

**SIGNALIZATION AGREEMENT**  
**FOR THE**  
**DALLAS NORTH TOLLWAY**  
**PHASE 3 EXTENSION AT HEADQUARTERS DRIVE**

(DNT \_\_\_\_\_)

THE STATE OF TEXAS §  
  §  
COUNTY OF COLLIN §

THIS AGREEMENT, by and between the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and a political subdivision of the State of Texas, hereinafter identified as the "Authority," and the CITY OF PLANO, a Texas municipal corporation, hereinafter identified as the "City," is to be effective as of the 28 day of May, 2002.

**WITNESSETH**

WHEREAS, the Authority constructs, operates, maintains, and periodically improves and modifies toll turnpike projects in certain counties in North-Central Texas, all in conformance with the provisions of Chapter 366, Texas Transportation Code, as amended (the "Regional Tollway Authority Act") and, pursuant thereto, is evaluating the proposed extension of the Dallas North Tollway (the "DNT") from its current northern terminus at a point south of State Highway 121 to a northern terminus at State Highway 380, said proposed project being commonly referred to as the "Phase 3 Extension"; and

WHEREAS, the Authority has committed to design, construct, and operate a portion of the Phase 3 Extension from the current northern terminus of the DNT to a new northern terminus between State Highway 121 ("SH 121") and Gaylord Parkway (the "Project"), all in

conformance with the terms of: (i) a Trust Agreement dated as of July 1, 1989, as supplemented, establishing and governing the operation of the Dallas North Tollway System Capital Improvement Fund from which the cost of constructing the Project will be paid, and (ii) the provisions of the Regional Tollway Authority Act, said Project being designed, constructed and operated as an extension and enlargement of the "Dallas North Tollway System"; and

**WHEREAS**, construction of the Project shall require the Authority, among other things, to (a) make certain adjustments to the existing intersection of Dallas Parkway with Headquarters Drive (both of which streets are operated, maintained, policed and regulated under the control and jurisdiction of the City), (b) remove and reconfigure portions of existing north and southbound Dallas Parkway, and (c) reconstruct Dallas Parkway, all in the manner and at the locations indicated in Construction Plans DNT-393 (the "Project Plans"), said Project Plans providing in part for the construction of northbound Dallas Parkway adjacent to the eastern boundary of the Project right-of-way and for the construction of southbound Dallas Parkway adjacent to the western boundary of the Project right-of-way up to and across SH 121; and

**WHEREAS**, the Authority has retained HNTB Corporation to serve as general consulting engineer for the Project, said HNTB Corporation being hereinafter called the "Consulting Engineer" (with that term being further defined in the Trust Agreement) to represent and assist the Authority in the planning, design, review and coordination of the design and construction phases of the Project; and

**WHEREAS**, the Authority has retained the engineering firms listed in Exhibit A (said firms being hereinafter collectively referred to as "Section Engineers") to prepare the Project Plans; and

**WHEREAS**, the construction and operation of the Project shall require substantial modification to the traffic signalization systems in place along Dallas Parkway at Headquarters Drive during construction of the Project, including the use of temporary signalization equipment during the construction thereof, and additionally, the City has determined that the signalization systems will further the public welfare; and

**WHEREAS**, the City has requested that the Authority provide funding for the removal of the existing traffic signalization systems, installation of temporary traffic signalization systems during and as may be required by the construction of the Project, and installation of permanent traffic signalization systems upon completion of the Project with respect to traffic signalization systems at the intersection of Headquarters Drive and Dallas Parkway; and

**WHEREAS**, the Authority has requested that the City assume responsibility for the design, issuance of plans and specifications, taking of bids, award of contracts and purchase orders, and the installation, testing, maintenance and supervision of said temporary and permanent traffic signalization work at the intersection of Headquarters Drive and Dallas Parkway, subject to certain reimbursement and other obligations of the Authority; and

**WHEREAS**, the City is a Texas home rule municipal corporation with all of the authority and powers related thereto as prescribed by the laws of the State of Texas; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the Authority and the City have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the installation and subsequent operation and maintenance of traffic signalization equipment, as well as with respect to other related matters.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of these premises and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Authority and the City agree as follows:

### **ARTICLE I. SIGNALIZATION**

**A. The Signalization Work.** The City, in conformity with the Project Plans, shall design, prepare, and issue construction plans and specifications, and shall be responsible for the installation, testing, supervision and maintenance of temporary and permanent traffic signalization systems (the "Signalization Work") at the intersection of Dallas Parkway and Headquarters Drive. In addition, the City shall provide for the removal of all temporary signalization equipment at the appropriate time(s) and, upon completion of said removal, the City shall return the property to a condition comparable to or better than its current condition , free of debris and hazards. The Signalization Work shall include:

