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April 25, 2011

VIA HAND DELIVERY

Allen Clemson
Executive Director
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

Re: Advance Funding Agreement for PGBT WE (SH 161)

Dear Mr. Clemson:

Enclosed for your files is a fully executed original of the Advance Funding Agreement relating to the PGBT WE. The Advance Funding Agreement provides for the payment of $12,000,000 from TxDOT to NTTA for reimbursement of costs incurred in connection with the UPRR bridge that crosses the PGBT WE.

If you have any questions or comments, please contact me.

Regards,

Kevin L. Twining

KLT/klt

Enclosure

cc: Bob Schell (w/encl. via email)
Frank E. Stevenson, II (w encl. via email)
Elizabeth Mow (w/encl. via email)
Janice Davis (w.encl. via email)

DAL:0567318/00150:2009403v1

CSJ: 2964-01-040
District: 18 - Dallas
Code Chart 64 #: 62855
SH 161: From Union Pacific RR
To Jefferson and Main Streets in Grand Prairie
Funding: RTR (SH 121 Subaccount)

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT FOR THE SH 161 TOLL PROJECT

THIS ADVANCE FUNDING AGREEMENT (this "Agreement") is made by and between the State of Texas, acting by and through the Texas Department of Transportation ("TxDOT"), and the North Texas Tollway Authority, a political subdivision of the State of Texas, acting by and through its duly authorized officials (the "NTTA").

WITNESSETH

WHEREAS, Transportation Code, §228.012 requires TxDOT to create a separate account in the state highway fund to hold payments received by TxDOT under a comprehensive development agreement, the surplus revenue of a toll project or system, and payments received under Transportation Code, §§228.0111(g)(2) and (i)(2); and

WHEREAS, TxDOT is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which a project or system is located, and may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization ("MPO") in which the region is located; and

WHEREAS, TxDOT has created a separate subaccount in the state highway fund to hold the payments received from the NTTA for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County ("SH 121 Subaccount"); and

WHEREAS, in Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission ("Commission") approved a memorandum of understanding ("MOU") with the Regional Transportation Council ("RTC"), the transportation policy council of the North Central Texas Council of Governments ("NCTCOG"), a federally designated MPO, concerning, among other things, the administration, sharing, and use of surplus toll revenue in the region served by NCTCOG, including funds in the SH 121 Subaccount; and

WHEREAS, responsibility for allocating funds in the SH 121 Subaccount has been assigned to the RTC under the MOU, as further clarified by Minute Order 112015, adopted by the Commission on October 29, 2009, providing that the selection of projects to be financed using those funds shall be made by the RTC, subject to Commission concurrence that the funds have been allocated to projects authorized by Transportation Code, §228.006; and

WHEREAS, the NTTA has requested funds from the SH 121 Subaccount for the portion of the State Highway 161 toll project consisting of the Union Pacific Railroad bridge over the SH 161 main lanes, the frontage road at-grade highway-railroad crossings, and the frontage

road intersections with Main and Jefferson Streets (CSJ 2964-01-040) (the "Project"); the RTC has selected the Project to be funded from the SH 121 Subaccount, and the Commission concurred in the selection and authorized the expenditure of funds in the SH 121 Subaccount to pay costs of the Project in Minute Order Number 111439, dated July 31, 2008 and Minute Order Number 112568, dated January 27, 2011; and

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 authorize TxDOT to contract with municipalities and political subdivisions to perform governmental functions and services; and

NOW, THEREFORE, in consideration of the 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 NTTA do agree as follows:

AGREEMENT

Article 1. Time Period Covered

This Agreement becomes effective when signed by the last party whose signing makes this Agreement fully executed, and TxDOT and the NTTA will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

TxDOT will release funds to the NTTA from the SH 121 Subaccount in the amounts specified and as described in Attachment A, Payment Provision, which is attached to and made a part of this Agreement. The construction of the Project is the sole responsibility of the NTTA and will be carried out and completed by the NTTA in accordance with the requirements of that certain Project Agreement, State Highway 161, effective July 30, 2009, as amended (the "Project Agreement").

Article 3. Shortfalls in Funding

The NTTA shall apply all funds released from the SH 121 Subaccount to the Project, and to no other projects. All cost overruns are the responsibility of the NTTA. Should the released SH 121 Subaccount funds, as described in Attachment A, Payment Provision, be insufficient to complete the Project, the NTTA may make further requests to the RTC and TxDOT for additional funds from the SH 121 Subaccount. Funds may be increased only through an amendment of this Agreement. If the SH 121 Subaccount does not contain sufficient funds to cover the balance necessary to complete the Project, or if the RTC or the Commission decline the request for any other reason, then the NTTA shall be responsible for any shortfall.

