

**SOUTHWEST PARKWAY
(TARRANT COUNTY)
FINANCIAL ASSISTANCE AGREEMENT
(Toll Equity Grant)**

This Financial Assistance Agreement (this "Agreement"), dated as of the 23rd day of September, 2009 (the "Effective Date"), is made by and between the Texas Department of Transportation, an agency of the State of Texas ("TxDOT"), and the North Texas Tollway Authority, a political subdivision of the State of Texas (the "NTTA"), for the purpose of providing financial assistance in connection with the development of a certain toll facility.

RECITALS

The parties acknowledge the following:

- A. The NTTA is a regional tollway authority governed by Chapter 366 of the Texas Transportation Code ("Chapter 366").
- B. The NTTA currently serves Collin, Dallas, Denton, and Tarrant Counties, and came into existence on September 1, 1997, as a statutory successor to the Texas Turnpike Authority.
- C. The proposed Southwest Parkway project extends for approximately 8.7 miles within Tarrant County, from IH 30 near the City of Fort Worth's Central Business District to Altamesa Boulevard in the city's southwest region (the "Southwest Parkway").
- D. Chapter 366 authorizes the NTTA to acquire, construct, maintain, repair, and operate turnpike projects at such locations within its jurisdiction as may be determined by the NTTA, and to issue bonds and other obligations for the purpose of paying all or any part of the cost of a turnpike project, such as the Southwest Parkway. NTTA has not committed to undertake the Southwest Parkway as of the Effective Date.
- E. Southwest Parkway affects railroad facilities known as the Davidson Yard, which are owned and operated by the Union Pacific Railroad Company ("UPRR"). UPRR agreed to terms regarding the design, construction, and operation of Southwest Parkway across the Davidson Yard (the "SWP/Davidson Yard Segment"). That agreement is documented in the "Union Pacific Railroad/Project Partners Formal Agreement," dated as of January 8, 2009, entered into by and between UPRR, the NTTA, the City of Fort Worth (the "City"), and TxDOT (as amended from time to time and including the separate agreements described therein, the "Formal Agreement").
- F. To (1) acquire the right-of-way interests needed for the SWP/Davidson Yard Segment, (2) obtain access to the Davidson Yard to construct the SWP/Davidson Yard Segment, and (3) otherwise close the right-of-way settlement described in the Formal Agreement, the NTTA and the City agreed to each fund an equal share of \$95 million (the "\$95 Million Obligation") payable either (a) to UPRR or (b) to reimburse the NTTA for work elements (\$11.32 million estimated cost) included in the \$95 Million Obligation that the parties to the Formal Agreement later agreed the NTTA will perform on behalf of UPRR (the "NTTA Work Elements"). The failure of the NTTA and the City to demonstrate by September 23, 2009, their

ability to fund the \$95 Million Obligation is one of several events entitling any party to the Formal Agreement, including UPRR, to terminate that agreement.

G. On June 11, 2009, the Regional Transportation Council (the "RTC") of the North Central Texas Council of Governments, the metropolitan planning organization for North Central Texas, adopted a resolution (the "RTC Resolution") committing to program \$49.87 million of Surface Transportation Program – Metropolitan Mobility Funds to fund the first portion of the \$95 Million Obligation (the "\$49.87 Million Portion").

H. The RTC Resolution further provides that if the NTTA does not establish feasibility for the Southwest Parkway or otherwise elects not to undertake the delivery of the Southwest Parkway on or before such time as the \$49.87 Million Portion is fully advanced to the NTTA, the RTC would fund the \$45.13 million balance from Category 2 funds already allocated to Southwest Parkway. TxDOT evaluated, and the Texas Transportation Commission acted upon, this other aspect of the RTC Resolution, along with other issues related to the Southwest Parkway, on August 27, 2009 by Minute Order 111927, as more fully documented in that certain Financial Assistance Agreement (Construction, Right-of-Way, and Study Costs) dated as of September 23, 2009 between TxDOT and the NTTA (the "45.13 Million Financial Assistance Agreement").

