

12/13/01

COPY

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG  
THE CITY OF FRISCO, THE COUNTY OF COLLIN,  
AND  
NORTH TEXAS TOLLWAY AUTHORITY**

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THE STATE OF TEXAS   §  
                                  §  
COUNTY OF COLLIN   §

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG THE CITY OF FRISCO,  
THE COUNTY OF COLLIN, AND NORTH TEXAS TOLLWAY AUTHORITY**

THIS REVISED AND RESTATED AGREEMENT (this "Restated Agreement") is entered into as of the \_\_\_\_ day of December, 2001, by and among CITY OF FRISCO, a municipal corporation organized and existing under the laws of the State of Texas (the "City"), COUNTY OF COLLIN, a political subdivision of the State of Texas (the "County"), and NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political subdivision of the State of Texas (the "Authority");

**W I T N E S S E T H:**

WHEREAS, the City, the County and the Texas Turnpike Authority, an agency of the State of Texas (the "TTA"), entered into that certain Agreement dated as of September 7, 1993 (the "Agreement") by which, among other things, the TTA agreed, subject to the satisfaction of certain conditions set forth in the Agreement, to provide for the construction of a two-lane service road, defined herein and in the Agreement as the "Service Road", extending from south to north a distance of approximately two and nine-tenths (2.9) miles from SH 121 to the point of divergence of the right-of-way for the proposed Dallas North Tollway Extension Project Phase 3 (the "Phase 3 Extension") and South Fifth Street in the City of Frisco, to operate for a limited period of time as a bidirectional street and subsequently to be included as a portion of a one-way



two-lane service or frontage road comprising part of the Phase 3 Extension, all as more specifically provided in the Agreement;

**WHEREAS**, pursuant to Senate Bill 370 which was passed by the 75th Texas Legislature and codified in part as Chapter 366 of the Texas Transportation Code (the "Regional Tollway Authority Act"), the Authority succeeded to all assets, rights and other property, and assumed all duties and obligations, of the TTA with respect to, among other things, the Dallas North Tollway and all existing and proposed extensions thereto, including the Phase 3 Extension and the rights and duties of the TTA under the Agreement;

**WHEREAS**, the County and the City secured sufficient monies to design and construct the Service Road, together with an additional roadway extending northward approximately one and eight-tenths (1.8) miles from the northern terminus of the Service Road to FM 720 (the "Northern Service Road Extension"), and the Authority agreed to reimburse the County and the City (as more specifically described in the following paragraph) for the costs of designing and constructing the Service Road and the Northern Service Road Extension upon the occurrence of certain events and the satisfaction of certain conditions, all as described in that certain Supplemental Agreement No. 1 dated as of April 7, 1998 (the "Supplemental Agreement No. 1") by and between the City, the County and the Authority;

**WHEREAS**, the Supplemental Agreement No. 1 provided that in lieu of accepting monetary reimbursement from the Authority for their construction of the Service Road and the North Service Road Extension, the County and the City could request that the Authority construct either (1) a second two-lane service road (defined herein and in the Supplemental Agreement No. 1 as the "Parallel Service Road") of similar design to, and running generally parallel to, the Service Road and the Northern Service Road Extension, to operate as a one-way

street and subsequently to be included as a portion of a one-way two-lane service or frontage road comprising part of the Phase 3 Extension or (2) a two-lane service road (defined herein and in the Supplemental Agreement No. 1 as the "720/380 Service Road Extension") of similar design to, and extending northward to US 380 from the northern terminus of, the Northern Service Road Extension (*i.e.*, FM 720), to operate as a bidirectional street and subsequently to be included as a portion of a one-way two-lane service or frontage road comprising part of the Phase 3 Extension;

**WHEREAS**, the Supplemental Agreement No. 1 further stated that if and when the Authority provides for the issuance of bonds or the provision of other financing to effect the Phase 3 Extension, the Authority would provide for the construction of the Service Road, the Northern Service Road Extension, the Parallel Service Road and the 720/380 Service Road Extension (collectively defined herein and in the Supplemental Agreement No. 1 as the "Roads and Extensions"), to the extent the Roads and Extensions were not constructed previously by the County and the City, and would reimburse the County and the City for all amounts owed by the Authority regarding the Roads and Extensions;

**WHEREAS**, in accordance with the Agreement, as amended by the Supplemental Agreement No. 1 (collectively, the "Existing Agreement"), the County and the City constructed the Service Road and the Northern Service Road Extension, and in March, 1998, the Authority remitted to the County the sum of Four Million and Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00) to fully discharge the Authority's obligations regarding those facilities at that time;

**WHEREAS**, the County and the City subsequently constructed the Parallel Service Road and a 1.5-mile segment of the 720/380 Service Road Extension, and the County and/or the City

intends to let a construction contract for the remaining 3.5 miles of the 720/380 Service Road Extension on or before December 31, 2001, the location of the Service Road, the Northern Service Road Extension, the Parallel Service Road and the 720/380 Service Road Extension being depicted on Schedule 1 attached hereto and made a part hereof;

**WHEREAS**, the County and the City have requested that the Authority construct that portion of the Phase 3 Extension related to the SH 121/Dallas North Tollway interchange (the "SH 121/DNT Interchange"), but resulting toll revenues are projected to be insufficient to service the bonds required to finance the resulting design and construction costs;

**WHEREAS**, notwithstanding that bonding shortfall, the Authority has agreed to construct the SH 121/DNT Interchange in consideration, in part, of its receipt from the County and the City, jointly, of a Seven Million and No/100 Dollars (\$7,000,000.00) credit against the Authority's reimbursement obligations under the Supplemental Agreement No. 1 and described above for the costs of the Roads and Extensions and, further, insofar as all of the Roads or Extensions have been or shall be fully constructed by the County and the City and the total cost thereof can be accurately estimated as of the effective date of this Restated Agreement, the parties desire to revise and restate the Authority's corresponding obligations under the Existing Agreement taking into account the aforementioned \$7,000,000.00 credit;

**WHEREAS**, the County and the City have fully satisfied a portion of their obligations to provide right-of-way required for the Phase 3 Extension by conveying to the Authority seven (7) tracts of land required for the construction by the Authority of the SH 121/DNT Interchange, and the parties desire to revise and restate the applicable provisions of the Existing Agreement to acknowledge that conveyance and to provide the City the right to require the reconveyance of those seven (7) tracts under certain circumstances;

**WHEREAS**, as additional consideration for the Authority commencing construction of the SH 121/DNT Interchange notwithstanding the bonding shortfall, the City and the County have agreed to use best efforts to reserve and convey to the Authority either fee title to or an easement in additional right-of-way (1) north of FM 720 to accommodate the main lane plaza for the Phase 3 Extension, (2) between SH 121 and Gaylord Parkway to accommodate a third lane to the northbound service or frontage road for the Phase 3 Extension, and (3) in the northeast quadrant of the SH 121/DNT Interchange to accommodate a future direct connector ramp, and the parties desire to document those obligations;

**WHEREAS**, the City requested, and the Authority agreed, to modify the schematic design for the Phase 3 Extension by adding a diamond ramp at Cotton Gin Road, and the parties desire to revise and restate the applicable provisions of the Existing Agreement accordingly; 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 City, the County, and the Authority have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the separate and distinct issues of importance to them regarding the matters addressed in this Restated Agreement;

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

## ARTICLE I.

### AMENDMENT AND RESTATEMENT OF THE EXISTING AGREEMENT

#### A. Status of the Existing Agreement

The City, the County and the Authority acknowledge and agree that the Recitals are true and correct in all material respects. As described in the Recitals, a substantial number of the parties' obligations under the Existing Agreement have been satisfied or require material amendment. Further, new agreements regarding the Phase 3 Extension must be documented. Consequently, the parties have concluded that an additional supplemental agreement to the Existing Agreement would be unwieldy and create confusion, and have executed this Restated Agreement with the express intent that it restate and supersede the Existing Agreement in all respects.

#### B. This Restated Agreement

As of the Effective Date and without limiting the provisions of Section VIII. L. hereof, this Restated Agreement shall be deemed to have superseded the Existing Agreement in all respects, except as to Section III. G. of Supplemental Agreement No. I, and the Existing Agreement shall terminate and be of no further force or effect.

## ARTICLE II.

### THE ROADS AND EXTENSIONS ACCELERATION OF THE SH 121/DNT INTERCHANGE

#### A. Status of the Roads and Extensions

As described in the Recitals, the County and/or the City have constructed the Service Road, the Northern Service Road Extension, the Parallel Service Road and a 1.5-mile segment of the 720/380 Service Road Extension up to FM 2934. The County and the City agree to complete, at their sole cost, the remaining 3.5 miles of the 720/380 Service Road Extension on or

before December 31, 2001. As a result, all of the Roads and Extensions are either completed or scheduled for completion, and the total cost thereof can be accurately estimated. Consequently, the parties agree that the Authority's sole remaining obligation with respect to the Roads and Extensions is one of reimbursement only, as specifically set forth in Section II. B. below.

