

**INTERLOCAL AGREEMENT BETWEEN  
THE NORTH TEXAS TOLLWAY AUTHORITY  
AND THE CITY OF PLANO**

(Contract ~~04030 NTT 00 IL AD~~)

03962-DNT-03-IL-PM

**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 are 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 land 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.

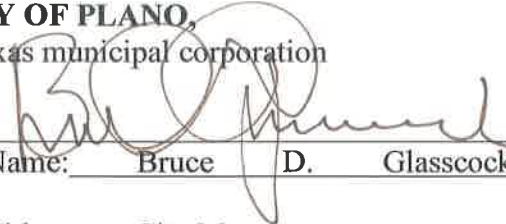
**S. HEADINGS**

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


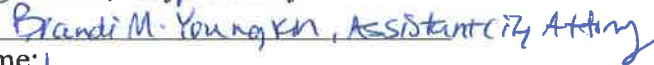
IN WITNESS WHEREOF, Plano and the Authority have executed this Agreement on the dates shown below, to be effective on the date listed above.

**ATTEST:**

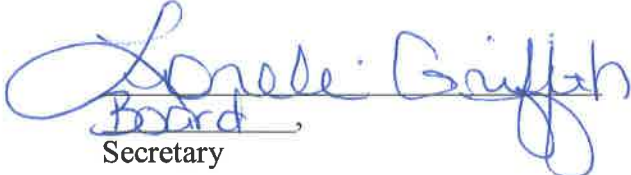
  
\_\_\_\_\_  
Lisa Henderson,  
\_\_\_\_\_  
City Secretary

**CITY OF PLANO,**  
a Texas municipal corporation  
By:   
Name: Bruce D. Glasscock  
Title: City Manager  
Date: 04/06/13

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Paige Mims, City Attorney  
By:   
Name: Brandi M. Young, Assistant City Attorney

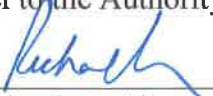
**ATTEST:**

  
\_\_\_\_\_  
Lonode Gaiffan  
Secretary

**NORTH TEXAS TOLLWAY  
AUTHORITY**

By:   
\_\_\_\_\_  
Gerry Carrigan,  
CEO/Executive Director  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Richard M. Abernathy  
Abernathy, Roeder, Boyd & <sup>Hollett</sup> Joplin, P.C.,  
Counsel to the Authority