

## TEXAS TRANSPORTATION COMMISSION

DALLAS, JOHNSON AND TARRANT Counties

**MINUTE ORDER**

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DALLAS AND FORT WORTH Districts

The Texas Department of Transportation (department) and the North Texas Tollway Authority (NTTA) have been proceeding with the development of a toll project that will extend SH 161 from SH 183 south to I-20 through the cities of Irving and Grand Prairie (SH 161 Project), and with the development of the SH 121 toll project from the Fort Worth Central Business District at I-30 to US 67 in Johnson County (Southwest Parkway/Chisholm Trail Project).

A portion of the Southwest Parkway/Chisholm Trail Project is located within the boundaries of the NTTA, and the southern section of the Southwest Parkway/Chisholm Trail Project is subject to the market valuation provisions set forth in Transportation Code, §228.0111 (the northern section is exempt from the market valuation requirement). The NTTA is authorized to construct, operate, maintain, expand, or extend the portion of the Southwest Parkway/Chisholm Trail Project extending into Johnson County as it would be a continuation of the NTTA's turnpike project extending from an adjacent county that is part of the NTTA.

The department and the NTTA have been working together to identify an approach to provide for the funding and development of the Southwest Parkway/Chisholm Trail Project and other transportation improvements within the boundaries of the NTTA and adjacent counties. Transportation Code, §228.0111 grants the NTTA the first option to develop, finance, construct and operate the Southwest Parkway/Chisholm Trail Project.

The department and the NTTA have negotiated a term sheet for providing financial assistance to the NTTA for the SH 161 Project, for the NTTA delivery of the SH 161 Project, and for the disposition of the Southwest Parkway/Chisholm Trail Project (Term Sheet) by which the department and the NTTA outlined a transaction to, among other things, strengthen the ability of the NTTA to undertake additional projects if the NTTA elects to undertake the SH 161 Project.

The Term Sheet provides for the NTTA's development of the Southwest Parkway/Chisholm Trail Project as a single project, subject to the NTTA establishing its feasibility and to potential phasing of development. To support the delivery of the Southwest Parkway/Chisholm Trail Project, the department and the NTTA would waive the requirement to develop a market valuation for the southern section of the Southwest Parkway/Chisholm Trail Project, and will cooperatively develop and evaluate strategies to support and accelerate the financial feasibility of the combined project.

On October 15, 2008, the NTTA's Board of Directors (1) accepted the Term Sheet without qualification or condition, (2) elected to exercise the NTTA's option to develop, finance, construct, and operate the SH 161 Project pursuant to the Negotiated Value Agreement, as modified by the Term Sheet, and (3) authorized the executive director of the NTTA to negotiate with the department the project agreement for the SH 161 Project. The department and the NTTA have entered into the project agreement for the SH 161 Project, effective July 30, 2009.

Transportation Code, §366.301 authorizes the department to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system by the NTTA on terms agreed to by the department and the NTTA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

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Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 to prescribe conditions for the commission's financing of a toll facility of a public or private entity (toll equity rules).

The commission previously directed department staff to work cooperatively with the staffs of the NTTA and the North Central Texas Council of Governments (NCTCOG) to develop possible alternatives for developing and implementing both the SH 161 Project and the Southwest Parkway/Chisholm Trail Project. The commission and the department support the development of both projects by the NTTA through the use of appropriate funding mechanisms.

The department, the NTTA, and the Regional Transportation Council (RTC) of the NCTCOG have cooperatively engaged in efforts to determine capital cost savings needed to make the Southwest Parkway/Chisholm Trail Project financially feasible. This includes the deferral of some of the direct connect bridges in Section 3B of the project and a reduction in the number of lanes to be constructed in Sections 5 and 6 of the project. This corridor configuration, which balances needed cost reductions with corridor functionality and mobility, has been titled Scenario 1C. The remaining direct connect bridges and additional lanes would be constructed when travel demand warrants.

In Minute Order 112114, dated January 28, 2010, the commission authorized the executive director of the department to proceed with negotiations with the NTTA and the RTC for (1) the development and implementation by the NTTA of the SH 161 Project and the Southwest Parkway/Chisholm Trail Project in a manner that minimizes the risk to the State Highway Fund and (2) financial assistance to the NTTA for the SH 161 Project and the Southwest Parkway/Chisholm Trail Project, subject to the NTTA's compliance with all of the prerequisites for developing those projects and obtaining such financial assistance, including the submittal of one or more requests for financing to the department and required commission approvals.