**B. Acceleration of the SH 121/DNT Interchange; the Roads and Extensions Reimbursement**

This Section II. B. continues, amends and restates the parties' rights and obligations under Section I. D. of the Supplemental Agreement No. 1. The Authority's estimated share of engineering and construction costs to build the SH 121/DNT Interchange exceeds the amount of bond debt that can be financed with the additional toll revenues projected to result from that improvement. In order to induce the Authority to construct the SH 121/DNT Interchange notwithstanding that shortfall, the County and the City have proposed, and the Authority has agreed, that the Authority will receive (1) a credit against the reimbursement amounts it will owe for the Roads and Extensions upon construction of the Phase 3 Extension and (2) the additional right-of-way described in Section III. G. Specifically, pursuant to the Supplemental Agreement No. 1, the Authority is required to provide for the construction of, or the reimbursement of costs for, the Roads and Extensions at such time it issues bonds or obtains other financing to effect the construction of the Phase 3 Extension. The total cost of the Roads and Extensions is estimated to be Twenty Million Three Hundred Thousand and No/100 Dollars (\$20,300,000.00), of which the Authority has previously reimbursed Four Million Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00) in March, 1998, leaving a balance of Fifteen Million Six Hundred Thousand and No/100 Dollars (\$15,600,000.00). For and in consideration of the Authority advancing the construction of the SH 121/DNT Interchange, the Authority shall receive a credit of Seven Million and No/100 Dollars (\$7,000,000.00) against the estimated and unreimbursed costs the

Authority will be required to reimburse the County and the City for the Roads and Extensions upon financing the Phase 3 Extension. Consequently, the Authority agrees to reimburse the County and the City (allocated as they jointly direct in writing) for previously unreimbursed design and construction costs actually incurred for the Roads and Extensions up to the amount of the remaining balance of Eight Million Six Hundred Thousand and No/100 Dollars (\$8,600,000.00) upon the occurrence or satisfaction of the events and conditions described in this Section II. B. and in Section II. C. below (the "Roads and Extensions Reimbursement"). The Authority shall be under no obligation regarding the Roads and Extensions Reimbursement unless and until the Authority receives the proceeds of the Financing (as defined in Section VII. J. below) to effect the Phase 3 Extension. Upon its receipt of the proceeds of the Financing to effect the Phase 3 Extension, the Authority shall remit the Roads and Extensions Reimbursement to the County and the City as they jointly direct. Notwithstanding the foregoing, and as previously set forth in the Existing Agreement, the Authority shall be obligated to remit the Roads and Extensions Reimbursement to the County and the City only if, and to the extent that, the 720/380 Service Road Extension is situated parallel to the controlled access toll lanes of the Dallas North Tollway, and no farther north than said toll lanes, to be constructed with proceeds from the Financing; stated differently, the Authority shall not be obligated to reimburse the County and the City for the cost of any portion of the 720/380 Service Road Extension extending beyond the terminus of the toll lanes constructed or to be constructed with said proceeds, unless and until bonds are issued or other financing is provided for that purpose.

**C. Other Conditions**

As previously provided in Section I.D. of the Agreement and in Sections I.B., I.C. and I.D. of the Supplemental Agreement No. I, the County and the City acknowledge and agree that

the Authority's obligation to remit the Roads and Extensions Reimbursement is further conditioned upon the satisfaction of the following:

- (1) the civil section engineer(s) retained and directed by the County and the City to design the Roads and Extensions shall be acceptable to the Authority, such acceptance not to be unreasonably withheld and shall be deemed given unless expressly disapproved within thirty (30) days following when notice is deemed given the Authority pursuant to Section VIII.A.;
- (2) all engineered features of, and all plans prepared in connection with, the Roads and Extensions shall conform fully with the design of completed and currently contemplated portions of the Dallas North Tollway (including, without limitation, the approved Phase 3 Extension schematic described in Section IV. C. below) and shall be reviewed and approved in writing by the Authority prior to their release for competitive bidding, such approval not to be unreasonably withheld and shall be deemed given unless expressly disapproved within thirty (30) days following when notice is deemed given the Authority pursuant to Section VIII.A.;
- (3) the design, grade, and alignment of the Roads and Extensions shall be approved by the Authority in its sole discretion, but only after reasonable consultation with the County and the City, and shall be constructed in strict accordance with the plans approved by the Authority pursuant to subsection II. C. (2) above; and
- (4) the County and the City shall have provided, and conveyed to the Authority at no cost to the Authority, sufficient right-of-way and easements for the construction and operation of the Roads and Extensions.



Without limiting the provisions of Sections II. F. and VII. B., the Authority shall have no obligation of any sort regarding the Roads and Extensions, nor with respect to the provision of any other service or frontage roads as part of the Phase 3 Extension, except to remit the Roads and Extensions Reimbursement as expressly set forth in this Article II.

**D. Reimbursement of Other Parties**

This Section II. D. continues, amends and restates the parties' rights and obligations under Section III. G. of the Supplemental Agreement No. 1. The Authority acknowledges that the County and the City have obtained or may obtain monies to be applied toward the design and/or construction of the Roads and Extensions from other governmental entities, quasi-governmental entities, or private parties, including without limitation the Frisco Economic Development Corporation. Notwithstanding the ultimate source of funds utilized by the County and the City in the performance of any activities required, permitted or contemplated by this Restated Agreement (or previously under the Existing Agreement), the Authority's reimbursement obligations shall run solely to the County and the City as provided herein, and no other party shall have any rights of reimbursement or otherwise against the Authority with respect thereto, nor shall the Authority be required to seek any consent, or undertake any investigation or inquiry, with respect to any reimbursement made pursuant to and in accordance with the terms of this Restated Agreement or made previously under the Existing Agreement. As provided in Section II. B., the Roads and Extensions Reimbursement and any additional reimbursements or payments of any kind owing by the Authority in the future to the County and the City shall be remitted by the Authority and allocated only if and as the County and the City jointly direct in writing.

**E. Records**

This Section II. E. continues, amends and restates the parties' rights and obligations under Section III. H. of the Supplemental Agreement No. 1. The County and the City shall maintain complete and accurate cost records for all engineered design, surveying, construction, and title insurance work, services and costs relating to the Roads and Extensions and to their other obligations under this Restated Agreement. The Authority and its representatives shall be allowed to inspect said records during regular business hours. All records relating to design and/or construction work for which resulting costs are to be reimbursed pursuant to the terms of this Restated Agreement shall be maintained by the County and the City for three (3) years after reimbursement of said work.

**F. The Parallel 720/380 Service Road Extension**

The parties acknowledge and agree that they have no current agreement, nor is any party obligated in any manner with respect to, a proposed two-lane service road of similar design to, and extending northwards to US 380 from the northern terminus of, the Parallel Service Road on the west side of the proposed Phase 3 Extension right-of-way (the "Parallel 720/380 Service Road Extension"). The City, the County and the Authority agree to consider and negotiate the sharing of costs or other cooperative participation regarding the Parallel 720/380 Service Road Extension, provided that the Authority shall in no event incur any obligation regarding the Parallel 720/380 Service Road Extension (1) unless and until the Authority receives the proceeds of the Financing and then (2) only if and to the extent the Parallel 720/380 Service Road Extension satisfies the conditions (a) in the concluding sentence of Section II. B. and (b) otherwise applicable to the Authority's remittance of the Roads and Extensions Reimbursement,

including those contained in clauses (1) through (4) of Section II. C. The Parallel 720/380 Service Road Extension is depicted on Schedule 1 attached hereto and made a part hereof.

### **ARTICLE III.**

#### **RIGHT-OF-WAY OBLIGATIONS**

##### **A. Surveying**

This Section III. A. continues, amends and restates the parties' rights and obligations under Section II. A. of the Agreement. The City and the County shall retain a professional surveying firm to prepare ground surveys, set or establish monuments and property corners, locate features (including all improvements of any kind), prepare survey plats and prepare legal descriptions for all land which, in the determination of the Authority and its general engineering consultant, HNTB Corporation (the "General Consultant"), is required (1) to be acquired in fee to provide the Authority with a 300-foot wide right-of-way for the Phase 3 Extension or (2) to be encumbered with drainage, slope or embankment, temporary construction or detour, or other easement interests, in order to permit the construction and operation by the Authority of the Phase 3 Extension. All survey plats prepared in accordance with this Section III. A. shall be of such a form as to permit the Title Company, as hereinafter defined, to furnish the "standard survey deletion," and shall be certified and delivered to the Authority.

##### **B. Conveyance to the Authority**

This Section III. B. continues, amends and restates the parties' rights and obligations under Section II. B. of the Agreement. The City, at no cost to the Authority, shall acquire and convey to the Authority (1) fee simple ownership in and to all property required to provide the Authority with a 300-foot wide right-of-way, (2) the appropriate easement interests of suitable lengths and widths in and to all property described in clause (2) of said Section III. A., and (3)

fee simple ownership in and to all property, and all easement interests, required to construct the Roads and Extensions. All property to be provided to the Authority pursuant to this Article III may be conveyed to the City and then to the Authority or directly from the then-current owner to the Authority. The Authority shall receive good and indefeasible fee simple title to all property conveyed, and good title to all easement interests granted, pursuant to this Article III, subject only to those matters of title reasonably acceptable to and approved by the Authority (the "Permitted Exceptions"), and free from all liens, rights of assessments, private easements, rights of reverter, and use restrictions. All property and easement interests shall be conveyed or granted by such instruments and with such warranties of title as are required by the Title Company as a condition to the issuance of the title insurance described in Section III. C. below. Upon obtaining title to any property or easement interest to be conveyed to the Authority pursuant to this Article III, the City shall convey said property or easement to the Authority at such time as the Authority is prepared to commence design and construction of the service or frontage roads and controlled access tollway lanes thereon. The City shall cooperate with the NTTA Outside General Counsel, as defined in Section III. D. below, in reviewing and, to the extent necessary, clearing the status of title for the property to be conveyed or to be encumbered by an easement, and shall deliver all applicable legal documents prepared by the NTTA Outside General Counsel, including deeds, easement agreements and partial releases, to the affected owners.

**C. Title Insurance**

This Section III. C. continues, amends and restates the parties' rights and obligations under Section II. C. of the Agreement and Section I. E. of the Supplemental Agreement No. 1. The Authority has retained Republic Title Company (the "Title Company") to issue, at no cost to

the City or the County, owner policies of title insurance insuring the Authority's good and indefeasible title to the property to be conveyed to the Authority in fee, and good title to the easements to be granted to the Authority, pursuant to Section III. B. above and Section III. G. below, said policies to be subject only to the Permitted Exceptions. Without limiting the foregoing, the City shall provide the foregoing title insurance, at the Authority's cost, with respect to all property and easements required in connection with the construction of the Roads and Extensions

**D. NTTA Outside General Counsel**

This Section III. D. continues, amends and restates the parties' rights and obligations under Section I. C. of the Agreement. The Authority shall authorize and direct its outside general counsel, Locke Liddell & Sapp LLP (the "NTTA Outside General Counsel"), to draft and/or review all documents necessary or desirable to effect the conveyance of the fee and easement interests to be provided by the City and the County pursuant to this Article III. The foregoing services to be performed by the NTTA Outside General Counsel shall include, in cooperation with the City and the County, the clearing of title to property and easements to be conveyed to the Authority pursuant to Section III. B. above and Section III. G. below, as necessary. The NTTA Outside General Counsel shall review the status of title for the property to be conveyed or encumbered by an easement and shall prepare all applicable legal documents, including deeds, easement agreements and partial releases, to be delivered to the City and the County for subsequent transmittal to the affected owners.

