

**PRESIDENT GEORGE BUSH TURNPIKE
AN EXTENSION AND ENLARGEMENT OF
THE DALLAS NORTH TOLLWAY
(190T)**

11/30/95

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**PRESIDENT GEORGE BUSH TURNPIKE
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CONSTRUCTION, OPERATION, AND MAINTENANCE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AGREEMENT, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission, hereinafter identified as "TxDOT," and the **TEXAS TURNPIKE AUTHORITY**, an agency of the State of Texas, hereinafter identified as the "Authority," is executed to be effective this 1st day of December, 1995.

W I T N E S S E T H

WHEREAS, in May, 1969, the Texas Highway Commission, by Minute Order 62250, designated a proposed highway as an outer loop for the City of Dallas and added the proposed highway to the state highway system; and

WHEREAS, in the early 1970's, the western portion of the proposed highway was redesignated as SH161 and the northern portion, extending 21.5 miles between IH35E and SH78, was redesignated as SH190; and

WHEREAS, that portion of SH190 located between IH35E and SH78 is more commonly known as the "Core Project"; that portion of SH190 consisting of approximately 4.9 miles between IH35E and IH635 extending the limits of SH190 to IH635 is more commonly known as the "Super Connector"; and, that portion of SH190 extending approximately 10 miles between SH78 and IH30 is proposed as the eastern extension of SH190 (the "Eastern Extension"); and

WHEREAS, TxDOT has commenced construction of the Core Project, but, due to funding limitations, TxDOT has not pursued the development of the Super Connector; and

WHEREAS, in April, 1995, the Texas Transportation Commission (the "Commission") passed Minute Order 105342 authorizing the Authority to conduct a toll road feasibility study of the Eastern Extension, but that study is not completed and no determination has been made; and

WHEREAS, pursuant to the provisions of Texas Transportation Code Ann. Ch. 361, as amended (Vernon Supp. 199_) (the "Turnpike Act"), the Authority is authorized to build and operate "turnpike projects", as that term is defined in the Turnpike Act, throughout the State of Texas; and

WHEREAS, the Authority has built and currently operates a turnpike project in Dallas and Collin Counties, extending approximately 21 miles and known as the Dallas North Tollway, including its Phase 1 and Phase 2 Extensions (collectively, the "DNT") which intersects and is designed to connect with the proposed right-of-way for SH190; and

WHEREAS, the Authority has proposed that TxDOT support the development by the Authority of the express lanes of SH190 as a turnpike project by, among other things, (1) transferring to the Authority all of TxDOT's right, title and interest to the Core Project and the Super Connector, including all work performed or right-of-way acquired by or on behalf of TxDOT, save and except certain service roads and interchanges completed or to be completed by TxDOT; (2) assisting the Authority in obtaining Federal funding for the project; and (3) by taking such other steps described in this Agreement to assist the Authority to finance, design, construct, operate and maintain the Core Project and the Super Connector as an extension and enlargement of the DNT (said SH190 turnpike project being hereinafter referred to as the "Turnpike"); and

WHEREAS, there is significant support by the local and county governmental jurisdictions through which SH190 extends for the development of the express lanes of SH190 as a turnpike project, as reflected by resolutions adopted by those jurisdictions and attached hereto as Schedule 1 and made a part hereof for all purposes, and TxDOT has determined that the transfer of the express lanes of SH190 to the Authority provides maximum benefit to the public in terms of local and regional mobility and air quality, both by accelerating the completion of the SH190 project and by providing a significant savings of tax dollars; and

WHEREAS, pursuant to Resolution 1559 passed on September 13, 1995 by the Board of Directors of the Authority, the Authority determined that the Bush Turnpike can be operated most effectively and economically as an integrated tollway project with the DNT and resolved that the Bush Turnpike should be constructed as an extension, enlargement and expansion of the DNT, and requested approval by the Commission regarding same and for approval by the Commission of the financing, construction, and operation of the Bush Turnpike by the Authority; and

WHEREAS, on October 26, 1995, the Commission, by Minute Order 106409, (1) accepted the traffic and revenue report that found that the Bush Turnpike is technically and financially suitable for development, (2) approved the proposed alignment/location of the Bush Turnpike, (3) approved the development of the Bush Turnpike as an extension, enlargement, and expansion of the DNT, provided that construction is not initiated by the Authority until its environmental review is completed and approved by the Commission in accordance with Section 361.103 of the Transportation Code, (4) approved and agreed to participate in the cost of the Bush Turnpike through extension as a loan of federal and/or

state funds as more particularly described in Section 17 of this Agreement, all as authorized and permitted by Section 362.004 of the Texas Transportation Code, and (5) proposed the removal from the designated State Highway System and transfer to the Authority of that portion of SH190 required for the Bush Turnpike; and

WHEREAS, pursuant to Commission Order 10649 and subject to completion of the required public hearing pertaining to the transfer and approval by the Governor, but otherwise in complete compliance with all statutory and other applicable requirements, including Section 362.0041 of the Texas Transportation Code and all rules set forth under Title 43, § 27.20 through § 27.26 of the Texas Administrative Code, and after conducting all other required public hearings, it has been determined that the State of Texas will receive substantial benefits from the construction and operation by the Authority of the express lanes of SH190 as a turnpike project and that the conversion of the express lanes of SH190 to a turnpike project and the transfer thereof to the Authority is the most feasible and economic means to accomplish necessary expansion, improvements and extensions to the state highway system; and

WHEREAS, TxDOT and the Authority have received all authorizations, consents and approvals, and have otherwise complied with all applicable law, required to enter into and perform under this Agreement and to support the construction and operation by the Authority of the Bush Turnpike.

