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AGREEMENT

BY AND BETWEEN

THE CITY OF PLANO

AND

TEXAS TURNPIKE AUTHORITY

10/07/93

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THE STATE OF TEXAS

COUNTY OF COLLIN

DALLAS NORTH TOLLWAY IMPROVEMENTS AND
BETTERMENTS FOR THE CITY OF PLANO
CONTRACT DNT 205

THIS AGREEMENT, entered into as of the 16th day of December, 1993, by and between the CITY OF PLANO, a municipal corporation, hereinafter referred to as "City," and the TEXAS TURNPIKE AUTHORITY, an agency of the State of Texas, hereinafter referred to as "Authority."

W I T N E S S E T H

WHEREAS, the Authority operates, maintains, and periodically improves and modifies the Dallas North Tollway (the "DNT"), all in conformance with the provisions of Article 6674v, Title 116 of the Texas Revised Civil Statutes (Acts 1953, 53rd Leg., Ch. 410, as amended) (the "Turnpike Act");

WHEREAS, the Authority has commenced the improvement, extension, and enlargement of the DNT between Briargrove Lane and SH121, including the construction of toll lanes, approaches, interchanges, ramps, toll facilities, bridges, and buildings, and where appropriate, the modification of existing structures, to be operated and maintained by the Authority, and service roads to be operated, maintained, policed, and regulated under the control and jurisdiction of the Cities of Dallas and Plano, all of said improvements, extensions, enlargements, and modifications being known as the Dallas North Tollway Extension Project, Phase 2, and

being hereinafter referred to as the "Project," in conformance with the terms of the Dallas North Tollway Revenue Bonds, Series 1989 and 1990, and the provisions of the Turnpike Act;

WHEREAS, the City has requested that the Authority, through its contractors, perform work in addition or as an enhancement to the work that the Authority was to perform in connection with the Project, said work being generally described as (a) the placement by the Authority's contractor(s) of pipes and sleeves at two (2) locations on the Project permitting the extension of water and wastewater lines across the DNT, (b) the modification and realignment of one (1) existing City street at the intersection of that street with the Project, together with the construction of additional paving at the intersection of two (2) streets within the Project, (c) the construction of right-of-way fencing along the Project right-of-way and within the municipal limits of the City, and (d) the provision of certain aesthetic enhancements to structures comprising the Project, including the use of an exposed aggregate finish on the concrete riprap at the overpasses at the intersections of the Project and five (5) City streets and the installation of pavers in the intersection medians at six (6) City Streets, all of said work described in clauses (a) through (d) above being collectively referred to as the "Modification Work" and being more particularly described in Article I hereof and in the Exhibits referenced therein;

WHEREAS, the City additionally has requested that the Authority, through its contractors, construct and install water and wastewater lines parallel to, and within the right-of-way of, the

Project and/or within easements provided by the City, said lines being of a capacity greater than the capacity required to serve the structures to be constructed by the Authority as part of the Project, it being the intent of the City that these lines and said additional capacity can be utilized to serve the water and wastewater needs of certain properties within the City's municipal limits and abutting the Project as said properties are developed, all of said water and wastewater work being collectively referred to as the "Enhanced Utility Work" and being more particularly described in Article II hereof and in the Exhibits referenced therein;

WHEREAS, the Authority has agreed to perform the Modification Work and the Enhanced Utility Work provided that resulting costs are discharged in accordance with the terms of this Agreement; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one or more state agencies to perform government functions and services under the terms thereof, and the City and the Authority have determined that it is in their best interests to assist each other in the design, procurement, construction, and installation of the Modification Work and the Enhanced Utility Work.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of these premises, the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, the mutual benefits accruing to each of the parties hereto, and other

good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, it is agreed as follows:

ARTICLE I.

