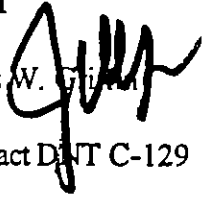


MEMORANDUM

TO: Susan A. Buse
Lee Anne DeMonbreum
Engineering
LPRH

DATE: August 1, 1996

FROM: James W. 

SUBJECT: Contract DNT C-129 - Screen Wall Construction Agreement with University Park
Dallas North Tollway

Attached is the executed Agreement between the TTA and the City of University Park providing the terms and conditions for the construction of a screen wall along the common right-of-way line between the DNT and University Park. The Agreement provides that the TTA will reimburse University Park for one-half of the construction cost of the wall at a future time when the TTA has completed construction of other screen walls on the DNT between its future terminus and IH 635.

**DALLAS NORTH TOLLWAY
AGREEMENT FOR SCREEN WALL CONSTRUCTION
(Mockingbird Lane to Greenbrier, East of DNT)**

THE STATE OF TEXAS §

COUNTY OF DALLAS §

THIS AGREEMENT, made as of this 3rd day of July , 1996, by and between TEXAS TURNPIKE AUTHORITY, an agency of the State of Texas (the "Authority"), and the CITY OF UNIVERSITY PARK, a municipal corporation (the "City").

WITNESSETH

WHEREAS, the Authority operates, maintains, and periodically improves and modifies the Dallas North Tollway (the "DNT"), all in conformance with the provisions of Chapter 361 of the Texas Transportation Code, as amended (the "Turnpike Act");

WHEREAS, the City is willing to construct a sound reducing Screen Wall in the City between Mockingbird Lane and Greenbrier, on the east side of the DNT, in the DNT right-of-way, provided that the Authority will provide certain agreements with respect to the cost, design, location and future maintenance thereof, all as more particularly set forth herein; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and the Turnpike Act, authorize the Authority and the City to contract 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 construction of the Screen Wall;

AGREEMENT

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.

OBLIGATIONS AND AGREEMENTS OF THE CITY AND THE AUTHORITY

A. The Screen Wall. The City, at its cost, shall provide for the construction of the Screen Wall in accordance with this Article I, including all design and quality assurance responsibilities related thereto.

B. Location of the Screen Wall. The Screen Wall shall extend northerly from a point sixty feet (60') north of the north curb cut of Mockingbird Lane to Greenbrier, save and except that portion of said length situated in the City of Dallas, and shall be situated generally between the eastern boundary of the northbound lanes of the DNT and the eastern right-of-way line of the DNT, all as will be shown on the Wall Location Plan (the "Location Plan") to be attached hereto as Exhibit A and made a part hereof for all purposes. The exact limits and location of the Screen Wall shall be determined in the discretion of the Authority and the City's contractors, but shall in all events be generally consistent with the information shown on the Location Plan.

C. Design of the Screen Wall. The appearance, composition, dimensions and general design of the Screen Wall shall be as described in and depicted on the plans, construction and detail sheets, correspondence and other materials to be reviewed and approved by the Authority (collectively, the "Plans"). The Authority hereby approves the location of the Screen Wall to be as generally indicated on the Location Plan. The City shall provide for the construction of the Screen Wall substantially in accordance with the Plans. The City agrees to retain the Authority's Screen Wall engineers, HNTB Corporation, or take other measures acceptable to the Authority, to ensure that the Screen Wall is designed with structural, functional and aesthetic compatibility with the DNT Screen Walls in other areas. Without limiting the foregoing, in no event shall the Screen Wall be designed, situated, constructed, maintained or modified so as to degrade the

operation or effectiveness of the DNT Screen Walls placed or to be placed by the Authority in other locations on the DNT. The City will pay all engineering costs associated with the design, bidding and construction of the Screen Wall.

D. Site Preparation. In order to permit the proper and efficient construction and subsequent maintenance of the Screen Wall, the City, through its contractor(s), shall remove all landscaping, paving, shrubbery and other vegetation, irrigation systems and other structures situated at or near the proposed location of the Screen Wall, except that the Authority will remove the existing concrete screen wall and fence from the middle of the city block between Amherst/Stanford to Greenbrier and will remove the existing chain link fence between Mockingbird and the alley north of Potomac and between Germany Park and University Boulevard, at its expense, in advance of any City Screen Wall construction.