A G R E E M E N T

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, TxDOT and the Authority agree as follows:

1. **Support for Turnpike.** TxDOT acknowledges its approval of and support for the financing, design, construction, operation and maintenance by the Authority of the Core Project and the Super Connector as a turnpike project pursuant to the Turnpike Act. Without limiting the provisions of this Agreement, TxDOT and the Commission will take all actions reasonably requested by the Authority which are consistent with this Agreement in furtherance of the purposes of this Agreement. Unless and until the Authority elects to abandon its efforts to construct and operate the Bush Turnpike, TxDOT shall not advance any alternative to or conflicting proposal for the development of the Bush Turnpike. Further, in its construction, operation and maintenance of the Retained Property (as hereinafter defined) or its consideration of any project that might affect the Bush Turnpike, TxDOT shall make every reasonable effort to minimize or avoid any adverse impact on the Bush Turnpike or its operation.

2. **Transfer of Right-of-Way and Interests.** Except as expressly provided in Section 3 below, as provided by Commission Minute Order 106409 and subject to approval of the Governor, all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property and other interests of any kind acquired by purchase,

condemnation, dedication or any other means by TxDOT for the purpose of constructing and operating the express lanes of SH190 (the "Property Interests") will be transferred by TxDOT to the Authority. The Property Interests shall be transferred to the Authority by order of the Commission reasonably acceptable to TxDOT and the Authority. The Property Interests shall be transferred "as is," and subject to all matters of record. TxDOT and the Authority shall address any pending or uncompleted dedication, conveyance or condemnation of any property or interests pertaining to SH190 pursuant to Section 5 hereof. TxDOT shall assist the Authority in preventing any reversion, forfeiture, reconveyance, loss or diminution of any previously acquired or dedicated Property Interests. The foregoing transfer of the Property Interests shall include all structures and improvements of any kind situated thereon, together with all stored materials and any items specially fabricated for the Bush Turnpike. The Property Interests are depicted and described on Exhibit A attached hereto and made a part hereof. The Authority agrees to receive the transfer of the Property Interests in complete compliance with the provisions of Section 362.0041 of the Texas Transportation Code and Title 43, § 27.20 through § 27.26 of the Texas Administrative Code.

3. **The Retained Property.** Notwithstanding anything to the contrary contained in Section 2 above, TxDOT shall retain full jurisdiction to and not transfer to the Authority the following structures and improvements and the land on which they are or will be constructed, *save and except* any portion of said structures and improvements constituting controlled access toll lanes of the Bush Turnpike or any land on or above which said lanes are or will be constructed for which the Authority shall receive sufficient easement and rights to use from TxDOT pursuant to Section 2 above:

- a. the completed interchange at SH78 and the Bush Turnpike, extending from Project Centerline Station 1011+00 to Project Centerline Station 1128+25;
- b. the interchange currently under construction at US75 and the Bush Turnpike, extending from Project Centerline Station 721+40 to Project Centerline Station 815+00;
- c. subject to the provisions of Section 6 hereof, the interchange to be constructed at IH35E and the Bush Turnpike, extending from Project Centerline Station 1340+00 of SH161 to Project Centerline Station 43+75 *save and except* ramps W-N, N-W, S-W, and W-S which shall be designed, constructed, operated, regulated, maintained, and policed by the Authority; and
- d. the service roads constructed with respect to SH190, exclusive of all exit and entrance ramps to the Bush Turnpike which shall be conveyed to the Authority from the turnpike lanes to the gore nose.

The structures and property described under subsections (a) through (d) above constitute the "Retained Property." Notwithstanding any provision of this Agreement to the contrary, TxDOT and the Authority shall consult and cooperate with one another to ensure that the Retained Property is not modified, operated or maintained in any manner that interferes

with access to and egress from, or with the safe and efficient operation of, the Bush Turnpike. TxDOT and the Authority shall jointly consult and approve the design of suitable signage, and other structures on the Retained Property which are necessary or desirable for the proper operation of the Bush Turnpike (exclusive of the Retained Property), provided that said structures and their installation shall conform to all applicable safety codes and standards (including, without limitation, MUTCD regulations) and shall not conflict with the operation of the Retained Property. The costs of installing and maintaining the signage, and other structures described in the preceding sentence shall be borne solely by the Authority. It is understood and agreed that the operation of the Bush Turnpike may by necessity be curtailed temporarily in the event of damage to the Retained Property caused by flood, accidents, emergencies, or calamities. TxDOT will, in that event, do everything reasonable to provide for rapid and timely repairs to those portions of the Retained Property under its control which are damaged, in order that the Authority may resume operation of the Bush Turnpike as soon as possible. TxDOT shall have no responsibility for the operation, maintenance, policing or regulation of the Property Interests. The Authority shall have no responsibility for the operation, maintenance, policing or regulation of the Retained Property. TxDOT shall execute suitable agreements with the cities and counties in which the service roads and other Retained Property are situated addressing those issues, which agreements shall allocate said responsibilities in a manner consistent with the terms of this Agreement and with the established policies of TxDOT. If (i) TxDOT determines that the Authority's operation of the Bush Turnpike materially interferes with or adversely affects the operation or use of the Retained Property or (ii) the Authority determines that TxDOT's operation of the Retained Property materially interferes with or adversely affects the operation or use of the Bush Turnpike, TxDOT and the Authority shall consult with each other, and such modifications or remedial actions acceptable to both parties will be accomplished, and all resulting costs shall be allocated between TxDOT and the Authority as they reasonably determine.

