

**FIRST AMENDMENT TO PROJECT AGREEMENT
SH 161 TOLL PROJECT**

THIS FIRST AMENDMENT TO PROJECT AGREEMENT (this "Amendment"), by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission ("TxDOT"), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas (the "Authority"), is executed to be effective the 23rd day of March, 2010 (the "Effective Date").

WITNESSETH

WHEREAS, TxDOT and the Authority are parties to that certain Project Agreement State Highway 161 dated July 30, 2009 (the "Project Agreement"). All capitalized terms not otherwise defined in this Amendment will have the same meaning as described in the Project Agreement; and

WHEREAS, TxDOT and the Authority desire to amend the Project Agreement; and

WHEREAS, Section 30 of the Project Agreement permits TxDOT and the Authority to amend the Project Agreement through written amendment.

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, TxDOT and the Authority agree as follows:

1. **Amendment to Table of Contents.** The Table of Contents to the Project Agreement is hereby amended by adding the following in the appropriate places thereof:

Exhibit N – Form of Transfer Agreement"

2. **Amendment to Section 2.** The first sentence of Section 2 of the Project Agreement is hereby amended by adding the following immediately before the period:

“, which Transfer Agreement shall be in the form attached hereto as Exhibit N”

3. **Amendment to Section 7(a).** The third sentence of Section 7(a) of the Project Agreement is hereby amended in its entirety to read as follows:

“The Authority’s issuance of a notice to proceed under the Design-Build Contract for the construction of the UPR Bridge shall be deemed an agreement by the parties for the Authority to build the UPR Bridge; provided that the Authority shall have no obligation to build the UPR Bridge until the occurrence of the Commitment.”

4. **Amendment to Section 18(a).** Section 18(a) of the Project Agreement is hereby amended in its entirety to read as follows:

“(a) Upfront Payment. On or before the earlier of (i) August 25, 2010 or (ii) one business day after the closing of the Financing that is secured by the Toll Equity Loan Agreement and/or Project revenues, the Authority shall pay the Upfront Payment in immediately available funds to TxDOT. The Upfront Payment shall be subject to adjustment as described in Sections 18(d) and (e).

If the Authority does not pay the Upfront Payment by February 28, 2010, the portion of the Upfront Payment representing reimbursement to TxDOT for funding draw requests for Phases 2 and 3 (the “Reimbursement Portion”) shall thereafter bear interest, at a rate equal to the rate that interest would have accrued on those funds had the funds been on deposit in Fund 6 plus 100 basis points (the “Interest Rate”) until the earlier of the date the Reimbursement Portion of the Upfront Payment is paid or May 27, 2010, and the remaining portion of the Upfront Payment shall not bear interest. If the Authority does not pay the Upfront Payment by May 27, 2010, the unpaid portion of the Upfront Payment shall thereafter bear interest at a rate equal to the Interest Rate until the earlier of the date the Upfront Payment is paid or August 25, 2010.

Notwithstanding the foregoing, the date for payment of all or a portion of the Upfront Payment may be extended past August 25, 2010, and the Upfront Payment, or unpaid portion thereof, shall be paid at the time, or over time, as agreed to by TxDOT, the Authority, and the RTC, and shall thereafter bear interest at the Interest Rate until paid, if and only if the Authority, by August 25, 2010, commits to (i) the development, financing, design, construction, operation and maintenance by the Authority of a continuous express lane facility within the SH 121 corridor extending from the Fort Worth Central Business District at IH 30 south to US 67 (the “Southwest Parkway/Chisholm Trail Parkway”) and (ii) enter into a construction contract for Southwest Parkway/Chisholm Trail Parkway within two years after the date on which all environmental requirements necessary for the development of Southwest Parkway/Chisholm Trail Parkway are secured and all legal challenges to such development are concluded. If the Authority does not enter into a construction contract for Southwest Parkway/Chisholm Trail Parkway within that two year period, payment of the Upfront Payment, or unpaid portion thereof, shall be made no later than the end of that two year period.”

5. **Amendment to Section 18(e).** Section 18(e) of the Project Agreement is hereby amended in its entirety to read as follows:

“(e) Increase for TxDOT Funding of Draw Requests. If prior to the payment of the Upfront Payment TxDOT funds any construction draw requests for Phases 2 and 3 (up to the amount of the Upfront Payment) or the UPR Bridge (to the extent the Authority is responsible for such payment), the amount of the Upfront Payment will be increased by (i) the interest that would have accrued on those funds paid by TxDOT (assuming those funds had remained in the project subaccount in Fund 6) from the date TxDOT funds the draw requests out of

Fund 6 to the earlier of (A) the date the Authority reimburses TxDOT for funding such draw request or (B) February 28, 2010, and (ii) the amount of any such construction draws for the UPR Bridge (to the extent the Authority is responsible for such payment). TxDOT shall calculate the adjustment amount and shall provide documentation to the Authority detailing how such adjustment amount was calculated.”