Minute Order 112114 further provides that, subject to satisfactory completion of negotiations and other prerequisites, the department is authorized and directed to present, for the commission's consideration, minute orders providing for the NTTA's development and implementation of the SH 161 Project and the Southwest Parkway/Chisholm Trail Project, and for providing financial assistance to the NTTA for those projects consistent with the provisions of that order. Under Minute Order 112114, those minute orders may provide for the preliminary and/or final approval of a toll equity loan for the SH 161 Project and/or the Southwest Parkway/Chisholm Trail Project, but only for both projects if both projects are structured as a single system.

In accordance with 43 TAC §27.53, the NTTA has submitted a request for financial assistance in an aggregate amount in nominal dollars no greater than the facility costs associated with the Southwest Parkway/Chisholm Trail Project, under mutually approved projections and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law, and which may only include costs for (1) design and construction, (2) operations and maintenance, and (3) major maintenance. The request also includes \$91 million in Proposition 14 bond proceeds that have been identified for the Southwest Parkway/Chisholm Trail Project. Based on estimates of facility costs, the maximum amount of the loan could be up to approximately \$2,366,561,333.

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Information and data required by Section 27.53(b) is contained in the request for financial assistance. Supplemental information and data required by Section 27.53(c) is contained in the request for financial assistance or has already been provided to the department.

Section 27.53(d) authorizes the executive director of the department to waive submission of individual items of information or data required by Section 27.53(c) if: (1) the information or data required by this section is not relevant to the project or the financial assistance requested; or (2) the department already possesses information or data in a format that may be substituted for the required information or data.

The department and the NTTA have negotiated an Agreement to Enter into Supplement to Toll Equity Loan Agreement (Agreement), the form of which is attached as Exhibit A to this order. The Agreement provides for the agreement of the department and the NTTA to enter into a supplement to the toll equity loan agreement for the SH 161 Project upon the fulfillment of the conditions precedent set forth in the Agreement, including environmental clearance of the Southwest Parkway/Chisholm Trail Project and the commission's adoption of a minute order approving the execution of the supplement and an increase in the toll equity loan commitment set forth therein. The supplement would amend the toll equity loan agreement to increase the amount of the toll equity loan commitment for the SH 161 Project to provide financial assistance for Scenario 1C of the Southwest Parkway/Chisholm Trail Project. The effect of the supplement is to provide a toll equity loan commitment for a single project comprised of SH 161 and the Scenario 1C configuration of Southwest Parkway/Chisholm Trail.

The department previously conducted environmental studies and analyses of the Southwest Parkway/Chisholm Trail Project, and has secured environmental clearance in the form of a Re-evaluation of the Final Environmental Impact Statement for the portion of the project from I-30 to FM 1171 in Fort Worth, which was approved by the Federal Highway Administration on June 3, 2009. A Finding of No Significant Impact for the section of the project from FM 1171 to US 67 is currently being reevaluated. Information and data relating to any known environmental, social, economic, or cultural resource issue is contained in the environmental documents prepared by the department.

The timely extension of SH 121 south and west from I-30 in Fort Worth to US 67 in Cleburne is a crucial element in the development of the cities of Fort Worth and Cleburne, Johnson and Tarrant counties, and the surrounding region. Development of the Southwest Parkway/Chisholm Trail Project will benefit the region by reducing congestion and improving air quality in those areas.

The financial assistance for the Southwest Parkway/Chisholm Trail Project is critical to the NTTA's overall plan of finance. The successful funding of the Southwest Parkway/Chisholm Trail Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by providing for the timely completion of the Southwest Parkway/Chisholm Trail Project, which will enhance mobility and operational efficiency, decrease congestion, increase safety, increase economic development opportunities, decrease travel time, decrease air pollution, and enhance quality of life in the SH 121 corridor. Without the department's assistance, the timeline to complete the Southwest Parkway/Chisholm Trail Project and realize those benefits could be delayed.

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The financial assistance for the Southwest Parkway/Chisholm Trail Project should lower the NTTA's capital costs, which will reduce the amount of equity from the NTTA System that will be necessary to complete the Southwest Parkway/Chisholm Trail Project. This will allow the NTTA to use that equity to finance both the Southwest Parkway/Chisholm Trail Project and the SH 161 Project. The Southwest Parkway/Chisholm Trail Project will expand the availability of funding for transportation projects or reduce direct state costs through the NTTA's issuance of bonds to finance project costs, and the potential payment of certain project expenses by the NTTA System's Capital Improvement Fund. The Southwest Parkway/Chisholm Trail Project, the NTTA, and the combined project comprised of SH 161 and Southwest Parkway/Chisholm Trail are likely to have sufficient revenues to assure repayment of any loan from the department.

