

INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF LITTLE ELM
AND
THE NORTH TEXAS TOLLWAY AUTHORITY
FOR THE CONSTRUCTION OF ADJACENT IMPROVEMENTS
TO LEWISVILLE LAKE TOLL BRIDGE
(02738-LLB-00-IL-PM)

STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS INTERLOCAL AGREEMENT (this "Agreement"), 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 its Board of Directors (the "Authority"), and the TOWN OF LITTLE ELM, a municipality, acting by and through its duly elected Town Council ("Little Elm"), is entered into effective as of the 30th day of April, 2009.

WITNESSETH

WHEREAS, the Authority and the County of Denton (the "County") entered into the Lewisville Lake Bridge Corridor Feasibility Study Interlocal Agreement dated as of September 20, 2000, as subsequently amended (the "Existing Agreement"), which describes the parties' respective obligations regarding a transportation project (the "Project") divided into two basic parts;

WHEREAS, one part of the Project is a proposed four-lane toll bridge across Lewisville Lake, defined in the Existing Agreement and herein as the "Bridge," and the other part is a series of roadways connecting the Bridge and extending from the intersection of IH-35E and Swisher Road on the west to the proposed intersection of the Dallas North Tollway with FM 2934 on the east, defined in the Existing Agreement and herein as the "Access Roads;"

WHEREAS, the Authority currently intends to substantially complete and open the Bridge for traffic in early August 2009, thereby generating additional traffic along the Access Roads;

WHEREAS, the Authority and the County have agreed that three (3) categories of improvements should be undertaken to the Access Roads and completed prior to the opening of the Bridge, if possible, in order to enhance the operation and mobility benefits of the Project (the "Adjacent Improvements"), and, in a Supplemental Agreement No. 5 to the Existing Agreement (the "Supplemental Agreement"), have agreed to share the cost of the Adjacent Improvements;

WHEREAS, Little Elm, together with the Texas Department of Transportation ("TxDOT") and the City of Lake Dallas ("Lake Dallas"), supports the undertaking of the Adjacent Improvements as provided in the Supplemental Agreement;

WHEREAS, additionally, Little Elm offered to utilize its contractors to construct the Adjacent Improvements, subject to reimbursement by the Authority, and upon reviewing the resulting quotes Little Elm received for the Adjacent Improvements, the Authority determined that accepting Little Elm's offer to construct the Adjacent Improvements provided material benefits; 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 Little Elm have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the construction of the Adjacent Improvements by Little Elm, as well as with respect to other related matters.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto by them respectively kept and performed as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Authority and the City agree as follows:

1. Approval, Design and Construction of the Adjacent Improvements. The Authority, at its cost, has designed, and prepared the construction plans and specifications for, the Adjacent Improvements (the "Plans") to enhance the operation and mobility benefits of the Project, consisting of the following:

- (a) Swisher Road improvements:
 - (i) Add northbound right-turn lane on IH-35E frontage road at Swisher Road; and
 - (ii) Add traffic signal at Swisher Road and Shady Shores Road intersection;
- (b) FM 720 improvements:
 - (i) Add a turn-lane on each leg of the existing FM 720-Eldorado Parkway intersection; and
 - (ii) Overlay and re-stripe intersection;
- (c) Eldorado Parkway improvements:
 - (i) Upgrade existing 72" culvert; and
 - (ii) Overlay and re-stripe Eldorado Parkway;

all as shown on Exhibit A attached hereto and made a part hereof (the "Adjacent Improvements"), which have been reviewed and approved by Little Elm. Additionally, the Authority has obtained all necessary approvals from TxDOT, Lake Dallas, Little Elm, and other necessary parties regarding said design and construction. Little Elm has received quotes from its contractors on the Plans in accordance with its standard change order/procurement practice and Interlocal Agreement Between the Town of Little Elm and the North Texas Tollway Authority

shall award and administer the necessary construction contract(s) (collectively, the "Construction Contract") and use all reasonable efforts to complete the Adjacent Improvements prior to the opening of the Bridge. Additionally, at their own cost, the Authority shall provide construction management and inspection services for the category of the Adjacent Improvements described under subparagraph (a) of this Paragraph 1 and Little Elm shall provide those services for those categories of the Adjacent Improvements described under subparagraphs (b) and (c). Without the prior written consent of the Authority and the County, Little Elm shall not cause or permit any changes to the Plans.

