



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	03/17/15
Department:	Engineering
Department Head:	Jack Carr, P.E.
Agenda Coordinator (include phone #): Kathleen Schonne (7198)	

CAPTION

A Resolution of the City of Plano, Texas, approving the terms and conditions of an Interlocal Agreement (ILA) between City of Plano and the North Texas Tollway Authority (NTTA) related to the construction of a new U-turn bridge crossing the Dallas North Tollway on the north side of Legacy and participation in the cost of construction of the improvements to the Dallas North Tollway between President George Bush Turnpike (SH 190) and Headquarters Drive, authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	2014-15, 2015-16, 2016-17, 2017-18	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	5,000,000	1,200,000	6,200,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-5,000,000	0	-5,000,000
BALANCE		0	0	1,200,000	1,200,000

FUND(S): STREET IMPROVEMENTS CIP

COMMENTS: Funding is available in the 2014-15 Street Improvements CIP for this item. Plano's participation in the cost of construction of Dallas North Tollway from President George Bush Tollway to Headquarters Drive, in the amount of \$5,000,000, will leave a \$0 balance for Plano's CIP project related to these improvements. Plano's participation will be fully reimbursed by Collin County through an Interlocal Agreement approved by the Plano City Council on September 22, 2014. The cost of construction for the U-Turn Bridge Crossing on the north side of Legacy Drive over Dallas North Tollway has not yet been identified; however, funding was programmed in future years of the 2014-15 Street Improvements CIP for this component of NTTA's project. The construction cost estimate for the U-Turn Bridge Crossing is approximately \$1.0 million.

STRATEGIC PLAN GOAL: Participating in an interlocal agreement to assist in the construction of improvements to Dallas North Tollway that are beneficial to City of Plano residents and businesses relates to the City's goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.

SUMMARY OF ITEM

Later this year, the North Texas Tollway Authority will begin the construction of improvements to DNT north of PGBT. This Interlocal agreement contributes \$5 million to the cost of their construction project. In a previous agenda item, the City Council has authorized an agreement with Collin County whereby the County will fund \$5 million in County bond funds for this project. This agreement also addresses the reimbursement of the cost incurred by the NTTA for the construction of a new U-turn bridge on the north side of Legacy Drive. The NTTA is constructing the U-turn bridge for the City of Plano and Plano will reimburse them for the amount NTTA pays to their contractor for the added work.



