

INTERLOCAL AGREEMENT
BETWEEN THE NORTH TEXAS TOLLWAY AUTHORITY
AND THE CITY OF RICHARDSON
PERTAINING CONSTRUCTION OF WATER AND WASTEWATER
CONDUITS ALONG, UPON, AND ACROSS
THE PRESIDENT GEORGE BUSH TURNPIKE

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS AGREEMENT, by and between the NORTH TEXAS TOLLWAY AUTHORITY, a Texas regional Tollway authority, hereinafter identified as the "Authority", and the CITY OF RICHARDSON, a Texas municipal corporation, hereinafter referred to as the "City", is to be effective as of the 1st day of July 1998.

WITNESSETH

WHEREAS, the Authority constructs, operates, maintains, and periodically improves and modifies toll turnpike projects situated in Collin, Dallas, Denton and Tarrant Counties, all in conformance with the provisions of Chapter 366, Texas Transportation Code, as amended, (the "Regional Tollway Authority Act"); and

WHEREAS, the Authority proposes to design, construct, and operate the President George Bush Turnpike, hereinafter referred to as the "Turnpike", following the planned route of SH190 from its eastern terminus at IH30 in eastern Dallas County to its western terminus at West Belt Line Road in Irving, with a portion of the Turnpike being situated within the municipal limits of the City, and

WHEREAS, the Authority has retained a general consulting engineer, section engineering firms and construction management firm to facilitate the design and construction of toll lanes, approaches, interchanges, ramps, toll facilities, bridges, buildings and the modifications of existing pavement structures all to be operated and maintained by the Authority; and

WHEREAS, the City has requested that the Authority design and construct water and wastewater conduits and appurtenances (the "City Utilities") along, upon and across the Turnpike within the City, said City Utilities being increased in size and or length beyond that which is necessary for the purpose 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 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 design, funding, construction, and/or reconstruction of the City utilities.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be and by them respectively kept and performed as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledge, the Authority and the City agree as follows:

AGREEMENT

ARTICLE I

DESIGN CHANGES AND SHARING OF COSTS

A. Design Changes

As part of the construction plans for the Turnpike along and through the City, the Authority is required to design and construct City Utilities to accommodate the water and wastewater accumulation and flow attributable to the Turnpike. The City has determined that it desires and requires additional capacity to accommodate water and wastewater accumulation and flow which are not attributable to the Turnpike, but solely to meet the needs of the City. In the interest of time and efficiency, the Authority has agreed to change, modify, and/or enlarge City Utilities along, upon and across the Turnpike within the City as shown in Exhibit A of this Agreement, attached hereto and incorporated herein for all purposes, said City Utilities being increased in size and length beyond that which is necessary for the purpose of the Authority.

B. Authorities Responsibilities

(1) The NTTA agrees to instruct its engineering firms to perform all engineering services needed for the preparation of plans, required specifications, and construction documents for construction of the utilities which are necessary as a part of the construction of the Turnpike and the utilities which are requested by the City.

(2) The Authority agrees to construct the utilities necessary for the operation, and maintenance of the Turnpike within the City according to City-approved final plans, the Standard

Specifications for Public Works Construction – North Central Texas Council of Governments (“NCTCOG”), and hereinafter collectively referred to as the “COG Specifications”, and any additional specifications and construction documents as may be approved by the City prior to the City’s approval of the final plans; and the Authority hereby agrees to construct the utilities in accordance with the approved plans, the required specifications, and the construction documents.

All such plans, required specifications, and construction documents shall be subject to the review and acceptance by the City prior to the awarding of any contract or contracts for the implementation thereof; and the City’s acceptance shall not be unreasonably withheld or delayed, provided that the City will not be responsible for delays that are beyond the City’s control.

(3) The Authority agrees that it will not make final payments to the contractors performing the construction of the utilities until such work has been approved in writing, by the City, said approval to be timely given and not unreasonable withheld.

(4) The Authority agrees to require that its contractors be responsible for the repair and maintenance of all defects due to faulty workmanship or materials that appear within a period of one (1) year from the date of final completion and acceptance of the work by the City. The above provisions shall be made a part of any and all performance bonds that the Authority requires its contractors to provide. The City agrees that if repairs or maintenance are necessary to the work described in this Agreement within one (1) year from the date of final completion and acceptance of the work by the City, the City agrees to pursue its rights and remedies solely against the contractors retained by the Authority or against the surety under any performance bonds delivered in connection with the work. To that end, the Authority agrees to make the City and additional obligee under any performance and payment bonds it requires its contractors to furnish. In no event shall the Authority become responsible for making said repairs or maintenance, or for discharging the cost of same. After the one-year period mentioned above, the City shall accept the responsibility for all future maintenance of said utilities.

C. City Responsibilities

(1) The City agrees to provide, at its own expense, inspectors on the Turnpike and each constructed utility shall be inspected by such inspector or inspectors as often as necessary for prudent installation.