6. **Amendment to Section 25(c).** Section 25(c) of the Project Agreement is hereby amended in its entirety to read as follows:

“(c) Upfront Payment. Either party may terminate this Agreement by written notice to the other party if the Upfront Payment (other than any portion of the Upfront Payment the date for payment of which has been extended in accordance with the third paragraph of Section 18(a)) has not been paid by August 25, 2010.”

7. **Amendment to Paragraph B.4. of Exhibit J.** The second sentence of Paragraph B.4. of Exhibit J to the Project Agreement is hereby amended in its entirety to read as follows:

“Each toll charged to the user will be rounded to the next highest penny.”

8. **Addition of Exhibit N.** Exhibit N attached hereto is hereby added as Exhibit N to the Project Agreement.

9. **Authorization.** Each party to this Amendment represents to the other that it is fully authorized to enter into this Amendment 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 Amendment in accordance with its terms, other than those that have been obtained.


10. **Remainder of Agreement.** Except as amended hereby, the Project Agreement shall continue in full force and effect in the form that was effective immediately before the execution of this Amendment.

11. **Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

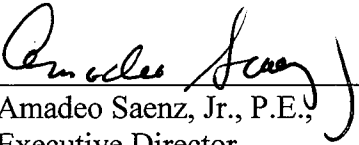
IN WITNESS WHEREOF, TxDOT and the Authority have executed this Amendment by six (6) multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY
AUTHORITY**

By: 
Allen Clemson,
Executive Director

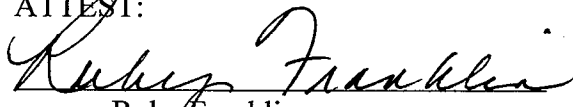
Date: 3/23/2010

**TEXAS DEPARTMENT OF
TRANSPORTATION**

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

Date: 2/25/10

ATTEST:


Ruby Franklin,
Secretary

APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL LLP
Outside General Counsel to the Authority


By: 
Kevin E. Twining

Exhibit N

Form of Transfer Agreement
Section (2)

[See Attached Agreement]

TRANSFER AGREEMENT

SH 161 TOLL PROJECT

THIS TRANSFER AGREEMENT (this "Agreement") dated as of _____, 20__ by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission ("TxDOT"), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas (the "Authority").

WITNESSETH

WHEREAS, TxDOT and the Authority have entered into that certain Project Agreement State Highway 161 dated July 30, 2009 (the "Project Agreement") relating to a continuous express lane facility within the SH 161 corridor extending from SH 183 south to IH 20 along the western boundary of Dallas County, a total length of approximately eleven and one-half (11.5) miles (the "Project"), being built in four (4) designated "Phases" as more fully described in Exhibit A attached hereto and made a part hereof (each a "Phase"); and

WHEREAS, pursuant to Subchapter D of Chapter 228 of the Texas Transportation Code ("Subchapter D"), and 43 TAC §§27.11-27.16, the Commission may remove a toll project that is part of the state highway system from that system and transfer it to a governmental entity that has the authority to operate a tolled highway; and

WHEREAS, for purposes of Subchapter D, each Phase constitutes a toll project, as defined in Section 201.001(b) of the Texas Transportation Code; and

WHEREAS, the Project Agreement contemplates that upon substantial completion of the work required to be performed by TxDOT or the Authority, as applicable, on a Phase, the Phase's main lanes and associated right-of-way will be removed from the state highway system and transferred to the Authority; and

WHEREAS, the work required to be performed by TxDOT or the Authority on Phase ___ of the Project from _____ to _____ in Dallas county (the "Referenced Phase"), has been substantially completed; and

WHEREAS, on _____, 20__, the Texas Transportation Commission (the "Commission") passed Minute Order _____ (the "Minute Order"), approving, subject to the approval of the Governor, the removal from the state highway system and transfer to the Authority of the main lanes and associated right-of-way of the Referenced Phase, and authorizing the executive director of TxDOT to enter into this Agreement; and

WHEREAS, under the Minute Order the Commission waived the repayment of any expenditures of TxDOT for the financing, design, development, construction, operation or maintenance of the Referenced Phase that have not been reimbursed with the proceeds of bonds issued for the Referenced Phase, and found that the transfer of the main lanes and associated right-of-way of the Referenced Phase will result in substantial net benefits to the State of Texas, TxDOT and the public that equal or exceed the amount of repayment waived; and

WHEREAS, TxDOT does not have any outstanding bonded indebtedness for the Referenced Phase; and

WHEREAS, TxDOT has completed the required public hearings pertaining to the transfer of the main lanes and associated right-of-way of the Referenced Phase to the Authority and the Commission and the Governor have approved such transfer.

