

**MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
COLLIN COUNTY, TEXAS  
AND  
THE NORTH TEXAS TOLLWAY AUTHORITY  
REGARDING THE INTERSECTION OF  
STATE HIGHWAY 121 AND EXCHANGE PARKWAY**

10/12/08

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**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)**, by and between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas, acting by and through the its Board of Directors, hereinafter identified as the “Authority,” and the **COLLIN COUNTY**, a county and political subdivision of the State of Texas, acting by and through its duly elected Commissioner’s Court, hereinafter identified as “the County,” is to be effective as of the 10<sup>th</sup> day of October, 2008.

**RECITALS**

**WHEREAS**, the Authority is authorized to study, evaluate, design, acquire, construct, maintain, repair, and operate turnpike projects within the counties of Dallas, Collin, Denton and Tarrant pursuant to Chapter 366 of the Texas Transportation Code, as amended (the “Regional Tollway Authority Act”); and

**WHEREAS**, the Authority and the Texas Department of Transportation have entered into that certain Project Agreement dated as of October 18, 2007 relating to a continuous express lane toll project along the current route of State Highway 121 extending approximately from Business SH 121 in Denton County to U.S. 75 in Collin County, a total length of approximately twenty-six (26) miles (the “Project”), and

**WHEREAS**, the Authority is currently designing, constructing, and operating the Project; and

**WHEREAS**, one or more of the Local Governments (hereinafter defined) plans to construct a future cross-street that will intersect with the Project, which will be known as “Exchange Parkway” (the planned location and configuration of said street being hereinafter referred to as “Exchange Parkway,” notwithstanding that such facility has not yet been constructed, and said intersection being hereinafter referred to as the “Intersection”); and

**WHEREAS**, the City of McKinney and the City of Allen (collectively, the “Local Governments”) have requested a modification to the current design and construction of the Project at the Intersection with Exchange Parkway so that the Project shall be constructed over Exchange Parkway (said modification as described in the Plans [hereinafter defined] being referred to as the “Redesign”); and

**WHEREAS**, the Authority has agreed to design and construct the Intersection in accordance with the Redesign, on and subject to the terms and conditions set forth in this MOU; and

**WHEREAS**, the County has agreed to contribute to the payment of the design and construction costs of the Redesign as hereinafter set forth; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the Authority and the County have determined that mutual benefits and advantages can be obtained by further formalizing their agreement as to the separate and distinct issues of importance to them regarding the Redesign.

## **AGREEMENT**

**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, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Authority and the County agree as follows:

### **ARTICLE I. THE REDESIGN**

#### **A. The Redesign**

The current design of the Intersection of the Project and Exchange Parkway provides that the Project will remain at grade and Exchange Parkway will be designed to pass over the Project. The Authority and the Local Governments have executed Interlocal Agreements under which they have agreed that the Project will be redesigned and constructed such that the Project will pass over Exchange Parkway, which one or more of the Local Governments will construct at grade, beyond the right-of-way limits of the Project, at a later date. The Authority has prepared the preliminary plans for the Intersection, which are set forth on Exhibit A attached hereto and

incorporated by reference (the "Preliminary Plans"). The County hereby acknowledges that it approves the Redesign as described in the Preliminary Plans and agrees that it will not object to design changes, if any, incorporated into the final plans for the Project's Intersection with Exchange Parkway (the "Plans") provided such changes do not increase the County's contribution to the design or construction of the Intersection to an amount greater than \$1,500,000.00.

## **ARTICLE II. COST SHARING**

### **A. Contributions of the County**

Subject to the conditions set forth below in subsection II.C., the County will reimburse the Authority for the lesser of (i) One Million Five Hundred Thousand Dollars (\$1,500,000.00) or (ii) one sixth (1/6) of the actual design and construction costs of the Redesign (as applicable, the "County Obligation") in accordance with the reimbursement schedule set forth below.

### **B. Reimbursement to the Authority**

Upon completion of the construction of the Intersection in accordance with the Plans, the Authority will provide the County with a written statement of the total cost increases resulting from designing and constructing the Intersection in accordance with the Redesign and will notify the County of the final amount of the County Obligation (the "Payment Notice"). The County will pay the entire amount of the County Obligation without offset or deduction, as set forth in the Payment Notice, on or before July 1, 2010.