THE MODIFICATION WORK

A. The Modification Work. The Modification Work shall be comprised of the following items:

1. Utility Crossing Work. The Authority shall provide for the placement of pipes and sleeves, extending in an east-west direction across the Project right-of-way at Tollway Centerline Stations 853+35 and 853+45. The pipes and sleeves shall be utilized by the City of Plano for the provision of water and wastewater service across the DNT. The City acknowledges that as of the effective date of this Agreement, the work described in this Section I.A.(1.) has been completed, and inspected and approved in all respects by the City. The City requested such work prior to it being commenced.

2. Intersection Improvements. The Authority shall provide for (a) the realignment and reconfiguration of Windhaven Parkway at the intersection of said street with the Project so as to make the alignment and configuration of said street more compatible with the alignment and configuration of the Project and (b) the construction of additional paving, curbing and other structures required to (i) connect Spring Creek Parkway to the north and southbound service roads at the intersection of Spring Creek Parkway and the Project and (ii) provide additional traffic capacity at Park Boulevard (FM 544) and the Project. The City

acknowledges that as of the effective date of this Agreement, the work at Windhaven Parkway described in this Section I.A.(2.) has been completed, and said completed work has been inspected and approved in all respects by the City. The City requested such work prior to it being commenced.

3. Fencing. The Authority shall provide for the construction of a suitable right-of-way fence, or the replacement of existing property line fencing, along the outside perimeter of the Project right-of-way at the locations (a) required to prevent hazardous or otherwise undesirable access by individuals, vehicles, and/or livestock onto the Project right-of-way or (b) otherwise required by the City. The City acknowledges that as of the effective date of this Agreement, the work described in this Section I.A.(3.) has been completed, and inspected and approved in all respects by the City. The City requested such work prior to it being commenced.

4. Aesthetic Enhancements. The Authority shall provide for certain aesthetic enhancements at several Project overpasses and intersection medians with the City's municipal limits. More specifically, the Authority shall provide for an exposed aggregate finish of the concrete riprap at the Project overpasses constructed at the intersections with Thoroughfare "D", Parker Road, Windhaven Parkway, Thoroughfare "B", and Spring Creek Parkway. Additionally, the Authority shall provide for the installation of interlocking pavers in the intersection medians constructed at the intersections of Park Boulevard (FM 544), Thoroughfare "D", Parker Road, Windhaven Parkway, Thoroughfare "B", and Spring Creek Parkway. The

City acknowledges that as of the effective date of this Agreement, the work described in this Section I.A.(4.) has been completed, except for the work to be completed at Thoroughfare "B" and Spring Creek Parkway, and all of said completed work has been inspected and approved in all respects by the City. The City requested such work prior to it being commenced.

B. The Modification Plans. The Modification Work is more specifically described in and depicted on the plans, construction and detail sheets, correspondence, and other materials listed on Exhibit A attached hereto and made a part hereof (the "Modification Plans"). The City acknowledges that it has reviewed the Modification Plans and approved same in all respects. Any portion of the Modification Work that remains incomplete as of the effective date of this Agreement shall be completed by or on behalf of the Authority in accordance with the Modification Plans, as the same may be modified and supplemented from time to time upon the agreement of the City and the Authority. The City requested such work prior to it being commenced.

C. Payment of Modification Costs. The contractor performing the Modification Work was selected on the basis of the lowest qualified bid received as a result of public advertisements. The City shall reimburse the Authority for all actual costs under the construction contracts, as amended by supplemental agreements and change orders (exclusive of the Authority's overhead, internal administrative, engineering, or processing costs) incurred by the Authority in the performance of the Modification Work (the "Modification Costs"). An estimate of the Modification Costs is