2. Reimbursement for the Adjacent Improvements. The Authority agrees to reimburse Little Elm for Little Elm's actual costs under the Construction Contract, now set at Six Hundred One Thousand Seven Hundred Dollars (\$601,700.00). Little Elm shall take all reasonable steps to prevent the Authority's reimbursement obligations under this Paragraph 2 from exceeding \$601,700.00, and shall not amend the Construction Contract without providing adequate prior notice to the Authority. Invoices complying with the terms of this Agreement shall be due and paid to Little Elm within thirty (30) days from their receipt by the Authority, together with reasonably adequate supporting documentation. Invoices will not be submitted by Little Elm to the Authority under this Agreement more frequently than once in any calendar month. Little Elm may stop construction of the Adjacent Improvements if nonpayment by the Authority of the full amount of any compliant invoice continues for more than forty-five (45) days from the Authority's receipt thereof.

3. Operation and Maintenance of the Adjacent Improvements. Upon completion of the Adjacent Improvements and the Authority's reimbursement of Little Elm in accordance with this Agreement, all of the Authority's obligations relating thereto shall be

Interlocal Agreement Between the Town of Little Elm and
the North Texas Tollway Authority

conclusively deemed fully satisfied and complete. The County, working with TxDOT, Lake Dallas, and Little Elm, has agreed in the Supplemental Agreement to provide or arrange for the operation and maintenance of the Adjacent Improvements at no cost to the Authority. Without limiting the foregoing, Little Elm has agreed to operate and maintain the upgraded culvert under Eldorado Parkway and the overlay of existing Eldorado Parkway, described under subparagraph 1.(c). This Agreement shall neither impose upon nor create for the Authority any responsibility for (i) the proper operation or maintenance of the Adjacent Improvements, including any costs resulting therefrom, or (ii) the police enforcement required for securing compliance with the traffic signalization, speed limits, or other matters related to the Adjacent Improvements.

4. **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, (a) the relationship of principal and agent, partnership or joint venture between Little Elm and the Authority or (b) a joint enterprise between Little Elm, the Authority, and/or any other party. Without limiting the foregoing, the purposes for which Little Elm 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.

5. **No Liability.** Nothing in this Agreement shall be construed to place any liability on either Little Elm or the Authority, or any liability on any of the Authority's or Little Elm's respective employees, agents, servants, consultants, directors or officers, for personal injury or property damage arising out of Little Elm's or the Authority's performance of their construction and other obligations under this Agreement. Furthermore, it is not the intent of this Agreement to impose upon Little Elm or the Authority any liability for injury to persons or damage to property arising out of any construction unrelated to the terms of this Agreement undertaken by

any contractor employed or engaged by the Authority or Little Elm. Nothing herein shall be construed as a waiver of any rights which may be asserted by either party hereto, including the defense of governmental immunity.

6. **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 Little Elm and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

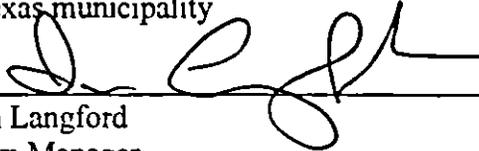
[Remainder of Page Intentionally Left Blank]

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

ATTEST:


Kathy Phillips
Town Secretary

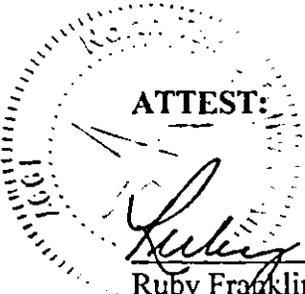
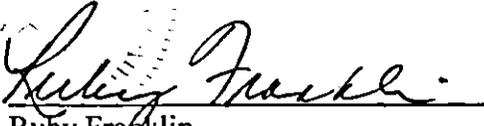
TOWN OF LITTLE ELM,
a Texas municipality

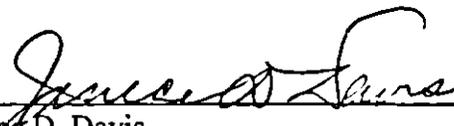

Ivan Langford
Town Manager

Date: 4/9/09

ATTEST:

NORTH TEXAS TOLLWAY AUTHORITY



Ruby Franklin
Secretary


Janice D. Davis
Interim Executive Director

Date: 4.30.09

APPROVED AS TO FORM:

Locke Lord Bissell & Liddell LLP
General Counsel

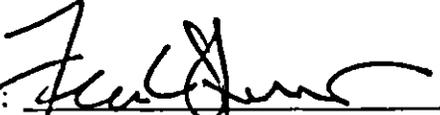
By: 
Frank E. Stevenson, II

EXHIBIT A

to

INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF LITTLE ELM
AND
THE NORTH TEXAS TOLLWAY AUTHORITY
FOR THE CONSTRUCTION OF ADJACENT IMPROVEMENTS
TO LEWISVILLE LAKE TOLL BRIDGE

Depiction of the Adjacent Improvements

[see following pages]

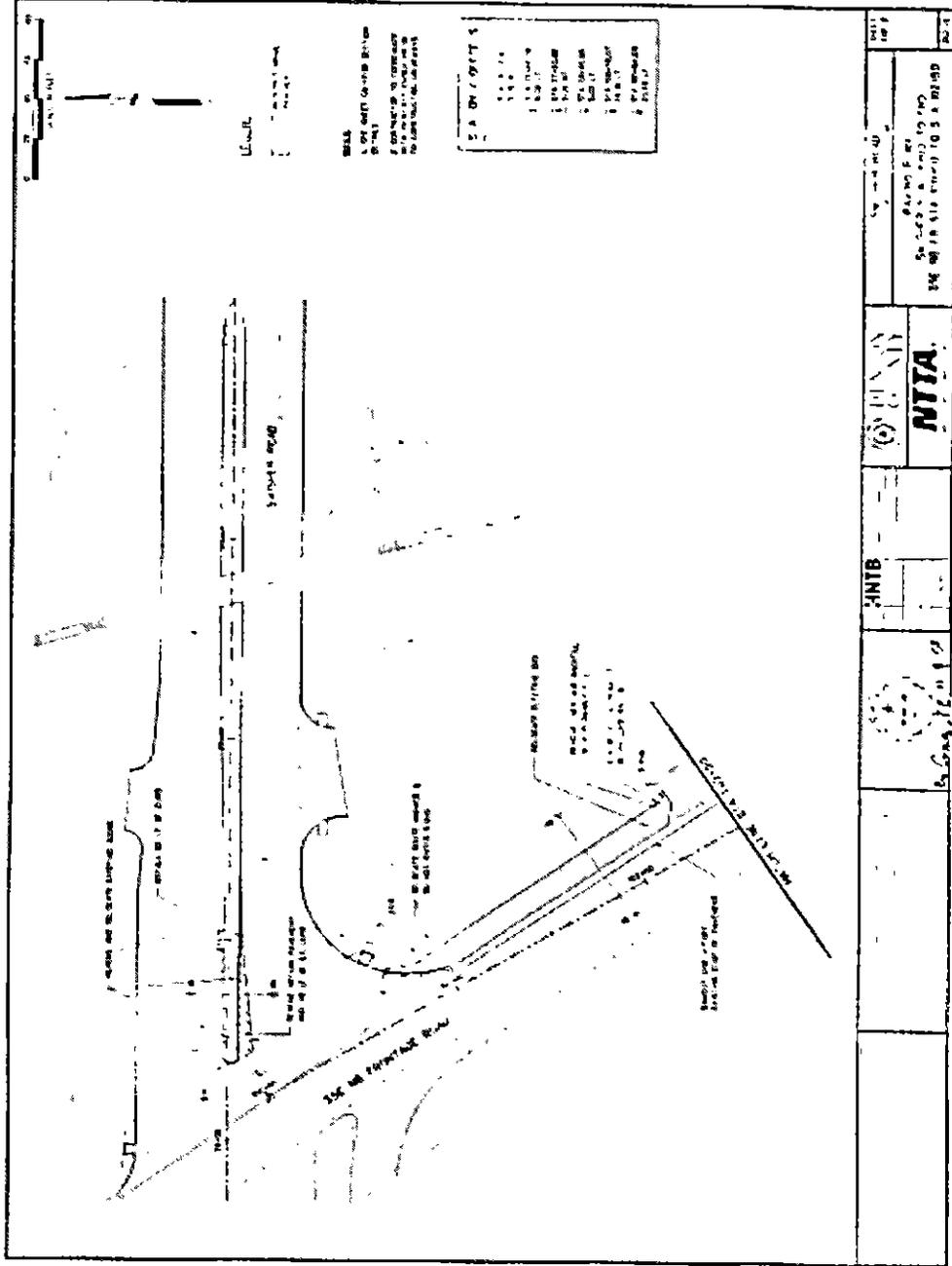


Exhibit A to Interlocal Agreement Between the Town of Little Elm and the North Texas Tollway Authority