4. **Delivery of Materials.** To assist the Authority in its design and construction of the Bush Turnpike and, specifically, to reduce the cost of completing the Bush Turnpike, TxDOT will provide the Authority with all original counterparts or, if originals are unavailable, copies of all materials prepared by or for TxDOT in connection with SH190, together with any and all other items or information in the possession of TxDOT and useful to or necessary for the Authority's completion of the Bush Turnpike (the "Delivered Materials"). Those items shall include, but not be limited to, permits, approvals and authorizations of any kind; engineering, construction, testing, design, surveying and other contracts; landowner agreements, purchase contracts or agreements to dedicate property interests; deeds, easement agreements, licenses and other conveyancing instruments; agreements with railroads or utilities, including those regarding the provision of service or the relocation/adjustment of facilities; completed or "in-progress" designs, plans, specifications, profiles, detail sheets, computations, disks, diskettes, computer tapes, user commands, cell libraries, and cost estimates; aerial, topographic and other maps; surveys, plats and metes and bounds descriptions; feasibility, traffic, soils and geotechnical, hydrologic, engineering and other reports, studies and data; signalization, maintenance, patrolling or other municipal agreements of any kind; interlocal agreements or agreements among agencies or other governmental entities or subdivisions; warranties and guarantees

of any kind; all environmental impact statements, environmental reevaluations, other environmental reports and all drafts thereof; copies of pleadings, briefs, legal research, filings and other documents related to any legal proceedings filed with respect to SH190, except for materials relating to pending eminent domain activities which TxDOT and the Authority shall pursue and complete pursuant to Section 5 hereof; and all related items. Without limiting the foregoing, the Authority has identified certain items comprising part of the Delivered Materials that it requires as soon as possible, which items are identified on Schedule 2 attached hereto and made a part hereof.

5. **Assignment of Rights.** After reviewing the Delivered Materials provided by TxDOT pursuant to Section 4 above, the Authority, from time to time, may request that TxDOT assign, in writing, to the Authority and/or its consultants all of TxDOT's right, title and interest in any permit, agreement, contract, conveyancing instrument, plan or other Delivered Material if in the reasonable determination of the Authority such assignment will result in a cost savings or otherwise benefit the development of the Bush Turnpike. TxDOT shall assist the Authority in obtaining any consents required to assign the foregoing items so that the Authority, to the greatest extent possible, shall have the same rights under and interests in the assigned Delivered Materials as TxDOT held prior to that assignment. The foregoing assignment rights shall not apply to any pending lawsuits, actions, condemnation and other proceedings related to SH190 and involving TxDOT; provided, however, that pending condemnation actions shall be addressed in the manner set forth in the following paragraph.

As of the execution date of this Agreement, the Texas Attorney General's Office, acting on behalf of TxDOT and the State, has undertaken eminent domain activities with respect to forty-three (43) Parcels required for the Bush Turnpike, SH190, and/or facilities on the Retained Property. Those Parcels, as well as the status of those eminent domain proceedings, are indicated on Schedule 3 attached hereto and made a part hereof for all purposes. TxDOT and the Authority agree that they will consult with one another and with the Attorney General's Office in order to arrange, on a Parcel-by-Parcel basis, the most efficient and effective approach to conclude the acquisition of the Parcels indicated on Schedule 3. Notwithstanding the foregoing, all awards, settlements, deposits or compensation of any kind paid after the execution date of this Agreement for right-of-way required for the Bush Turnpike, SH190, and/or the Retained Property shall be allocated between and shared by TxDOT and the Authority based on the percentage of the acquired property to be utilized for TxDOT's and the Authority's facilities, respectively. Awards, settlements, deposits or other compensation previously paid or tendered, either into the registry of any court or to any entity and regardless of whether withdrawn, shall not be allocated or credited in the manner described in the preceding sentence.

6. **Construction Obligations of TxDOT.** TxDOT shall complete timely all structures which TxDOT has commenced to construct in connection with SH190. Without limiting the foregoing, TxDOT has built the SH78 interchange and shall be responsible for any finishing work required with respect to that structure. TxDOT has commenced construction of the US75 interchange and agrees to use best efforts to complete same by January, 1998. TxDOT shall use best efforts to construct and complete the IH35E interchange by January

2001, provided, however, that the Authority shall be responsible for constructing the W-N, N-W, S-W, and W-S ramps of said interchange and the express lanes of the Turnpike through that interchange, at the Authority's sole cost. TxDOT shall construct the Burlington Northern outfall drainage tunnel which will intersect the Bush Turnpike at Project Centerline Station 178+65. TxDOT's construction obligations for the foregoing service roads, interchanges and drainage tunnel shall include all pavement; curbs; headwalls; wingwalls; aprons; right-of-way fencing; guard fencing; impact attenuators and other safety devices; junction boxes, inlets, manholes, culverts, channels, piping, conduits and other drainage structures; illumination devices; signage; pavement markings and other delineation devices; and other typical and necessary appurtenances. Lastly, TxDOT and the Authority shall negotiate and execute mutually acceptable interagency agreements relating to all utility relocation or adjustment agreements executed by TxDOT with respect to SH190 prior to the effective date of this Agreement, and, pursuant to said interagency agreements, TxDOT, on behalf of the Authority and pursuant to an equitable allocation and sharing of costs, shall acquire all property interests and perform all work required thereunder. TxDOT shall permit the Authority to review any designs, plans and specifications pertaining to TxDOT's construction obligations under this Section 6 in order to ensure that said work is accomplished in a manner and to standards which, in the reasonable opinion of both TxDOT and the Authority, are consistent with the overall design and construction of the Bush Turnpike.