E. Maintenance of the Screen Wall. The Authority shall provide at its sole cost, for:

- (1) the maintenance of the western face of the Screen Wall,
- (2) the repair of any damage to the Screen Wall caused by any patron of the DNT or any contractor retained on behalf of the Authority, and
- (3) any repair or maintenance required to maintain or restore the structural integrity of the Screen Wall, except to the extent said maintenance or repair is necessitated by an event or condition described in Section II(E.) hereof

F. Removal or Modification of the Screen Wall. The Authority, from time to time, may remove and/or modify all or any portion of the Screen Wall to the extent necessary to:

- (1) comply with any properly issued order or ruling of a qualified governmental body acting within the limits of its jurisdiction,
- (2) permit the modification of the DNT,
- (3) permit the repair or replacement of the Screen Wall, or
- (4) further the efficient operation of the DNT and/or protect the safety of the traveling public, as determined within the reasonable discretion of the Executive Director of the Authority.

Additionally, the Authority may alter the western face of the Screen Wall and make any other modifications to the remainder of the Screen Wall which do not materially and adversely affect its appearance and structural soundness.

Neither the City nor, except as provided in Section I(F.), any other party shall be entitled to make any modifications, alteration or attachments of any kind to the Screen Wall, or to remove all or any portion thereof.

Should the Authority find it necessary to remove, modify, or relocate the Screen Wall, it shall replace or restore the Screen Wall in a similar manner of construction as existed before the removal, modification or relocation.

G. Ownership. Notwithstanding the granting of certain rights to the City under this Agreement, the Authority shall own and hold full legal title in and to the Screen Wall. No other party or parties, including the City or the public in general, shall have any rights or interests in the Screen Wall, other than those rights expressly provided the City under this Agreement.

H. Approval of Location of Screen Wall. The City and the Authority each acknowledges that it has reviewed the Location Plan and has approved same as generally indicating the proposed location of the Screen Wall.

I. Construction of the Screen Wall. The Authority consents to the removal of all landscaping, paving, shrubbery and other vegetation, irrigation systems and other structures by the City or its contractors pursuant to Section I.(D.) hereof as may be necessary to construct the Screen Wall in accordance with the Plans. Neither the City nor its contractors shall owe any compensation or have any liability with respect to removal of items pursuant to Section I. (D.).

The City agrees to make all reasonable efforts to ensure that said removal activities and the subsequent construction of the Screen Wall do not (1) impair the structural integrity of or otherwise damage any portion of the DNT, (2) cause the discharge of dust, dirt, rock or other debris onto the DNT, or create any other hazardous condition for patrons of the DNT, or (3) interfere with the safe and efficient operation of the DNT. All contractors and subcontractors providing services directly or indirectly to the City in connection with this Agreement shall be fully licensed, as required, and shall at all times during the performance of their work carry insurance reasonably acceptable to the Authority and the City.

J. Granting of Easements. The City intends to construct the Screen Wall near the common boundary of the eastern DNT right-of-way owned by the Authority and the adjacent right-of-way dedicated to the City. To the extent that any pilings, footings, shorings, drainage facilities or other permanent features of the Screen Wall are situated on property dedicated to or otherwise held or used by the City, the City hereby grants, without warranty, to the Authority, its successors and assigns, a permanent easement in and to the property upon which any such features of the Screen Wall are situated. Additionally, the City hereby grants, without warranty, to the Authority, its successors and assigns, a temporary easement in and to any property which from time to time shall be utilized by the Authority or its contractors in connection with its reconstruction, relocation, alteration, maintenance or removal of the Screen Wall in accordance with this Agreement, including temporary easements required for the detouring of traffic.

ARTICLE II.

PARTIAL REIMBURSEMENT OF COSTS BY AUTHORITY

A. Screen Wall Subject to Partial Reimbursement of Costs

There are five different interface sections constituting the Screen Wall, to be more particularly described by the Plans. The Sections are summarized as follows:

<u>WALL SECTION</u>	<u>APPROXIMATE LENGTH</u>	<u>SCREEN WALL HEIGHT</u>	<u>LOCATION</u>
A.	500 Ft.	14 Ft. Max. Ht.	Mockingbird to Tollbooth (Potomac)
B.	1400 Ft.	14 Ft. Max. Ht.	Tollbooth (Potomac) to Germany Park
C.	1300 Ft.	10 Ft. Max. Ht.	Germany Park to University Boulevard
D.	600 Ft.	13 Ft. Max. Ht.	University Blvd. to Emerson/Glenwick
E.	1800 Ft.	14 Ft. Max. Ht.	Amherst/Stanford to Greenbrier

B. Amount of Reimbursement by Authority. The Authority agrees to reimburse the City in the amount of 50% of the total construction costs of the Screen Wall described in the Agreement, payable as provided below. The Authority's share is estimated at the time of execution of this Agreement to be \$1,151,521.00, but the actual costs of construction may exceed such amount or be less than such amount. In either event, the Authority agrees to pay 50% of such construction costs as provided herein. The Authority's Agreement to reimburse costs is contingent upon the Wall Sections A, B, and E not exceeding 14 feet in height above the ground line, the Wall Section adjacent to Germany Park (Wall Section C) not exceeding 10 feet in height above the ground line, Wall Section D not exceeding 13 feet in height above the ground line, and further conditioned that all sections of the Screen Wall follow the design standards previously established by the Authority for the DNT.