set forth on Exhibit B attached hereto and made a part hereof, and the City acknowledges and accepts the estimate as a fair and reasonable projection of the Modification Costs to be reimbursed by the City pursuant to this Agreement. The City and the Authority acknowledge and agree that as October 7, 1993, the Authority has paid not less than Three Hundred Eighty-Three Thousand Eight Hundred Eighty-Four and 73/100 Dollars (\$383,884.73), exclusive of retainage, of the Modification Costs for Modification Work that has been completed, and accepted and approved by the City, said amount being based upon properly supported costs paid by the Authority in accordance with the terms of this Agreement. Within sixty (60) days following the execution date of this Agreement, the City shall reimburse the Authority for said \$383,884.73 in Modification Costs incurred and paid by the Authority up to October 7, 1993. Final payment of all Modification Costs shall be made within sixty (60) days following the last to occur of (1) the completion by or on behalf of the Authority of the Modification Work, (2) the inspection and approval thereof by the City, said approval not to be unreasonably withheld or delayed, and (3) the submission by the Authority to the City of proper support for and evidence of the costs incurred and paid by the Authority.

ARTICLE II.

THE ENHANCED UTILITY WORK

A. The Enhanced Utility Work. The Enhanced Utility Work pertains to the installation by or on behalf of the Authority of certain water and wastewater lines parallel to, and within the

right-of-way of, the Project and/or easements provided by the City (the "Enhanced Water Utilities"). The City and the Authority acknowledge and agree that the Enhanced Water Utilities were necessitated, and shall be utilized by, certain structures to be constructed in connection with the Project, but that at the request of the City, the capacity of the Enhanced Water Utilities was significantly increased to permit the subsequent use of the Enhanced Water Utilities by properties abutting or in the vicinity of the Project at such time as those properties are developed and require water and wastewater service.

B. The Enhanced Utility Plans. The Enhanced Utility Work is more specifically described in and depicted on the plans, construction and detail sheets, and other materials listed on Exhibit C attached hereto and made a part hereof (the "Enhanced Utility Plans"). The City acknowledges that it has provided for the preparation of, and has fully reviewed and approved, the Enhanced Utility Plans. The Enhanced Utility Work shall be completed by the Enhanced Utilities Contractor, as hereinafter defined, in accordance with the Enhanced Utility Plans, as the same may be modified and supplemented from time to time upon the agreement of the City and the Authority.

C. Performance of the Enhanced Utility Work. The Authority has retained a contractor (the "Enhanced Utilities Contractor") acceptable to the City to perform the Enhanced Utility Work. The Enhanced Utility Contractor was selected on the basis of the lowest qualified bid received as a result of public advertisements. Notwithstanding the retention of the Enhanced Utilities Contractor

by the Authority, the parties acknowledge and agree that the City shall be solely responsible for approving the design of, and inspecting, the Enhanced Utility Work.

D. Payment of Enhanced Utility Costs. The Authority shall be entitled to reimbursement of a specified amount of all costs (the "Enhanced Utility Costs") the Authority incurs in the connection with the Enhanced Utility Work. The determination of the amount of the Enhanced Costs to be reimbursed to the Authority has been made in a manner consistent with City Ordinance No. 90-8-9 generally utilized by the City in sharing and assessing the pro-rata costs of utility improvements among the multiple owners benefitting from same, all as more specifically set forth on Exhibit D attached hereto and made a part hereof. The Enhanced Utility Costs are set forth on Exhibit E attached hereto and made a part hereof, and the City acknowledges and accepts said costs as the final, fair and reasonable determination of the Enhanced Utility Costs to be reimbursed to the Authority and assessed and collected by the City against the applicable developers/owners pursuant to this Agreement. The Enhanced Utility Costs, in the amounts of \$96,064.33 for water line costs and \$50,811.49 for wastewater line costs, are based on actual final measurements and contract costs, as verified by the City Engineer of the City. The City shall be under no obligation to reimburse the Authority for the Enhanced Utility Costs. The City, however, unconditionally agrees to utilize best efforts to assess and collect the Enhanced Utility Costs from the developers/owners and to remit same to the

Authority, all in accordance with the terms of this Agreement and Ordinance No. 90-8-9.

E. Future Obligations for the Enhanced Water Utilities.

Upon completion, the City shall accept the Enhanced Water Utilities and shall operate and maintain same, and the Authority shall bear no responsibility therefor.