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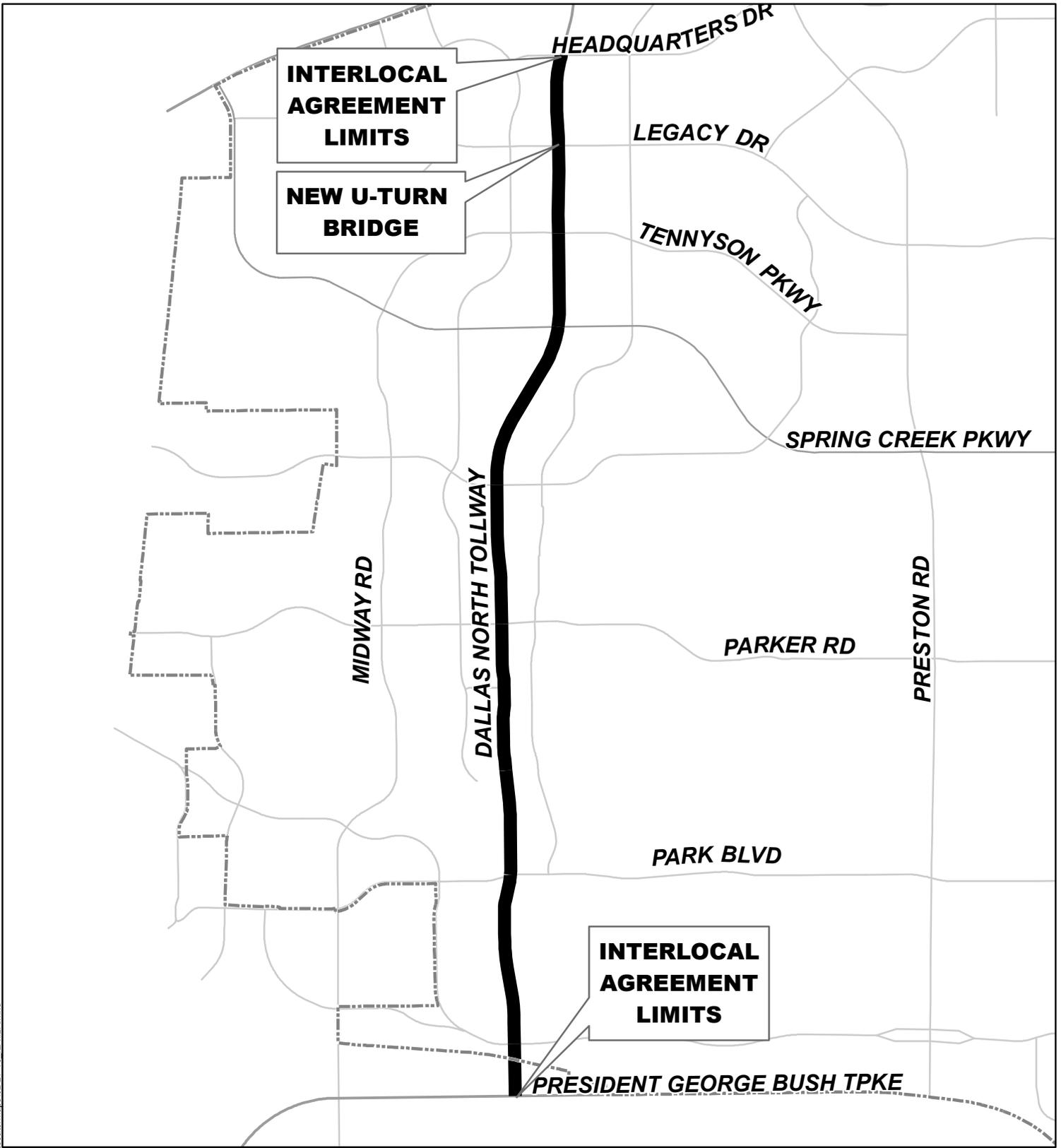
<https://maps.google.com/maps?q=dallas+north+tollway+and+Midway+Road,+plano+tx&hl=en&ll=32.977564,-96.823883&spn=0.21543,0.363579&sll=33.061262,-96.736625&sspn=0.215225,0.363579&hq=midway+road+plano+tx&t=m&z=12>

List of Supporting Documents:

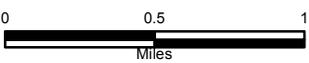
Location Map; Resolution; Exhibit A Interlocal Agreement

Other Departments, Boards, Commissions or Agencies

N/A

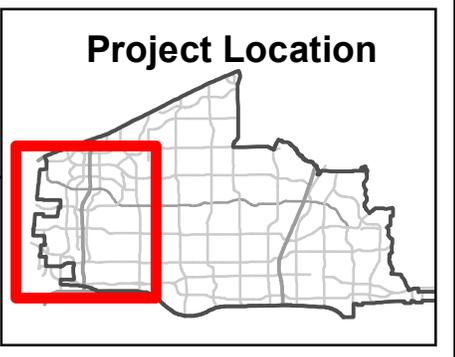


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February, 2015
City of Plano GIS Division

**Interlocal Agreement (ILA)
between
City of Plano and
North Texas Tollway
Authority (NTTA)**



A Resolution of the City of Plano, Texas, approving the terms and conditions of an Interlocal Agreement (ILA) between City of Plano and the North Texas Tollway Authority (NTTA) related to the construction of a new U-turn bridge crossing the Dallas North Tollway on the north side of Legacy and participation in the cost of construction of the improvements to the Dallas North Tollway between President George Bush Turnpike (SH 190) and Headquarters Drive, authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement for improvements along Dallas Parkway and Dallas North Tollway between President George Bush Turnpike (SH 190) and Headquarters Drive by and between the North Texas Tollway Authority and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his designee is hereby authorized to execute the amended Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the amended Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 17th day of March, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

EXHIBIT A

**INTERLOCAL AGREEMENT BETWEEN
THE NORTH TEXAS TOLLWAY AUTHORITY
AND THE CITY OF PLANO
(Contract _____)**

**INTERLOCAL AGREEMENT BETWEEN
THE NORTH TEXAS TOLLWAY AUTHORITY
AND THE CITY OF PLANO
(Contract _____)**

**THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §**

THIS AGREEMENT, by and between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority acting by and through its Board of Directors, (the “Authority” or the “NTTA”) and the **CITY OF PLANO, TEXAS**, a Texas home-rule municipality, acting by and through its duly elected City Council, (“Plano” or the “City,”) is to be effective as of the ____ day of _____, 2015 (the “Effective Date”).