7. **Construction Obligations of the Authority; Control of Work.** Except as hereinafter provided in this Section 7 or in Section 6 above, the Authority shall be responsible for the design and construction of the Bush Turnpike, including all required utility relocation and/or adjustment. Except as hereinafter provided, the Authority shall have sole authority and responsibility for (a) the design of the Bush Turnpike and all features thereof, (b) the selection of underwriters, investment bankers, financial advisors, legal counsel, consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, sureties, and other parties retained in connection with the financing, design, construction, maintenance or operation of the Bush Turnpike, (c) the commencement, sequencing and timing of design and construction activities and other work, (d) the acceptance or rejection of work or other deliverables, and (e) the negotiation, bidding, and letting of contracts. Notwithstanding the foregoing, the Authority shall provide TxDOT and the Federal Highway Administration (the "FHWA") with designs, plans and specifications for the Bush Turnpike, and TxDOT shall respond to the Authority within thirty (30) days following receipt by TxDOT's District Office of any such item if, in its reasonable judgment, any proposed design is detrimental to the safe and efficient operation of the applicable portion of the Bush Turnpike. Additionally, TxDOT shall use best efforts to expedite review by FHWA of said designs, plans, and specifications. As provided in Section 4 hereof, the Authority intends to review and, as appropriate, utilize the designs, plans and specifications prepared by or on behalf of TxDOT for SH190 to the greatest extent reasonably compatible with the optimal design of the Bush Turnpike. Further, the Authority shall comply with the design criteria contained in the Texas State Highway 190 Amenities Committee Report issued in 1990. Nevertheless, subject to the review and approval rights of TxDOT and the FHWA described above and in Exhibit B attached hereto and made a

part hereof, the Authority may make such changes to said designs, plans and specifications as the Authority determines are necessary or desirable either to assist the financing of the Bush Turnpike or for the proper operation of the Bush Turnpike, including, but not limited to, modifications to the width of bridges, the width of and composition of shoulders and the design of retaining walls and pavement structure, together with the addition of toll plazas and other features distinctive to turnpike projects. The nature, extent and procedure for the exercise of the review and approval rights of TxDOT and the FHWA are more particularly described on Exhibit B attached hereto and made a part hereof for all purposes. Nothing contained in this Section 7 or elsewhere in this Agreement shall abrogate, limit, or modify the rights of TxDOT, working with the Authority, to designate the location of and establish, limit, and control the entrances and exits of the Bush Turnpike as both entities consider necessary or desirable to ensure proper operation and maintenance of the Bush Turnpike. In the event of any conflict between the provisions of this Section 7 and Exhibit B, the latter shall control.

8. **Responsibility for Design.** Except as provided in the following sentence, the Authority acknowledges, and fully accepts its responsibility for, the design, construction, maintenance, regulation, signage, illumination and overall operation of the Bush Turnpike, and hereby contracts to accept said responsibility in any litigation. Nothing, however, contained in this Agreement or elsewhere shall impose any liability on the Authority for or with respect to (a) the Retained Property or (b) any schematic plans, plans or specifications completed by or on behalf of TxDOT as of the date hereof, except to the extent subsequently modified by or on behalf of the Authority. TxDOT has prepared the schematic plan for the Core Project, which the Authority intends to utilize subject to any necessary modifications. The Authority shall (x) perform all additional field surveying and design work, (y) prepare the feasibility study and (z) prepare the traffic and revenue study, as necessary for the Bush Turnpike and at no cost to TxDOT, save and except for TxDOT's prior agreement to discharge ten percent (10%) of the costs of the feasibility study. Neither TxDOT nor the Authority waives, relinquishes, limits or conditions its governmental immunity or any other right to avoid liability which it otherwise might have to third parties. Nothing in this Agreement shall be construed as creating any liability in favor of any third party or parties against either TxDOT or the Authority, nor shall it ever be construed as relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the Authority, but the Authority shall become fully subrogated to TxDOT and shall be entitled to maintain an action over and against any third party or parties legally liable for having caused the Authority or TxDOT to pay or disburse any sum of money in connection with any previously completed portion of the Bush Turnpike.

9. **Environmental and Financial Investment Studies.** The Authority shall be responsible for and shall produce a reevaluation of the existing Final Environmental Impact Statement (the "FEIS") for the Core Project, addressing all changes and updates regarding the Record of Decision issued by the FHWA in 1984 with respect to the FEIS. Additionally, the Authority will be responsible for conducting requisite public hearings and public meetings regarding the reevaluation of the FEIS and the Record of Decision issued for the Core Project, shall conduct and prepare a Major Investment Study for the Super Connector in accordance with all applicable Federal guidelines, shall prepare the Final Environmental

Impact Statement for the Super Connector, and shall seek a Record of Decision therefor. In order to expedite all environmental reviews, reports, studies and findings required for the completion of the Bush Turnpike, TxDOT shall use best efforts to complete its review and comment upon all such materials within thirty (30) days following its receipt from the Authority.

