

AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION, THE FEDERAL HIGHWAY ADMINISTRATION, AND THE NORTH TEXAS TOLLWAY AUTHORITY FOR FUNDING FOR THE DEVELOPMENT, DESIGN, AND CONSTRUCTION OF THE STATE HIGHWAY 121 TOLL PROJECT

THIS AGREEMENT, made and entered into as of this 26 day of November, 2007, by and between the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas, hereinafter referred to as "TxDOT," the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FHWA," and the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political subdivision of the State of Texas, hereinafter referred to as the "NTTA."

WITNESSETH:

WHEREAS, on November 30, 2006, the FHWA and TxDOT executed an agreement permitting Federal participation in the initial construction and reconstruction of State Highway (SH) 121, extending .23 miles east of Business 121 to the Dallas North Tollway in Denton and Collin Counties, Texas, as a toll facility (hereinafter referred to as the "2006 Toll Agreement"); and

WHEREAS, TxDOT and NTTA have entered into a Project Agreement for the design and construction of SH 121 from the Dallas North Tollway in Denton and Collin Counties to US 75 in Collin, Dallas, and Denton Counties as a toll facility after the completion of the process required pursuant to the National Environmental Policy Act (NEPA) pertaining to the collection of tolls on the entire SH 121; and

WHEREAS, the Project Agreement will further require NTTA to operate and maintain the entire SH 121, extending .23 miles east of Business 121 to US 75 in Collin, Dallas, and Denton Counties, as a toll facility; and

WHEREAS, Section 129(a)(1) of Title 23, United States Code, as amended, permits Federal participation in the initial construction of toll highways, and in the reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and the conversion of the highway to a toll facility; and

WHEREAS, TxDOT and FHWA desire to modify and replace the 2006 Toll Agreement in its entirety with a new agreement that includes the entire SH 121, extending .23 miles east of Business 121 to US 75 in Collin, Dallas, and Denton Counties (hereinafter referred to as the "Toll Facility") and add NTTA as a party; and

WHEREAS, TxDOT, FHWA and NTTA have agreed to be bound by and to comply with provisions of Section 129(a) of Title 23, United States Code, as amended, for the Toll Facility; and

WHEREAS, paragraph 3 of Section 129(a) of Title 23, United States Code, as amended, restricts the use of revenues:

"(3) Limitations on use of revenues - ... "all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private

person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.”

NOW, THEREFORE, TxDOT, FHWA and NTTA hereto agree as follows:

1. NTTA and TxDOT agree that the toll revenues from the operation of the Toll Facility will be used first for debt service (including the funding of reasonable reserves and revenue-sharing obligations to TxDOT), for reasonable return on investment of any private person financing the Toll Facility, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation, as provided in paragraph 3 of Section 129(a) of Title 23, United States Code, as amended.

2. TxDOT’s and NTTA’s authority to impose and collect tolls on any segment of the Toll Facility is dependent upon the prior completion of any process required pursuant to the National Environmental Policy Act (NEPA) pertaining to the collection of tolls on any such segment.

3. In accordance with Section 129(a) of Title 23, United States Code, as amended, TxDOT and NTTA hereby certify that they can and will comply with the following requirements provided in paragraph 3 of Section 129(a), Title 23, United States Code, as amended:

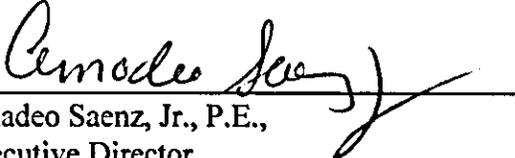
NTTA agrees to certify to FHWA annually that the Toll Facility is being adequately maintained. If it provides such certification, NTTA is entitled to use any toll revenues in excess of amounts required under paragraph 1 of this Agreement for any purpose for which Federal funds may be obligated by a State under Title 23, United States Code. TxDOT agrees to be bound by such certification for the sole purpose of establishing NTTA’s entitlement under this paragraph. TxDOT’s agreement to be bound does not relieve NTTA from complying with any maintenance or other obligations under the Project Agreement.

4. NTTA agrees, upon reasonable notice, to make all its records pertaining to the Toll Facility subject to audit by TxDOT and FHWA. NTTA and TxDOT agree to annually audit the records of the Toll Facility for compliance with the provisions of this Agreement and report the results thereof to FHWA. In lieu of NTTA performing said audit, a report of an independent auditor furnished to TxDOT and FHWA by NTTA will satisfy the requirements of this section.

5. This Agreement shall (a) bind and benefit the parties’ successors and assigns, including any party that succeeds to the interests or obligations of a party, (b) will be prepared in triplicate originals so that each signatory will have an original Agreement, and (c) amends, restates and supersedes the 2006 Toll Agreement by and between TxDOT and FHWA.

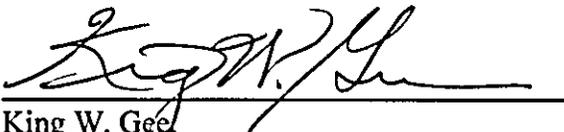
IN WITNESS WHEREOF, TxDOT, FHWA and NTTA hereunto have caused this Agreement to be duly executed as of this day and year first written above.

TEXAS DEPARTMENT OF TRANSPORTATION



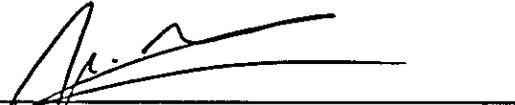
Amadeo Saenz, Jr., P.E.,
Executive Director

FEDERAL HIGHWAY ADMINISTRATION



King W. Gee,
Associate Administrator for Infrastructure

NORTH TEXAS TOLLWAY AUTHORITY



Jorge Figueredo, Ph.D.,
Executive Director