**E. Conveyance of Streets to the City or the County**

This Section III. E. continues, amends and restates the parties' rights and obligations under Section I. G. of the Agreement. Upon completion of the Phase 3 Extension, the Authority

shall convey to the City a permanent and perpetual easement for street purposes in and to the right-of-way on which service or frontage roads comprising part of the Phase 3 Extension have been constructed within the corporate limits of the City of Frisco and shall convey to the County a permanent and perpetual easement for street purposes in and to the right-of-way on which service or frontage roads have been constructed within the jurisdiction of the County of Collin. Without limiting the provisions of Article VI hereof, the City and the County thereafter shall operate, maintain, regulate, and police said service roads.

**F. Satisfaction of Obligations for Seven Parcels; the City's Reconveyance Right**

The Authority acknowledges and agrees that the County and the City have fully satisfied a portion of their obligations to provide right-of-way required for the Phase 3 Extension and described in Section III. B. above by conveying to the Authority seven (7) tracts of land required for the construction of the SH 121/DNT Interchange, said tracts being identified by the Authority as DNT Parcels 11-1, 11-2, 11-3, 11-4, 11-6, 11-8 and 11-26. The Authority acknowledges and agrees that if construction is not commenced on the SH 121/DNT Interchange within one (1) year following the City's execution and delivery of the deeds conveying the above-described seven (7) tracts to the Authority, the City may require that the property conveyed thereby be reconveyed by the Authority pursuant to instruments substantially identical to those deeds, at no cost to the City. Additionally, prior to the commencement of construction, the Authority shall not encumber or convey said property so as to frustrate the intent or operation of the City's reconveyance rights provided in the foregoing sentence. Immediately upon the commencement of construction and without the necessity of any notice or action of any kind, the City's reconveyance rights shall terminate automatically and be of no further force or effect.

**G. Additional Right-of-Way Obligations**

In addition to its obligations under Section III. B. above, and for and in consideration of the Authority's agreement to commence construction of the SH 121/DNT Interchange notwithstanding the bonding shortfall described in Section II. B, the City and the County agree to use best efforts to reserve and convey to the Authority all additional right-of-way required to accommodate (1) the main lane plaza for the Phase 3 Extension north of FM 720 and generally depicted on the schematic referenced in Section IV. C., below, (2) an additional third lane to the northbound service or frontage road between SH 121 and Gaylord Parkway, and (3) a future direct connector ramp (from southbound SH 121 to northbound Dallas North Tollway) in the northeast quadrant of the SH 121/DNT Interchange. The City or the County shall convey the property described in clause (1) of the preceding sentence to the Authority with the remainder of the property described in Section III.B. and the property described in clauses (2) and (3) not later than January 1, 2006. The additional right-of-way required pursuant to this Section III. G. is described or depicted on the schematic referenced above or on Exhibit A attached hereto and made apart hereof, and shall be conveyed in accordance with the procedure and standards described in Sections III. A. through D. above.

**ARTICLE IV.**

**DESIGN ISSUES**

**A. Design Revisions**

The initially proposed schematic for the Phase 3 Extension included fourteen (14) pairs of ramps between SH 121 and US 380. The City requested, and the Authority has agreed, that the design for the Phase 3 Extension be modified to add a diamond ramp at Cotton Gin Road to service the Frisco Square development (the "Design Revisions"). For and in consideration of the

Authority's agreement to modify the Phase 3 Extension design and to include the Design Revisions, the City has agreed to provide the assurance set forth in Section IV. C. below.

**B. Public Involvement**

Any public meetings or hearings required as a result of the Design Revisions or otherwise regarding the Phase 3 Extension shall be conducted with the City's and the County's support and involvement, working in cooperation with the Authority toward expediting completion of the Phase 3 Extension. Officials with the Texas Department of Transportation ("TxDOT") also shall be encouraged to participate in those meetings and hearings.

**C. Approval of Design**

The Phase 3 Extension has been revised to incorporate the Design Revisions, and the City and the County therefore acknowledge and agree that the design, alignment, number and location of ramps and other features of the Phase 3 Extension as indicated by (and to the extent and level of detail shown on) the most current schematic are fully acceptable to the City and the County in all respects, said design, alignment, ramp configuration and other features being generally depicted on Exhibit B attached hereto and made a part hereof.

**D. Aesthetic Treatments**

The Authority shall develop a base standard for aesthetic treatments to be included in the Phase 3 Extension design. The Authority shall maintain a technical work group including representatives from the City and the County for the purposes of sharing information, coordinating efforts and consulting with interested parties, including for the purpose of evaluating the modification of aesthetic treatments, including landscaping, within the design of the Phase 3 Extension and in addition to the base aesthetic standard. The determination of whether to incorporate any aesthetic modifications, upgrades or additions shall be at the sole



discretion of the Authority. If the City or the County requests and the Authority agrees to a modification, upgrade or addition to the Authority's base aesthetic standard for the Phase 3 Extension, the City or the County, as applicable, shall reimburse the Authority for the difference in costs between the design and construction of the Authority's base aesthetic treatments and the requested modifications, upgrades or additions. The City or the County, as applicable, shall pay the resulting design and construction costs within thirty (30) days after receipt of an invoice therefor from the Authority, unless otherwise agreed by the Authority and the City or the County.

## **ARTICLE V.**

### **THE CITY'S AND THE COUNTY'S SUPPORT AND OBLIGATIONS**

#### **A. Support of the Phase 3 Extension**

The City and the County acknowledge their approval of and support for the Authority's financing, design, construction, operation and maintenance of the Phase 3 Extension as a turnpike facility (including, without limitation, the Dallas North Tollway portions of the SH 121/DNT Interchange) and agree to take all actions reasonably requested by the Authority which are consistent with this Restated Agreement in the furtherance of the purposes hereof. The City and the County agree to support the Authority in the necessary environmental clearance and review process, and to provide such information and support as may be requested by the Authority, TxDOT, the Federal Highway Administration ("FHWA"), or any other governmental or quasi-governmental entity in the environmental application and review process or with regard to the necessary toll feasibility (including the report of the Authority's financial advisor or underwriter), environmental and corridor studies (collectively, the "Studies"). The parties agree to coordinate and conduct the necessary public hearings and public participation efforts required

to initiate and complete the Phase 3 Extension. The parties shall make every reasonable effort to maintain communication with the public and with their respective representatives regarding the progression of the Phase 3 Extension review process. In addition, the City and the County agree to assist and join with the Authority in obtaining the various approvals, permits and agreements required of the applicable governmental entities and agencies, whether federal, state or local, regarding the Phase 3 Extension. Finally, without limiting those provisions of this Restated Agreement stipulating that the SH 121/DNT Interchange comprises part of the Phase 3 Extension, the rights provided the Authority pursuant to this Article V. regarding construction staging areas, utility relocation, utility clear zones, signalization, utility service, drainage map revisions and other matters shall be equally applicable to, and exercisable by the Authority for, the construction of the SH 121/DNT Interchange as for the remainder of the Phase 3 Extension.

**B. Construction Staging Areas**

If requested by the Authority, the City and the County shall provide, on a temporary basis as described below, any available right-of-way located along the Phase 3 Extension for the Authority's exclusive use as a staging area during the construction of the Phase 3 Extension. Such areas may be used for the placement and operation of construction site trailers, temporary material disposal, temporary embankments or shoring structures, the operation of a concrete and/or asphalt batch plant, and for any other purpose related to the construction of the Phase 3 Extension. During its use of the staging areas, the Authority shall use all reasonable efforts to maintain the property in an orderly condition, free from excessive debris and clutter. Upon completion of construction activities for the Phase 3 Extension or cessation of the Authority's use of the staging areas, whichever comes first, the Authority shall return the staging areas to the

City or the County, as applicable, in a condition comparable to when received for use by the Authority.

**C. Utility Relocation, Generally**

The City shall 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 right-of-way required for the Phase 3 Extension or are otherwise affected by, or in conflict with, the construction, operation or maintenance of the Phase 3 Extension. If the City elects to reimburse the Authority in lieu of performing the relocation work, the Authority, its engineer(s) and contractor(s), at the City's expense, shall design and undertake said relocation and the City shall provide, at its expense, quality assurance inspection services during said relocation and adjustment, all as may be more specifically set forth in the Subsequent Agreements, as defined in Section VII. D.

**D. Utility Clear Zones at DNT Overpasses**

The City shall also be responsible for the relocation of all utilities, conduits, cables and related improvements and facilities at the Phase 3 Extension overpass locations. Relocations shall be in such a manner to provide an unobstructed zone for the overpass bridge foundations at each location where the Phase 3 Extension crosses over existing or proposed City of Frisco streets. The City shall provide a utility clear zone as shown in Exhibit C, attached hereto and made a part hereof. This utility clear zone shall be located between four feet (4') and twelve feet (12') behind the back of curb of the through traffic lanes of the ultimate cross street width. The Authority will design the overpass bridges to accommodate the ultimate cross street widths as determined by the City. If the Authority determines that the Phase 3 Extension bridge foundation elements are required in the center median of cross streets, an eight foot (8') wide utility clear

zone shall also be provided by the City. The utility clear zone shall extend not less than seventy-five feet (75') in either direction of the Phase 3 Extension centerline (one hundred fifty feet [150'] total). The City shall cause any and all necessary relocations to be completed in a timely manner so as to avoid any delay in any portion of the construction of the Phase 3 Extension. Nothing in this Section V. D. or in Section V. C. above is intended or shall be construed as imposing any obligations on the City to relocate utilities that are located either (1) south of the SH 121 intersection with the Dallas North Tollway or (2) outside the corporate limits of the City.