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, TxDOT and the Authority agree as follows:

1. **Removal from State Highway System.** The main lanes and associated right-of-way of the Referenced Phase are hereby removed from the state highway system.
2. **Transfer of Right-of-Way and Interests.** Except as expressly provided in Section 3 below, TxDOT hereby transfers and conveys to the Authority the main lanes and associated right-of-way of the Referenced Phase, including all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind, whether now or hereafter acquired by purchase, condemnation, dedication or any other means by TxDOT (or otherwise held by TxDOT) necessary for constructing and operating the main lanes of the Referenced Phase (the "Property Interests"), said fee interests being more particularly described in the metes and bounds descriptions in Exhibit B attached hereto and made a part hereof.

To further evidence this transfer, a deed without warranty in the form attached hereto as Exhibit C shall be executed and recorded as soon as reasonably possible utilizing the legal descriptions set forth in Exhibit B. All costs of recordation shall be the responsibility of the Authority.

The Property Interests are transferred "as is," without warranty of title, and subject to all matters of record. The transfer of the Property Interests includes all structures and improvements of any kind now or hereafter situated thereon, together with all stored materials and any items specially fabricated for the Project, if any.

3. **The Retained Property.** Notwithstanding anything to the contrary contained in Section 2 above, TxDOT retains full jurisdiction to and does not transfer to the Authority the following structures and improvements and the land on which they are or will be constructed, *save and except* any portion of said structures and improvements constituting the main lanes of the Project over which the Authority has jurisdiction and any land on or above which said lanes are or will be constructed for which the Authority does hereby receive sufficient rights to use from TxDOT pursuant to Section 2 above and the Project Agreement:

- (a) IH 20 Interchange;
- (b) IH 30 Interchange;
- (c) Spur 303;
- (d) SH 180; and

(e) SH 183 Interchange.

4. **Successors and Assigns.** This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including without limitation any successor public agency to the Authority. Other than as provided in the preceding sentence, neither TxDOT nor the Authority shall assign, lease, sublet, or transfer its interest in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

5. **Severability.** If any provision of this Agreement, or the application thereof to any person 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 persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

6. **Written Amendments.** Any changes in the character, 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 the Authority and TxDOT.

7. **Notices.** All notices to either party by the other required under this 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:

If to the Authority:

Delivered personally:

North Texas Tollway Authority
Attention: Executive Director
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093

Delivered by mail:

North Texas Tollway Authority
Attention: Executive Director
P.O. Box 260729
Plano, Texas 75026

If to TxDOT:

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
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, (214) 320-6117. 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.

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

9. **Sole Benefit.** This Agreement is entered into for the sole benefit of TxDOT and the Authority and their respective successors and permitted assigns. 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.

10. **Title Assurances and Assistance.** Notwithstanding the conveyance of the Referenced Phase by a deed without warranty, TxDOT shall fully cooperate with the Authority to allow and cause the Authority to make maximum use of TxDOT's existing title insurance, provided that TxDOT shall not be required to expend any non-reimbursed amounts or to undertake any liability as a result.

11. **Relationship of the Parties.** Nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent between TxDOT and the Authority, nor any joint enterprise.

12. **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 in accordance with its terms, other than those that have been obtained.

13. **Interpretation and Status of the Project Agreement.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision. TxDOT and the Authority acknowledge and agree that the Project Agreement remains in full force and effect as written. Without limiting the foregoing, nothing contained in this Agreement shall abrogate, or otherwise be construed so as to limit or affect, the concluding paragraph of Section 2 of the Project Agreement.