ARTICLE III.

MISCELLANEOUS

A. Limitations on Liability. Nothing in this Agreement shall be construed to place any liability on either the City, the Authority or the Authority's general consulting engineer, construction manager, or section engineers for personal injury arising out of the construction of the improvements, enhancements, and betterments related to the Project. Furthermore, it is not the intent of this Agreement to impose upon the City any liability for injury to persons or property arising out of any construction unrelated to the terms of this Agreement undertaken by any contractor employed by the Authority. Nothing herein shall be construed as a waiver of any rights which may be asserted by either party hereto, including the defense of governmental immunity.

B. Records. The Authority shall maintain complete and accurate cost records for the Modification Work and the Enhanced Utility Work. The City and its representatives shall be allowed to inspect said records during the Authority's regular business hours. All records relating to the Modification Costs and the Enhanced

Utility Costs shall be maintained by the Authority for three (3) years after completion of the applicable work.

C. Authorization. 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.

D. Sole Benefit. This Agreement is entered into for the sole benefit of the Authority and the City and their respective successors and assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

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

F. Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not

possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

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

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. There are no representations, understandings, or agreements relative hereto which are not fully expressed herein. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

I. Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.

J. Headings. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

K. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

L. Interpretation. 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.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in triplicate this 16th day of December, 1993, to be effective as of the day above stated.

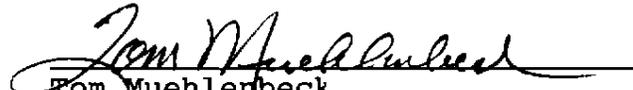
The City

APPROVED AS TO FORM:

CITY OF PLANO



City Attorney



Tom Muehlenbeck
City Manager

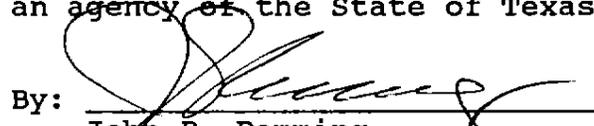
The Authority

ATTEST:

TEXAS TURNPIKE AUTHORITY,
an agency of the State of Texas



Harry Kabler,
Secretary-Treasurer
[SEAL]

By: 

John B. Ramming,
Executive Director

APPROVED AS TO FORM:

Locke Purnell Rain Harrell
(A Professional Corporation),
General counsel

By: 

Frank E. Stevenson, II

EXHIBIT A

DALLAS NORTH TOLLWAY IMPROVEMENTS AND BETTERMENTS
FOR CITY OF PLANO
DNT 205

Dallas North Tollway Extension Phase 2

The Modification Plans

1. Waterline and Wastewater Line Plans prepared by Shimek, Jacobs and Finklea dated 10/29/92, Sheets 1 of 2 and 2 of 2.
2. Realignment Plans for Windhaven Parkway included in plans prepared by Shimek, Jacobs and Finklea dated 11/2/90, designated Contract No. DNT-184.
3. Paving Plans for Spring Creek Parkway included in plans prepared by Carter & Burgess dated 6/17/91, designated Contract No. DNT-185.
4. Capacity Improvements for Park Boulevard (FM 544) by the City of Plano.
5. Fencing Plans shown on Contract Nos. DNT-184 and DNT-185, said plans being previously referred to above.
6. Aesthetic enhancements as depicted on Plans for Contract Nos. DNT-184 and DNT-185 and Special Provisions and/or Specifications to Contract Nos. DNT-184 and DNT-185, Special Provision SP427, Surface and Finishes, and Special Specification SS90, Interlocking Pavers for Concrete.

