

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Memorandum of Understanding, North Texas Tollway Authority (NTTA) – Engineering

On September 23, 2008, the Commissioners Court of Collin County, Texas, met in regular session with the following members present and participating, to wit:

Keith Self
Phyllis Cole
Jerry Hoagland
Joe Jaynes
Kathy Ward

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, Precinct 4

During such session the court considered a request for approval of a Memorandum of Understanding (MOU) with the North Texas Tollway Authority (NTTA).

Thereupon, a motion was made, seconded and carried with a majority vote of the court for approval of a Memorandum of Understanding (MOU) with the North Texas Tollway Authority (NTTA) for Grade Separation at Exchange Parkway and SH 121 and further authorize the County Judge to finalize and execute same (County participation NTE \$1,500,000). Same is hereby approved in accordance with the attached documentation.



ATTEST:

Stacey Kemp
Stacey Kemp, Ex-Officio Clerk
Commissioners' Court
Collin County, TEXAS

Keith Self
Keith Self, County Judge

Phyllis Cole
Phyllis Cole, Commissioner, Pct. 1

Jerry Hoagland
Jerry Hoagland, Commissioner, Pct. 2

Joe Jaynes
Joe Jaynes, Commissioner, Pct. 3

Kathy Ward
Kathy Ward, Commissioner, Pct. 4

AI-28970

Item #: 4. f. 5.

Commissioners Court

Date: 09/23/2008

Submitted For: Ruben Delgado
Department: EngineeringSubmitted By: Tracy Homfeld,
Engineering**Information****Description of Agenda**

Approval of Memorandum of Understanding (MOU) with the North Texas Tollway Authority (NTTA) for Grade Separation at Exchange Pkwy and SH 121 Tollway

Purchasing Department Action

Commissioners' Court consideration and any action regarding approval of a Memorandum of Understanding (MOU) with the North Texas Tollway Authority (NTTA) for Grade Separation at Exchange Pkwy and SH 121 Tollway and further authorize the County Judge to execute same. Collin County's contribution is a not to exceed \$1,500,000.00.

Finance Department Action

Construction of Intersection at SH121 and Exchange approved on CO# 2008-308-04-29. Funds to come from contingency bond funds. No fiscal Impact at this time. Funds will not be needed until July 1, 2010.

Auditor's Office Action

Based on Ruben's communication and the MOU, this is the forniliation of the agreed funding. If approved, under GAAP and GASB the funding obligation liability must be encumbered even though the funding will not be needed until 7/1/2010.

Commissioners Court

Memorandum of Understanding (MOU) with the North Texas Tollway Authority (NTTA) for Grade Separation at Exchange Parkway and SH 121 and further authorize the County Judge to finalize and execute same (County participation NTE \$1,500,000), Engineering.

Budget Information*Information about available funds*Budgeted: Funds Available: Adjustment:

Amount Available: 1,500,000

Unbudgeted: Funds NOT Available: Amendment: **Account Code(s) for Available Funds**

1: See Note

Fund Transfers**Fiscal Impact****Trans Amt:****From:****To:****Dept. Name:****Additional Line Items:****Remarks:**

No fiscal Impact at this time. Funds will not be needed until July 1, 2010.

AttachmentsLink: [Court Order](#)Link: [Comm. Court Memo](#)Link: [Court Order 2008-308-04-29](#)Link: [NTTA Letter](#)Link: [MOU](#)



COLLIN COUNTY

Engineering Department
825 N. McDonald Street
Suite 160
McKinney, Texas 75069
972-548-3727
www.collincountytx.gov

MEMORANDUM September 11, 2008

To: Commissioners' Court

Fr: Ruben Delgado, P.E.; Director of Engineering

**Re: Exchange Parkway Grade Separation at SH 121
Approval of Memorandum of Understanding (MOU)
North Texas Tollway Authority (NTTA)**

On April 29, 2008 Commissioners Court approved participating with the Cities of Allen and McKinney and the NTTA to redesign and construct Exchange Parkway from an at grade intersection to a grade separated intersection- reference the attached Court Order.

