

CSJ: 0918-45-862  
District: 18 - Dallas  
Code Chart 64 #: 61957  
Trinity Parkway: From IH35E/SH 183  
To US 175/SH 310  
Funding: SH 121 Subaccount  
County: Dallas

THE STATE OF TEXAS           §  
THE COUNTY OF TRAVIS       §

**ADVANCE FUNDING AGREEMENT  
FOR THE TRINITY PARKWAY TOLLWAY TRANSPORTATION PROJECT**

**THIS ADVANCE FUNDING AGREEMENT IS MADE BY AND BETWEEN** the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the North Texas Tollway Authority, acting by and through its duly authorized officials, hereinafter called the "NTTA."

**WITNESSETH**

**WHEREAS**, Transportation Code, Chapters 201, 221, 227, and 228 authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and

**WHEREAS**, Transportation Code, §228.012 requires the State to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement ("CDA"), the surplus revenue of a toll project or system, and payments received under Transportation Code, §§228.0 111(g)(2) and (i)(2); and

**WHEREAS**, the State 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**, the State has created subaccounts 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 payments"); 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 the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by NCTCOG, including the SH 121 payments; and

**WHEREAS**, responsibility for allocating the SH 121 payments has already been assigned, to a degree, to the RTC under the MOU, which provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence; and

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**WHEREAS**, the RTC has selected and Commission Minute Order Number 111553 dated October 30, 2008, concurs with the RTC selection, and approves the development of the Trinity Parkway transportation highway project, described as the construction of a new toll road adjacent to the Trinity River from US 175 to SH 183 and authorizes the expenditure of funds from the SH 121 payments; and,

**WHEREAS**, the NTTA has requested that the State allow the NTTA to utilize funds from the SH 121 payments for the NTTA to perform engineering design work to include engineering plans, specifications and estimates for the thirty (30) percent completion level for the Trinity Parkway, a new tollway transportation project from IH 35E/SH 183 to US 175/SH 310 in Dallas County, hereinafter called the "Project"; and,

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

**WHEREAS**, the Governing Body of the NTTA has approved entering into this Agreement by resolution number 08-498 dated December 17, 2008, which is attached hereto and made a part hereof as Attachment B, which is identified in the location map shown as Attachment C.

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State;

**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, the State 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 the agreement fully executed, and the State 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**

The State will authorize the performance of only those Project items of work, which the NTTA has requested and agreed to undertake and pay for utilizing funds from SH 121 payments held in a State subaccount, as described in Attachment A, Payment Provision and Work Responsibilities, which is attached to and made a part of this Agreement. The items of work described in Attachment A, are the sole responsibility of the NTTA and will be carried out and completed by the NTTA.

### **Article 3. Shortfalls in Funding**

The NTTA shall apply all funds released from the SH 121 Subaccount to the Project as described in Attachment A, Payment Provisions and Work Responsibilities, and to no other projects. Should the

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released SH 121 Subaccount funds be insufficient to complete the items of work contemplated by the Project, the NTTA may make further requests to the RTC for additional funds from the SH 121 Subaccount. If additional funds cannot be allocated by the RTC, the State or the NTTA may then have the option of placing the Project on hold until additional funds can be secured; or the State or NTTA may provide additional funds to complete the project; or if and to the extent permitted by law, the State may assume responsibility for completing the Project. Nothing in this Agreement shall be construed as the NTTA's waiver of its first option to develop, finance, construct, and operate the Project pursuant to Transportation Code, §228.0111.

If the Project is placed on hold, the NTTA will maintain all Project records, reports, documents, studies, plans and other applicable information for the resumption of the Project upon receipt of additional funds. If the State assumes responsibility of the Project, the NTTA will cooperate with the State and provide all Project records, reports, documents, studies, plans and other applicable information to allow the State to complete the Project.

**Article 4. Responsibilities of the Parties**

The State 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.

**Article 5. Compliance with Texas Accessibility Standards and ADA**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement 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) (ADA).

**Article 6. Termination**

This Agreement shall remain in effect unless terminated:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the breach of the other party;

**Article 7. 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:

<b>NTTA:</b>	<b>State:</b>
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

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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 8. Sole Agreement**

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the NTTA and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

**Article 9. Successors and Assigns**

The State 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 10. Amendments**

By mutual written consent of the parties, this contract may be amended prior to its expiration.

**Article 11. State Auditor**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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 12. Inspection of Books and Records**

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 the State 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, the State 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 13. 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 the State with a fully executed copy of the State'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 the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

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**Article 14. 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 the State.