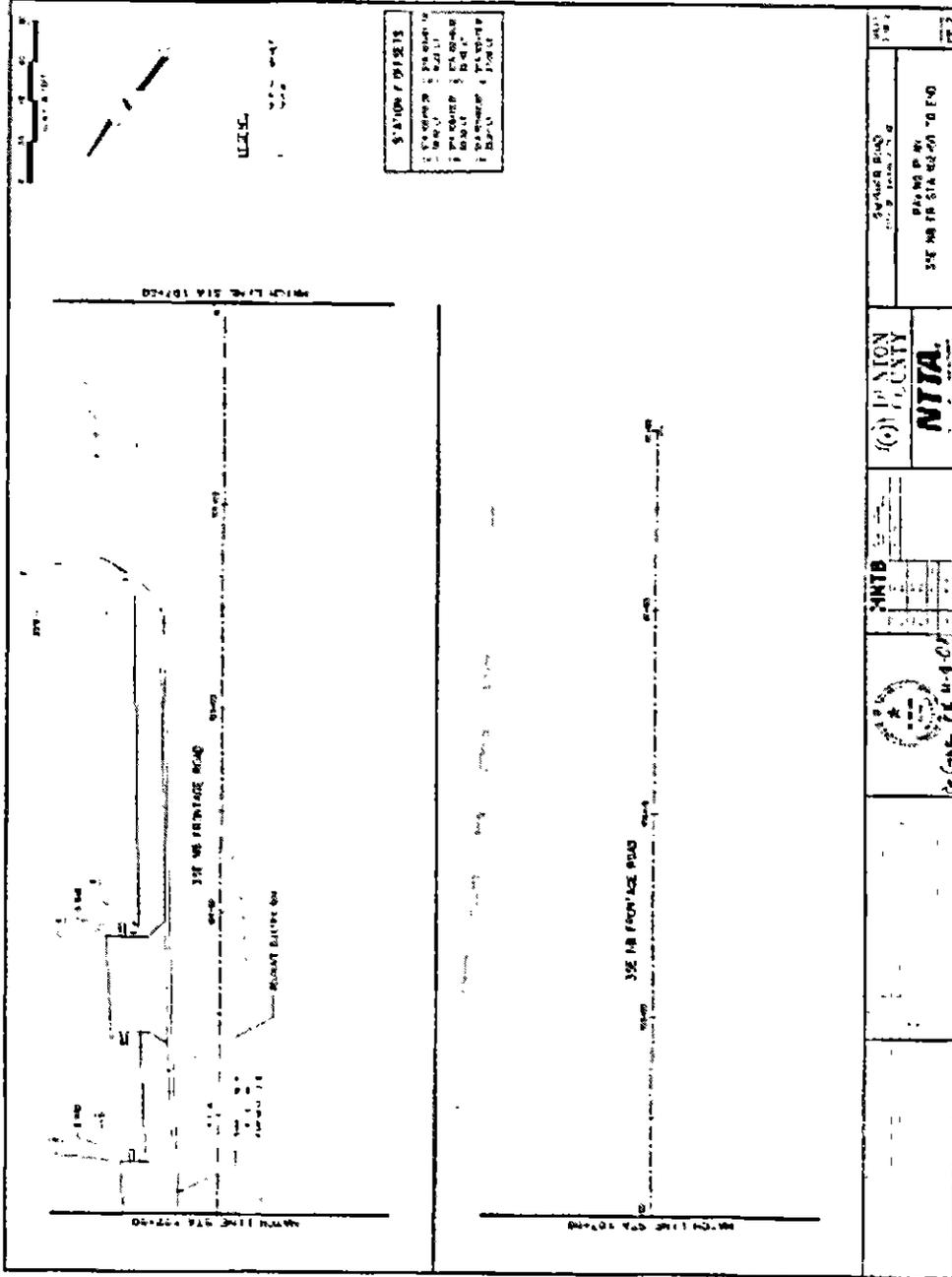


Exhibit A to Interlocal Agreement Between the Town of Little Elm and the North Texas Tollway Authority



