

**AGREEMENT BETWEEN THE NORTH TEXAS TOLLWAY AUTHORITY AND
THE REGIONAL TRANSPORTATION COUNCIL CONCERNING RETURN
OF FEE PAYMENTS UNDER TOLL EQUITY LOAN AGREEMENT**

This Agreement is entered into between the North Texas Tollway Authority (NTTA) and the Regional Transportation Council (RTC). The purpose of this Agreement is to memorialize the agreement by RTC to return to NTTA all TELA Fees (as defined below) received by or available to RTC for project selection and to designate State Highway 161 (SH 161) and/or Southwest Parkway/Chisholm Trail (SWP/CT) as the transportation project(s) in the Dallas-Fort Worth region for the application of the TELA Fees.

RECITALS:

WHEREAS, NTTA, a regional tollway authority and a political subdivision of the State of Texas, is authorized to develop and operate turnpike projects within the Counties of Collin, Dallas, Denton, and Tarrant pursuant to Chapter 366 of the Texas Transportation Code;

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is the federally designated Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of the State of Texas in accordance with federal law, with the proviso that RTC be the decision-making group for regional transportation policy;

WHEREAS, NCTCOG is a regional planning commission and a political subdivision of the State of Texas, authorized under Texas Local Government Code, Chapter 391;

WHEREAS, RTC, comprised primarily of local elected officials, is the regional transportation policy body of NCTCOG, and has been and continues to be a regional forum for cooperative decisions on transportation, thereby fulfilling its responsibilities as the cooperative transportation decision-making group of NCTCOG;

WHEREAS, RTC's Bylaws and Operating Procedures (Bylaws) spell out the manner in which RTC shall fulfill its responsibilities as the cooperative transportation decision-making group of NCTCOG;

WHEREAS, consistent with the Bylaws, RTC and TxDOT entered into that certain Memorandum of Understanding Regional Revenue Sharing Fund for Surplus Toll Revenues and CDA Concession Payments dated January 3, 2007 (the Project Selection MOU) whereby TxDOT and RTC agreed that selection of projects to be financed using funds in the regional revenue sharing account established for the region served by NCTCOG shall be made by RTC, subject to concurrence of the Texas Transportation Commission (Commission);

WHEREAS, NTTA and TxDOT entered into that certain Project Agreement State Highway 161 dated July 30, 2009, as amended, assigning certain rights and responsibilities between NTTA and TxDOT for the development, construction, operation, maintenance and financing for SH 161;

WHEREAS, to provide support for NTTA's efforts to develop, construct, operate, maintain and finance SH 161, TxDOT established a toll equity loan commitment on NTTA's behalf in accordance with that certain Toll Equity Loan Agreement dated _____, 2010¹ between NTTA and TxDOT (TELA);

¹ The TELA may not be executed before this Agreement is signed, so language will need to be slightly modified.

WHEREAS, NTTA and TxDOT are negotiating a Project Agreement Southwest Parkway/Chisholm Trail Project that, if executed, will assign certain rights and responsibilities between NTTA and TxDOT for the development, construction, operation, maintenance and financing for SWP/CT;

WHEREAS, to provide support for NTTA's efforts to develop, construct, operate, maintain and finance SWP/CT, TxDOT has agreed to supplement the TELA to increase the toll equity loan commitment on NTTA's behalf in accordance with that certain Agreement To Enter Into Supplement to Toll Equity Loan Agreement dated _____, 2010² between NTTA and TxDOT (Agreement to Supplement);

WHEREAS, under Section 2.06 of the TELA, on the first day of the fiscal year following the 10th anniversary of the date of the TELA and on the first day of each fiscal year thereafter, NTTA is required to pay to TxDOT a non-refundable amount equal to three percent of that fiscal year's Maximum Available Annual Amount (as defined in the TELA) (TELA Fee), and TxDOT is required to apply the TELA Fee to the cost of transportation and air quality projects in the Dallas-Fort Worth region as authorized by law that are selected by RTC, subject to concurrence by the Commission;

WHEREAS, NTTA executed the TELA and the Agreement to Supplement with the understanding and in reliance that RTC would select SH 161 and/or SWP/CT as the transportation projects in the Dallas-Fort Worth region for the application of the TELA Fees, thereby causing the return to NTTA of the amount of any TELA Fees available to RTC for project selection;

WHEREAS, RTC passed Regional Transportation Council Policy on SH 161 and Southwest Parkway/Chisholm Trail Toll Equity Loan Fee and Release, and Timing of the SH 161 Up-Front Payment (P10-05) dated April 8, 2010 addressing the subject matter of this Agreement and authorizing its execution; and

WHEREAS, NTTA and RTC desire to enter into this Agreement to evidence RTC's agreement to select SH 161 and/or SWP/CT as the transportation projects in the Dallas-Fort Worth region for the application of the TELA Fees, thereby causing the return to NTTA of the amount of any TELA Fees available to RTC for project selection.

AGREEMENT:

NOW THEREFORE, in consideration of these premises, NTTA and RTC agree to the following:

1. NTTA hereby requests, and RTC hereby selects, subject to Commission concurrence, SH 161 as a transportation project in the Dallas-Fort Worth region for the application of any TELA Fees. Except as set forth in section 2 below, RTC shall not select any other transportation project or air quality project for the application of any TELA Fees, unless requested by NTTA. RTC agrees to take such further action as may be required by TxDOT or NTTA to further evidence its selection of SH 161 for such purpose.
2. Conditioned upon the toll equity loan commitment under the TELA being increased pursuant to the Agreement to Supplement to provide support for the NTTA's efforts to develop, construct, operate, maintain and finance SWP/CT, NTTA hereby requests and RTC hereby selects, subject to Commission concurrence, SWP/CT as a transportation project in the Dallas-

² The Supplement may not be executed before this Agreement is signed, so language will need to be slightly modified.