### **C. Funding of County Obligation**

The County's payment of the County Obligation shall be dependent upon available funding at the time the County Obligation is payable. The County intends to fund the County Obligation from the proceeds of bonds or other indebtedness issued by the County, and the County agrees to include the County Obligation as a project to be funded from such proceeds as required under applicable law in a program for a bond election and/or other authorization required to issue obtain and use proceeds to pay the County Obligation.

**ARTICLE III.  
GENERAL PROVISIONS**

**A. Mutual Cooperation**

To the extent County cooperation is required, the County and the Authority hereby agree to cooperate fully with each other to permit the Authority to design, construct, operate, and maintain the Intersection in accordance with the Plans. The County agrees to grant to the Authority at no cost to the Authority right-of-way or other property owned or controlled by the County, if any, necessary or desirable for the construction, operation, and maintenance of the Project at the Intersection with Exchange Parkway, including temporary construction easements (if any) required during construction of the Intersection. The Authority and the County shall each consult and fully cooperate with the other party to ensure that its respective facilities at the Intersection are not operated, maintained, expanded or modified in any manner that interferes with the other party's facilities. This subsection is not intended, and shall not be construed, to waive or otherwise limit any rights or obligations the Authority or the County may have by statute.

**ARTICLE IV.  
MISCELLANEOUS**

**A. Term of MOU**

The term of this MOU shall commence on the effective date set forth above and end on the complete performance by the parties hereto of all provisions of this MOU.

**B. Exchange Parkway**

Notwithstanding any provision of this MOU, this MOU creates no right, duty, or obligation on the part of the County with respect to the design or construction of the Project, Exchange Parkway, or the Intersection. The County's sole obligation pertains to the County Obligation. Notwithstanding any provision of this MOU, this MOU creates no duty or obligation on the part of the Authority with respect to the design and construction of Exchange Parkway. The Authority's only obligation under this MOU pertains to the design and construction of the Project.

**C. Notices**

In each instance under this MOU in which one party is required or permitted to give notice to the others, 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:

In the case of the County:

Collin County  
Attn: Ruben Delgado  
Engineering Department  
825 N. McDonald Street, Suite 160  
McKinney, Texas 75069

In the case of the Authority:

By hand delivery or air courier:

North Texas Tollway Authority  
Attn: Jorge Figueredo, Ph.D., Executive Director  
5900 W. Plano Parkway, Suite 100  
Plano, Texas 75093

By mail:

North Texas Tollway Authority  
Attn: Jorge Figueredo, Ph.D., Executive Director  
P.O. Box 260729  
Plano, Texas 75026

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

**D. Relationship of the Parties; No Joint Enterprise**

Nothing in this MOU 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 the County and/or the Authority or (2) a joint enterprise between the County, the Authority and/or any other party. Without limiting the foregoing, the purposes for which the County and the Authority have entered into this MOU are separate and distinct, and

there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

**E. Successors and Assigns**

This MOU shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Other than as provided in the preceding sentence, no party shall assign, sublet or transfer its respective interests in this MOU without the prior written consent of the other parties to this MOU, unless otherwise provided by law.

**F. Severability**

If any provision of this MOU, or the application thereof to any entity or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this MOU and the application of such provision to other entities or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

**G. Written Amendments**

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

**H. Limitations**

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

**I. Sole Benefit**

This MOU is entered into for the sole benefit of the County, the Authority and their respective successors, and nothing in this MOU 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.

**J. Authorization**

Each party to this MOU represents to the other that it is fully authorized to enter into this MOU 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 MOU. Each signatory on behalf of the County and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this MOU.

**K. Venue**

The provisions of this MOU 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.

**L. Interpretation**

No provision of this MOU 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.

**M. Waiver**

No delay or omission by either party hereto to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

**N. Entire MOU**

This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings or agreements relative hereto which are not fully expressed in this MOU.

**O. Counterparts**

This MOU may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.