RECITALS

WHEREAS, on or about April 9, 1985, the City of Plano, Texas and the Texas Turnpike Authority entered into the “Agreement” to acquire land for service lanes along the Dallas North Tollway in Plano (the “Service Road Agreement”); and

WHEREAS, on or about March 24, 1986, the City of Plano, Texas, Collin County, Texas and the Texas Turnpike Authority entered into the “Agreement Between the City of Plano and Collin County and Texas Turnpike Authority” to construct the service lanes along the Dallas North Tollway in Plano and Collin County (the “Construction Agreement”); and

WHEREAS, on or about May 14, 1990, the City of Plano, Texas and the Texas Turnpike Authority entered into the “Interlocal Agreement” to acquire additional property necessary for the construction, operation and maintenance of Phase II of the Dallas North Tollway (the ”Right-of-Way Agreement”); and

WHEREAS, on or about May 19, 1993, the City of Plano, Texas and the Texas Turnpike Authority entered into the “Signalization Agreement Contract DNT 209” to address signalization along the Dallas North Tollway in Plano (the “Signalization Agreement”); and

WHEREAS, on or about December 16, 1993, the City of Plano, Texas and the Texas Turnpike Authority entered into the “Dallas North Tollway Improvements and Betterments for the City of Plano Contract DNT 205” by and between the City of Plano and Texas Turnpike Authority (the “Improvements Agreement”); and

WHEREAS, on or about November 7, 1995, the City of Plano, Collin and Denton Counties and the Texas Turnpike Authority entered in the “Maintenance Agreement – Dallas North Tollway/Dallas Parkway Corridor” (the “Maintenance Agreement”); and

WHEREAS, the Authority has constructed the Dallas North Tollway (“DNT”) and the President George Bush Turnpike (“PGBT”) pursuant to Chapter 366 of the Texas Transportation Code, as amended (the “Regional Tollway Authority Act”); and

WHEREAS, the Authority studied and evaluated traffic congestion along the DNT between PGBT and Sam Rayburn Tollway (“SRT”) and determined that there is a need to relieve increasing traffic; and

WHEREAS, Plano and the Authority have agreed that the Authority will construct interchange improvements to the PGBT/DNT interchange; convert the ramps entering and exiting Plano Parkway to tolled lanes; add an additional lane in each direction of the DNT from the SRT to PGBT; reconfigure ramps between Parker Road and Windhaven Drive in Plano, Texas; add ramps north of Windhaven Drive; and include landscaping and aesthetic enhancements between PGBT and SRT all as more particularly depicted on **Exhibit A** and more

fully described in Contract No. 03786-DNT-03-CN-PM and Contract No. 03787-DNT-03-CN-PM (the “Improvements”); and

WHEREAS, the Authority agrees to construct the U-turn bridge on Legacy Drive pursuant to the design submitted by Plano as described in Contract No. 03787-DNT-03-CN-PM which cost shall be reimbursed by Plano to the Authority as described below (the “U-turn”); and

WHEREAS, Plano will authorize NTTA to use existing Plano easements and right-of-way on the east and west side of DNT between Plano Parkway and Park to manage traffic and construction of the Improvements; and

WHEREAS, the Authority will design and construct the Improvements and Plano will contribute Five Million and No/100 Dollars (\$5,000,000.00) to construct the Improvements and the Authority will also pay for the costs related to the construction of the U-turn at the Legacy Drive subject to reimbursement from Plano; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local government entities to contract with one another to perform governmental functions and services under the terms thereof, and the Authority and Plano have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the design, construction, maintenance and operation of the Improvements and the U-turn within the Plano corporate limits.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Authority and Plano agree as follows:

ARTICLE I. OBLIGATIONS OF THE PARTIES

A. REVIEW OF DESIGN PLANS AND CONSTRUCTION CONTRACT NO.

The Authority has prepared, and Plano has reviewed, accepted and is in possession of, the Design Plans (Construction Contract No. 03786-DNT-03-CN-PM and Contract No. 03787-DNT-03-CN-PM for roadway improvements that are ninety percent (90%) complete (the “Design Plans”). Plano shall have the right to review and comment on the completed Design Plans. The Authority agrees to design and construct the Improvements.

