

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF ALLEN
AND
THE NORTH TEXAS TOLLWAY AUTHORITY
REGARDING THE INTERSECTION OF
STATE HIGHWAY 121 AND EXCHANGE PARKWAY**

9/ __/08

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THIS INTERLOCAL AGREEMENT (“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 the its Board of Directors, hereinafter identified as the “Authority,” and the **CITY OF ALLEN**, a Texas home rule municipality, acting by and through its duly elected City Council, hereinafter identified as “the City,” is to be effective as of the 24th day of September, 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) is constructing a 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 fully constructed, and said intersection being hereinafter referred to as the “Intersection”); and

WHEREAS, the City, the City of Allen, and Collin County (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 Agreement; and

WHEREAS, the City 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 City 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 City 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 parties hereby agree 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 finish constructing at grade 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 City hereby acknowledges that it approves the Redesign as described in the Preliminary Plans and agrees that it will not object to non-material design changes, if any,

incorporated into the final plans for the Project's Intersection with Exchange Parkway (the "Plans"). The Authority agrees that unless otherwise agreed by the City, the final Plans shall be substantially similar to the Preliminary Plans, and the Authority shall provide the City with copies of the final Plans when they are available.

ARTICLE II. COST SHARING

A. Contributions of the City

The City 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 "City 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 City 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 City of the final amount of the City Obligation (the "Payment Notice"). The City will pay the entire amount of the City Obligation without offset or deduction, as set forth in the Payment Notice, on or before July 1, 2010. The City reimbursement to the Authority shall be from current revenue or other lawfully available funds.

ARTICLE III. GENERAL PROVISIONS

A. Mutual Cooperation

The City 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 City agrees to grant to the Authority at no cost to the Authority right-of-way or other property owned or controlled by the City 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 City 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 City may have by statute.

B. Construction of Exchange Parkway

Understanding that the design and construction has commenced on the portions of Exchange Parkway located within the City's corporate limits at the Intersection of Exchange Parkway with the Project, which are set forth on Exhibit B attached hereto and incorporated by reference (the "City's Plans"), the City shall contact the Authority and thereafter take all steps the Authority reasonably deems necessary or desirable to ensure that future design changes, construction, maintenance and operation of Exchange Parkway does not impair or interfere with the design, construction, operation or maintenance of the Project. The City shall submit any material plan changes for Exchange Parkway to the Authority for the Authority's review, and the applicable construction contract shall not be let unless and until the Authority approves the plan changes in writing, such approval not to be unreasonably withheld or delayed. Thereafter, Exchange Parkway where it intersects with and crosses under the Project shall be constructed in accordance with the approved plans, and the Authority shall have the right to make such inspections and testing it desires to confirm same. The City also shall cause its staff and consultants to continue to meet and communicate with the Authority regularly during the remaining design and construction phases of Exchange Parkway, and the Authority shall reasonably cooperate with the City in advancing such design and construction provided the same complies with the provisions of this subsection III.B.

C. Signalization.

- (1) In consideration of the City's performance of its obligations under this Agreement, the Authority shall provide for the design, construction and installation of temporary and permanent traffic signalization at the portions of the Intersection within the City's corporate limits necessitated by the construction of the Project. The Authority shall design, prepare and issue construction plans and specifications, take bids, award contracts and purchase orders, install and test (or cause the same to be done) any temporary or permanent traffic signalization systems for at the Intersection, and also shall install and/or relocate, at its sole

expense, any traffic signals, conduit, controllers or any other related facilities that may be required at the Intersection for or as a result of the construction of the Project (collectively, the "Signalization Work"). Thereafter, the City (either itself or by agreement with TxDOT) shall be responsible for the operation and maintenance of said traffic signalization systems. The Signalization Work shall include the Authority's provision, at its cost, of the standard TxDOT signal kit, plus "Opticom® units."