**E. Signalization**

This Section V. E. continues, amends and restates the parties' rights and obligations under Section II. D. of the Agreement. For and in consideration of the City's and/or the County's acquisition and donation to the Authority of the additional right-of-way for the Phase 3 Extension described in Section III. G., the Authority shall reimburse the City in an amount not to exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) for costs the City incurs in the design, construction and installation of traffic signalization necessitated by the construction of the Phase 3 Extension. The City (with respect to property within its corporate limits) or the County (with respect to property within its jurisdictional limits), as applicable, shall 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) any temporary or permanent traffic signalization systems at the intersections of the City's streets and the County's roads with the Phase 3 Extension and also shall relocate, at its sole expense, any traffic signals, conduit, controllers or any other related facilities that may be required for the construction of the Phase 3 Extension (collectively, the "Signalization Work"). The City or the County, as applicable, shall ensure that the design and performance of the Signalization Work

(including all related relocation and installation activities) do not delay or impede the construction, opening to traffic or subsequent operation of the Phase 3 Extension. To that end, the City or the County, as applicable, shall submit the plans and specifications for the Signalization Work to the Authority for its review and approval prior to commencing any of the Signalization Work, provided that the Authority's review and approval shall not impose any obligation or liability on the Authority with respect to the Signalization Work or alter or abrogate any of the City's or the County's obligations pursuant to this Restated Agreement. Notwithstanding the foregoing, at the City's request, the Authority shall agree to undertake the installation and subsequent removal of temporary traffic signalization systems at the City's cost upon terms set forth in a separate agreement. Upon completion of the Signalization Work, the City and the County agree to operate and maintain the described traffic signalization systems 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. The Authority's sole obligation regarding the Signalization Work is one of reimbursement only, and nothing contained in this Restated Agreement shall impose upon or create for the Authority any responsibility for (1) the proper design, operation or maintenance of traffic signalization along the Phase 3 Extension or (2) the police enforcement required for securing compliance with the traffic signals described in this Restated Agreement.

**F. Utility Service**

This Section V. F. continues, amends and restates the parties' rights and obligations under Section II E. of the Agreement. When requested by the Authority, the City will supply, at its sole cost, water and sanitary sewer service to the perimeter of the Authority's Phase 3 Extension right-of-way and adjacent to the Authority's facilities, including ancillary support and

administration buildings, ramp tollbooths and main lane toll plazas that are located within the City's corporate limits. The City shall invoice the Authority only for the Authority's actual usage of said services at such standard rates as the City charges other governmental entities, and the Authority shall promptly pay all invoices submitted therefor by the City.

**G. Advancing Commencement of the Phase 3 Extension**

As evidenced by the parties' negotiation and execution of this Restated Agreement, their previous execution of and performance under the Agreement and the Supplemental Agreement No. 1 and the Authority's preparation of the Studies, the Authority, the City and the County have identified the ultimate construction of the Phase 3 Extension as a critical component to addressing mobility, development and quality of life issues in the region. To that end, the Authority agrees that it will pursue the Studies and otherwise continue to evaluate the feasibility of the Phase 3 Extension with reasonable diligence and will seek new toll, feasibility, environmental and corridor studies, or updates to existing ones, *at least* as frequently as is consistent with the Authority's customary practices. The Authority promptly shall deliver to the City and the County copies of the Studies, together with all updates and revisions thereto issued from time to time. The City and the County, at their sole option, may request that the Studies be clarified or updated, or that specific data or issues be taken into consideration or evaluated, provided that if (1) the Authority disagrees that the updates, revisions or other modifications are warranted, the City and the County shall be responsible for, and promptly discharge, all resulting costs and charges; and (2) the City and the County agree to refrain from seeking such modifications with unreasonable frequency or from otherwise overburdening the Authority's consultants with such requests. The Authority further agrees to evaluate with the City and the County methods to accelerate the commencement of the Phase 3 Extension. To the extent the

Studies indicate in the opinion of the Authority that the Phase 3 Extension is not feasible as a turnpike project, the City and the County, jointly and at their sole option, may commit to satisfy, or provide for the satisfaction of, the monetary, non-monetary and/or other conditions identified by the Authority as preventing or impeding the determination that the Phase 3 Extension is feasible as a turnpike project (the "Feasibility Conditions"), including the City's and the County's agreement to provide or obtain the monetary contribution or support required to satisfy any monetary shortfalls. Any such commitment must (1) be accompanied by such reasonable assurances of performance as the Authority, the NTTA Outside General Counsel, its financial advisor, traffic engineer and bond counsel may require, (2) fully address and be completely responsive to the Feasibility Conditions as specifically identified, described and set forth by the Authority, and (3) state that, if accepted, it is unconditional and irrevocable. Stated differently, the Authority will consider, diligently and in good faith, and will commit funds and resources to evaluate any proposal jointly advanced by the City and the County to address the Feasibility Conditions that conforms to the conditions of the preceding sentence, but shall be under no obligation to commit funds and other resources to review any proposal to accelerate commencement of the Phase 3 Extension which constitutes an alternate approach to resolving any Feasibility Condition or otherwise fails to fully satisfy the actions, conditions or other requirements identified by the Authority in the Studies for addressing any Feasibility Condition. In all events, the Authority's Board of Directors, consistent with its statutory and other obligations and duties, shall be the final arbiter of whether the City's and the County's proposal satisfies the criteria contained in the two preceding sentences, as well as whether the requested acceleration by the City and the County should be undertaken pursuant to the timetable and in the manner proposed by the City and the County. Except as provided in (and in accordance

with) this Section V.G., unless and until the Authority notifies the City and the County that the design, construction and operation of the Phase 3 Extension as a turnpike project is not feasible, the City and the County shall neither advance nor support any alternative to, or conflicting proposal for, the development of the Phase 3 Extension, including without limitation any thoroughfare corridor parallel to the Phase 3 Extension. Finally, nothing contained in this Section V.G. shall create any third-party beneficiary or other rights in the City or the County with respect to the Studies or the contracts between the Authority and its consultants regarding the preparation of the Studies, and said consultants shall continue to be retained solely by and for the benefit of the Authority, and neither the City nor the County shall have any right, or otherwise attempt, to direct the activities of those consultants.

#### **H. Drainage Map Revisions**

It is not anticipated that the Authority will be required to obtain a Letter of Map Revision ("LOMR") from the Federal Emergency Management Agency ("FEMA") for the construction of the SH 121/DNT Interchange because the construction and operation of that facility will not require the diversion of storm water runoff or the disturbance of any channel sections outside of the Authority's rights-of-way. However, if the City determines that it is necessary to obtain a Conditional Letter of Map Revisions ("CLOMR") and/or LOMR for the diversion of storm water runoff or the disturbance of any channel sections within its rights-of-way along the Phase 3 Extension, the City agrees to accept full responsibility for submitting all applications required to obtain a CLOMR and/or LOMR from FEMA. The City shall be solely responsible for the permitting process, including design, field survey, print fees and any document revisions that are necessary to complete a LOMR and/or CLOMR, provided that the Authority shall provide technical information and assistance required to prepare the CLOMR application. The City



agrees to use its reasonable efforts to secure approvals from FEMA and from any property owners affected by any proposed map revisions. The Authority and City shall take the steps necessary to expedite and avoid delays in the application process for the CLOMR and LOMR. The City agrees to promptly contact the Authority regarding technical and other matters requiring assistance from the Authority's staff or agents. If easements across private property are required to effect a proposed map revision and to accommodate the drainage improvements related to and necessitated by the Phase 3 Extension, the City shall be responsible for acquiring the easements at its sole cost. The City acknowledges and agrees that if the map revisions indicate the passage on, over, through or under City-owned property, the City shall grant the necessary easements at no cost to the Authority. The County agrees to provide similar support with respect to those portions of the Phase 3 Extension located outside of the City's corporate limits.

## **ARTICLE VI.**

### **MAINTENANCE**

#### **A. Summary of Terms and Limits of Maintenance for the Phase 3 Extension**

As described in Section II. A. of this Restated Agreement, the County and/or the City have designed and constructed, or will design and construct, all of the Roads and Extensions. Additionally, the County and/or the City have committed to design and construct a two-lane service road of similar design to, and running parallel to, the 720/380 Service Road Extension and extending southward and from US 380 to the northern terminus of the Parallel Service Road, to operate as a bidirectional street and subsequently to be included as a portion of a one-way two-lane service or frontage road comprising part of the Phase 3 Extension. The facility described in the preceding sentence, together with the Roads and Extensions, as they may

ultimately constitute service or frontage roads comprising part of the Phase 3 Extension are hereinafter referred to as the "Phase 3 Frontage Roads". The northbound Phase 3 Frontage Road will be situated on the east side of the Phase 3 Extension right-of-way between the northbound toll lanes and the east Phase 3 Extension right-of-way limits. The southbound Phase 3 Frontage Road will be situated on the west side of the Phase 3 Extension right-of-way between the southbound toll lanes and the west Phase 3 Extension right-of-way limits. Said northbound and southbound toll lanes, together with all ramps extending to or from said lanes up to their gore nose or intersection with the applicable Phase 3 Frontage Roads or other streets, are hereinafter referred to as the "Turnpike Lanes"; the portion of the Phase 3 Extension right-of-way on which the Turnpike Lanes are situated is referred to as the "Turnpike Lanes Area"; and the remaining portion of the Phase 3 Extension right-of-way is hereinafter referred to as the "Phase 3 Frontage Roads Area." Generally, the Authority shall be responsible for the operation, maintenance, policing, regulation and repair of the Turnpike Lanes, and the City or the County, as applicable, shall be responsible for the operation, maintenance, policing, regulation and repair of the Phase 3 Frontage Roads, all as more specifically set forth in Sections VI. B. and C. below and as depicted on the "Ultimate Section and Typical Plan" attached hereto and made a part hereof as Exhibit D. The maintenance provisions of this Restated Agreement shall apply to those portions of the Turnpike Lanes Area, adjoining Phase 3 Frontage Roads Area and/or rights-of-way comprising the Phase 3 Extension and situated within either the City's corporate limits or the County's jurisdictional limits.