I. TxDOT, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code, is authorized to participate, through the expenditure of money from any source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity.

J. TxDOT has adopted rules at 43 Tex. Admin. Code § 27.50, *et seq.* (the "Toll Equity Rules") setting forth the policies and procedures by which it will participate in the financing of a toll facility of a public or private entity.

K. In accordance with the Toll Equity Rules, the NTTA submitted a request for the \$49.87 Million Portion for the purpose of funding the first portion of the \$95 Million Obligation (the "Request").

L. On June 25, 2009 by Minute Order 111856, and on July 30, 2009 by Minute Order 111889, the Texas Transportation Commission, pursuant to its constitutional and statutory authority and the Toll Equity Rules, gave preliminary and final approval, respectively, of the Request for the \$49.87 Million Portion, to be provided in the form of a grant.

M. By Resolution No. 09-238 passed on September 23, 2009, the NTTA Board of Directors authorized the Executive Director of the NTTA to enter into this Agreement.

AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

1. TxDOT will provide financial assistance, in the form of a grant, to the NTTA in the amount of \$49.87 Million to be used to fund a portion of the \$95 Million Obligation.

2. Funds provided pursuant to this Agreement shall be disbursed by TxDOT within thirty (30) days of receipt of a request from the NTTA to TxDOT's Fort Worth District Office, utilizing the notice information in section 20 of the \$45.13 Million Financial Assistance Agreement, which shall include the following:

- A. the amount requested;
- B. a description of the use of the funds requested;
- C. confirmation that the amount requested is owed as part of the \$95 Million Obligation, whether payable to UPRR or to reimburse the NTTA for the NTTA Work Elements; and
- D. copies of proposals, invoices, fee statements, or other documentation showing the intended use of the funds requested.

The NTTA may submit a request for disbursement to TxDOT prior to the NTTA's actual payment of said amounts to UPRR, provided said request otherwise complies with this Agreement; however, TxDOT must receive and approve evidence of the NTTA's actual payment of the sums subject to the request for disbursement prior to TxDOT's reimbursement thereof.

3. The NTTA may, but is not obligated to, request pre-approval of costs to be incurred in connection with the \$95 Million Obligation and the Formal Agreement and that are to be paid with funds provided under this Agreement, provided the amount of such costs comprises a portion of the \$95 Million Obligation, as reasonably determined by TxDOT, and the proposed use of funds provided under this Agreement to pay or reimburse such costs complies with the requirements of this Agreement. Except for expenditures that have been preapproved, TxDOT shall have the right to deny all or part of a request for funds proposed to be used for purposes not authorized by this Agreement or due to a lack of adequate documentation. In either event, the NTTA will have the right to submit additional information to clarify the use of the funds requested or to provide any missing documentation.

4. Costs paid or reimbursed using funds provided under this Agreement must be paid or reimbursed in accordance with applicable state and federal laws, including the Cost Principles established in OMB Circular A-87 that specify that costs must be allowable, reasonable and allocable to the project.

5. The NTTA will maintain transaction-level expenditure information, either provided by UPRR or prepared by the NTTA and relating to work performed by the NTTA on behalf of UPRR, pertaining to expenditures made or reimbursed with funds provided under this Agreement.

6. Funds provided to the NTTA pursuant to this Agreement are in the form of a grant and will not be repaid to TxDOT.

7. Except as provided in the following sentences, the construction of the SWP/Davidson Yard Segment by the NTTA or other ultimate developer of the Southwest Parkway occurs during the "NTTA Construction Period," as defined in the Formal Agreement, which commences on March 26, 2012, subject to extension under certain circumstances