- (1) the preparation of all plans and specifications required for the Signalization Work (the "Signalization Plans") and the submission of said plans and specifications to the Authority for its review and approval, said Signalization Plans, when approved by the Consulting Engineer for the Project, shall become part of the Project Plans for the purposes of this Agreement;
- (2) the letting of all construction contracts, the supervision of construction, the furnishing, installing, testing, regulating and adjusting of all traffic signals (complete with lamps, ballasts, ballast boxes, all conduit and interconnect cables required for the proper operation of the traffic signals, conductors between the traffic signals and the base of the

tower or post supporting the traffic signal, mounting brackets, cables and guys, fastenings, hardware and internal connections), the procurement and installation of the signal control equipment software, the development and implementation of the traffic signal timing, the fabrication and installation of sign hardware associated with the signal operation, and the furnishing of all labor, tools, equipment, and incidentals necessary to provide the traffic signals complete in place, in a neat and workmanlike finished appearance and ready for operation. In completing the Signalization Work, the City shall use to the greatest degree practicable salvaged materials and equipment from its available stock, provided the same are of at least equal quality to the signalization structures and facilities currently located at the intersection of Dallas Parkway and Headquarters Drive. The Signalization Work shall not include any features constituting betterment or enhancements for aesthetic purposes, or betterments or enhances of a technical nature that exceeds the City's current minimum standards for its signalization systems at the intersection of Dallas Parkway and Headquarters Drive, provided, however, that the City may elect to procure or install any such features in connection with the Signalization Work at the City's sole cost and without reimbursement by the Authority; and

- (3) the completion of the Signalization Work in a timely manner which the Authority has determined to be in accordance with the following timetable (the "Timetable"):
  - (a) upon written notice to proceed from the Authority, the City shall have up to fifteen (15) calendar days to mobilize its contractor(s) for the Signalization Work (the "Mobilization Period), and

- (b) following the Mobilization Period, the City shall have up to twenty-two (22) working days to complete or cause its contractor(s) to complete the Signalization Work.

The City or its designated contractor shall perform the Signalization Work by the City's use of labor and/or supervisory personnel employed directly by or under contract to the City. If the City does not have the machinery, equipment and vehicles necessary to perform the Signalization Work, machinery, equipment and vehicles may be rented or leased by the City on commercially prudent terms as necessary. The City, through contracting with third-party contractors, vendors or suppliers, or alternatively, from City stock, will provide all materials (new and unused) and equipment necessary to perform the Signalization Work. The Authority shall review and approve in writing all material and equipment purchases to be made by the City which cost greater than \$25,000, such approval not to be unreasonably withheld or delayed. The Authority's review and approval authority specified herein shall not impose any obligation or liability as to the Authority concerning the City's contracting or purchasing processes related to this Agreement or alter or abrogate any of the City's obligations pursuant to any contract entered into by the City related to the City's performance of this Agreement, other than the Authority's obligation to reimburse the City under the provisions of this Agreement.

**B. Tests and Inspection of Signalization Work.** The City shall provide opportunities and facilities as may be required to enable the Authority and its agents, contractors, consultants or representatives to make suitable inspections of materials, equipment and installation methods sufficient to permit the Authority to confirm that all installation methods, component materials and equipment comply with the Project Plans and accepted requirements. The Authority will promptly notify the City of any failure of the materials, equipment or installation methods to

meet accepted requirements, and the City will take such measures as are necessary to obtain acceptable system components and installation procedures without delay.

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

**D. Payment.** The Authority shall reimburse the City for costs actually and properly incurred and supported under the terms and conditions of this Agreement and in the manner and amounts, and subject to the limitations, hereinafter described.

- (1) As further described and limited below, the Authority shall reimburse the City for all costs incurred (a) in completing the Signalization Work and (b) for design and construction contracts, labor, equipment, materials, supplies, labor additives, and warehouse or material handling charges incurred by the City in conformity with this Agreement.
- (2) The City shall maintain complete and accurate cost records for the Signalization Work. The Authority and its representatives shall be allowed to inspect said records during the City's regular business hours. All records relating to Signalization Work shall be maintained by the City for four (4) years after the City's receipt of final payment from the Authority.
- (3) Payments to the City pursuant to this Agreement shall be made no more frequently than monthly based upon itemized statements (the "Statements"), detailed to identify any of the City's employees or contractor personnel performing the Signalization Work, their

wage rate, the time worked, the equipment used, the time of its use, and the materials used. The Statements also shall identify materials furnished by the City and reimbursable by the Authority at the City's cost; the Authority shall not reimburse the City for used, salvaged or reconditioned materials. Labor additives or burden, overhead, and material handling charges will be shown as a percentage factor and applied to the total cost of labor or materials as applicable. The original and four (4) copies of the Statements shall be submitted to the Authority at the following address: North Texas Tollway Authority, 5900 W Plano Parkway, Suite 100, Plano, Texas 75093, Attn: Deputy Director.