In the same amount as the cities, Commissioners Court agreed to provide funding not to exceed \$1,500,000 or 1/6th of the estimated \$9,000,000 total cost. NTTA would fund 50% or \$4,500,000, re-design and engineer and construct SH 121 at Exchange Parkway as a grade separated intersection.

The attached MOU formally incorporates the above cost participation obligations.

Collin County funding obligation or payment would be due on or before July 1, 2010.

We request Commissioners Court approve the attached MOU and authorize Judge Keith Self to execute the MOU.

xc: Bill Bilyeu
Monika Arris
Tracy Homfeld

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Construction of an Intersection at SH 121 and Exchange – Engineering

On April 29, 2008, the Commissioners Court of Collin County, Texas, met in regular session with the following members present and participating, to wit:

Keith Self
Phyllis Cole
Jerry Hoagland
Joe Jaynes
Jack Hatchell Not Present

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, Precinct 4

During such session the court considered a request for approval to construct an intersection at SH 121 and Exchange.

Thereupon, a motion was made, seconded and carried with a majority vote of the court for approval to construct an intersection at SH 121 and Exchange. Same is hereby approved in accordance with the attached documentation.

No Vote

Keith Self, County Judge

[Signature]

Phyllis Cole, Commissioner, Pct. 1

[Signature]

Jerry Hoagland, Commissioner, Pct. 2

[Signature]

Joe Jaynes, Commissioner, Pct. 3

NOT PRESENT

Jack Hatchell, Commissioner, Pct. 4



ATTEST:

[Signature]

Stacey Kemp, Ex-Officio Clerk
- Commissioners' Court
Collin County, TEXAS



NORTH TEXAS TOLLWAY AUTHORITY

September 9, 2008

Mr. Ruben Delgado
Collin County Engineering Department
Collin County McKinney Plaza Location
825 N. McDonald Street
McKinney, Texas 75069

RE: 121 Tollway and Exchange Parkway

Dear Mr. Delgado,

Enclosed is the memorandum of understanding for the improvements on the 121 Tollway project to accommodate the construction of Exchange Parkway. I believe the agreement accurately reflects our discussions and understanding - should you find it acceptable please return two executed originals to me for final execution. We will return one original for your records.

Please contact me at 214-952-3979 if you have any questions or require further information.

Best regards,

Elizabeth Mow, P.E.
Director of Project Delivery

CC:
Jeff Dalley
Steve Hankins
Dave Clarke

Paul N. Wageman
Chairman

Victor Vandergriff
Vice Chairman

Kenneth Barr
Director

Gary Base
Director

Bob Day
Director

David R. Denison
Director

Michael Nowels
Director

Robert Shepard
Director

Alan B. Sims
Director

Jorge Figueredo
Executive Director

Rick Herrington
Deputy
Executive Director

P.O. Box 260729
Plano, TX 75026

5900 W. Plano Parkway
Suite 100
Plano, TX 75093

214-461-2000

214-528-4826 (Fax)

www.nita.org

**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**

1/9/08

**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**

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 10th 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

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

By:

Keith Self
Name: Keith Self
Title: County Judge

APPROVED AS TO FORM:

THE AUTHORITY:

NORTH TEXAS TOLLWAY AUTHORITY

ATTEST:

Ruby Franklin
Ruby Franklin
Secretary

Jorge Figueredo
Jorge Figueredo, Ph.D.
Executive Director

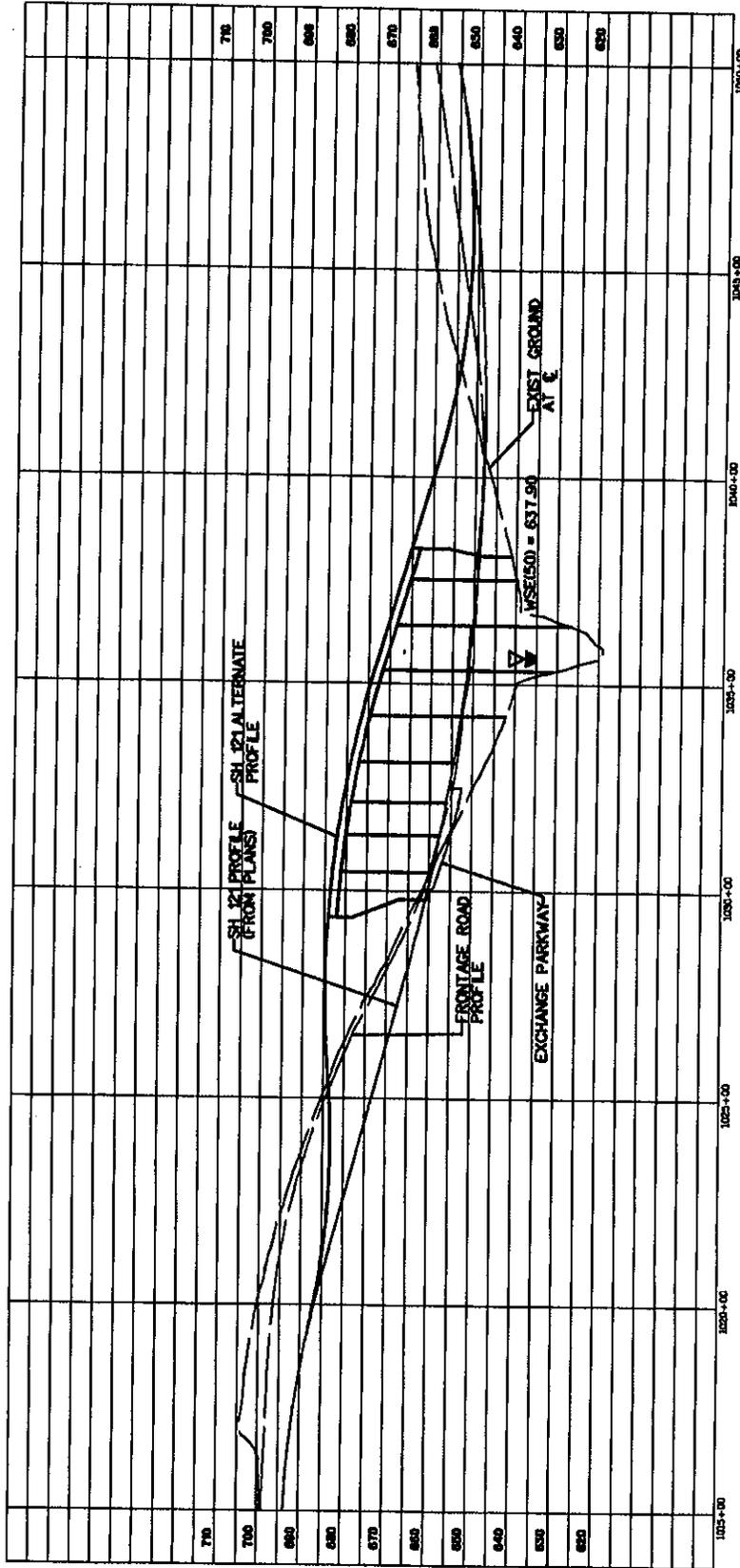
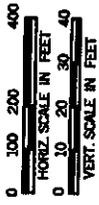
Date: 10-10-08

APPROVED AS TO FORM:
Locke Lord Bissell & Liddell LLP

By: James T. Rain
James T. Rain

EXHIBIT A
PRELIMINARY PLANS FOR THE REDESIGN

[to be provided]



PRELIMINARY FOR REVIEW ONLY

STATE OF TEXAS
 SH 121 SEGMENT 3N
NPA
 NORTH TEXAS PARKWAY AUTHORITY
 EXCHANGE PARKWAY OVERPASS ALTERNATIVE EXHIBIT A
 SHEET NO. 11 HALFF
 DATE: 11/11/11
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]