- (2) The City shall ensure that, once completed, its traffic signalization systems do not impede or interfere with the operation of the Project, including, without limitation, access to or egress from the Turnpike Lanes. The Authority shall keep the City reasonably informed of the Authority's design and construction plans in furtherance thereof. Upon completion of the Signalization Work, the City agrees (either itself or by agreement with TxDOT) to operate, police and maintain the described traffic signalization systems at no cost to the Authority and to assume the responsibility for provision of all electrical power required for signal operations, including that required during construction and test periods.
- (3) This subsection III.C. sets forth the Authority's sole obligation regarding the Signalization Work and nothing contained in this Agreement shall in any way impose upon or create for the Authority any responsibility for (i) the proper operation of traffic signalization along the Project within the corporate limits of the City or (ii) the police enforcement required for securing compliance with the traffic signals described in this Agreement.

D. Utility Clearances and Relocations.

- (1) The City agrees to maintain a utility clear zone by prohibiting the subsequent issuance of any utility permits that would conflict with the design and construction of the Intersection. With respect to the overpass structure to be constructed for the passage of the Project's controlled access lanes (the "Turnpike Lanes") over Exchange Parkway, the utility clear zone shall extend not less than seventy-five feet (75') from the Turnpike Lanes centerline (for a utility clear zone of not less than one hundred fifty feet [150'] total). This utility clear zone shall be located between four feet (4') and twelve feet (12') behind the back of curb of the

through traffic lanes (ultimate width) of the cross street. The City shall be responsible for relocating any utilities or other surface or subsurface improvements and facilities that the Authority determines to be in conflict with the utility clear zone.

ARTICLE IV.
MISCELLANEOUS

A. Term of Agreement

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

B. Subsequent Agreements

The City agrees to enter into such subsequent agreement(s) with the Authority as may be necessary or desirable for either the construction, operation and maintenance of the Intersection or to ensure the physical integrity of the Project. Although the precise terms of the Subsequent Agreements shall be negotiated at a later time, none of those terms shall conflict with any provision of this Agreement, absent the specific agreement of the parties to the contrary, and all such Subsequent Agreements otherwise shall be consistent with the terms and provisions hereof.

C. Exchange Parkway

Notwithstanding any provision of this Agreement, this Agreement 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 Agreement pertains to the design and construction of the Project.

D. Notices

In each instance under this Agreement 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 City:

City of Allen
Attn: City Manager
305 Century Parkway
Allen Texas 75013

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.

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 the City and/or the Authority or (2) a joint enterprise between the City, the Authority and/or any other party. Without limiting the foregoing, the purposes for which the City 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. Successors and Assigns

This Agreement 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 Agreement without the prior written consent of the other parties to this Agreement, unless otherwise provided by law.

G. Severability

If any provision of this Agreement, 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 Agreement 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.

H. 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 Agreement shall be of any effect unless in writing and executed by all of the parties.

I. Limitations

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

J. Sole Benefit

This Agreement is entered into for the sole benefit of the City, the Authority and their respective successors, and 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.

K. 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 the City and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Agreement.

L. 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 the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

M. 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.

N. 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.

O. Entire Agreement

This Agreement 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 Agreement.

P. Counterparts

This Agreement 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.

Q. 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, the City and the Authority have executed this Agreement on the dates shown below, to be effective on the date listed above.

THE CITY:

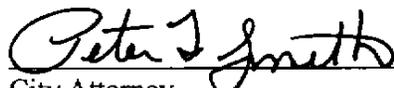
CITY OF ALLEN

ATTEST:


Name: Shelley George
Title: City Secretary

By: Shelli Seimer 10-2-08
Name: Peter H. Vargas / Shelli Seimer
Title: City Manager / Assistant City Manager

APPROVED AS TO FORM:

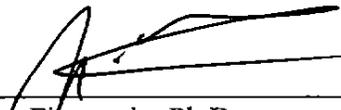

City Attorney

THE AUTHORITY:

NORTH TEXAS TOLLWAY AUTHORITY

ATTEST:


