

**SOUTHWEST PARKWAY AND CHISHOLM TRAIL  
(TARRANT AND JOHNSON COUNTIES)  
FINANCIAL ASSISTANCE AGREEMENT  
(Construction, Right-of-Way, and Study Costs)**

This Financial Assistance Agreement (this "Agreement"), dated the 23rd day of September, 2009 (the "Effective Date"), is made by and between the Texas Department of Transportation, an agency of the State of Texas ("TxDOT"), and the North Texas Tollway Authority, a political subdivision of the State of Texas (the "NTTA"), for the purpose of providing financial assistance in connection with the development of a certain toll facility.

**RECITALS**

The parties acknowledge the following:

A. The NTTA is a regional tollway authority governed by Chapter 366 of the Texas Transportation Code ("Chapter 366").

B. The NTTA currently serves Collin, Dallas, Denton, and Tarrant Counties, and came into existence on September 1, 1997, as a statutory successor to the Texas Turnpike Authority.

C. The proposed Southwest Parkway project extends for approximately 8.7 miles within Tarrant County, from IH 30 near the City of Fort Worth's Central Business District to Altamesa Boulevard in the city's southwest region (the "Southwest Parkway"). The proposed Chisholm Trail project extends for approximately 19 miles from Altamesa Boulevard to US 67 in the City of Cleburne (the "Chisholm Trail").

D. Chapter 366 authorizes the NTTA to acquire, construct, maintain, repair, and operate turnpike projects at such locations within its jurisdiction as may be determined by the NTTA, and to issue bonds and other obligations for the purpose of paying all or any part of the cost of a turnpike project, such as the Southwest Parkway. The NTTA has not committed to undertake the Southwest Parkway or Chisholm Trail project as of the Effective Date.

E. Southwest Parkway affects railroad facilities known as the Davidson Yard, which are owned and operated by the Union Pacific Railroad Company ("UPRR"). UPRR agreed to terms regarding the design, construction, and operation of Southwest Parkway across the Davidson Yard (the "SWP/Davidson Yard Segment"). That agreement is documented in the "Union Pacific Railroad/Project Partners Formal Agreement," dated as of January 8, 2009, entered into by and between UPRR, the NTTA, the City of Fort Worth (the "City"), and TxDOT (as amended from time to time and including the separate agreements described therein, the "Formal Agreement").

F. To (1) acquire the right-of-way interests needed for the SWP/Davidson Yard Segment, (2) obtain access to the Davidson Yard to construct the SWP/Davidson Yard Segment, and (3) otherwise close the right-of-way settlement described in the Formal Agreement, the NTTA and the City agreed to each fund an equal share of \$95 million (the "\$95 Million Obligation") payable either (a) to UPRR or (b) to reimburse the NTTA for work elements

M. On August 27, 2009, by Minute Order 111927, the Texas Transportation Commission, pursuant to its constitutional and statutory authority, acted upon the three requests noted above and authorized TxDOT to (1) pay the \$45.13 Million Balance if the NTTA does not establish feasibility for the Southwest Parkway or otherwise elects not to undertake the delivery of the Southwest Parkway on or before such time as the \$49.87 Million Portion is fully advanced to the NTTA under the \$49.87 Million Toll Equity Grant Agreement, (2) pay the cost of the Advanced Construction Work to the NTTA if TxDOT develops the Southwest Parkway, and (3) participate in the cost of the Study by reimbursing 50% of those costs to the NTTA, with the total amount of TxDOT's obligations under clauses (1) and (2) not to exceed \$85.13 million; and

N. By Resolution No. 09-~~23~~<sup>238</sup> passed on September 23, 2009, the NTTA Board of Directors authorized the Executive Director of the NTTA to enter into this Agreement.

#### AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

#### **The \$45.13 Million Balance**

1. TxDOT will pay to the NTTA the \$45.13 Million Balance upon the conditions set forth in, and in accordance with terms of, this Section and Sections 2, 3, and 4 below. The \$45.13 Million Balance will be used to fund the remaining portion of the \$95 Million Obligation as set forth in this Agreement.