C. Time of Partial Reimbursement by Authority. The Authority will not reimburse the City for its share of the Screen Wall costs until such time as the Authority has completed the funding and construction of those other Screen Walls at specific locations between the southern terminus of the DNT and IH 635 as have been approved by the Authority prior to the date of this Agreement, provided that all reimbursement of the 50% of the construction costs of the Screen Wall Sections provided for herein and for which the City has otherwise qualified will be made by the Authority to the City within 10 years of the effective date of this Agreement. The Authority shall determine the order in which it provides reimbursement for Wall Sections of the Screen

Wall, the last reimbursement being for Section C of the Screen Wall, said last reimbursement to be made only after the Authority has completed the construction of or reimbursement for all other Screen Walls which the Board of the Authority has, prior to the date of this Agreement, resolved to construct along the DNT.

D. Security During Construction. The City will be responsible, either directly or through its contractor, for establishing security measures during construction to prevent pedestrian access onto the DNT right-of-way while existing walls or fences have been removed to clear the area for the permanent Screen Wall construction. Upon completion of construction, the Authority shall, if the Wall has been constructed in accordance with the Plans and this Agreement, accept the Screen Wall for permanent maintenance responsibility as provided herein, except as otherwise provided in Section II.(E.) below.

E. Maintenance of the Screen Wall by the City. The City shall provide, at its sole cost, for:

(1) The maintenance of the (i) eastern face of the Screen Wall, including the aesthetic appearance thereof, and (ii) the median or parkway paving between the east face of the Screen Wall and the west curb of the abutting City street, and

(2) the repair of any damage to the Screen Wall caused by any vehicle utilizing the abutting City street or area driveways, or any other vehicle or cause emanating from the eastern side of the Screen Wall.

ARTICLE III.

MISCELLANEOUS

A. Limitation of Liability. Nothing in this Agreement shall be construed to place any liability on either the Authority, the City, or the City's general consulting engineer, City

engineer, or contractors for personal injury arising out of the construction of the Screen Wall. Nothing herein shall be construed as a waiver of any rights which may be asserted by any party hereto, including the defense of governmental immunity.

B. 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.

C. 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.

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 parties.

E. Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, in whole or in part, the parties hereto 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.

F. 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.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior or contemporaneous written or oral agreement between the parties hereto with respect to the subject matter hereof. Except for the Location Plan and the Plans to be approved as provided herein, 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.

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

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

J. 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 duplicate this 3rd day of July, 1996.



The Authority

TEXAS TURNPIKE AUTHORITY
an agency of the State of Texas

Jimmie G. Newton
Jimmie G. Newton,
Secretary

By: James W. Griffin
James W. Griffin,
Executive Director

[SEAL]

APPROVED AS TO FORM:

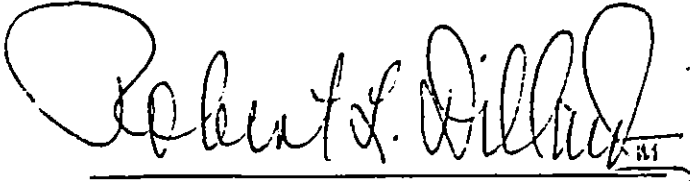
Locke Purnell Rain Harrell
(A Professional Corporation), General Counsel

By: Frank E. Stevenson, II
Frank E. Stevenson, II

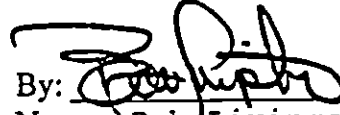
APPROVED AS TO FORM:

The City

CITY OF UNIVERSITY PARK,
a municipal corporation



City Attorney

By: 
Name: Bob Livingston
Title: City Manager

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on this 3rd day of July, 1996, by James W. Griffin, Executive Director of TEXAS TURNPIKE AUTHORITY, an agency of the State of Texas, on behalf of said agency.

Nancy L Greer

Notary Public in and for
the State of Texas

My Commission Expires:

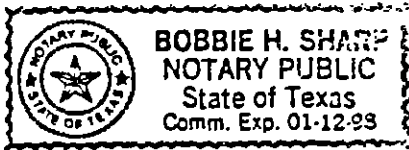


Printed Name of Notary

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on this 2nd day of July, 1996, by Bob Livingston, City Manager of THE CITY OF UNIVERSITY PARK, a municipal corporation, on behalf of said corporation.



Bobbie H. Sharp
Notary Public in and for
the State of Texas

My Commission Expires:

01-12-98

Bobbie H. Sharp
Printed Name of Notary