10. **Bidding Procedures; Insurance.** The Authority shall use its established bidding and procurement procedures except in those instances in which such procedures conflict with Federal and/or State law applicable to the Authority. In the event of such a conflict, the bidding and procurement procedures shall comply with applicable Federal and State law. The respective activities of the Authority's and TxDOT's contractors may from time to time be performed adjacent to one another. Further, it is possible that the Authority's construction activities may encroach periodically on the Retained Property and that TxDOT's construction activities may encroach periodically on the Property Interests. The Authority and TxDOT shall address in a reasonable and cooperative manner any such encroachment and any consequences thereof. Additionally, either the Authority or TxDOT shall be entitled, after providing reasonable notice prior to bidding, to require that any construction contract of the other party obligate the applicable contractor to list both the Authority and TxDOT as "additional insureds" with respect to any insurance for which the contractor must obtain an "additional insured" rider or amendment.

11. **HUB Policy; DBE Guidelines.** The Authority shall comply with its Historically Underutilized Businesses Policy (the "HUB Policy") as set forth in the Authority's Resolution No. 1387, as may be amended. Additionally, the Authority shall comply with the applicable DBE guidelines and regulations established in 49 CFR Part 23, Subpart D, as may be amended.

12. **Compliance With Applicable Laws.** It is the Authority's obligation to monitor the construction contractor(s) retained for the Bush Turnpike to ensure that, to the extent otherwise required by law, (a) labor compliance standards are met in accordance with the provisions of the "Davis-Bacon and Related Acts" established in 29 CFR Parts 1, 3 and 5, and (b) wages of the contractors' employees are not less than those contained in the wage determination established by the U.S. Department of Labor. Additionally, the Authority shall be obligated to monitor said construction contractors to ensure, to the extent otherwise required by law, compliance with (x) the anti-kickback regulations established in 29 CFR Part 3; (y) the provisions of Title VI of the Civil Rights Act of 1964 codified in 49 CFR Part 21 and 23 CFR Part 710.405(b); and (z) the equal employment opportunity standards established in 41 CFR Part 60. The Authority shall make available to the governmental agencies responsible for enforcement of the above-referenced laws, orders and regulations, all documentation and records necessary to review and audit the various requirements established under this Section 12. To the extent otherwise required by law, the Authority's construction contracts shall include the provisions required by FHWA Form 1273, Required Contract Provisions, together with the applicable provisions of the Clean Air Act and Clean Water Act codified in 42 USC 1368, et seq., including but not limited to the certification of the National Pollution Discharge Elimination System permits established under Section 402 of the Clean Water Act. Compliance with these provisions shall be the responsibility of the

Authority for all contracts let by the Authority subsequent to the effective date of this Agreement. In addition, the Authority shall, to the extent required by law, be responsible for compliance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. This Section 12 shall operate and be construed solely as acknowledging and obligating the Authority to comply with the referenced Federal laws *only* to the extent that, and *only* for so long as, such compliance is otherwise required; if due to a change in the law or for any other reason any of the foregoing requirements are found to be inapplicable to the Authority and/or in connection with the Bush Turnpike, this Agreement shall be deemed modified automatically to delete said requirement(s). The Authority may rely on the legal opinion of its legal counsel in connection with any action taken or arising under this Agreement, provided that said opinion shall not bind TxDOT or the FHWA.

13. **Operation, Maintenance and Regulation of the Bush Turnpike.** Upon completion, the Bush Turnpike shall be operated, maintained, policed, and regulated by the Authority in compliance with the Turnpike Act and relevant provisions of any trust agreement(s) or similar documentation evidencing or securing the Financing, as hereinafter defined, and as an extension and enlargement of the DNT.

14. **Maintenance of Records.** All records and documents prepared by the Authority under this Agreement must be made available to authorized representatives of TxDOT and the FHWA during normal work hours. All records and documents prepared under this Agreement must be maintained by the Authority for three (3) years after final payment of construction costs incurred in connection with the Bush Turnpike. Notwithstanding the foregoing, the Authority shall comply with all Federal laws pertaining to the retention of records and the provision of access thereto.

15. **Reports and Plans to TxDOT.** The Authority shall deliver to TxDOT all biannual progress reports for the Bush Turnpike prepared by the Authority's consulting engineers. At the earliest possible date following completion of construction of any segment of the Bush Turnpike, the Authority will deliver to TxDOT the final set of plans and specifications for said segment of the Bush Turnpike, which shall clearly identify the limits and items to be maintained by the Authority, TxDOT, and the applicable municipality or county, respectively, pursuant to the terms and conditions of this Agreement and the Turnpike Act. The Authority and TxDOT shall negotiate and execute agreements with the applicable municipalities and counties delineating, in a manner consistent with the final set of plans and specifications, their respective maintenance, operation, regulation and policing obligations regarding the service roads and interchanges.

16. **The Financing.** The Authority intends to finance, in part, the design and construction of the Bush Turnpike with proceeds from the issuance and sale of one or more series of revenue bonds, which bonds also may include amounts for refunding all or certain Dallas North Tollway revenue bonds previously issued by the Authority (collectively, the "Financing"). All of the Authority's obligations regarding the design and construction of the Bush Turnpike are contingent and conditioned upon the successful issuance and sale of said revenue bonds and the Authority's receipt of the proceeds from the Financing. TxDOT shall have no rights or obligations regarding the provision of the Financing, provided, however,

that if reasonably requested by the Authority, TxDOT shall promptly cooperate with and fully assist the Authority by providing assurances or other information necessary or desirable for obtaining the Financing, provided that said assurances and/or information are, in TxDOT's reasonable judgment, consistent with the provisions of this Agreement.