The Southwest Parkway/Chisholm Trail Project is consistent with the approved Statewide Transportation Plan, the Statewide Transportation Improvement Program, and the approved plan of the North Central Texas Council of Governments (NCTCOG), the metropolitan planning organization for the Dallas-Fort Worth region, and will be consistent with the transportation improvement program of the NCTCOG and with the State Implementation Plan.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the North Texas Tollway Authority meets the requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of financial assistance comprised of (a) \$91 million in Proposition 14 bond proceeds that have been identified for the Southwest Parkway/Chisholm Trail Project and (b) an aggregate amount in nominal dollars no greater than the facility costs associated with Scenario 1C of the Southwest Parkway/Chisholm Trail Project, under mutually approved projections and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law, and which may only include costs for (1) design and construction, (2) operations and maintenance, and (3) major maintenance. The executive director is directed to implement the actions authorized and required by 43 TAC §27.54.

IT IS FURTHER ORDERED that the executive director of the department is authorized to enter into the Agreement to Enter into Supplement to Toll Equity Loan Agreement (Agreement), the form of which is attached as Exhibit A to this order, with such changes as the executive director may approve.

Submitted and reviewed by:

James M Bass  
Chief Financial Officer

Recommended by:

Cemal Sevil  
Executive Director

**112142 FEB 24 10**

Minute Date  
Number Passed

**AGREEMENT TO ENTER INTO  
SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT**

dated as of \_\_\_\_\_, 2010

between

**North Texas Tollway Authority,**  
as Borrower,

and

**Texas Department of Transportation,**  
as TxDOT,

relating to

**SOUTHWEST PARKWAY/CHISHOLM TRAIL PROJECT**

**and**

**[COMBINED SH 161/SOUTHWEST PARKWAY/  
CHISHOLM TRAIL PROJECT]**

This AGREEMENT TO ENTER INTO SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2010 is made by and between the North Texas Tollway Authority (the "Borrower") and the Texas Transportation Commission, acting by and through the Texas Department of Transportation ("TxDOT").

### **PRELIMINARY STATEMENTS:**

(1) On \_\_\_\_\_, 2010, the Borrower and TxDOT entered into that certain Toll Equity Loan Agreement for the SH161 Project (the "TELA") pursuant to which TxDOT has agreed to establish the Toll Equity Loan Commitment (as defined in the TELA) to provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for 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 as a "turnpike project" under Chapter 366, Texas Transportation Code, off of the state highway system (the "SH 161 Project").

(2) The Borrower and TxDOT are negotiating and intend to enter into a Project Agreement Southwest Parkway/Chisholm Trail Project (the "SWP/CT Project Agreement") that will assign certain rights and responsibilities with respect to the development, construction, operation, maintenance and financing of the SWP/CT Project.

(3) The Texas Transportation Commission has given preliminary approval for an increase in the Toll Equity Loan Commitment to provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for the SWP/CT Project and has authorized the execution of this Agreement.

(4) The parties desire to enter into a supplement to the TELA, amending the TELA to provide for such increase in the Toll Equity Loan Commitment, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE I** **DEFINITIONS**

Section 1.01 Certain Defined Terms. The following terms have the following meanings. Capitalized terms used herein and not defined have the meaning given in the TELA or in the Supplement, as the case may be; provided that terms defined in the TELA and also defined in the Supplement have the meaning given in the Supplement unless otherwise expressly stated herein.

“NEPA Finality Date” means the date that the Borrower shall have obtained a record of decision, finding of no significant impact or other action, as applicable, required under the National Environmental Policy Act for the entire SWP/CT Project and any applicable period to challenge such action shall have lapsed with no challenge having been brought, and is the date that "all environmental requirements necessary for the development of the toll project are secured and all legal challenges to development are concluded" for purposes of Section 228.0111(g), Texas Transportation Code.

“Series 2011 Bond Purchase Contract” means the Bond Purchase Contract between the Borrower and the initial purchaser(s) of the Series 2011 First Tier Bonds.

“Series 2011 Closing Date” means the date the Series 2011 Project Debt is issued, authenticated and delivered in accordance with the Trust Agreement.

“Series 2011 Closing Deadline” means the deadline under this Agreement for the Series 2011 Closing Date, which shall be the earlier of (a) February 28, 2014 or (b) the date that is 24 months after the NEPA Finality Date.

“Series 2011 Finance Documents” means each of the supplement to the Trust Agreement described in Section 3.01 1(b) of this Agreement, the Series 2011 First Tier Bonds, the Supplement, the SWP/CT Project TIFIA Loan Agreement, the SWP/CT Project TIFIA Bond, Master Custodial Agreement document described in Section 3.01 1(c) of this Agreement, the Toll Equity Loan Note in the form of Appendix A to the Supplement, and the Account Control Agreement document described in Section 3.01 1(f) of this Agreement.