(2) The City agrees to assist the Authority in any manner necessary to ensure the acquisition of the necessary right-of-way. The City acknowledges and accepts that the Authority will not begin construction of City utilities until such right-of-way as is necessary for any

sequence thereof is acquired or a right-of-entry obtained, it being incumbent upon the Authority to assure that all such installations at all times be within property owned or controlled by the Authority or currently owned or controlled by the City.

(3) The City shall purify the new water lines to be installed by the Authority and shall conduct such pressure tests as are necessary after the utility trenches are backfilled by the Authority's contractor.

(4) Upon completion and acceptance of the City Utilities, the City shall become and maintain sole responsibility for the City Utilities in accordance with Section II.B.4.

D. Cost Sharing

The City agrees to pay to the Authority the sum of One-hundred Twenty-one Thousand, One-Hundred Forty-nine Dollars and Fifty Cents (\$122,149.50) to reimburse the Authority for the construction and redesign costs incurred in excess of that which the Authority would have incurred if such changes, modifications, or enlargements had not been required by the City, as described herein.

City Costs for Oversizing Water and Wastewater Lines	
Line A – 12" in Water	\$29,619.50
Lines WL2 & WL3 – 12" Water	\$79,504.00
Line A3 – 8" Wastewater	\$13,026.00
TOTAL	\$122,149.50

The payment by City to the Authority shall be made no later than 30 days after the execution date of this Agreement. The Authority shall be responsible for all other costs related to the City Utilities required to accommodate the Turnpike and provide at its own expense, project management during the construction of all the City Utilities. Upon request, the Authority shall provide the City with a detail statement of the costs incurred to redesign and construct the City Utilities.

**ARTICLE III
GENERAL PROVISIONS**

A. **Control of Turnpike Facilities.** The Authority acknowledges and agrees that the City has no authority, responsibility or obligation to operate, maintain, police, regulate and provide public safety functions for the Turnpike lanes and facilities.

B. Non-applicability of Certain City Codes. The City acknowledges and agrees that the Authority is not subject to the various zoning, building and development codes promulgated and enforced by the City with respect to the Authority's activities. Further, the City shall not charge the Authority any development, impact license, zoning, permit, building or construction fees of any kind with respect to the Turnpike.

C. No Liability. Nothing in this Agreement shall be construed to place any liability on either the City, the Authority, the Consulting Engineer, or Section Engineers or any liability on any of the Authority's or City's respective employees, agents, servants, directors or officers for personal injury or property damages arising out of the construction and design of City Utilities for personal injury or property damage allegedly arising out of the terms of this Agreement. 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 the construction and design of City Utilities undertaken by any contractor employed or engaged by the Authority or the City. Nothing herein shall be construed as a waiver of any rights may be asserted by either party hereto, including the defense of governmental immunity.

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

E. Notices. In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (i) when delivered in hand, (ii) one (1) business day after being deposited with a reputable overnight air courier service, or (iii) 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 Richardson
Attn: Bill Keefler
Title: City Manager
P.O. Box 830309
Richardson, Texas 75083-0309

In case of the Authority:

North Texas Tollway Authority
Attn: Jerry Hiebert
Executive Director
3015 Redcraig Street P.O. Box 260729
P.O. Box 190369 Plano, TX 75026
Dallas, Texas 75219-0369

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

F. Successors and Assigns. This Agreement shall bind and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Other than as provided in the preceding sentence, neither the City nor the Authority shall assign, sublet, or transfer their respective interests in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

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

H. Written Amendments. Any change in the agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the City and the Authority.

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

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

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

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

- M. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.
- N. Waiver. No delay or omission by either party hereto to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.
- O. Entire Agreement. This Agreement constitutes the entire agreement between parties with respect to the subject matter thereof. There are no representation, understandings, or agreements relative hereto which are not fully expressed in this Agreement.
- P. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and shall constitute one single agreement between the parties.
- Q. Headings. The article and section used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Authority have executed this Agreement on this 14th day of August, 2000, to be effective on the date listed above.

ATTEST:

Joe E. Baker
City Secretary

CITY OF RICHARDSON,
a Texas Municipal Corporation

By: [Signature]
Name: BILL KEFFER
Title: City Clerk

APPROVED AS TO FORM:

Peter H. Smith
City Attorney
By: _____
Assistant City Attorney

NORTH TEXAS TOLLWAY AUTHORITY,
a Regional Tollway Authority

ATTEST:

Ruby Franklin
Ruby Franklin, Executive Secretary

By: [Signature]
Name: Jerry N. Hibbert
Title: Executive Director

APPROVED AS TO FORM:

Marcelle S. Jones
Marcelle S. Jones, General Counsel

EXHIBIT A

**AGREEMENT FOR CONSTRUCTION OF WATER AND WASTEWATER
CONDUITS ALONG, UPON, AND ACROSS
THE PRESIDENT GEORGE BUSH TURNPIKE**

CITY OF RICHARDSON

Cost Share Calculations and City Utility Location Map