2. In the event NTTA elects not to develop the Southwest Parkway and the \$49.87 Million Portion is fully advanced to the NTTA pursuant to the \$49.87 Million Toll Equity Grant Agreement, then:

A. TxDOT shall directly disburse to the NTTA the \$45.13 Million Balance of the \$95 Million Obligation as and when such amount has been incurred and is properly owing by the NTTA to UPRR pursuant to the Formal Agreement and to Section 3 below. The NTTA may submit a request for disbursement to TxDOT prior to the NTTA's actual payment of said amounts to UPRR, provided said request otherwise complies with this Agreement; however, TxDOT must receive and approve evidence of the NTTA's actual payment of the sums subject to the request for disbursement prior to TxDOT's reimbursement thereof.

B. TxDOT may require, at TxDOT's sole option, that the NTTA assign its rights under the Formal Agreement to TxDOT, in which case TxDOT shall assume the NTTA's obligations thereunder.

C. The NTTA may, but is not obligated to, request pre-approval of costs to be paid with funds provided under this Agreement, provided the amount of such costs comprises a portion of the \$95 Million Obligation, as reasonably determined by TxDOT, and the proposed use of funds provided under this Agreement to pay or reimburse such costs complies with the requirements of this Agreement.

D. Except for expenditures that have been preapproved, TxDOT shall have the right to deny all or part of a request for funds proposed to be used for purposes not authorized by this Agreement or due to a lack of adequate documentation. In either event, the NTTA will have the right to submit additional information to clarify the use of the funds requested or to provide any missing documentation.

3. Funds provided to the NTTA pursuant to this Agreement shall be disbursed by TxDOT to the NTTA within thirty (30) days of receipt of a request from the NTTA, which shall include the following:

- A. the amount requested;
- B. a description of the use of the funds requested;
- C. confirmation that the amount requested is owed as part of the \$95 Million Obligation, whether payable to UPRR or to reimburse the NTTA for the NTTA Work Elements; and
- D. copies of proposals, invoices, fee statements, or other documentation showing the intended use of the funds requested.

The NTTA shall submit all requests for disbursement to TxDOT's Fort Worth District office, utilizing the address set forth in Section 20 hereof, to expedite processing. Upon receipt of each request, TxDOT shall pay the amount that is properly owing and due, or notify the NTTA of its basis for disapproval, within thirty (30) days.

4. An estimated disbursement schedule for the \$49.87 Million Portion being paid by TxDOT pursuant to the \$49.87 Million Toll Equity Grant Agreement and, only if the NTTA elects not to develop the Southwest Parkway, for the \$45.13 Million Balance being paid by TxDOT under this Agreement is:

Calendar Year	\$49.87 Million Portion (STP-MM)	\$45.13 Million Balance (Category 2)
2009	\$22,182,693	\$0
2010	\$27,687,307	\$14,568,201
2011	\$0	\$25,121,121
2012	\$0	\$440,678
2013	\$0	\$5,000,000
<b>Total</b>	<b>\$49,870,000</b>	<b>\$45,130,000</b>

**The Advanced Construction Work Reimbursement**

5. Except as provided in the following sentences, the construction of the SWP/Davidson Yard Segment by the NTTA or other ultimate developer of the Southwest Parkway occurs during the "NTTA Construction Period," as defined in the Formal Agreement, which commences on March 26, 2012, subject to extension under certain circumstances stipulated in the Formal Agreement. However, the Advanced Construction Work, estimated to cost approximately \$40 million, must, from a sequencing standpoint, be built prior to or during

UPRR's construction of its improvements in the Davidson Yard. The NTTA will, at its sole cost (subject to possible reimbursement under Section 6 below) and irrespective of whether it ultimately elects to undertake the Southwest Parkway, design, advertise, let, construct, and complete the Advanced Construction Work in compliance with section 7 of the \$49.87 Million Toll Equity Grant Agreement.