17. **The Loan.** Section 1012 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240), as codified in Title 23 of the United States Code ("ISTEA"), provides for Federal participation in the construction of toll highways. Specifically, Section 1012 of ISTEA, codified as Section 129 of Title 23, permits a State to loan all or part of the "Federal share", as that term is defined in ISTEA, of the costs of a toll project to a public or private agency constructing that toll facility. The Authority intends to satisfy, in part, costs of the construction of the Bush Turnpike with proceeds from a loan (the "Loan") made by TxDOT pursuant to Title 23, Section 129(a)(7) of the United States Code, Article 3, Section 52-b of the Constitution of the State of Texas, and Section 362.004 of the Texas Transportation Code. Certain provisions and terms of the Loan are set forth in that certain Agreement By And Between The State of Texas, The Texas Turnpike Authority, And The Federal Highway Administration For Funding Of The SH190 Turnpike Project, and attached hereto as Exhibit C and made a part hereof for all purposes (the "FHWA Agreement"). The Authority may communicate directly with the FHWA, the Federal Highway Administrator, and the FHWA staff in connection with the FHWA Agreement, provided that the Authority shall generally forward all communications to the FHWA through TxDOT and/or after informing TxDOT thereof. TxDOT acknowledges and agrees that the first advance of the proceeds of the Loan in the amount of \$20,000,000 will be made on the date the Authority delivers the Bonds it is issuing to satisfy a portion of its costs of the Bush Turnpike. The remaining Loan proceeds shall be advanced by TxDOT in accordance with the following schedule of advances:

October 1, 1996	\$35,000,000
October 1, 1997	\$20,000,000
October 1, 1998	\$40,000,000
October 1, 1999	\$20,000,000

TxDOT shall make the Loan advances to the Authority by causing them to be transferred by wire transfer to Bank One, Texas, N.A. for deposit to the account of the Authority in accordance with wiring instructions furnished to TxDOT by the Authority. Bank One, Texas, N.A. is also the Trustee under the Trust Agreement dated as of July 1, 1989 (the "Trust Agreement") between the Authority and the Trustee, securing the Authority's revenue bonds issued for the DNT. The Loan advances shall be deposited by the Authority in the ISTEA Loan Subaccount of the 1995 Project Account in the Tollway Construction Fund held by the Trustee under the Trust Agreement. If not otherwise defined in this Agreement, defined terms used in this Section 17 have the meanings given in the Trust Agreement.

The obligation of TxDOT to make the Loan advances to the Authority in accordance with the schedule set out above is subject only to (i) TxDOT not receiving from FHWA under Title 23, Section 129(a)(7) of the United States Code, or any statutory provision that

is the successor thereto, in any year an amount sufficient to fund the Loan advance for such year and (ii) the amounts received by TxDOT from FHWA under Title 23, Section 129(a)(7) of the United States Code, or any successor statutory provision, in such year being appropriated to TxDOT by the Legislature of the State of Texas in such a manner as to prohibit its use to make the Loan advance for that year.

Under the Trust Agreement, after the tolls and revenues of the DNT have been deposited in the amounts required in the other Funds and Accounts created under the Trust Agreement, the surplus is deposited into the Capital Improvement Fund which is also held by the Trustee under the Trust Agreement. Within the Capital Improvement Fund, the Authority has established with the Trustee the ISTEALoan Debt Service Account. The principal of and interest on the Loan shall be payable only out of amounts on deposit in the ISTEALoan Debt Service Account and no other funds or other assets of the Authority are pledged to the repayment of the Loan and the Authority shall be under no obligation to make any payment from any other source.

Interest on the original amount of the Loan advances shall accrue from October 1, 2000, at the rate of 4.2% per annum and, to the extent not prepaid from surplus revenues, shall compound at the rate of 4.2% per annum annually on January 1, in each of the years 2001, 2002, 2003 and 2004. The compounded outstanding balance of the Loan is hereafter referred to as the "Outstanding Balance". Interest shall accrue from January 1, 2004, on the Outstanding Balance at the rate of 4.2% per annum. Payment of the principal of and interest on the Outstanding Balance shall commence on October 1, 2004, and shall continue thereafter with payments being made on January 1, 2005, and on each succeeding January 1 thereafter for twenty-six (26) annual installments until January 1, 2030, when the Outstanding Balance shall be due and payable. Simultaneously with the sale of the Authority's bonds to finance the Bush Turnpike, and based upon the projected traffic, revenue, expenses, and debt service on the DNT, the Authority shall prepare, as Exhibit D to this Agreement, a principal and interest payment schedule designed to allow the Authority to pay as much of the principal amount of the Outstanding Balance each year as possible and still maintain a 1.2 times coverage of its Net Revenues over its total debt service on the DNT, including the Loan and the bonds to be issued by the Authority for the capacity expansion to the Bush Turnpike between SH78 and IH35E. A projected and preliminary payment schedule, determined as of the execution date of this Agreement and subject to revision pursuant to the previous sentence, is attached as Exhibit D to this Agreement.