**B. Authority Maintenance Responsibilities**

With respect to the Phase 3 Extension, the City, the County and the Authority acknowledge and agree that the Authority has the responsibility to:

- (1) Maintain all the Phase 3 Extension 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 Area.
- (2) Maintain all improvements constructed by the Authority as a part of the Phase 3 Extension exit and entrance ramps within the limits extending from the Turnpike Lanes Area to the ramp gore nose at the applicable Phase 3 Frontage Road.
- (3) Repair and maintain all soundwalls, screen walls, retaining walls and similar structures within the limits of the Turnpike Lanes Area.
- (4) Maintain the fence and guardrail, if any, placed along and between the Turnpike Lanes Area and the Phase 3 Frontage Roads Area used to protect ramp toll plazas.
- (5) Maintain all the Phase 3 Extension illumination structures, including under-bridge luminaires, but specifically excluding all Phase 3 Frontage Road illumination and street intersection illumination.
- (6) Maintain complete bridge structures that carry the Turnpike Lanes over the City's or the County's streets.
- (7) Maintain structural bridge components carrying the City's or the County's streets over the Turnpike Lanes.
- (8) Maintain all the Phase 3 Extension trailblazers, "Left Lane Must Enter Turnpike," "No Pedestrians, Bicycles or Motor Driven Cycles," and similar signs regarding the Phase 3 Extension within the corporate limits of the City or the jurisdictional limits of the County.
- (9) License, permit, and regulate utility construction and maintenance along and across the Turnpike Lanes Area.

The Authority acknowledges and agrees that, save and except for fire, "haz-mat," and EMS response, the City and the County shall have no responsibility or obligation to operate, maintain, police, regulate and provide public safety functions for the Turnpike Lanes and/or with respect to the Turnpike Lanes Area.

**C. City and County Maintenance Responsibilities**

With respect to the Phase 3 Extension, the City, the County and the Authority acknowledge and agree that the City (only with respect to the following obligations relating to services, structures or property within the City's corporate limits) or the County (only with respect to the following obligations relating to services, structures or property within the jurisdictional limits of the County), as applicable, has the responsibility to operate, maintain, police, regulate and provide public safety functions for the City's streets or the County's roads over and under the Turnpike Lanes (but not including the Turnpike Lanes) and for the Phase 3 Frontage Roads situated within the corporate limits of the City or the jurisdictional limits of the County, said responsibilities to include the following:

- (1) Repair and maintain all the City's streets or the County's roads over and under the Turnpike Lanes and all Phase 3 Frontage Roads, including all traffic signal systems, luminaires, other illumination structures, and foundations therefor.
- (2) Repair and maintain all storm water conduits and receivers, both open and closed, on, along and across the Phase 3 Frontage Roads Area and maintain any drainage, utility, right-of-way or other easements situated thereon for the purpose of serving the Phase 3 Extension.
- (3) Repair and maintain all soundwalls, screen walls, retaining walls and similar structures within the Phase 3 Frontage Roads Area.

- (4) Maintain all unpaved Phase 3 Extension right-of-way areas not otherwise identified herein as a responsibility of the Authority.
- (5) Keep the vegetation mown, maintain all landscaping and irrigation systems, and remove, collect and dispose of unauthorized signs, debris and trash accumulated in the Phase 3 Extension right-of-way areas not otherwise identified herein as a responsibility of the Authority.
- (6) Maintain and, as necessary, modify guardrail and fences, if any, along the Phase 3 Frontage Roads and the City's streets or the County's roads crossing over and under the Turnpike Lanes.
- (7) Maintain and, as necessary, modify or supplement all traffic regulatory and directional signs and all pavement traffic markings on the Phase 3 Frontage Roads and on the City's streets or the County's roads over and under the Turnpike Lanes, except Phase 3 Extension trailblazers, "Left Lane Must Enter Turnpike," "No Pedestrians, Bicycles or Motor Driven Cycles," and similar signs regarding the Phase 3 Extension.
- (8) Furnish all policing, sweeping, flushing, snow/ice control services and other public safety services on the Phase 3 Frontage Roads and on the City's streets or the County's roads crossing over and under the Turnpike Lanes.
- (9) License, permit, and regulate all driveway and street connections to the Phase 3 Frontage Roads, and otherwise maintain proper control of access in relation to ramps to and from the Turnpike Lanes.
- (10) Provide fire, "haz-mat," and EMS response for the Turnpike Lanes and the Phase 3 Frontage Roads.

The City and the County acknowledge and agree that the Authority shall have no responsibility or obligation to operate, maintain, police, regulate and provide public safety functions for the Phase 3 Frontage Roads and/or with respect to the Phase 3 Frontage Roads Area.

## **ARTICLE VII.**

### **GENERAL PROVISIONS**

#### **A. Term of this Restated Agreement**

The term of this Restated Agreement shall commence on the effective date set forth above and end on the earlier to occur of (1) the complete performance by the parties hereto of all provisions of this Restated Agreement or (2) upon determination by the Authority of the non-feasibility of the Phase 3 Extension. If the Authority determines in its sole discretion that it would not be feasible to continue with the evaluation, planning or construction of the Phase 3 Extension, the Authority shall notify the City and the County in writing of its intent to terminate this Restated Agreement, which shall become effective immediately upon the City's and the County's receipt of said notification. Notwithstanding the foregoing, the City's right to require the reconveyance of property described in, and pursuant to the terms of, Section III.F. and the provisions of Section VII. I. hereof shall remain in full force and effect notwithstanding any such termination.

#### **B. Service Roads**

Without limiting the provisions of Section II. A and B., other than its payment of the Roads and Extensions Reimbursement in accordance with the terms of this Restated Agreement, the Authority has no obligation of any kind to design, construct or operate service, frontage or access roads in connection with the Phase 3 Extension. The City or the County shall be

responsible for designing, constructing and maintaining at its sole expense any underpass U-turns and U-turn deceleration lanes along any Phase 3 Frontage Road, provided that to the greatest extent practicable, the Authority shall design and construct bridges for the Phase 3 Extension so as to accommodate said lanes. The City or the County, as applicable, shall ensure that the design and construction of such facilities will not delay or impede any phase of the construction of the Phase 3 Extension or the subsequent operation thereof. Without limiting the provisions of Section VI. C. above, the City agrees to operate and maintain all Phase 3 Frontage Roads constructed by the Authority within the City's corporate limits commencing upon the Authority's completion of the construction of the Phase 3 Extension, and the County agrees to maintain all such Phase 3 Frontage Roads situated outside the City's corporate limits and within the County's jurisdictional limits. The City and the County further agree that the Phase 3 Frontage Roads will not be operated or maintained in such a manner so as to impede access to or egress from the Turnpike Lanes, and, without limiting the foregoing, in exercising its authority to license, permit and regulate driveway permits for the Phase 3 Frontage Roads, the City and the County shall maintain control of access consistent therewith and with all other applicable terms of this Restated Agreement.

**C. Cross Streets or Roads**

If the City or the County desires at any time to construct or modify a cross street or road over or under the Phase 3 Extension, it shall contact the Authority and thereafter take all steps the Authority reasonably deems necessary or desirable to ensure that the design, construction, maintenance and operation of the cross street or road does not impair or interfere with the design, construction, operation or maintenance of the Phase 3 Extension. The City or the County shall submit the plans for any such proposed cross street or road to the Authority for the Authority's

review, and the applicable construction contract shall not be let unless and until the Authority approves the plans in writing. Thereafter, the cross street or road shall be constructed in accordance with the approved plans and the Authority shall have the right to make such inspections and testing it desires to confirm same. Without limiting the foregoing, the City or the County, as applicable, at its sole expense shall cause any cross street or road to be designed and constructed to accommodate the profile grade design of the Phase 3 Extension. The City or the County, as applicable, also shall cause its staff and consultants to meet and communicate with the Authority regularly during the design and construction phases of any cross street or road, and the Authority shall reasonably cooperate and with the City or the County in advancing the design and construction of any cross street or road complying with the provisions of this Section VII.C.

**D. Subsequent Agreements**

Upon completion of the Studies and the Authority's determination, in its sole discretion, that the Phase 3 Extension is feasible as a turnpike project, the City and the County agree to enter into such agreement(s) with the Authority as may be necessary for the construction, operation and maintenance of the Phase 3 Extension (whether one or more, the "Subsequent Agreements"). The Subsequent Agreements may, among other things, (1) specify the final alignment of and/or final schematics for the Phase 3 Extension and (2) more precisely delineate cost sharing between the parties, responsibilities for property acquisition and transfer, responsibilities for construction, operation and maintenance of the Phase 3 Frontage Roads, interchanges, traffic control devices (including specific project limits), details and timing regarding the relocation of utilities, and such other terms as may be appropriate to ensure the physical and fiscal integrity of the Phase 3 Extension. Although the precise terms of the Subsequent Agreements shall be negotiated at a later time, none of those terms shall conflict with any provision of this Restated Agreement,



absent the specific agreement of the parties to the contrary, and all such Subsequent Agreements otherwise shall be consistent with the terms and provisions hereof.