“Series 2011 Pricing Date” means the date of the execution of the Series 2011 Bond Purchase Contract.

“Supplement” has the meaning set forth in Section 2.01 below.

## **ARTICLE II** **AGREEMENT TO ENTER INTO SUPPLEMENT**

Section 2.01 Agreement to Enter into Supplement. On the Series 2011 Closing Date, but not before then, the Borrower and TxDOT shall complete all appendices of and blanks in, and date, execute and deliver six original sets of, a supplement to the TELA, in the form and substance attached to this Agreement as Exhibit A (the “Supplement”), provided all the conditions precedent set forth in Article III hereof are satisfied not later than the Series 2011 Closing Deadline or waived in writing by TxDOT.

Section 2.02 Cancellation of Original Toll Equity Loan Note. Concurrently with execution and delivery of the Supplement and the replacement Toll Equity Loan Note in the form of Appendix A to the Supplement, TxDOT shall mark “Cancelled and Replaced” on the face of the original Toll Equity Loan Note delivered pursuant to the TELA and return the original Toll Equity Loan Note to the Borrower.

Section 2.03 Revisions to Form of Supplement.

1. Before executing and delivering the Supplement, the parties shall complete all bracketed [ ] provisions with the applicable information.

2. If, as of the date for execution and delivery of the Supplement it is evident that the Series 2011 Project Debt has not been or will not be issued in 2011, then the parties shall make technical modifications to the Supplement before execution and delivery in order to change "2011" wherever it occurs to the calendar year in which the Series 2011 Closing Date is expected to occur.

3. Prior to the Series 2011 Pricing Date, TxDOT and the Borrower agree to negotiate in good faith any technical revisions and corrections to the form of the Supplement set forth in Exhibit A to this Agreement to the extent necessary to carry out the purpose and intent of the Supplement.

4. If the Borrower does not obtain the SWP/CT Project TIFIA Loan, then the parties shall remove all reference to such loan from the Supplement.

5. In lieu of the Supplement, the parties may effectuate its terms by amending and restating the TELA.

Section 2.04 Time of Essence. Time is of the essence in satisfying the conditions precedent set forth in Article III and entering into the Supplement by the Series 2011 Closing Deadline. Accordingly, the Borrower agrees and acknowledges that it cannot expect, and is not entitled to, any extension of the Series 2011 Closing Deadline.

**ARTICLE III**  
**CONDITIONS PRECEDENT TO ENTRY INTO SUPPLEMENT**

Section 3.01 Condition Precedent to Entry into Supplement.

The obligation of TxDOT to enter into the Supplement is subject to the condition precedent that TxDOT shall have received, from or on behalf of the Borrower, on or before the Series 2011 Closing Deadline, the following, each in form and substance satisfactory to TxDOT (and on the Series 2011 Closing Date TxDOT shall deliver to the Borrower a certificate certifying that all conditions precedent set forth in this Section 3.01 have been satisfied or expressly waived, with the delivery of the certificate also a condition to entering into the Supplement and increasing the Toll Equity Loan Commitment):

1. Documents to Be Delivered. Either an original or a copy of each of the following documents to be delivered on or before the Series 2011 Closing Date, except for the Preliminary Official Statement which is to be delivered on or before the Series 2011 Pricing Date:

(a) the Supplement, with all terms and conditions that are not determined as of the date hereof, including the SWP/CT Guaranteed Completion Date, Maximum Available Aggregate Amount, Maximum Available Annual Amount, and Appendices A, B, D and E thereto, finalized and approved by TxDOT;

(b) a supplement to the Trust Agreement reflecting the Series 2011 Project Debt and the replacement of the Toll Equity Loan Note pursuant to the Supplement;

(c) an amendment, supplement or joinder to, or notice under, the Master Custodial Account Agreement as may be necessary to include the SWP/CT Project and its Project Revenues thereunder;

(d) each other Series 2011 Finance Document, together with any exhibit or schedule thereto and any document entered into in accordance therewith;

(e) the SWP/CT Project Agreement and the construction contracts for the SWP/CT Project, together with any exhibit or schedule thereto and any document entered into in accordance therewith or in order to support the obligations of any party thereunder;

(f) a Direct Agreement with each Construction Contractor for the SWP/CT Project;

(g) a Project Budget setting forth amounts estimated to be spent in each year for Project Costs, Operating Expenses, Major Maintenance Expenses and Capital Expenditures for the Project as defined in the Supplement, to be set forth in Appendix D attached to the Supplement;