**Article 15. 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.

**IN WITNESS WHEREOF, THE STATE 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 of Contract Services  
Texas Department of Transportation

Date December 19, 2008

**THE NORTH TEXAS TOLLWAY AUTHORITY – NTTA**

By: Janice Davis  
Janice Davis  
Interim Executive Director

Date: 12.17.08

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## **ATTACHMENT A**

### **Payment Provision and Work Responsibilities**

#### **Items of Work**

The NTTA will be responsible for preparing or causing to be prepared engineering plans, specifications and estimates for the thirty (30%) percent completion level of the Project. The NTTA thirty (30) percent design completion level will be based upon ninety (90) percent schematics completion to allow for a US Army Corps of Engineers 408 permit. The engineering and testing services as may be required must be accomplished in accordance with all applicable state and federal laws, rules and regulations.

The following specific items of work are eligible for SH 121 Subaccount funds:

- a. Design management;
- b. ROW and utility right-of-entry work;
- c. Design Criteria Manual development services (aesthetic master plan and details);
- d. Final design for Section 1 of the Project from IH 35E/SH 183 to Hampton Road;
- e. Final design for Section 2 of the Project from Hampton Road to Continental Avenue;
- f. Final design for Section 3 of the Project from Continental Avenue to DART Bridge;
- g. Final design for Section 4 of the Project from the DART Bridge to IH 45;
- h. Final design for Section 5 of the Project from IH 45 to US 175/SH 310;
- i. Geotechnical/levee design engineering;
- j. Geotechnical/retaining wall engineering; and,
- k. Pavement design engineering.
- l. Traffic and revenue studies

#### **Project Funding**

The State will release funds for the Project from the SH 121 Subaccount at a fixed amount not to exceed \$30,000,000 to pay the NTTA for the Project's items of work 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 performance of the Project's items of work.

The NTTA shall be responsible for collating and combining all approved invoices from the NTTA's contracted professional services providers and submit to the State, with a Project

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Progress Report, one NTTA approved billing statement no more frequently than once a month and no later than ninety (90) days of the NTTA payment to its contracted professional services providers.

The State 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 for the performance of the Project items of work.

The State and the NTTA shall make good faith efforts to pay the funding amount due from the SH 121 Subaccount funds on the submittal of eligible invoices.

**Project Completion**

Upon completion of the Project at the thirty (30) percent completion level, the NTTA will issue a signed "Notification of Completion" to the State acknowledging the Project's completion.

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**ATTACHMENT B**

**RESOLUTION OF NTTA  
Approving this Advance Funding Agreement**



NORTH TEXAS TOLLWAY AUTHORITY

RESOLUTION NO. 08-498

**A RESOLUTION AUTHORIZING AN ADVANCE FUNDING AGREEMENT  
WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR PAYMENT OF  
SPECIFIED COSTS ASSOCIATED WITH THE PROPOSED TRINITY PARKWAY**

December 17, 2008

WHEREAS, the North Texas Tollway Authority (the "NTTA") is a regional tollway authority governed by Chapter 366 of the Texas Transportation Code; and

WHEREAS, the City of Dallas has adopted a Balanced Vision Plan ("BVP") for construction of lakes, river meanders, recreation facilities and related amenities in the Dallas Floodway for the proposed Trinity Lakes Park; and

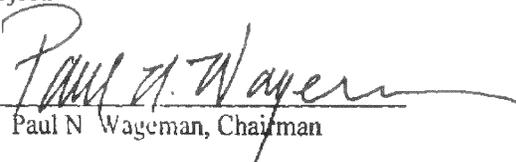
WHEREAS, the BVP includes an alternative for construction within the Dallas Floodway adjacent to the east levee of a proposed parkway known as the Trinity Parkway, which may be designed as a six-lane, controlled access toll facility extending approximately nine miles from the State Highway ("SH") 183/Interstate Highway 35E interchange northwest of downtown Dallas to the U.S. 175/SH 310 interchange southeast of downtown Dallas (the "Project"); and

WHEREAS, at the Mayor of Dallas' Trinity Summit in January 2008, the NTTA proposed a "Beat 2014" strategy to complete the Project before December 31, 2013; and

WHEREAS, in September 2008, the Regional Transportation Council (the "RTC") of the North Central Texas Council of Governments approved advancing \$30,000,000 of TxDOT category 2 funds to pay the costs of design and traffic and revenue studies for the Project, with the advanced funds to be reimbursed by the entity that ultimately develops the Project; and