6. If TxDOT develops the Southwest Parkway, TxDOT agrees to reimburse the NTTA for the NTTA's costs incurred for the Advanced Construction Work as follows. TxDOT's obligation to reimburse the NTTA takes effect when the NTTA's rights and obligations under the Formal Agreement are assigned to and assumed by TxDOT. TxDOT will reimburse the NTTA for such costs incurred for the Advanced Construction Work prior to that date and evidenced by documentation furnished, and reasonably acceptable, to TxDOT. Thereafter, TxDOT shall similarly reimburse the NTTA for additional costs the NTTA incurs for the Advanced Construction Work upon TxDOT's receipt and approval of reasonably acceptable supporting documentation therefor. Notwithstanding the two preceding sentences, TxDOT's reimbursement payments to the NTTA may be delayed until six (6) months after TxDOT awards the contract for construction of the two new Southwest Parkway bridges over the Davidson Yard. Upon the NTTA's receipt of said reimbursement amounts, the NTTA will be deemed to have transferred to TxDOT its right, title, and interest in the reimbursed portions of the Advanced Construction Work.

7. The NTTA will maintain transaction-level expenditure information that is either:

- (A) provided by UPRR,
- (B) prepared by the NTTA and related to work performed by the NTTA on behalf of UPRR, or
- (C) prepared by the NTTA and related to the Advanced Construction Work,

pertaining to expenditures made or reimbursed with funds provided under this Agreement.

8. In no event will the amount paid by TxDOT under Sections 1 through 6 of this Agreement exceed \$85.13 million.

### **The Study Reimbursement**

9. The NTTA previously contracted for the development of the Study for the Southwest Parkway and Chisholm Trail projects. TxDOT will pay 50% of the cost of the Study by reimbursing that amount to the NTTA. In return for TxDOT's reimbursement under this Section 9, TxDOT shall have equal co-ownership rights to the Study with the NTTA.

### **Miscellaneous**

10. Costs paid or reimbursed using funds provided under this Agreement must be paid or reimbursed in accordance with applicable state and federal laws, including the Cost Principles established in OMB Circular A-87 that specify that costs must be allowable, reasonable and allocable to the project.

11. Funds provided to the NTTA pursuant to this Agreement are in the form of a grant and will not be repaid to TxDOT.

12. The NTTA will comply with applicable state and federal law in the performance of work under this Agreement, including obtaining the approval of the Federal Highway Administration ("FHWA") or another federal agency, if required, and will comply with the Toll Equity Rules relating to the performance of work.

13. Upon TxDOT's request and, to the extent applicable and permitted by federal law, after reasonable advance notice and opportunity to cure from TxDOT, NTTA shall reimburse TxDOT for any federal funds that are applied by NTTA to pay costs not incurred in conformity with applicable state and federal law.

14. The NTTA will maintain its books and records relating to the Southwest Parkway, the financial assistance provided under this Agreement, and the costs paid or reimbursed by the NTTA using funds provided under this Agreement, in accordance with the requirements of the Toll Equity Rules, and will comply with the audit requirements and other requirements relating to project records in 43 Tex. Admin. Code § 27.55(b), including having a full audit of its books and records performed annually in accordance with the standards of OMB Circular No. A-133. The NTTA shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

15. The NTTA and TxDOT shall maintain all books, documents, papers, accounting records and other documents relating to costs paid or reimbursed under this Agreement and shall make such materials available to the state, to the FHWA, and to the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at their respective offices during the contract period and for four years from the date of completion of the Southwest Parkway or until any impending litigation, or claims are resolved. Additionally, the state and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

16. If either party defaults in the performance of any obligation described in this Agreement, the other party may exercise any rights and remedies granted by law or this Agreement.

17. Except for the NTTA's authorization and obligation regarding the design and construction of the Advanced Construction Work, nothing herein shall be construed as an approval for, or the agreement by, the NTTA to construct the SWP/Davidson Yard Segment or the remainder of the Southwest Parkway, Chisholm Trail, or to operate any portion thereof.

18. The NTTA assumes all liability and responsibility for complying with applicable local, state and federal environmental laws, regulations and requirements, concerning the development of the Advanced Construction Work and the NTTA Work Elements.

19. The NTTA shall ensure that all property and services paid for or reimbursed with funds provided under this Agreement are procured using the procurement standards established

in Title 49 CFR §18.36, and the NTTA shall adhere to the property management standards established in 49 CFR §18.32.