B. PAYMENT OF ROADWAY IMPROVEMENTS

The Authority will pay for the Improvements; provided, however, Plano shall pay the Authority Five Million and No/100 Dollars (\$5,000,000.00) of the cost of the Improvements. Plano shall remit this amount to the Authority within ninety (90) days after the Authority issues a Notice to Proceed to the lowest responsible bidder and the Authority submits a request for payment.

C. U-TURN BRIDGE ON LEGACY DRIVE

The Authority agrees to construct the U-turn bridge on Legacy Drive (the “U-turn”) pursuant to the design submitted by Plano as described in Contract No. 03787-DNT-03-CN-PM. Plano is solely responsible for the cost of the design and construction of the U-turn, which costs is in addition to the costs of the Improvements. The costs of the U-turn shall be reimbursed by

Plano to the Authority within thirty (30) days of each invoice submitted by the Authority to Plano. Plano is solely responsible for all costs related to change orders approved by the Authority for the work related to the U-turn. The Authority is solely responsible for the construction management and material testing related to the construction of the U-turn.

D. PLANO'S AND THE AUTHORITY'S NON-MONETARY OBLIGATIONS

1. The Authority shall acquire all right-of-way required to construct the Improvements.

2. Plano shall be responsible for the operation, maintenance, regulation, and public safety functions of the north bound and south bound Dallas Parkway and its right of way within the corporate limits of Plano pursuant to the Maintenance Agreement.

3. The parties shall create a technical working group to coordinate and resolve issues concerning the implementation of this Agreement including, but not limited to, cooperation in routing and closing lanes along the Dallas Parkway.

4. The Authority will not be liable or responsible in any manner, financially or otherwise, for providing sound walls to any development which is proposed, platted, approved, permitted, or constructed along or near the PGBT or DNT that is not shown in the environmental document. The Authority provided a copy of the environmental document to the City and the City hereby acknowledges its receipt. The City shall be responsible for using the information to determine compatible lane uses based on projected noise levels.

ARTICLE II.
GENERAL PROVISIONS

A. TERM OF AGREEMENT

The term of this Agreement shall begin on the Effective Date and end on the earlier to occur of (1) the complete performance by the parties hereto of all provisions of this Agreement or (2) other termination by the Authority pursuant to this Agreement

B. MUTUAL SUPPORT

Plano acknowledges its approval of and support for the Authority's financing, design, construction, operation and maintenance of the Improvements within the corporate limits of Plano and agrees to 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 determines that the design, construction and operations of the Improvements and U-turn are not feasible, Plano shall not advance any alternative to or conflicting or competing proposal for the development of the Improvements. Plano agrees to support the Authority in the necessary environmental clearance and permitting review processes and to provide such information as may be required by the Authority. The parties agree to coordinate and conduct the necessary public hearings and public participation efforts required to initiate and complete the Improvements and the U-turn. The parties shall make every reasonable effort to maintain communication with the public and the other party's representatives regarding the progress of the construction of the Improvements and the U-turn. In addition, Plano agrees to assist and join the Authority in obtaining and performing under the various approvals, permits and agreements required of the applicable governmental entities and agencies, whether federal, state or local, regarding the Improvements and the U-turn.

C. ELECTION TO PROCEED AND RELIANCE

Notwithstanding any other provision of this Agreement, the Authority, in its sole judgment, shall determine whether it is feasible to design, finance, construct, operate and maintain the Improvements and the U-turn. Plano acknowledges that unless and until said feasibility is established and accepted by the Authority's Board of Directors, this Agreement creates or imposes no obligations on the Authority with respect to the design, construction, operation and/or maintenance of the Improvements and the U-turn, and the Authority makes no representations with respect thereto. Should the Authority determine that the Improvements and the U-turn are not feasible or otherwise determines not to proceed with the evaluation, design and construction of the Improvements and the U-turn for any reason, the Authority shall promptly notify Plano in writing and Plano shall be released from its obligations under this Agreement. In such event, this Agreement shall terminate, and neither the Authority nor Plano shall incur or be obligated to the other for any further obligations or expenses regarding the Improvements or the U-turn.