**E. Control of Authority Facilities and Operations; Nonapplicability of Certain City and County Codes**

The City and the County acknowledge and agree that the Authority is not subject to any zoning, building and development codes and/or ordinances promulgated and enforced by the City or the County, and that the City and the County shall not assess against the Authority any development, impact, license, zoning, permit, building, connection or construction fee(s) of any kind with respect to the construction or operation of the Phase 3 Extension. The City and the County acknowledge that as a result of federal and/or state regulations, traffic control concerns, work sequencing or weather-related issues or general scheduling matters, the Authority may be required to perform construction activity at night, and the City and the County agree to accommodate and support such activity, if necessary, upon receiving reasonable prior notice thereof by the Authority. Notwithstanding the foregoing, the Authority agrees that it shall comply with all national building codes with respect to its design and construction of buildings which are not distinctive to the Authority's statutory purpose of constructing and operating turnpike projects. By way of example and not in limitation, the Authority shall comply with said codes with respect to administrative buildings, but not toll plazas.

**F. Storm Water Permitting**

The City will permit the Authority to connect to the City's municipal separate storm sewer and storm water drainage systems (the "MS4"), if any, and the City will provide easements and other interests and make such enlargement or other betterment work required for the efficient discharge of project storm water from the Phase 3 Extension. If the Authority must seek permitting for storm water discharges or outfalls, the City agrees, at the Authority's option,

to either (1) include the Authority as a co-permittee in the City's MS4 storm water permit applications or (2) provide the information and assistance necessary to allow the Authority to seek an individual permit for the MS4 operated by the Authority within the corporate limits of the City. If the Authority is unable to permit individually, the City will submit all permits and conduct all storm water quality testing and reporting, and the Authority shall reimburse the City for all additional actual costs that result. At the City's request, the Authority will provide the City with technical information and assistance required to prepare the applications. Whether an individual or co-permit is obtained, the City and the Authority agree as follows:

- (1) The Authority will be responsible for the construction, operation, maintenance and inspection of the MS4s it owns within the Turnpike Lanes Area unless otherwise provided in an agreement with the City. The City shall be responsible for the construction, operation, maintenance and inspection of the MS4s it owns.
- (2) Each party will submit its own proposed storm water management program as part of its MS4 permit application and will be responsible for implementing the program on the MS4 for which it is the operator and for complying with the conditions of its storm water permit relating to the program.
- (3) Each party will implement procedures to investigate, detect and abate unlawful discharges and improper disposal into the MS4s that each party operates. If discharges to the MS4 operated by the Authority are involved, the City and the Authority shall consult with each other on water quality problems attributable to third parties, and will coordinate efforts to initiate a mutually acceptable response to minimize or eliminate the water quality problem. At the Authority's request, the City will enforce the City's regulations regarding the contribution of

pollutants to the MS4 caused or occurring within the Authority's right-of-way, provided that the Authority's right to abate or otherwise regulate the same third-party conduct shall not be affected thereby.

- (4) The Authority will use reasonable efforts to control pollution in storm water that originates on the Authority's right-of-way, as required by the conditions of its MS4 storm water permit. The City will use reasonable efforts to control pollution in storm water discharged onto the Authority's right-of-way, as required by the conditions of its MS4 storm water permit.
- (5) Each party will promptly notify the other if it knows of a release of oil or a hazardous substance in an amount that may be harmful and that may be introduced into the other party's MS4.
- (6) After reasonable notice to and approval by the Authority and subject to safety and traffic-control measures required by the Authority in response to such notice, the City may enter the Authority's right-of-way to conduct inspections reasonably related to monitoring compliance with storm water pollution laws by parties other than the Authority. Without limiting the foregoing, any activity performed by the City, its agents, employees or contractors on the Authority's right-of-way shall comply with all applicable local, state and federal laws and regulations.
- (7) The Authority may incorporate into its MS4 permit applications and reports the results of the City's tests conducted in connection with its MS4 storm water permits, including "wet-weather" monitoring results (whether under the wet-weather monitoring program coordinated by the North Central Texas Council of Governments or otherwise) and "dry-weather" field screening.

- (8) At the City's request, the Authority will make available to the City research related to highway operations and storm water runoff referenced in the storm water management plan included in Part 2 of the Authority's National Pollution Discharge Elimination Systems permit application, including design procedures and standard details developed by the Authority as best management practices for construction activities and for permanent storm water quality structural treatment controls.
- (9) The Authority may state its reliance on the storm water public awareness program, which is required by the MS4 storm water permit for the City and which is conducted by the City, as a program that satisfies the Authority's public awareness program obligations under the MS4 storm water permit.
- (10) The City and the Authority each may incorporate into its respective MS4 permit applications and reports information from the permit applications or reports filed by the other.

**G. Soundwalls**

The Authority may be required by federal law to construct soundwalls (sometimes known as noise walls), screen walls, retaining walls or similar structures as a condition to operating the Phase 3 Extension, and shall pay all resulting design and construction costs. The provision of soundwalls will be analyzed in the environmental assessment (the "EA") prepared as part of the Studies in accordance with the Authority's applicable criteria. The City and the County shall acknowledge receipt of the sound contours provided in the final EA and shall be responsible for using the information to determine compatible land uses based on projected noise levels. Consequently, the City or the County, as applicable, shall be responsible for constructing

soundwalls if either of them permits the planning or construction of incompatible land uses where the noise contours indicate that the FHWA or other applicable criteria are exceeded, and the Authority shall have no responsibility therefor. Without limiting the foregoing, the Authority will not be liable or obligated, financially or otherwise, for providing soundwalls to any development which is proposed, approved, permitted or constructed after the completion and approval of the EA. As provided in Section VI. C., the City agrees to maintain and repair all soundwalls, screen walls, retaining walls or similar structures which are not located within the Turnpike Lanes Area but are within the corporate limits of the City, and the County agrees to provide said maintenance and repair for all such structures outside the City's corporate limits and within the County's jurisdiction.

#### **H. Billboards**

With respect to billboards or similar outdoor signs within the Turnpike Lanes Area, the Authority shall follow its policy expressed in Resolution No. 98-048, dated July 24, 1998, of removing all existing billboards and similar outdoor signs when acquiring real property and terminating all leases and other instruments pertaining thereto, to the greatest extent practical and permissible under applicable law. The City and the County agree to cooperate with the Authority to prohibit and eliminate the presence of billboards or other similar outdoor signs that would or could be visible from the traveled portion of the Phase 3 Extension. The City and the County shall be solely responsible for (1) the removal of any billboards and similar outdoor signs situated within that portion of the Phase 3 Extension right-of-way the City and/or the County acquire and convey to the Authority pursuant to Article III, (2) any related relocation costs and other consideration, and (3) the removal of other billboards and similar outdoor signs to the greatest extent practical and permissible under applicable laws. The Authority, the City and the

County agree that, to the extent permitted by law, neither party shall consent to or permit the future construction or installation of billboards or similar outdoor signs on, or visible from, the Phase 3 Extension right-of-way. This Section VII. H. is consistent with the City's policy regarding the restriction and regulation of billboards.

**I. No Liability**

Nothing in this Restated Agreement shall be construed to place any liability on the City, the County, the Authority, the General Consultant or any of the Authority's, the City's or the County's respective employees, consultants, contractors, agents, servants, directors or officers for any alleged personal injury or property damage arising out of the Phase 3 Extension evaluation, design, construction or operation, or for any alleged personal injury or property damage arising out of the City's or the County's operation, policing, regulation, maintenance or repair of the Phase 3 Frontage Roads, the Phase 3 Frontage Roads Area or the City's streets or the County's roads connecting to or crossing the Phase 3 Extension. Furthermore, it is not the intent of this Restated Agreement to impose upon the City, the County or the Authority any liability for any alleged injury to persons or damage to property arising out of any matters unrelated to the terms of this Restated Agreement or with respect to any actions undertaken by any consultant or contractor employed or engaged by the Authority, the City or the County. Nothing herein shall be construed as a waiver of any rights which may be asserted by the City, the County, the Authority, and/or their officials, including the defense of governmental immunity, official immunity or qualified immunity.

**J. The Financing**

If its feasibility as a turnpike project is established, the Authority intends to finance the design and construction of the Phase 3 Extension with proceeds from the issuance of commercial

paper, the sale of one or more series of revenue bonds and/or other financing, which bonds or other products also may include amounts for refunding all or certain Dallas North Tollway System revenue bonds previously issued by the Authority (collectively, the "Financing"). In addition to the conditions described in Section VII. K. below, all of the Authority's obligations regarding the construction of the Phase 3 Extension are contingent and conditioned upon the successful issuance and sale of said commercial paper, revenue bonds or other actions pertaining to the Financing and the Authority's receipt of the proceeds from the Financing. If reasonably requested by the Authority, the City and the County shall promptly cooperate with the Authority by providing assurances or other information necessary for obtaining the Financing, including assurances and information contained in any official statement or similar document issued for the Financing, provided that said assurances and/or information are, in the City's or the County's reasonable judgment (as applicable), consistent with the provisions of this Restated Agreement. Copies of this Restated Agreement will be provided to, and reviewed and relied upon by, underwriters, investment bankers, brokerage firms and similar parties in connection with the provision of the Financing.

**K. Conditioned on Feasibility**

The City and the County acknowledge that the Authority must establish the feasibility of the Phase 3 Extension as a turnpike project before the Authority can commit to design, construct and operate that project in accordance with the Regional Tollway Authority Act. Consequently, unless and until said feasibility is established, this Restated Agreement creates no obligations on behalf of the Authority with respect to the ultimate construction, operation and/or maintenance of the Phase 3 Extension, provided that the foregoing shall not be construed so as to abrogate or

otherwise modify the City's right to require the reconveyance of property described in, and pursuant to the terms of, Section III. F.

## **ARTICLE VIII.**

### **MISCELLANEOUS**

#### **A. Notices**

In each instance under this Restated 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 Frisco  
Attn: City Manager  
6891 Main Street  
Frisco, Texas 75034

In the case of the County:

County of Collin  
Attn: County Judge  
Courthouse, Suite 626  
210 S. McDonald Street  
McKinney, Texas 75069

In the case of the Authority:

By hand delivery or air courier:

North Texas Tollway Authority  
Attn: Jerry Hiebert, Executive Director  
5900 W. Plano Parkway, Suite 100  
Plano, Texas 75093



By mail:

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

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

**B. Relationship of the Parties; No Joint Enterprise**

Nothing in this Restated Agreement is intended to create, nor shall be deemed or construed by the parties or by any third party as creating, (1) the relationship of principal and agent, partnership or joint venture between the City, the County and the Authority or (2) a joint enterprise between the City, the County, the Authority and/or any other party. Without limiting the foregoing, the purposes for which the City, the County and the Authority have entered into this Restated Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

**C. Successors and Assigns**

This Restated Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Neither the City, the County nor the Authority shall assign, sublet or transfer its respective interests in this Restated Agreement without the prior written consent of the other parties to this Restated Agreement, unless otherwise provided by law.