Fort Worth region for the application of any TELA Fees. RTC agrees to take such further action as may be required by TxDOT or NTTA to further evidence its selection of SWP/CT for such purpose.

3. NTTA shall notify RTC each time it makes a payment of a TELA Fee to TxDOT, and RTC shall promptly thereafter take all action necessary to cause TxDOT to transfer the amount of the TELA Fee to NTTA or otherwise apply the amount of the TELA Fee to SH 161 and/or SWP/CT. The parties intend that upon the RTC's selection, and Commission's concurrence, of either SH 161 or SWP/CT as a transportation project in the Dallas-Fort Worth region for the application of any TELA Fees, TxDOT will return the amount of any TELA Fee directly to NTTA. If TxDOT instead transfers the amount of any TELA Fee to RTC, RTC shall immediately notify NTTA of the amount received from TxDOT and shall return such amount to NTTA within one business day of receipt of such amount.

4. NTTA or RTC, as applicable, each represents to the other that (i) it is duly organized and validly existing and has all requisite power and authority to conduct its business as now being conducted, (ii) it is not in default under or in violation of any provision of the documents, laws and regulations governing its formation and existence, (iii) it has full power and authority to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder, (iv) it has taken all action required by any statute, law, code, regulation, or other state or federal legislative, executive or administrative requirement or by its charter, by-laws or other organizational documents to authorize the execution and delivery of and performance of its obligations under this Agreement, (v) this Agreement has been duly, validly and properly executed and delivered by NTTA or RTC, as applicable, and, assuming due authorization, execution and delivery by the other party, constitutes a valid and binding legal obligation of NTTA or RTC, as applicable, enforceable against the said party in accordance with its terms, (vi) the execution, delivery and performance of this Agreement, and the transactions contemplated hereby, do not and will not (a) conflict with or result in any violation of or constitute a breach or default under any provision of (I) any statute, law, code, regulation, or other state or federal legislative, executive or administrative requirement generally applicable to the transactions contemplated hereby, other than any violation, breach or default that would not have a material adverse effect on the transactions contemplated hereby or (II) any of the charter, by-laws or other organizational documents applicable to or governing the creation and existence of NTTA or RTC, as applicable, (b) violate, conflict with or result in a violation or breach of, or constitute a default (with or without due notice or lapse of time or both) under, or permit the termination of, or require any notice under, or require the consent of any other party to, any note, bond, indenture, license, agreement or other instrument or obligation to which NTTA or RTC, as applicable, is a party, or (c) violate any judgment to which NTTA or RTC, as applicable or any of its assets is bound or subject, and (vii) no notice to and no permit, authorization, consent or approval of any governmental entity or other person or entity is necessary for the performance by NTTA or RTC, as applicable, of its obligations under this Agreement.

5. The recital clauses set forth above are true and correct and are incorporated herein by reference.

6. All notices and communications hereunder shall be in writing and shall be deemed to be duly given when received by facsimile, hand delivery, certified mail, return receipt requested to the parties hereto at the following addresses:

If to NTTA: North Texas Tollway Authority
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093
Attention: Executive Director
Fax no: (972) 930-2622

If to RTC: Regional Transportation Council
616 Six Flags Drive
Arlington, Texas 76011
Attention: Director of Transportation
Fax No: (817) 608-2315

or at such other address as either party may have furnished to the other party in writing.

7. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all previous understandings as to the subject matter of this Agreement. Furthermore, this Agreement may be modified or amended only by a writing executed by all parties hereto or their respective successors or assigns, as applicable.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules which might require the application of the laws of another jurisdiction.

9. This Agreement shall be binding upon and inure to the benefit of NTTA and RTC and their respective successors and assigns, including, without limitation, any successor public agency or other body to NTTA or RTC. Neither NTTA nor RTC shall assign its interest in this Agreement without the prior written consent of the other party to this Agreement, except as provided in the preceding sentence or as otherwise provided by law.

10. Insofar as the TELA Fees will not accrue, if at all, until after the 10th anniversary of the date of the TELA, it is an essential term of this Agreement that the parties hereby commit to use best efforts to ensure that the benefits provided herein remain in effect irrespective of changes in legislation or to the Project Selection MOU occurring subsequent to the date hereof or for any other reason. NTTA and RTC will, upon request by either party, execute, acknowledge or deliver such further instruments, documents or other writings and do such further acts as either party deems necessary, desirable or proper to carry out the purposes of this Agreement and the intent of the parties. Without limiting the foregoing, if at any time RTC either (i) is expected to lose or (ii) has lost its ability to fully perform its obligations hereunder, RTC, for itself and on behalf of any affiliated entities controlling RTC, under RTC's control or subject to RTC's influence, commits to use best efforts to promptly cause the assumption of RTC's obligations hereunder by such party or parties to which the ability to perform such obligations then resides. Further, RTC will use best efforts to cause the TELA Fees to be made available to RTC and to obtain Commission concurrence to a disposition of those TELA Fees in accordance with this Agreement.

11. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute, collectively, one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Executed on 7.23, 2010.



Allen Clemson
Executive Director
North Texas Tollway Authority
a regional tollway authority and
political subdivision of the State of Texas



Michael Morris, P.E.
Staff Director
Regional Transportation Council
the regional transportation policy body of NCTCOG