgment of the City and the Authority, the Authority may reimburse without violating existing repayment obligations or impairing the Authority's long-term ability to study or

undertake other projects. The actual amount of the reimbursement to the City shall be determined in a subsequent agreement between the City, the Authority and, if appropriate, one or more other parties. The reimbursement shall be accomplished over a twenty (20) year term commencing on January 1, 2026, as necessitated by the Authority's projected capital needs. That subsequent agreement also shall address the source of reimbursement, coverage requirements with respect to the Authority's other debt, and the priority status of the reimbursement obligation.

13. General Provisions.

- a. This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties, or any representations made, which are not expressly set forth herein. This Agreement may be amended only by a written instrument executed by the parties hereto.
- b. This Agreement shall bind the City, the Authority and, with respect to Section 8, TxDOT, and their successors and assigns.
- c. The headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- d. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured or dictated such provision.
- e. This Agreement does not in any way create a partnership, joint venture, or principal/agent relationship between the parties hereto and under no circumstances

shall the City, the Authority or TxDOT be considered as, or represent itself to be, an agent of any other party hereto.

- f. This Agreement is entered into for the sole benefit of the Authority, the City and TxDOT, and their respective successors and assigns. Nothing contained herein, or in any approval subsequently provided or action taken by any party hereto, shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation, or other entity, including, without limitation, the public in general.
- g. The City acknowledges that the Authority must establish the feasibility of the Trinity Parkway as a turnpike project before the Authority can commit to design, construct and operate that project in accordance with the Turnpike Act. Consequently, unless and until said feasibility is established, this Agreement creates no obligations on behalf of the Authority with respect to the ultimate construction, operation, and/or maintenance of the Trinity Parkway project, and the Authority makes no representations with respect thereto. Nothing contained in this Subsection 13.g. shall be construed, however, as conflicting with the Authority's commitment to evaluate fully the feasibility of the Trinity Parkway as a turnpike project.
- h. 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.
- i. If the Authority elects to undertake the construction of the Trinity Parkway project, the City will assist and join with the Authority in obtaining the various approvals,

permits and agreements required of the applicable counties, municipalities, councils of government, agencies, departments and subdivisions, both federal and state.

j. Without limiting the generality of Section 1 or Subsection 13.i. above, the City specifically agrees as follows:

- The City shall use all reasonable efforts to effect the dedication of right-of-way and easements required for the Trinity Parkway. If the Authority elects to undertake the construction of the project, the City promptly shall convey to the Authority all City-owned right-of-way and easements dedicated at that time, and shall cooperate fully with the Authority to obtain the dedication of other property required.
- The City will facilitate the provision of utility services to the Trinity Parkway toll plazas and other facilities by extending, at its cost, all City-owned utility services to the outside boundary of the right-of-way adjacent to the proposed sites for said facilities within the corporate limits of the City.
- If the Authority constructs the Trinity Parkway project, the City will permit the connection of storm water drainage systems built as part of the project to neighboring storm water systems belonging to the City, if any, and the City shall provide any easements or other interests and make such enlargement or other betterment work required to effect the efficient discharge of project storm water in that manner. The City will assist the Authority in obtaining all required NPDES permits.

- 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 design, construction and operation of its turnpike lanes, frontage roads, connectors, ramps, toll plazas and barriers, and similar structures. Further, the City shall not charge the Authority any development, impact, license, zoning, permit, building or construction fees of any kind with respect to the Trinity Parkway.

- k. The Authority agrees that, with respect to billboards or similar outdoor signs within the right-of-way that will constitute the Trinity Parkway, it will follow the policy, expressed in 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 Trinity Parkway 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 Trinity Parkway right-of-way that would be within the view of the traveled portion of the facility. The intent of the parties under this subsection 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 Trinity Parkway.

- 1. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by either the City, the NTTA or TxDOT of any immunities from suit or from liability that the parties may have by operation of law.
- iii. This Agreement shall be construed and governed in accordance with laws of the State of Texas and the parties to this Agreement hereby stipulate that venue for any and all causes of action between the parties and arising under this Agreement shall be State District Court in Dallas County, Texas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF DALLAS

NORTH TEXAS TOLLWAY AUTHORITY

TEODORO J. BENAVIDES,
City Manager

By: *Jill Jordan*
Assistant City Manager

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

ATTEST:
Shirley Gray
City Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ANGELA K. WASHINGTON,
Interim City Attorney

LOCKE LIDDELL & SAPP LLP,
General Counsel

By: *Lawrence G. Hall*
Assistant City Attorney
Submitted to City Attorney *LGH*

Frank E. Stevenson, II
Frank E. Stevenson, II

IN WITNESS WHEREOF, TxDOT has caused this Agreement to be executed on this 11th
day of May, 1999, to evidence its agreement set forth in Section 8 hereof.

TEXAS DEPARTMENT OF TRANSPORTATION

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: Charles W. Heald, P.E.

Charles W. Heald, P.E.
Executive Director

EXHIBIT A

THE AUTHORITY'S DESIGN ASSUMPTIONS

- **General:** Features summarized in Section 2 of this Agreement;
- **Limits:** SH-183 and IH-35E Interchange on the northwest to US-175 and US-75 Interchange on the southeast. Full access would be provided eastbound and westbound from SH-183 and IH-35E and US-175. Access to US-75 would be from a frontage road;
- **Intermediate Interchanges:**
 - Eastbound on-ramp and westbound off-ramp from Commonwealth Drive,
 - Full interchange at Inwood Road,
 - Eastbound on-ramp and westbound off-ramp from Westmoreland Road,
 - Full interchange at Sylvan Avenue,
 - Full interchange at the Woodall Rodgers Freeway,
 - Eastbound on-ramp and westbound off-ramp from Commerce Street,
 - Full interchange at Houston Street and Jefferson Boulevard,
 - Full interchange at Corinth Street,
 - Full interchange at Martin Luther King Boulevard,
 - Westbound on-ramp and eastbound off-ramp from IH-45,
 - Westbound on-ramp and eastbound off-ramp from Lamar Street;
- **Length and Width:** The proposed roadway would be approximately ten miles long and eight lanes wide;
- **Toll Collection:** For the purpose of the Draft Feasibility Report, it was assumed that tolls would be collected using electronic toll collection methods only; and
- **Opening Year:** 2006.

EXHIBIT B

TIMING AND DISTRIBUTION OF THE CITY'S FUNDING

Fiscal Year 1998-1999:	\$10,000,000
Fiscal Year 2000-2001:	\$13,000,000
Fiscal Year 2001-2002:	\$30,700,000
Fiscal Year 2003-2004:	\$ 3,300,000
Fiscal Year 2004-2005:	<u>\$27,000,000</u>
	\$84,000,000