- (4) The Statements will indicate the total reimbursable amount that has become due for the Signalization Work actually performed throughout the term of this Agreement and the amount then due and payable to the City by the Authority. The Authority shall remit reimbursement to the City within twenty-one (21) days following the Authority's receipt of a Statement conforming with this Section I.D. Five percent (5%) of all reimbursable amounts shall be withheld pending (a) completion of the Work, (b) satisfactory completion of final inspection of the Work and audit, and (c) verification that the claims of all mechanics and materialmen have been resolved.
- (5) The Statements shall include only those costs that have been actually paid for the Signalization Work from City funds up to the date of the Statements. The Authority shall not reimburse the City for any of the City's overhead, administrative, processing, review or project management costs or expenses relating to the Signalization Work, nor shall the Authority have any obligation, except the express reimbursement obligations described in this Agreement, to discharge any of the wages or other personnel expenses incurred by the City in connection with the Signalization Work or with the preparation of this

Agreement. The City certifies that it has used its best efforts in preparing the Cost Estimate (herein so called) for the Signalization Work that is attached hereto as Exhibit B and incorporated herein by reference for all purposes.

- (6) In addition to the limitations set forth in subsection I.D.(8) below, unsupported charges or charges made after final payment by the Authority shall not be considered eligible for reimbursement.
- (7) Except as otherwise expressly provided in this Agreement, the obligation of the Authority with respect to the Signalization Work is one of reimbursement only. This Agreement creates no other obligations on behalf of the Authority with respect to the design, construction, testing, inspection, operation and/or maintenance of the Signalization Work, and the Authority makes no representations nor assumes any obligation with respect thereto. Further, all of the Authority's reimbursement obligations are subject to and limited by the provisions of subsection I.D.(8) below.
- (8) Notwithstanding anything to the contrary set forth in this Agreement, the City acknowledges and agrees that in no event shall the Authority's reimbursement obligation hereunder exceed in the aggregate Two Hundred Twenty-one Thousand, Two Hundred Five dollars and No Cents (\$ 221,205.00), said amount being the total amount for the Signalization Work shown on the Cost Estimate times 1.1 (a 10% contingency), without subsequent modifications to this Agreement as authorized by the City and the Authority. Further, the Authority shall have no obligation to reimburse the City for any portion of the Signalization Work performed subsequent to the applicable deadline provided in the Timetable set forth in subsection I.A.(3).

**E. Operation and Maintenance of Completed Signalization Systems.** Upon completion of the Signalization Work, the City agrees to operate and maintain the described traffic signalization systems at no cost to the Authority. The City hereby assumes the responsibility for provision of all electrical power required for signal operations, including that required during construction and test periods.

**F. No Signalization Responsibility for the Authority.** The Authority's rights and obligations contained in this Agreement shall in no way impose upon or create for the Authority any responsibility for (1) the proper operation of traffic signalization along Dallas Parkway, Headquarters Drive, or otherwise in the DNT corridor within the City boundaries, or (2) the police enforcement required for securing compliance with the traffic signals described in this Agreement.

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

## **II. Indemnification.**

Nothing in this Agreement shall be construed to place any liability on either the City, the Authority, or the Consulting Engineer for personal injury or property damage arising out of the Signalization Work. Furthermore it is not the intent of this Agreement to impose upon the City or the Authority any liability, pursuant to the indemnity contained in subsection I.H.(1) or

otherwise, for injury to persons or property arising out of any construction unrelated to the terms of this Agreement undertaken by any contractor employed by the Authority or the City. Nothing herein shall be construed as a waiver of any rights which may be asserted by either party hereto, including the defense of governmental immunity.