Article 4. Return of Project Funding

The NTTA shall reimburse TxDOT for any funds released from the SH 121 Subaccount that are not expended in accordance with the requirements of this Agreement. Within 120 days of completion of the Project, or upon termination of this Agreement, the NTTA shall perform an audit of the cost accounting of the Project. If any excess SH 121 Subaccount funds exist,

such funds shall be returned to TxDOT within 30 days. In accordance with Article 13 and Article 14 as contained in this Agreement, the state auditor and/or TxDOT may also conduct an audit or investigation of the cost accounting of the Project.

Article 5. Responsibilities of the Parties
TxDOT and the NTTA agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents. The NTTA and TxDOT expressly agree that the Project is not a joint venture or enterprise. However, if a court should find that the parties are engaged in a joint venture or enterprise as a result of this agreement, then the NTTA, to the extent provided by law, agrees to pay any liability finally adjudicated by a court of competent jurisdiction against TxDOT for acts and deeds of the NTTA, its employees or agents during the construction of the Project, and TxDOT, to the extent provided by law, agrees to pay any liability finally adjudicated by a court of competent jurisdiction against the NTTA for acts and deeds of TxDOT, its employees or agents during the construction of the Project.

Article 6. Compliance with Texas Accessibility Standards and ADA
The NTTA shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

Article 7. Cross Default
A material breach of either this Agreement or the Project Agreement shall be considered a material breach of the other agreement.

Article 8. Termination
This Agreement shall remain in effect unless terminated by (a) mutual written agreement and consent of both parties or (b) either party upon the breach of the other party.

Article 9. Notices
All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

NTTA:	State:
North Texas Tollway Authority Attn: Executive Director 5900 West Plano Parkway, Suite 100 Plano, Texas 75093	Texas Department of Transportation Attn: Dallas District Engineer 4777 East US Highway 80 Mesquite, Texas 75150

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 10. Sole Agreement
If the terms of this Agreement are in conflict with the provisions of any other existing agreements between the NTTA and TxDOT, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 11. Successors and Assigns
TxDOT and the NTTA each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

Article 12. Amendments
By mutual written consent of the parties, this Agreement may be amended prior to its expiration.

Article 13. State Auditor
The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under a contract. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 14. Inspection of Books and Records
The NTTA shall maintain records sufficient to document that funds provided under this Agreement were expended only for eligible costs that were incurred in accordance with all applicable state and local laws, rules, policies, and procedures, and in accordance with all applicable provisions of this Agreement. The NTTA shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to TxDOT for review and inspection during the contract period and for four (4) years from the date of completion of work defined under this Agreement or until any impending litigation or claims are resolved. Additionally, TxDOT shall have access to all governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

Article 15. Insurance
If this Agreement authorizes the NTTA or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT's Form 1560 Certificate of Insurance verifying the existence of

coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

Article 16. Remedies
This Agreement shall not be considered as specifying an exclusive remedy for a breach of this Agreement. All remedies existing at law or in equity are available to either Party and are cumulative.

Article 17. Legal Construction
If a provision of this Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

Article 18. Debarment
The NTTA shall not contract with any person that is suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by TxDOT.

Article 19. Signatory Warranty
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party they represent.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, TxDOT AND THE NTTA have executed duplicate counterparts to effectuate this Agreement.

THE STATE OF TEXAS
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: Janice Mullenix
Janice Mullenix
Director, Contract Services Section, General Services Division
Texas Department of Transportation

Date: April 19, 2011

THE NORTH TEXAS TOLLWAY AUTHORITY – NTTA

By: Allen Clemson
Allen Clemson
Executive Director

Date: April 11, 2011

ATTACHMENT A

Payment Provision

TxDOT will release funds for the construction of the Project from the SH 121 Subaccount at a fixed amount not to exceed $12,000,000 to pay the NTTA for the construction of the Project through the submittal of monthly eligible invoices from the NTTA.

The NTTA shall be responsible for the review, approval and payment of eligible invoices received from the NTTA's contracted professional services providers for the Project.

The NTTA shall submit to TxDOT NTTA approved billing statements, accompanied with Project Progress Reports, no more frequently than once a month.

TxDOT shall release the SH 121 Subaccount funds on a cost basis within thirty (30) days of receipt of a State approved invoice and State approved Project Progress Report from the NTTA for payment of the construction of the Project.