(including an extension up to five years) stipulated in the Formal Agreement. However, certain retaining walls, bents for the Southwest Parkway and Hulen Street spans, and other components of the SWP/Davidson Yard Segment described on Attachment A to this Agreement and estimated to cost approximately \$40 million must, from a sequencing standpoint, be built prior to or during UPRR's construction of its improvements in the Davidson Yard (the "Advanced Construction Work"). NTTA will, at its sole cost and irrespective of whether it ultimately elects to undertake the Southwest Parkway, design, advertise, let, construct and complete the Advanced Construction Work in compliance with: (A) the Toll Equity Rules, including, without limitation, 43 Tex. Admin. Code § 27.56 thereof, and (B) the schematic approved as of the Effective Date of this Agreement by TxDOT and the PS&E to be subsequently approved by TxDOT (the "Approved Plans"). TxDOT will review, and if appropriate approve, any original PS&E within 30 days of receipt, whereupon said PS&E will become part of the Approved Plans. Without in any way limiting the provisions of Section 17 of this Agreement, the NTTA may use its bidding procedures and contract documents for the Advanced Construction Work in accordance with the Toll Equity Rules, including, without limitation, 43 Tex. Admin. Code § 27.56(c)(5), provided said procedures and documents are approved by TxDOT. TxDOT shall review, and if appropriate approve, any amendments to the Approved Plans within 30 days of receipt. The NTTA assumes all liability and responsibility for complying with applicable local, state and federal environmental laws, regulations and requirements, concerning the Advanced Construction Work, and with respect to the Advanced Construction Work, assumes all liability and responsibility for existing and future environmental permits, issues, and commitments therefor. With respect to any retaining walls constructed by the NTTA but maintained by TxDOT pursuant to the Formal Agreement, the NTTA shall provide TxDOT a warranty against latent defects substantially identical to what TxDOT provided the NTTA with respect to "Warranted Improvements" in the "Project Agreement State Highway 161" dated July 30, 2009, all to be more specifically set forth in the project agreement for Southwest Parkway executed between the parties. The warranty shall expire on the later of three (3) years after the NTTA issues written acceptance of each portion of the warranted improvements under each contract pursuant to which a portion of the warranted improvements were constructed or six (6) months after the NTTA's rights and obligations under the Formal Agreement are assigned to and assumed by TxDOT. In the event TxDOT does not assume such rights and obligations the warranty period ends seven (7) years after the NTTA's written acceptance of such warranted improvements. With respect to any drainage systems constructed by the NTTA but maintained by TxDOT pursuant to the Formal Agreement, the NTTA shall provide TxDOT a warranty using substantially the same terms, including the period in which the warranty is in effect, as is required for retaining walls by this paragraph. With respect to any retaining walls or drainage systems to be constructed by the NTTA but maintained by TxDOT pursuant to the Formal Agreement, NTTA must submit to TxDOT the design plans for such improvements to TxDOT for TxDOT's review. Construction may begin only after TxDOT approves the plans. During construction of any such retaining walls or drainage systems, TxDOT may inspect construction activities and may order the stoppage of construction if such activities are not in accordance with the TxDOT-approved design.

8. If the NTTA elects to undertake the Southwest Parkway, it will design, advertise, let, construct, and complete the Southwest Parkway in compliance with (A) the Toll Equity Rules, including, without limitation, 43 Tex. Admin. Code § 27.56 thereof, and (B) the schematic and PS&E approved by TxDOT.

9. The estimated disbursement schedule under this Agreement for the \$49.87 Million Portion is:

Calendar Year	\$49.87 Million Portion (STP-MM)
2009	\$22,182,693
2010	\$27,687,307
2011	\$0
2012	\$0
2013	\$0
Total	\$49,870,000

10. The NTTA will comply with applicable state and federal law in the performance of work under this Agreement, including obtaining the approval of the Federal Highway Administration ("FHWA") or another federal agency, if required, and will comply with the Toll Equity Rules relating to the performance of work.

11. Upon TxDOT's request and, to the extent applicable and permitted by federal law, after reasonable advance notice and opportunity to cure from TxDOT, NTTA shall reimburse TxDOT for any federal funds that are applied by NTTA to pay costs not incurred in conformity with applicable state and federal law.