## **ARTICLE II. MISCELLANEOUS PROVISIONS**

**A. Relationship of the Parties; No Joint Enterprise.** Nothing in this 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 and the Authority or (2) a joint enterprise between the City, the Authority and/or any other party. Without limiting the foregoing, the purposes for which the City and the Authority have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

**B. Notices.** In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (1) when delivered in hand, (2) one (1) business day after being deposited with a reputable overnight air courier service, or (3) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

In the case of the City:

City of Plano  
1520 Ave. K,  
Plano, TX 75086-0358  
Attn: Thomas Muehlenbeck, City Manager

In the case of the Authority, if mailed:

North Texas Tollway Authority  
Attn: Deputy Executive Director

P.O. Box 260729  
Plano, Texas 75026

or, if delivered by hand or by air courier service:

North Texas Tollway Authority  
Attn: Deputy Executive Director  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093

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

**C. Successors and Assigns.**

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

**D. Severability.**

If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

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

**F. Limitations.**

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

**G. Sole Benefit.**

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

**H. Authorization.**

This Agreement is entered into subject to the provisions of the City's charter and the ordinances of the City and all applicable state and federal laws and the applicable regulations of administrative agencies with jurisdiction over the subject matter of this Agreement. Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. Each signatory on behalf of the City and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

**I. Venue.**

The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas, and exclusive venue for any legal actions arising hereunder shall be in Collin County, Texas.

**J. Interpretation.**

No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

**K. 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.

**L. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings, or agreements relative hereto which are not fully expressed in this Agreement.

**M. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.

**N. Headings.**

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

**O. No Liability.**

Nothing in this Agreement shall be construed to place any liability on either the City, the Authority, the Consulting Engineer, or the Section Engineers or any liability on any of the Authority's or City's respective employees, agents, servants, consultants, directors or officers for personal injury or property damage arising out of the City's operation, policing, regulation, maintenance or repair of the service roads or the City streets over and under the turnpike lanes. Furthermore, it is not the intent of this Agreement to impose upon the City or the Authority any liability for injury to persons or damage to property arising out of any construction unrelated to the terms of this Agreement undertaken by any contractor employed or engaged by the Authority or the City. Nothing herein shall be construed as a waiver of any rights which may be asserted by either party hereto, including the defense of governmental immunity.

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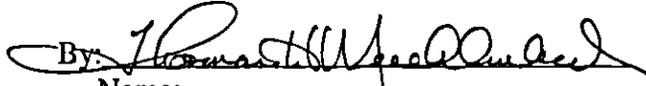
IN WITNESS WHEREOF, the City and the Authority have executed this Agreement on

the dates shown below, to be effective on the date listed above.

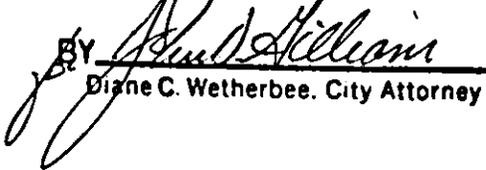
ATTEST:

**CITY OF PLANO,**  
a Texas municipal corporation  
**THOMAS MUEHLENBECK**  
City Manager

Name: Elaine Sealke  
Title: City Secretary

By:   
Name: \_\_\_\_\_  
Title: City Manager

APPROVED AS TO FORM:

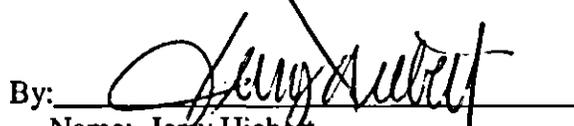
BY:   
Diane C. Wetherbee, City Attorney

Date: 5/15, 2002

ATTEST:

**NORTH TEXAS TOLLWAY AUTHORITY**

  
Ruby Franklin  
Secretary

By:   
Name: Jerry Hiebert  
Title: Executive Director

Date: Date: 5/28, 2002

**EXHIBIT A  
DALLAS NORTH TOLLWAY –  
PHASE 3 EXTENSION TO HEADQUARTERS DRIVE  
SIGNALIZATION AGREEMENT  
FOR THE CITY OF DALLAS**

**DESIGNATED SECTION ENGINEERS – DNT 393**

**Engineering Firms**

**Project Sections**

Birkhoff Hendricks & Conway

Dallas North Tollway

Turner Collie & Braden

SH 121

**EXHIBIT B  
DALLAS NORTH TOLLWAY  
PHASE 3 EXTENSION TO HEADQUARTERS DRIVE  
SIGNALIZATION AGREEMENT  
FOR THE CITY OF PLANO**

**THE COST ESTIMATE**

**Temporary Span-Wire Signal**

Removal of Permanent Signal-	\$ 15,000.00
Install Temporary Signal-	\$ 56,304.00
Miscellaneous unforeseen signal adjustments-	\$ 20,000.00

**Permanent Signal Installation**

Construct Permanent Mast arm Signal-	\$109,791.00
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**TOTAL COST** **\$201,095.00**