D. CONTROL OF AUTHORITY FACILITIES, OPERATIONS AND NONAPPLICABILITY OF CERTAIN CITY CODES

Plano acknowledges and agrees that the Authority is not subject to the various zoning, building and development codes and/or ordinances promulgated and enforced by Plano with respect to the Authority's structures and activities within the DNT right-of-way, and that it shall not assess against the Authority any development, impact license, zoning, permit, building, connection or construction fee(s) of any kind with respect to the construction or operation of the Improvements. The parties are subject to certain federal regulations, in particular those related to the Clean Air Act, which may affect the Authority and its contractors in their performance of this

Agreement. Plano acknowledges that as a result of federal and/or state regulations, or other construction schedules, the Authority may be required to close lanes on the access roads of the DNT to perform construction activity at night or twenty-four (24) hours a day. The Authority shall use reasonable efforts to notify Plano of any lane closures planned night or 24-hour work. Plano agrees to give its full cooperation to accommodate such activity, including providing support for notifying the public by posting a press release and notice on Plano's website.

E. RELATIONSHIP OF THE PARTIES; NO JOINT ENTERPRISE

Nothing in this Agreement is intended to create, nor shall be deemed or construed by the parties or by any third party as creating, (1) the relationship of principal and agent, partnership or joint venture between Plano and the Authority or (2) a joint enterprise between Plano, the Authority and/or any other party. Without limiting the foregoing, the purposes for which Plano and the Authority have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

F. NO LIABILITY

Nothing in this Agreement shall be construed to place any liability on either Plano, the Authority, the Consulting Engineer, or any liability on any of the Authority's or Plano's respective employees, consultants, contractors, agents, servants, directors or officers for any alleged personal injury or property damage arising out of the evaluation, design and construction of the Improvements or the U-turn, or for any alleged personal injury or property damage arising out of Plano's operation, policing, regulation, maintenance or repair of the Service Roads or the City streets connecting to, crossing or within the DNT or PGBT. Furthermore, it is not the intent of this Agreement to impose upon Plano or the Authority any liability for any alleged injury to

persons or damage to property arising out of any matters unrelated to the terms of this Agreement undertaken by any consultant or contractor employed or engaged by the Authority or Plano. Nothing herein shall be construed as waiver of any rights which may be asserted by either party hereto, including the defense of governmental immunity.

G. NOTICES

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

By Hand Delivery or Courier:

City of Plano
Attn: Bruce D. Glasscock, City Manager
1520 K Ave.
Plano, Texas 75074

By Mail:

City of Plano
Attn: Bruce D. Glasscock, City Manager
P. O. Box 860358
Plano, Texas 75086

In the case of the Authority:

By Hand Delivery, Courier or Mail:

North Texas Tollway Authority
Attn: Gerry Carrigan, CEO/Executive Director
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093

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

H. SUCCESSORS AND ASSIGNS

This Agreement shall bind, and shall be the sole and exclusive benefit of, the respective parties and their legal successors. Other than as provided in the preceding sentence, neither Plano 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.

I. 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 this 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.

J. WRITTEN AMENDMENTS

Any change in the agreements, 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 Plano and the Authority.

K. LIMITATIONS

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

L. SOLE BENEFIT

This Agreement is entered into for the sole benefit of Plano 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.

M. 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. Each signatory on behalf of Plano and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Agreement.

N. VENUE

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

O. 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.

P. WAIVER

No delay or omission by either party hereto to exercise any right or power hereunder shall impair such right or power or to 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 any other covenant, condition or agreement herein contained.

Q. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings or agreement relative hereto which are not fully expressed in this Agreement. Each party relied solely on their judgment in entering into this Agreement.

R. 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.

S. HEADINGS

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

IN WITNESS WHEREOF, Plano and the Authority have executed this Agreement on the dates shown below, to be effective on the date listed above.

ATTEST:

Name: Lisa C. Henderson,
Title: City Secretary

CITY OF PLANO,
a Texas municipal corporation

By: _____
Name: _____
Title: _____

Date: _____

APPROVED AS TO FORM:

Paige Mims, City Attorney
By: _____
Title: _____

ATTEST:

Name: _____,
Title: _____

**NORTH TEXAS TOLLWAY
AUTHORITY**

By: _____
Gerry Carrigan,
CEO/Executive Director

Date: _____

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd & Joplin, P.C.,
Counsel to the Authority

By: _____
Richard M. Abernathy