[Signature page follows]

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by six (6) multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY
AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
[Allen Clemson],
Executive Director

By: _____
[Amadeo Saenz, Jr., P.E.]
Executive Director

Date: _____

Date: _____

ATTEST:

By: _____
[Ruby Franklin]
Secretary

APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL LLP
General Counsel to the Authority

By: _____
[Kevin L. Twining]

Exhibit A

Description of the Project

The Project

The Project consists of those portions of SH 161 extending from SH 183 in Dallas County south to IH 20 in Dallas County and is comprised of the following four Phases:

(a) Phase 1: All frontage roads from IH 20 to Carrier Parkway (North of IH 30), SH 161 CL Station 100+00 to Station 426+00. SH 183/SH 161 Interchange Phase II south to Conflans Road. SH 161 CL Station 665+00 to Station 712+00.

(b) Phase 2: Two main lanes in each direction (the ultimate northbound main lanes) from SH 183 to just north of IH 30 (Carrier Parkway), northbound main lane bridge over Bear Creek and Trinity Railway Express, northbound main lane bridge over the Trinity River, frontage roads from Rock Island Road to Oakdale Road, and frontage roads from Lower Tarrant Road to Carrier Parkway. SH 161 CL Station 450+00 to Station 672+20.

(c) Phase 3: Three main lanes in each direction from SH 183 to just north of IH 30 (Carrier Parkway) and temporary ramps between Egyptian Way and Carrier Parkway. SH 161 CL Station 441+00 to Station 672+20.

(d) Phase 4: All main lanes from IH 20 to north of IH 30 (Carrier Parkway), full direct connection interchange at IH 30, direct connections at IH 20, Union Pacific Railroad bridge, underpass and other related improvements, SH 180 bridges over the main lanes and electronic toll collection and ITS equipment.

Exhibit B

Metes and Bounds Description of Project Main Lanes

Exhibit C

Deed Without Warranty

[see following pages]

When recorded, return to:
Locke Lord Bissell & Liddell LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
Attn: Frank E. Stevenson, II

DEED WITHOUT WARRANTY

THE STATE OF TEXAS, ACTING THROUGH THE TEXAS TRANSPORTATION COMMISSION AND ON BEHALF OF THE TEXAS DEPARTMENT OF TRANSPORTATION (“Grantor”), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas (“Grantee”), the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee all of the land described in Exhibit A attached hereto and hereby made a part hereof, together with all structures and improvements of any kind now or hereafter situated thereon, and all rights, privileges and appurtenances thereunto belonging (the “Property”).

This conveyance is made pursuant to (a) that certain Project Agreement State Highway 161 dated July 30, 2009 (the “Project Agreement”) between the Texas Department of Transportation (“TxDOT”) and Grantee relating to a continuous express-lane facility within the SH 161 corridor extending from extending from SH 183 south to IH 20 along the western boundary of Dallas County, a total length of approximately eleven and one-half (11.5) miles (the “Project”), said Project Agreement having been entered into by TxDOT pursuant to Minute Order No. 111742 approved by the Texas Transportation Commission (the “Commission”) on March 26, 2009, and (b) that certain Transfer Agreement dated as of _____, 20__ (the “Transfer Agreement”) between TxDOT and Grantee relating to (i) the removal from the State Highway System of the main lanes and associated right of way of that portion of the Project designated as Phase __ of the Project, from _____ to _____ in Dallas county (the “Referenced Phase”) and (ii) the transfer of the Referenced Phase to Grantee, said removal and transfer being made pursuant to Minute Order _____ approved by the Commission on _____, 20__; and

As provided in the Transfer Agreement and the Project Agreement, the Property includes all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind, whether now or hereafter acquired by purchase, condemnation, dedication or any other means by Grantor (or otherwise held by Grantor) necessary for constructing and operating the main lanes of the Referenced Phase.

TO HAVE AND TO HOLD the Property, together with all and singular the rights, privileges, and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns.

The Property is transferred "as is," without warranty of title, and subject to all matters of record. Grantor does not make to Grantee, or its successors and assigns, any representations as to the title to the Property and Grantor does hereby convey to Grantee, its successors and assigns, the Property without warranty of title, either express or implied, and specifically excluding the warranties of title arising by virtue of §5.023 of the Texas Property Code (or its successor) and all other warranties of title that might arise by common law or statute.

IN TESTIMONY WHEREOF, I have caused the Seal of the State to be affixed.

EXECUTED on this _____ day of _____, 20____.

[RICK PERRY]
GOVERNOR OF TEXAS

Attest:

Recommended for Approval:

[Esperanza Andrade]
Secretary of State

[Amadeo Saenz, Jr., P.E.],
Executive Director,
Texas Department of Transportation

Address of Grantee:

North Texas Tollway Authority
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093

EXHIBIT A
to
Deed Without Warranty
DESCRIPTION OF PROPERTY

(see attached)