**P. Headings**

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



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

**THE COUNTY:**

**COUNTY OF COLLIN**

ATTEST:

Georgia S Shepherd  
Name: Georgia S Shepherd  
Title: Administrative Secretary

By: Keith Keith Self  
Name: Judge Keith Self  
Title: County Judge

**THE AUTHORITY:**

**NORTH TEXAS TOLLWAY AUTHORITY**

ATTEST:

Ruby Franklin  
Ruby Franklin  
Secretary

Jorge Figueredo  
Jorge Figueredo, Ph.D.  
Executive Director

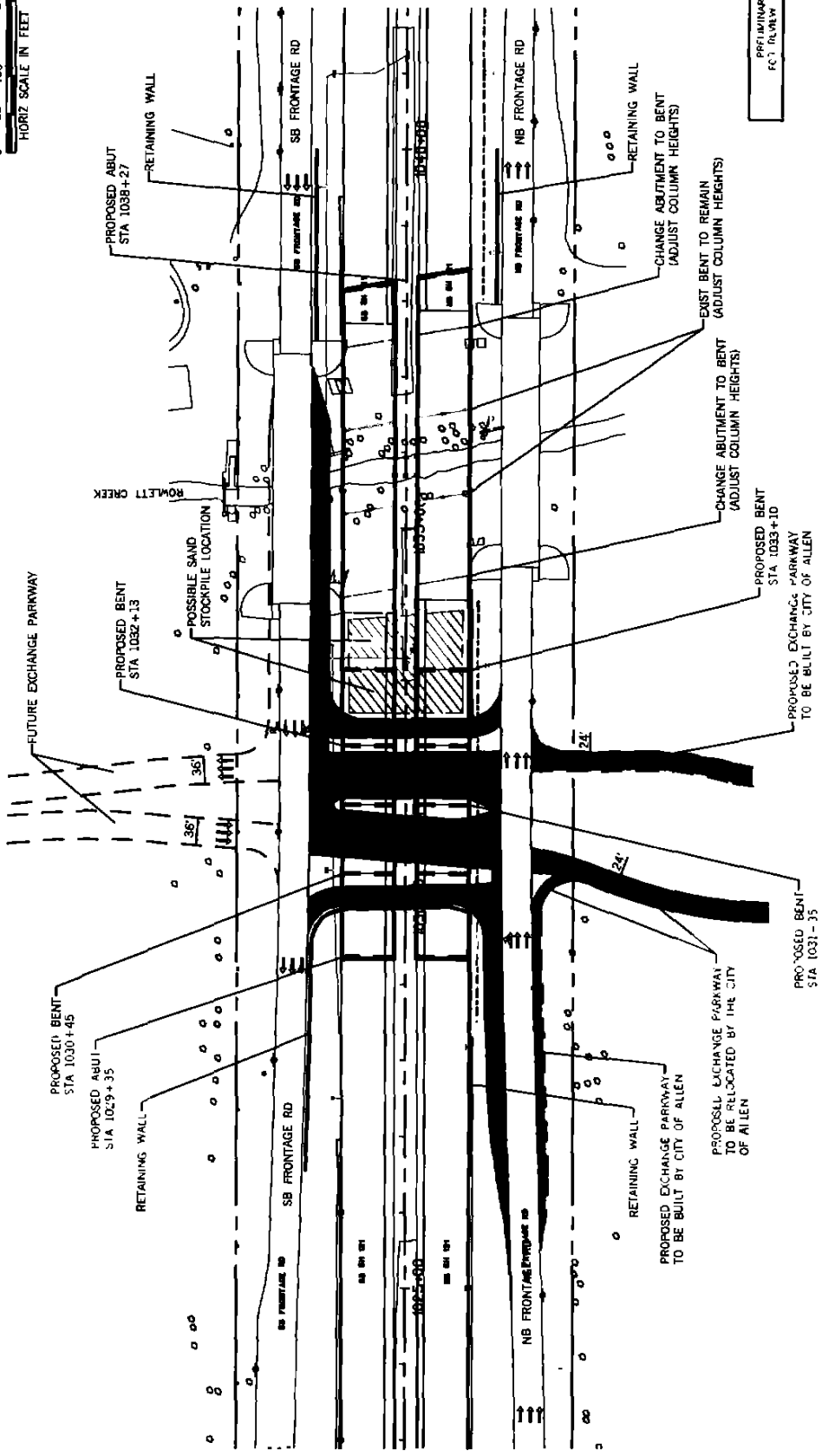
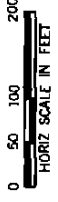
Date: 10-10-08