On or before October 1, 2004 and, thereafter, on or before January 1, 2005, and each succeeding January 1 thereafter through January 1, 2030, the Authority covenants that from the amounts deposited into the Capital Improvement Fund in excess of the balance required to be maintained therein for other purposes by the Trust Agreement, it shall cause the Trustee to deposit into the ISTEALoan Debt Service Account amounts sufficient to pay the principal of and interest on the Loan due on such dates. The Authority further covenants that from the amounts on deposit in the ISTEALoan Debt Service Account, it will pay to TxDOT the principal of and interest on the Loan on the dates and in the amounts set out above and in Exhibit D. The Authority reserves the right, but shall not have the obligation, to prepay the interest as provided above and to prepay the principal amount of the Loan

at any time without any prepayment penalty or premium. In addition, the Authority shall be obligated to make a partial prepayment on the outstanding balance of the Loan on January 1 of any year in which the Net Revenues of the DNT for the immediately preceding Fiscal Year were at least two (2) times the average annual Debt Service Requirements of the DNT, including the debt service on all of the Authority's bonds outstanding under the Trust Agreement, the Loan and all other obligations then outstanding and payable from the Capital Improvement Fund. The amount of said mandatory prepayment due on any January 1 will equal the lesser of (i) one-half of the debt service payment due on the Loan on such date or (ii) the maximum amount which can be paid without causing the Net Revenues of the DNT for the immediately preceding Fiscal Year to fall below two (2) times the average annual Debt Service Requirements of the DNT, as described above, after taking such prepayment into account as a payment on the Outstanding Balance made for such periods. Each such voluntary or mandatory prepayment described in this paragraph shall be credited against the Loan as directed by the Authority. Following each such prepayment, the Authority shall furnish a revised Exhibit D to TxDOT showing the principal and interest payments to be made on the Loan following the prepayment.

Subject to the provisions of the following sentence, the Authority reserves the right to issue "Additional Bonds" under the Trust Agreement for any lawful purpose and to issue other obligations for any lawful purpose payable from amounts on deposit in the Capital Improvement Fund and secured by a pledge of and lien on such amounts superior to the lien and pledge securing the repayment of the Loan. Without the prior written consent of TxDOT, the Authority shall not issue any such "Additional Bonds" or other obligations if as a result the Authority will be unable to maintain a 1.2 times coverage of its Net Revenues over the Debt Service Requirements on the DNT, including the Loan. The principal of and interest on the Loan shall be payable only from tolls and revenues generated by the DNT (including the Bush Turnpike) and deposited in the Capital Improvement Fund and said payments shall be fully subordinate and inferior to any bond or other obligation of the Authority issued or entered into and secured by the tolls and revenues of the DNT (including the Bush Turnpike), such bond or other obligation being referred to as the "Senior Debt." Notwithstanding the provisions of the foregoing sentence, the Authority shall pay and TxDOT may receive the payments of principal and interest owing on the Loan as set forth in this Section 17 and on Exhibit D attached hereto so long as (a) the full payment of all amounts then payable on the Senior Debt has been made or duly provided for in accordance with the applicable trust agreement or other document, and (b) no default under, or acceleration of, the Senior Debt has occurred and remains uncured.

TxDOT may elect to advance state highway funds to the Authority in accordance with this Agreement and the FHWA Agreement in lieu of all or any portion of the Loan amounts described above; any state highway funds advanced in that manner shall be governed by the terms of this Agreement and of the FHWA Agreement as if they were amounts advanced under the Loan.

18. **Repayment by the Authority of SH190/DNT Interchange Costs.** Prior to the decision to undertake SH190 as a turnpike project, the Authority and TxDOT agreed to an allocation and sharing of costs incurred in constructing the SH190/DNT interchange, which costs

totalled Ten Million Dollars (\$10,000,000.00). As of the date of this Agreement, the Authority has paid Five Million Four Hundred Thousand Dollars (\$5,400,000.00) of said costs. For and in consideration of the agreements of TxDOT contained herein, the Authority agrees to reimburse TxDOT for all costs resulting from the construction of the SH190/DNT interchange, to be paid pursuant to the following schedule:

commencing on October 1 of the year next following the year in which the Loan is fully paid and discharged, the first annual payment of Five Hundred Thousand and No/100 Dollars (\$500,000.00) shall be made, and said annual payments shall continue until such time as TxDOT has been reimbursed, without interest, for the remaining Four Million Six Hundred Thousand Dollars (\$4,600,000.00) in costs.

Notwithstanding the foregoing, in no event shall the Authority be required to make any payment pursuant to this Section 18 unless and until (a) all operational and maintenance expenses for the Bush Turnpike have been paid, (b) all reserve accounts required under any trust agreements have been fully funded, (c) all debt payments owing under the Financing and the Loan have been made, and (d) any repairs or alterations requiring unusually large capital outlays have been made or suitable reserves established. The repayment of costs resulting from the construction of the SH190/DNT interchange shall be fully subordinate and inferior to the satisfaction of the amounts described in clauses (a) through (d) of the preceding sentence, provided, however, that so long as the amounts described in clauses (a) through (d) have been satisfied, the Authority shall pay and TxDOT may receive the annual payments described above.

19. **Termination of this Agreement.** This Agreement may be terminated upon the occurrence of either of the following conditions:

- (a) By written mutual agreement and consent of the parties hereto; or
- (b) By satisfactory completion of all responsibilities and obligations described herein.