EXHIBIT B

DALLAS NORTH TOLLWAY IMPROVEMENTS AND BETTERMENTS
FOR CITY OF PLANO
DNT 205

Dallas North Tollway Extension Phase 2

Estimate of Modifications Costs

<u>Improvements, Enhancements, and Betterments</u>	<u>Estimated Cost</u>
Water line and wastewater line crossing	\$191,899
Realignment of Windhaven Parkway	30,971
Additional lanes to Spring Creek	22,238
Capacity Improvement to Park Boulevard (FM544)	102,467
Fencing Right-of-Way	62,877
Exposed Aggregate Finish Riprap	31,434
Interlocking Pavers	<u>144,289</u>
	\$586,175

EXHIBIT C

DALLAS NORTH TOLLWAY IMPROVEMENTS AND BETTERMENTS
FOR CITY OF PLANO

DNT 205

Dallas North Tollway Extension Phase 2

The Enhanced Utility Plans

Plans prepared by Shimek, Jacobs and Finklea dated 11/2/90,
designated Contract No. DNT-184.

EXHIBIT D

DALLAS NORTH TOLLWAY IMPROVEMENTS AND BETTERMENTS
FOR CITY OF PLANO
DNT 205

Dallas North Tollway Extension Phase 2

Method for Sharing Enhanced Utility Costs

The Authority will receive from the City payments based on a pro rata fee for the Enhanced Utility Costs relating to the installation of water and wastewater lines of a capacity in excess of those lines that would be required to serve the Authority's facilities, and said portion shall constitute the "oversize cost determination", as utilized in the Ordinance referenced below. Except as otherwise expressly provided in the preceding sentence, the methods of determining the amount to be received in reimbursement to the Authority, the terms of reimbursement, and the pro rata share due from participating properties shall be determined in accordance with City of Plano Ordinance No. 90-8-9, Article V, Section 21-166, et seq., of the City of Plano Code, provided further that the City shall not deduct and retain any sums from the pro rata fees to be returned to the Authority pursuant to Section 21-188 or otherwise. The "oversize cost determination" to be reimbursed to the Authority pursuant to the terms of this Agreement shall be \$96,064.33 for water line costs and \$50,811.49 for wastewater line costs, as set forth on Exhibit E attached hereto and in Section II.D. of the Agreement. Based on these oversize costs the pro rata fee for water lines is \$28.45/ft. and for wastewater lines is 19.02/ft.

EXHIBIT E

DALLAS NORTH TOLLWAY IMPROVEMENTS AND BETTERMENTS
FOR CITY OF PLANO
DNT 205

Dallas North Tollway Extension Phase 2

Actual Enhanced Utility Costs
(Based on Final Measurements)

Water Line Costs

<u>Description and Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
12" water line	3376.2 LF	\$ 24.44	\$82,514.33
12" valve	4 EA	1,000.00	4,000.00
12" tap & valve	2 EA	4,000.00	8,000.00
Fire Hydrant	1 EA	1,100.00	1,100.00
6" valve	1 EA	450.00	<u>450.00</u>
			\$96,064.33

Pro rata fee $\frac{96,064.33}{3376.2} = 28.45/\text{LF}$

Wastewater Line Costs

10" sanitary sewer	1594.1 LF	\$ 15.89	\$ 25,330.25
8" sanitary sewer	1076.1 LF	14.14	15,214.64
4' diameter manhole	6 EA	900.00	5,400.00
Conn. to exist. manhole	1 EA	1,000.00	1,000.00
Trench safety	3866.6 LF	1.00	<u>3,866.60</u>
			\$ 50,811.49

Pro rata fee $\frac{50,811.49}{2670.2} = 19.20/\text{LF}$

DALLAS NORTH TOLLWAY IMPROVEMENTS AND BETTERMENTS
FOR CITY OF PLANO
DNT 205

Dallas North Tollway Extension Phase 2

Estimate of Modifications Costs

<u>Improvements, Enhancements, and Betterments</u>	<u>Estimated Cost</u>
Water line and wastewater line crossing	\$191,899
Realignment of Windhaven Parkway	30,971
Additional lanes to Spring Creek	22,238
Capacity Improvement to Park Boulevard (FM544)	102,467
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