20. All notices to either party by the other required under this Agreement or the \$49.87 Million Toll Equity Grant Agreement shall be delivered personally, sent by facsimile transmission, or sent by Certified or Registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
P.O. Box 260729  
Plano, Texas 75026  
Attention: Executive Director

Texas Department of Transportation  
Fort Worth District Office  
2501 SW Loop  
Fort Worth, Texas 76133  
Attention: District Engineer

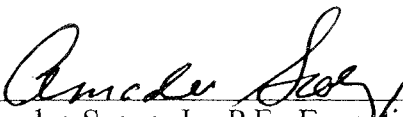
All personally delivered notices shall be deemed given on the date so delivered. Notice by facsimile shall be deemed given on the date indicated by written confirmation of transmission to, in the case of the Authority, (214) 528-4826 or, in the case of TxDOT, (817) 370-6787. All mailed notices shall be deemed given three (3) days after being deposited in the mail. Either party hereto may change the above address or facsimile number by sending written notice of such change to the other in the manner provided for above.

21. TxDOT acknowledges that the use of the \$45.13 Million Balance to fund the remaining portion of the \$95 Million Obligation and the reimbursement of the Advanced Construction Work, to be disbursed as provided under this Agreement if the NTTA elects not to develop the Southwest Parkway, meets the requirements of Transportation Code, §222.103. The foregoing does not in any manner limit TxDOT's ability to disallow a reimbursement request not in compliance with this Agreement.

22. This Agreement shall be effective from the Effective Date.

**TEXAS DEPARTMENT OF TRANSPORTATION**

**NORTH TEXAS TOLLWAY AUTHORITY**

By:   
Amadeo Saenz, Jr., P.E., Executive Director

By: \_\_\_\_\_  
Allen Clemson, Executive Director

in Title 49 CFR §18.36, and the NTTA shall adhere to the property management standards established in 49 CFR §18.32.

20. All notices to either party by the other required under this Agreement or the \$49.87 Million Toll Equity Grant Agreement shall be delivered personally, sent by facsimile transmission, or sent by Certified or Registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
P.O. Box 260729  
Plano, Texas 75026  
Attention: Executive Director

Texas Department of Transportation  
Fort Worth District Office  
2501 SW Loop  
Fort Worth, Texas 76133  
Attention: District Engineer

All personally delivered notices shall be deemed given on the date so delivered. Notice by facsimile shall be deemed given on the date indicated by written confirmation of transmission to, in the case of the Authority, (214) 528-4826 or, in the case of TxDOT, (817) 370-6787. All mailed notices shall be deemed given three (3) days after being deposited in the mail. Either party hereto may change the above address or facsimile number by sending written notice of such change to the other in the manner provided for above.


21. TxDOT acknowledges that the use of the \$45.13 Million Balance to fund the remaining portion of the \$95 Million Obligation and the reimbursement of the Advanced Construction Work, to be disbursed as provided under this Agreement if the NTTA elects not to develop the Southwest Parkway, meets the requirements of Transportation Code, §222.103. The foregoing does not in any manner limit TxDOT's ability to disallow a reimbursement request not in compliance with this Agreement.

22. This Agreement shall be effective from the Effective Date.

**TEXAS DEPARTMENT OF TRANSPORTATION**

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_  
Amadeo Saenz, Jr., P.E., Executive Director

By:  \_\_\_\_\_  
Allen Clemson, Executive Director

## ATTACHMENT A

### THE ADVANCED CONSTRUCTION WORK

1. SWP Section 1
  - Construct Retaining Walls from University to Trinity River along the common boundary
  - Construct Retaining Walls from Trinity River to Forest Park along the common boundary
  - Remove the existing Rosedale Connectors and reconstruct Rosedale Connectors
  - Contribution to construction of Abut Connection Wall East
2. SWP Section 2
  - Construct Retaining Walls from Rosedale Street to University along the common boundary
3. SWP Section 2B includes:
  - Construct selected bridge elements inside the Davidson Yard to include foundations, columns, crash walls and bent caps for Bridge Bent Lines E, D, F and G (Bents N3, N4, N5, N6, S5, S6, S7, S8, H3, H4, H5, H6)
  - Construct retaining wall along Vickery (Wall VA)
  - Construct the bottom section of the 2-tiered wall (Wall TB)
  - Remove the existing Hulen Bridge Ramp
  - Structurally brace the existing Hulen Bridge bent #4 to allow for existing traffic.

Note: These are the major items. Other items to be included, but not listed are: traffic control, drainage, signing and striping, illumination (for the Rosedale Connectors), excavation, SWPPP, etc.