WHEREAS, the RTC requested the Texas Department of Transportation ("TxDOT") to finalize an advance funding agreement ("AFA") with the NTTA setting forth the terms for the advance of the RTR funds, and TxDOT and the NTTA have agreed upon the terms of the AFA, which will provide funding for the design of build-alternative 3C of the Project and traffic and revenue studies for the Project; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the NTTA hereby authorizes the Interim Executive Director to finalize and execute, on behalf of the NTTA, an Advance Funding Agreement with TxDOT for the advance to the NTTA of \$30,000,000 to pay the costs of final designs of Sections 1 through 5 of the Project, corridor-wide pavement design and engineering services, geotechnical/retaining wall design and engineering services and geotechnical/levee design and engineering services for the design to the Section 408 submittal level, all of which designs shall be for build-alternative 3C of the Project, and to pay the costs of traffic and revenues studies and analyses for the Project.

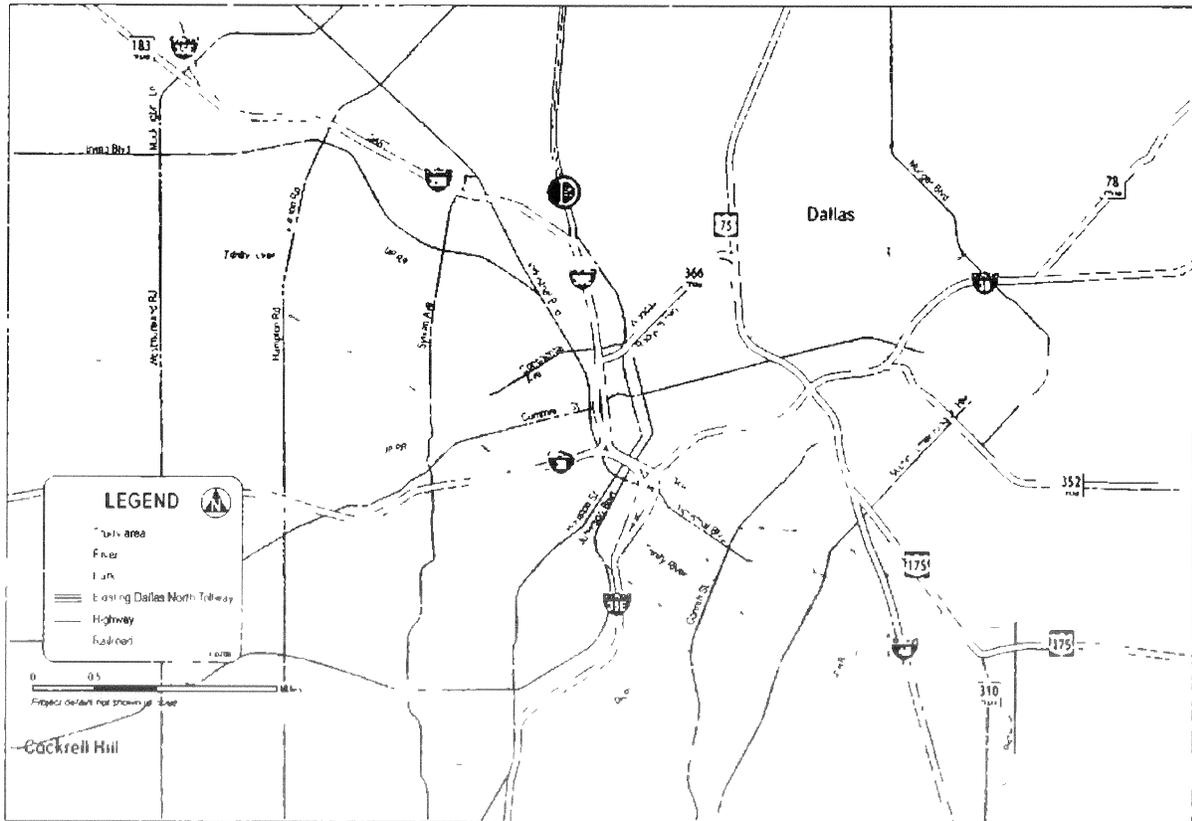
  
Paul N. Wageman, Chairman

ATTEST:

  
Ruby Franklin, Secretary

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**ATTACHMENT C**  
**PROJECT LOCATION MAP**



Trinity Parkway  
Project Location Map