20. **Successors and Assigns.** This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including without limitation any successor agency to the Authority. Other than as provided in the preceding sentence, neither TxDOT nor the Authority shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

21. **Officials not to Benefit.** No member or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom. No member, officer, or employee of the State of Texas, TxDOT, the Authority,

or of a local public body during his/her tenure shall have interest, direct or indirect, in this Agreement or the benefits/proceeds thereof. Pursuant to the provisions of 31 USC 1352, the Authority shall complete the "Disclosure of Lobbying Activities", attached hereto as Exhibit E and made a part hereof for all purposes.

22. **Federal Debarment Requirements.** Pursuant to the provisions of 49 CFR Part 29, the Authority shall complete the "Debarment Certification", attached hereto as Exhibit F and made a part hereof for all purposes. All subcontractors to the Authority must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Exhibit G and made a part hereof for all purposes.

23. **Circulation of the Agreement.** Copies of this Agreement will be provided to, reviewed and relied upon by underwriters, investment bankers, brokerage firms and similar parties in connection with the provision of the Financing.

24. **Reimbursement.** The Commission by Minute Order 106409 has found that the transfer of SH190 to the Authority pursuant to this Agreement will result in substantial net benefits to the State, TxDOT, and the traveling public that exceed the cost to TxDOT and other parties of SH190, said cost to include the cost and/or dollar value of the various interests, property and rights conveyed, assigned and/or transferred under this Agreement. Consequently, no reimbursement or compensation shall be required of the Authority in connection with said transfer or this Agreement.

25. **Super Connector Issue.** As indicated in Section 9 of this Agreement, the Authority must obtain certain environmental approvals as a precondition to its construction of the Super Connector. If for any reason the Authority is unable to construct the Super Connector, and notwithstanding anything to the contrary contained in Section 17 hereof, the Authority promptly shall remit to TxDOT all unspent portions of the Loan, exclusive of interest other than accrued but unpaid interest that has accrued since October 1, 2000 pursuant to Section 17 hereof, upon certified completion of the Core Project. Portions of the Loan spent on the Core Project shall be amortized and repaid to TxDOT pursuant to same terms and 1.2 times coverage formula provided under Section 17. To assure TxDOT that the Loan will not be spent disproportionately between the Core Project and the Super Connector, TTA makes the following representations and agreements:

(a) In no event shall a greater percentage of the Loan be spent on the Core Project than the percentage of total construction costs for the Bush Turnpike to be incurred on the Core Project; and

(b) If and to the extent that the Authority expends portions of the Loan on the Core Project, it shall likewise expend not less than a proportionate share of the \$20,000,000 of DNT funds that the Authority has committed to the construction of the Bush Turnpike (i.e., for every \$100 of the Loan spent on the Core Project, the Authority shall spend \$14.81 of the DNT funds).

Except as expressly modified in this Section 25, the terms of Section 17 and all other provisions contained in this Agreement addressing the Loan shall apply notwithstanding the Authority's inability to construct the Super Connector.

26. **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.

27. **Written Amendments.** Any changes in the character, 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 Authority and TxDOT.

28. **Notices.** All notices to either party by the other required under this Agreement shall be delivered personally or sent by Certified or Registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

Texas Turnpike Authority
3015 Raleigh Street
P. O. Box 190369
Dallas, Texas 75219
Attention: Executive Director

Texas Department of Transportation
Dallas District Office
9700 East R.L. Thornton Freeway
Dallas, Texas 75228
Attention: District Engineer

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

29. **Limitations.** All covenants and obligations of TxDOT 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 TxDOT or the Authority shall have any personal obligations or liability hereunder.

30. **Sole Benefit.** This Agreement is entered into for the sole benefit of TxDOT 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.

31. **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 between TxDOT and the Authority.

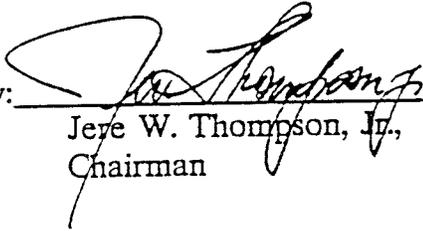
32. **Authorization.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that except for the approval thereof by the Governor (the required public hearing pertaining to the transfer having been completed), 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. If and to the extent that any approval or action by the Governor of the State of Texas is required to effectuate or authorize any provision of this Agreement, TxDOT agrees that it has obtained, or will use all reasonable efforts to obtain, said approval or action. Each signatory on behalf of TxDOT and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

33. **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.

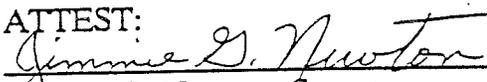
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IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by six (6) multiple counterparts on the dates shown hereinbelow, effective on the date listed above.

TEXAS TURNPIKE AUTHORITY

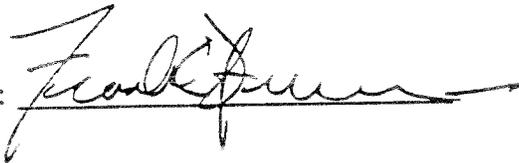
By: 
Jere W. Thompson, Jr.,
Chairman

Date: 12/1/95

ATTEST:

Jimmie G. Newton, Secretary

Approved As To Form:

Locke Purnell Rain Harrell
(A Professional corporation),
Special 190 Counsel

By: 

White Hill Sims & Wiggins, L.L.P.,
Special 190 Counsel

By: _____

TEXAS DEPARTMENT OF
TRANSPORTATION

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission by Commission Minute Order 106409.

By: _____
Wm. G. Burnett, P.E.,
Executive Director

Date: _____

Recommended for approval:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____