12. The NTTA will maintain its books and records relating to the Southwest Parkway, the financial assistance provided under this Agreement, and the costs paid or reimbursed by the NTTA using funds provided under this Agreement, in accordance with the requirements of the Toll Equity Rules, and will comply with the audit requirements and other requirements relating to project records in 43 Tex. Admin. Code § 27.55(b), including having a full audit of its books and records performed annually in accordance with the standards of OMB Circular No. A-133. The NTTA shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

13. The NTTA and TxDOT shall maintain all books, documents, papers, accounting records and other documents relating to costs paid or reimbursed under this Agreement and shall make such materials available to the state, to the FHWA, and to the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at their respective offices during the contract period and for four years from the date of completion of the Southwest Parkway or until any impending litigation, or claims are resolved. Additionally, the state and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. If either party defaults in the performance of any obligation described in this Agreement, the other party may exercise any rights and remedies granted by law or this Agreement.

15. Except for the NTTA's authorization and obligation regarding the design and construction of the Advanced Construction Work, nothing herein shall be construed as an approval for, or the agreement by, the NTTA to construct the SWP/Davidson Yard Segment or the remainder of the Southwest Parkway or to operate any portion thereof.

16. The NTTA assumes all liability and responsibility for complying with applicable local, state and federal environmental laws, regulations and requirements, concerning the development of the Advanced Construction Work and the NTTA Work Elements.

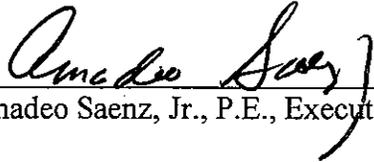
17. The NTTA shall ensure that all property and services paid for or reimbursed with funds provided under this Agreement are procured using the procurement standards established in Title 49 CFR §18.36, and the NTTA shall adhere to the property management standards established in 49 CFR §18.32.

18. TxDOT acknowledges that the request for financial assistance in the amount of \$49.87 million, to be used to pay for a portion of the costs to acquire right of way interests needed for the Southwest Parkway, obtain access to the Davidson Yard to construct the Southwest Parkway, and otherwise close the settlement described in the Formal Agreement, meets the requirements of 43 TAC §27.53 and §27.54. The foregoing does not in any manner limit TxDOT's ability to disallow a reimbursement request not in compliance with this Agreement.

19. This Agreement shall be effective from the Effective Date until December 31, 2018. Any funds not expended at that time will not be available to the NTTA.

TEXAS DEPARTMENT OF TRANSPORTATION

NORTH TEXAS TOLLWAY AUTHORITY

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

By: _____
Allen Clemson, Executive Director

16. The NTTA assumes all liability and responsibility for complying with applicable local, state and federal environmental laws, regulations and requirements, concerning the development of the Advanced Construction Work and the NTTA Work Elements.

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NORTH TEXAS TOLLWAY AUTHORITY

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

By:  _____
Allen Clemson, Executive Director

ATTACHMENT A

THE ADVANCED CONSTRUCTION WORK

1. SWP Section 1
 - Construct Retaining Walls from University to Trinity River along the common boundary
 - Construct Retaining Walls from Trinity River to Forest Park along the common boundary
 - Remove the existing Rosedale Connectors and reconstruct Rosedale Connectors
 - Contribution to construction of Abut Connection Wall East
2. SWP Section 2
 - Construct Retaining Walls from Rosedale Street to University along the common boundary
3. SWP Section 2B includes:
 - Construct selected bridge elements inside the Davidson Yard to include foundations, columns, crash walls and bent caps for Bridge Bent Lines E, D, F and G (Bents N3, N4, N5, N6, S5, S6, S7, S8, H3, H4, H5, H6)
 - Construct retaining wall along Vickery (Wall VA)
 - Construct the bottom section of the 2-tiered wall (Wall TB)
 - Remove the existing Hulen Bridge Ramp
 - Structurally brace the existing Hulen Bridge bent #4 to allow for existing traffic.

Note: These are the major items. Other items to be included, but not listed are: traffic control, drainage, signing and striping, illumination (for the Rosedale Connectors), excavation, SWPPP, etc.