**D. Severability**

If any provision of this Restated Agreement, or the application thereof to any entity or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable,

the remainder of this Restated Agreement and the application of such provision to other entities or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

**E. 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 Restated Agreement shall be of any effect unless in writing and executed by the City, the County and the Authority.

**F. Limitations**

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

**G. Sole Benefit**

This Restated Agreement is entered into for the sole benefit of the City, the County, the Authority and their respective successors, and nothing in this Restated Agreement or in any approval subsequently provided 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.

**H. Authorization**

Each party to this Restated Agreement represents to the other that it is fully authorized to enter into this Restated 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 Restated Agreement. Each

signatory on behalf of the City, the County and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Restated Agreement.

**I. Venue**

The provisions of this Restated 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 Collin County, Texas.

**J. Interpretation**

No provision of this Restated 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.

**K. Waiver**

No delay or omission by any 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 any of the parties hereto of any of the covenants, conditions or agreements to be performed by any other party 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.

**L. Entire Agreement**

This Restated 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 Restated Agreement.

**M. Counterparts**

This Restated 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.

**N. Headings**

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

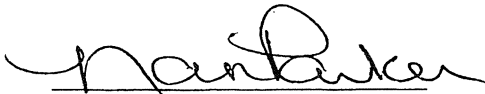
**O. Design**

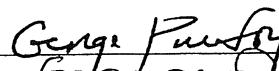
This Section VIII. O. continues, amends and restates the parties' rights and obligations under Section III. B. of the Agreement. Except as otherwise expressly provided in this Restated Agreement, the Authority's determination of the design, alignment, location, grade, composition and construction methods employed for the Phase 3 Extension or any components thereof shall be made in its discretion and shall be final.


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

**ATTEST:**

**CITY OF FRISCO,**  
a Texas municipal corporation

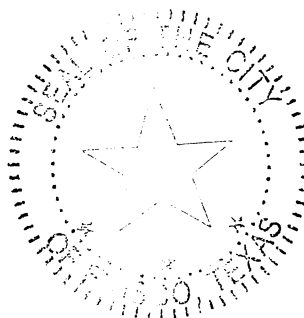
  
City Secretary

By:   
Name: George Puresky  
Title: City Manager

**APPROVED AS TO FORM:**  
  
City Attorney

Date: January 30, 2002

By: \_\_\_\_\_  
Name: \_\_\_\_\_



ATTEST:

Georgia A. Shepherd  
County Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

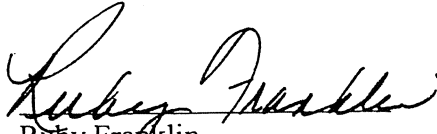
By: \_\_\_\_\_  
Name: \_\_\_\_\_

COUNTY OF COLLIN,  
a political subdivision of the State of Texas

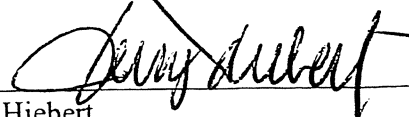
By: Ron Harris  
Name: Ron Harris  
Title: County Judge

Date: 12-28-2001

ATTEST:

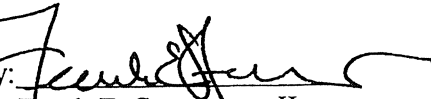
  
Ruby Franklin  
Secretary

NORTH TEXAS TOLLWAY AUTHORITY,  
a regional tollway authority,

  
Jerry Hiebert  
Executive Director

Date: 12/28/01

APPROVED AS TO FORM:  
Locke Liddell & Sapp LLP

By:   
Frank E. Stevenson, II

**SCHEDULE 1**

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG  
THE CITY OF FRISCO, THE COUNTY OF COLLIN,  
AND  
NORTH TEXAS TOLLWAY AUTHORITY**

**DEPICTION OF THE SERVICE ROAD, THE NORTHERN SERVICE ROAD EXTENSION,  
THE PARALLEL SERVICE ROAD, THE 720/380 SERVICE ROAD EXTENSION, AND THE  
PARALLEL 720/380 SERVICE ROAD EXTENSION**  
(Recitals and Section I.F.)

[See following Page]

DECEMBER, 2001

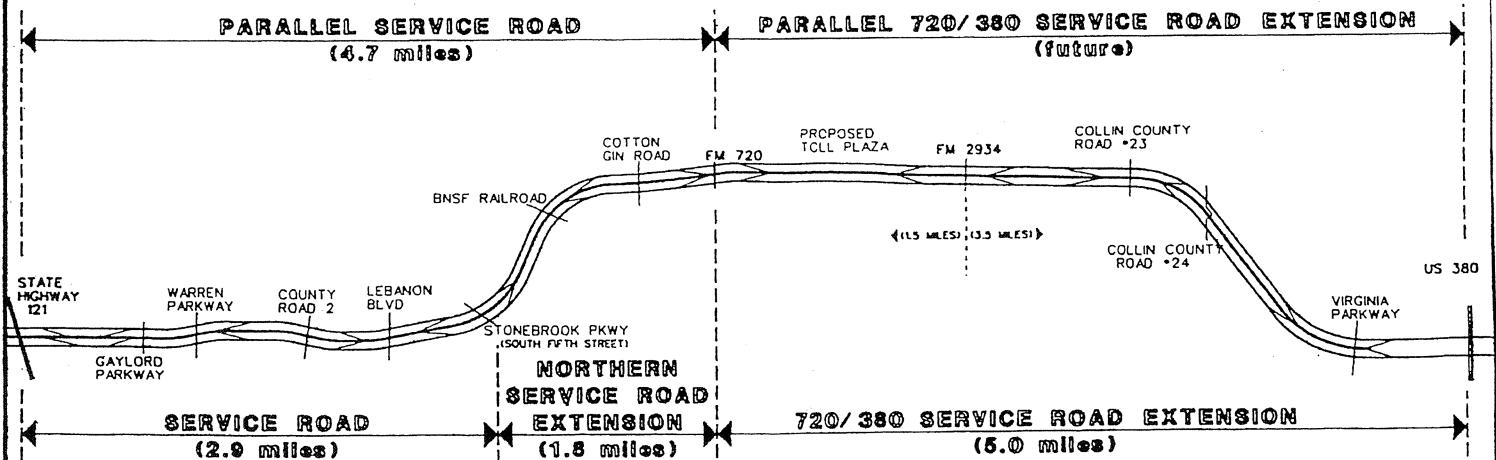
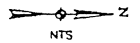


EXHIBIT D  
DALLAS NORTH TOLLWAY - PHASE 3  
ROADS AND EXTENSIONS  
SH121 TO US380





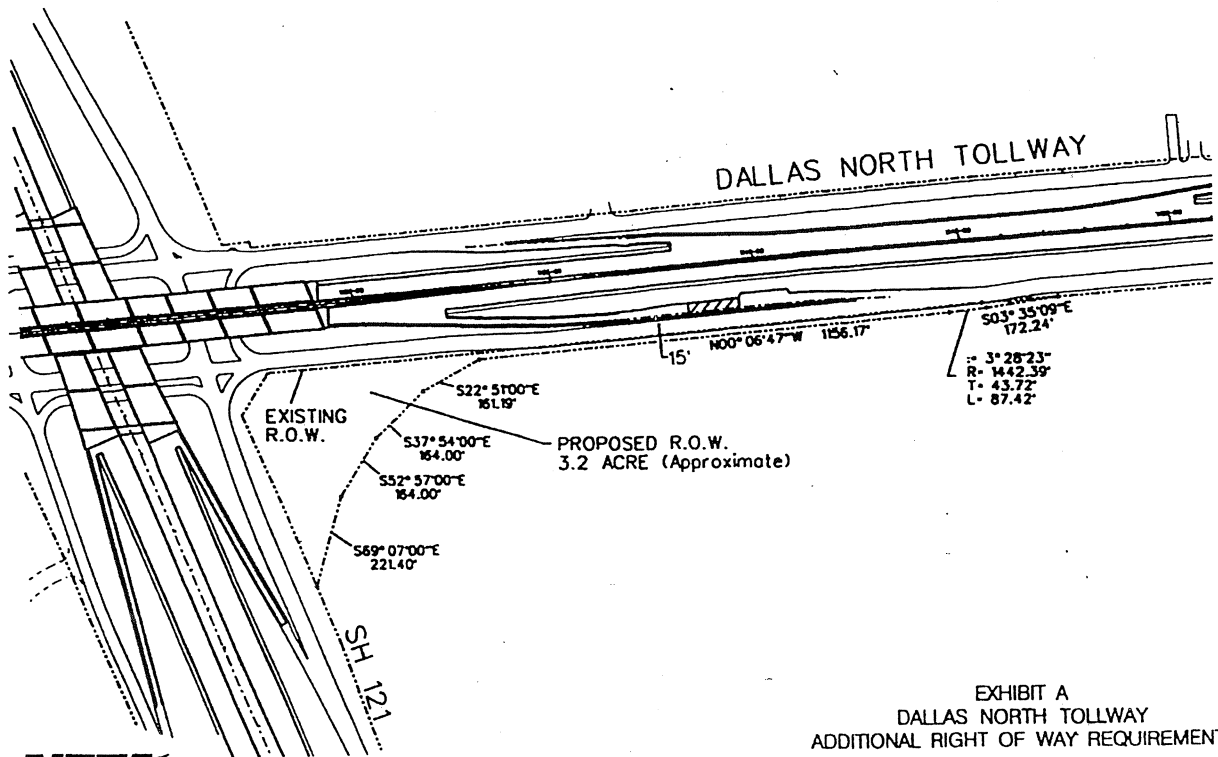
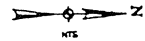
**EXHIBIT A**