Ruby Franklin
Secretary


Jorge Figueredo, Ph.D.
Executive Director

Date: 10-27-08

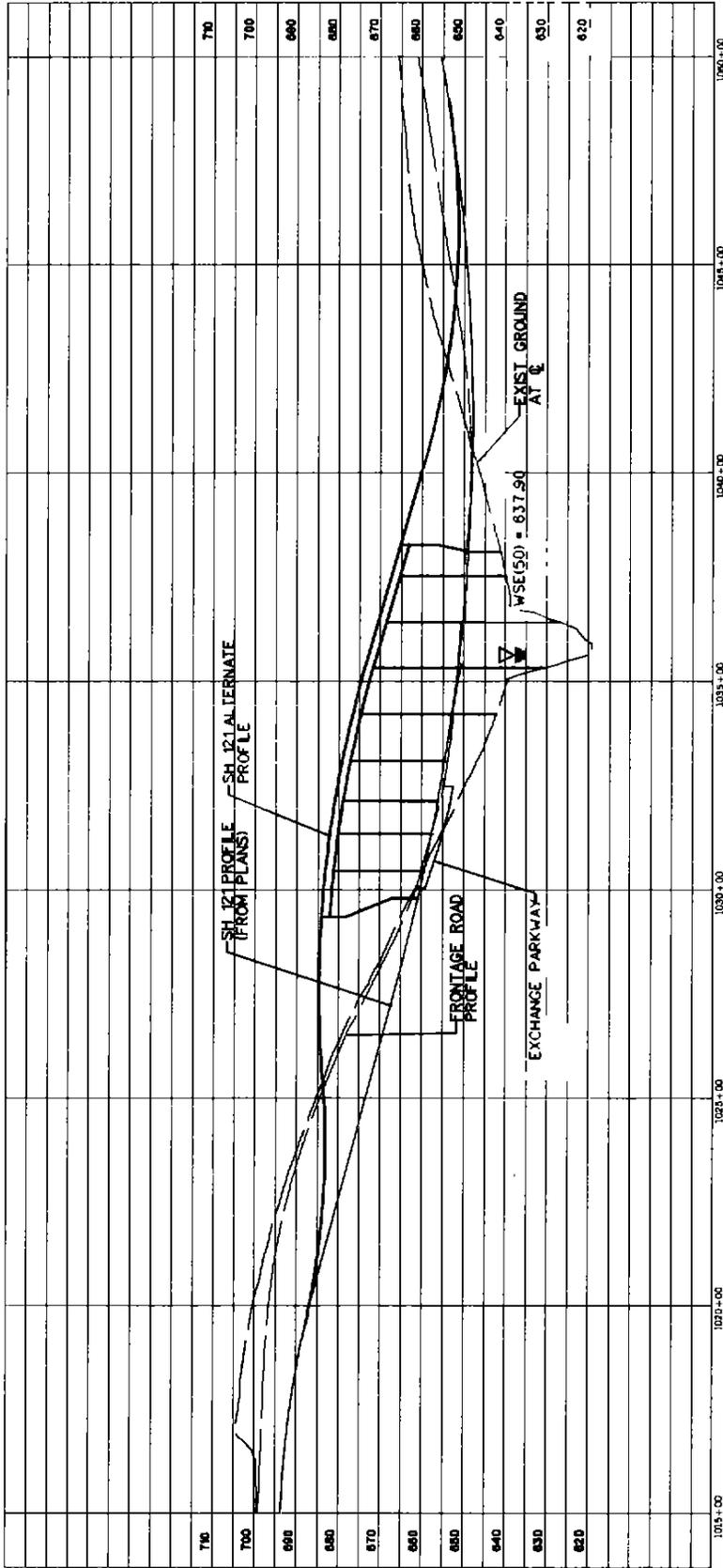
APPROVED AS TO FORM:
Locke Lord Bissell & Liddell LLP

By: 
James T. Rain

EXHIBIT A
PRELIMINARY PLANS FOR THE REDESIGN

[attached]

0 100 200 400
 HORIZ SCALE IN FEET
 0 10 20 30 40
 VERT SCALE IN FEET



THE PRIMARY
 FC - REVIEW ONLY

SH 121 SEGMENT 3N	
 <small>NORTH CAROLINA TRANSPORTATION AUTHORITY</small>	
EXCHANGE PARKWAY OVERPASS ALTERNATIVE EXHIBIT A	
 <small>ENGINEERS</small>	
DATE: 08/20/08	SCALE: AS SHOWN
PROJECT NO: 022200-0001-00-01-01-01	SHEET NO: 2 OF 2

EXHIBIT B
CITY'S PLANS FOR EXCHANGE PARKWAY

[attached]