**APPROVED AS TO FORM:**  
Locke Lord Bissell & Liddell LLP

By: James T Rain  
James T. Rain

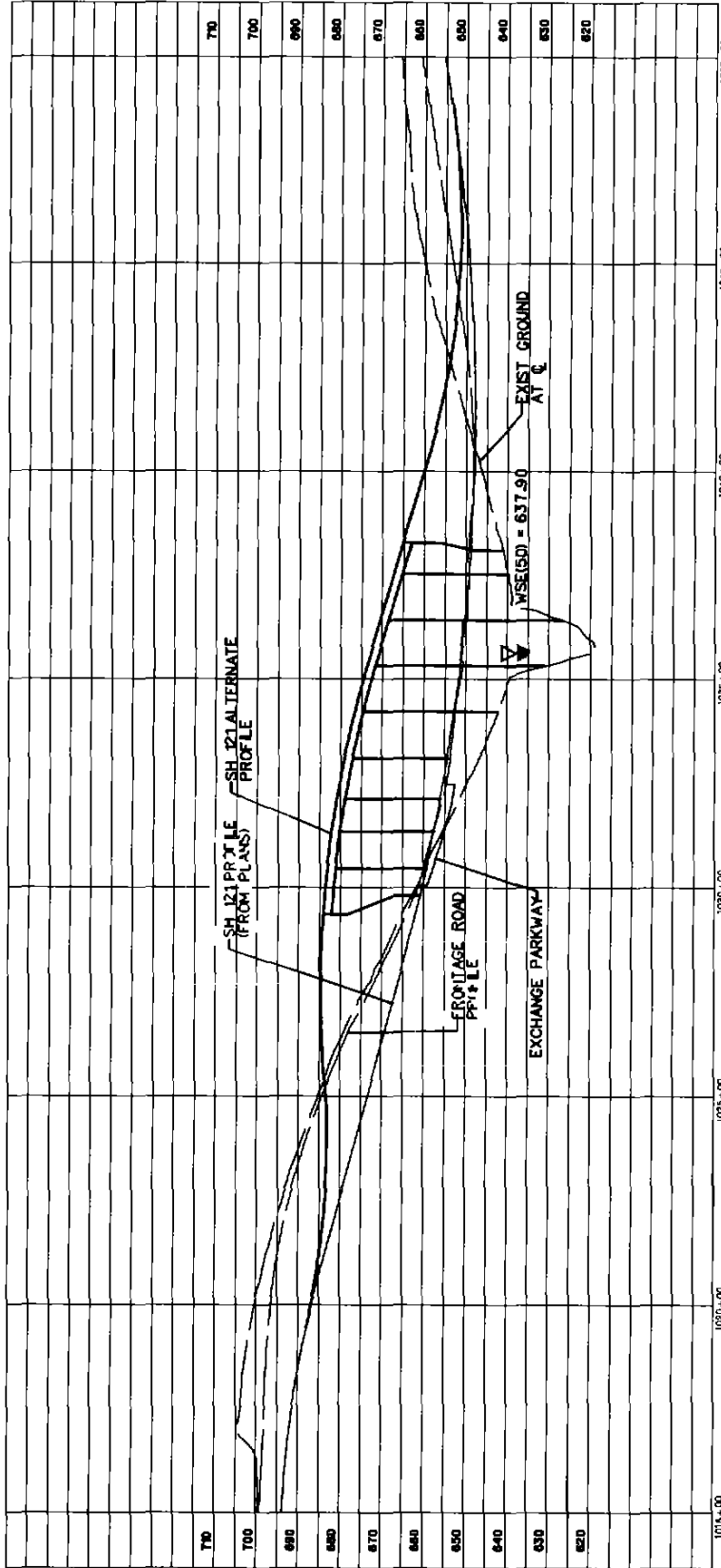
**EXHIBIT A**  
**PRELIMINARY PLANS FOR THE REDESIGN**

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DATE	NO.	BY	CHKD.
SH 121 SEGMENT 3N			
EXCHANGE PARKWAY OVERPASS ALTERNATIVE EXHIBIT A			
H HALFF			SCALE
SHEET NO. 1022B-2181-02-SH-01 1 OF 1			

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PRELIMINARY  
 FOR REVIEW ONLY

DATE	NO.	BY	REVISED
SH 121 SEGMENT 3N			
 NORTH CAROLINA TURNPIKE AUTHORITY			
EXCHANGE PARKWAY OVERPASS ALTERNATIVE EXHIBIT A			
HALFF		SECTION #	
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DRAWING NO. 12123-2161-03-02-01 (REV. 2 - 8-1)			