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG  
THE CITY OF FRISCO, THE COUNTY OF COLLIN,  
AND  
NORTH TEXAS TOLLWAY AUTHORITY**

**DEPICTION OF ADDITIONAL RIGHT-OF-WAY OBLIGATIONS**  
(Sec. III. G.)

[see following page]

DECEMBER 2001



**NCTA**  
NORTH TEXAS TOLLWAY AUTHORITY

EXHIBIT A  
DALLAS NORTH TOLLWAY  
ADDITIONAL RIGHT OF WAY REQUIREMENTS

**HALFF ASSOCIATES, INC.**  
ENGINEERS • SCIENTISTS • SURVEYORS • PLANNERS • LANDSCAPE ARCHITECTS

**EXHIBIT B**

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG  
THE CITY OF FRISCO, THE COUNTY OF COLLIN,  
AND  
NORTH TEXAS TOLLWAY AUTHORITY**

**GENERAL DEPICTION OF DESIGN, ALIGNMENT AND  
OTHER FEATURES OF THE PHASE 3 EXTENSION**  
(Sec. IV. C.)

The Schematics titled:

1. Dallas North Tollway  
Hwy 121 to Warren Parkway  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 1 of 8)
2. Dallas North Tollway  
Warren Parkway to Lebanon Road  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 2 of 8)
3. Dallas North Tollway  
Lebanon Road to BNSF Railroad  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 3 of 8)
4. Dallas North Tollway  
Genesis Court to FM 720  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 4 of 8)
5. Dallas North Tollway  
Main Toll Plaza #4  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 5 of 8)

6. Dallas North Tollway  
FM 2934 to Panther Creek Parkway  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 6 of 8)
7. Dallas North Tollway  
Panther Creek Parkway to Mahard Egg Farm  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 7 of 8)
8. Dallas North Tollway  
Virginia Parkway to U.S. Highway 380  
North Texas Tollway Authority  
Frisco, Texas  
(sheet 8 of 8)

dated November, 2001 and prepared by Halff Associates, Inc. are hereby incorporated by reference.

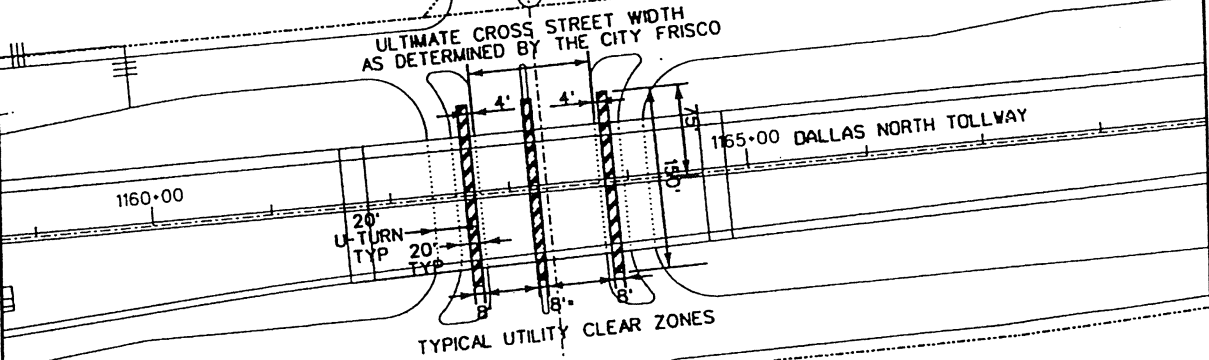
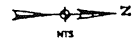
**EXHIBIT C**

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG  
THE CITY OF FRISCO, THE COUNTY OF COLLIN,  
AND  
NORTH TEXAS TOLLWAY AUTHORITY**

**DEPICTION OF UTILITY CLEAR ZONES  
(Sec. V. D.)**

[See following Page]

DECEMBER, 2001



• NOTE: MEDIAN UTILITY CLEAR ZONE  
AS DETERMINED BY NITA FOR BRIDGE  
SPANS THAT REQUIRE MEDIAN BENT  
(TYPICAL FOR SPANS OVER 125'  
MEASURED PARALLEL TO DNT  
CENTERLINE)

**LEGEND**

 UTILITY CLEAR ZONES



EXHIBIT C  
DALLAS NORTH TOLLWAY  
UTILITY CLEAR ZONES

 **HALFF ASSOCIATES, INC.**  
ENGINEERS • SCIENTISTS • SURVEYORS • PLANNERS • LANDSCAPE ARCHITECTS

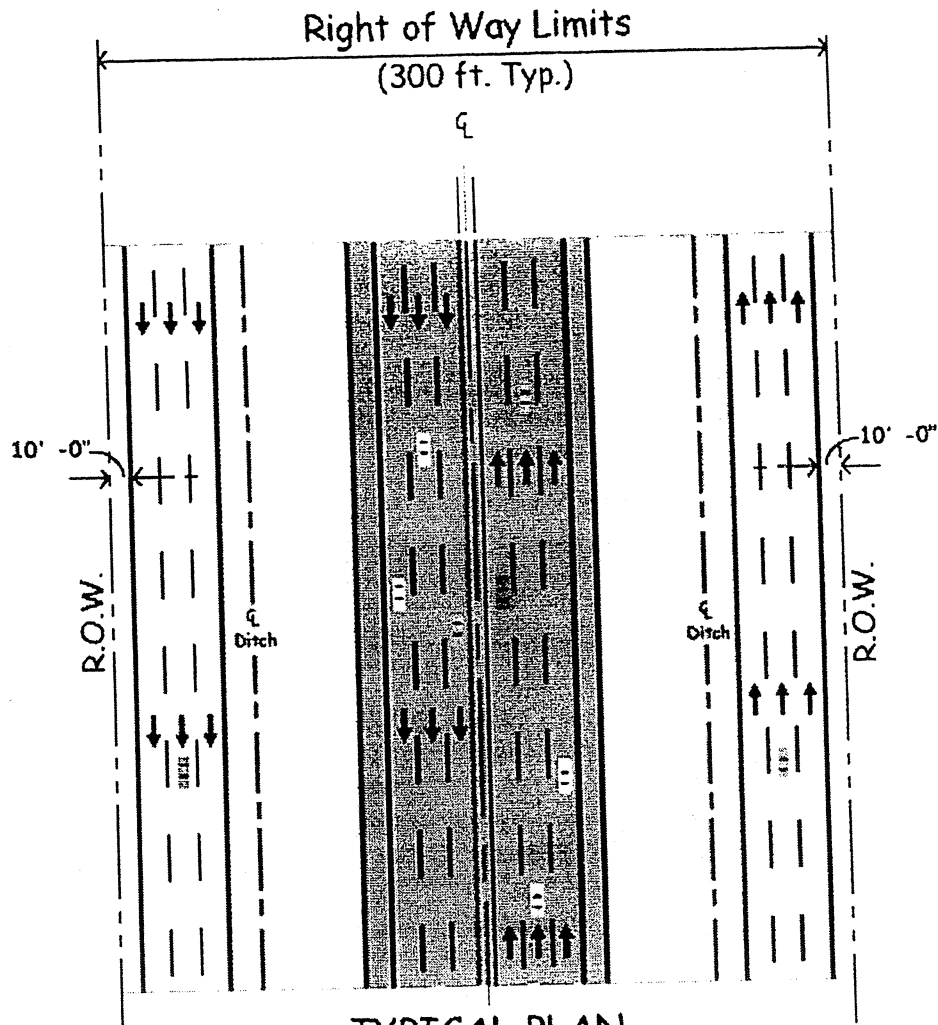
**EXHIBIT D**

**REVISED AND RESTATED  
AGREEMENT BY AND AMONG  
THE CITY OF FRISCO, THE COUNTY OF COLLIN,  
AND  
NORTH TEXAS TOLLWAY AUTHORITY**

**DEPICTION OF TURNPIKE LANES AREA AND PHASE 3 FRONTAGE ROADS AREA  
(RESPECTIVE MAINTENANCE OBLIGATIONS)**

(Sec. VI. A.)

[See following Page]



TYPICAL PLAN

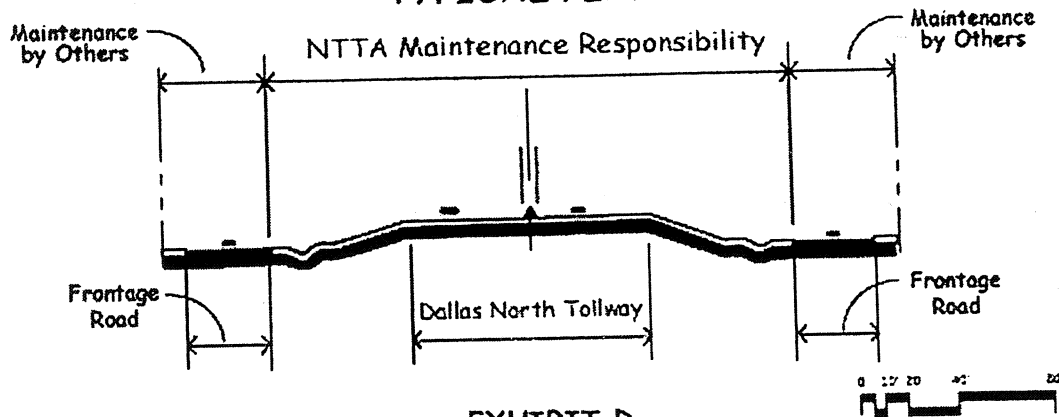


EXHIBIT D

DNT - PHASE 3  
MAINTENANCE RESPONSIBILITY  
S.H. 121 TO US 380

**NTTA**  
NORTH TEXAS TOLLWAY AUTHORITY

**ENTB**