(h) an amendment to, or notice under, the Account Control Agreement as may be necessary relating to the payment of Operating Expenses for the SWP/CT Project; and

(i) the Preliminary Official Statement relating to the Series 2011 First Tier Bonds, together with any supplements thereto and the Official Statement relating to the Series 2011 First Tier Bonds, together with any supplements thereto,

each of which shall have been duly authorized, executed and delivered by the parties thereto (except for the Supplement, which shall have been only executed by the Borrower), and, except for the Preliminary Official Statement, the Official Statement and the Supplement, shall be in full force and effect and, to the extent that a copy is provided, accompanied by a certificate by an authorized officer of the Borrower certifying as of the Series 2011 Closing Date that each such copy that is delivered to

TxDOT is a true, complete and correct copy thereof, as amended as of the Series 2011 Closing Date.

2. Financial Model. At least (i) five Business Days but no more than ten Business Days prior to the Series 2011 Pricing Date and within two Business Days after the Series 2011 Pricing Date and (ii) five Business Days but no more than ten Business Days prior to the date of the execution of the term sheet relating to the SWP/CT Project TIFIA Loan and within two Business Days after the date of the execution of the term sheet relating to the SWP/CT Project TIFIA Loan, an electronic copy of the Financial Model, demonstrating, among other matters, that (x) the payment of principal of and interest on the Series 2010 Project Debt and the Series 2011 Project Debt (other than interest to be paid for from Series 2010 Project Debt or Series 2011 Project Debt) and modeled Additional Senior Project Debt plus the Project Budget amounts other than Project Costs and Capital Expenditures if and to the extent paid for from Series 2010 Project Debt, Series 2011 Project Debt, modeled Additional Senior Project Debt, the Capital Expenditure Reserve Fund or the General Fund, and after adjustment for amounts available in the Major Maintenance Reserve Fund, as approved by TxDOT for Appendix D to the Supplement, do not exceed 100% of the projected Project Revenues in any year, (y) at all times there will be an unencumbered fund balance in the General Fund and (z) at no time will there be an advance anticipated to be required under the Toll Equity Loan Commitment as modified pursuant to the Supplement.

3. Insurance Report. On or before the Series 2011 Closing Date, a report prepared by the Insurance Consultant to the effect that all insurance policies required to be maintained by the Borrower under Section 5.05(g) of the TELA are in full force and effect for the entire Project including the SWP/CT Project, the premiums due thereon have been paid (if applicable), that such policies otherwise conform with the requirements specified in the TELA and that the types and coverages provided by such policies are adequate in relation to the entire Project including the SWP/CT Project.

4. Opinions. TxDOT general counsel, Borrower general counsel and Trustee counsel shall deliver on or before the Series 2011 Closing Date opinions in the forms delivered in connection with the execution of the TELA as applicable to the increase of the Toll Equity Loan Commitment to include the SWP/CT Project and the issuance of the Series 2011 Project Debt.

5. Authorization and Authority. On or before the Series 2011 Closing Date in relation to each of the Borrower and each Contractor that has executed a Contract or been selected by the Borrower to execute a Contract for the SWP/CT Project, an original or a copy certified by an authorized officer of the relevant Person to be true, complete and correct of (i) the authorizing resolutions of its board of directors, general partners, or managing member or manager, as applicable, authorizing the transactions contemplated under the TELA and the

Supplement as they relate to the SWP/CT Project and under the Transaction Documents to which such Person is or is intended to be a party and in the case of the Borrower designating the Board Representative, together with a certificate that no such authorization has been amended or revoked. In relation to the Borrower, on or before the Series 2011 Closing Date (i) an incumbency certificate of the Borrower, and (ii) the Borrower's most recent unaudited and (if available) audited financial statements.

6. Governmental Approvals. On or before the Series 2011 Closing Date, TxDOT shall have received a copy of each Governmental Approval listed in Exhibit B attached to this Agreement and any other required Governmental Approvals, together with a certificate by a Board Representative certifying as of the Series 2011 Closing Date that the schedule of Governmental Approvals set forth in the certificate sets forth all Governmental Approvals that are necessary for the work being performed relating to the design, acquisition, construction, and equipping of the SWP/CT Project as of the Series 2011 Closing Date.

7. Consultant Reports. On or before the Series 2011 Pricing Date, copies of the following, each in form and substance satisfactory to TxDOT:

(a) a final report of the Traffic Engineer prepared and dated not earlier than 90 days before the Series 2011 Pricing Date relating to the SWP/CT Project and the Project as defined in the Supplement;

(b) a final report of the Consulting Engineer prepared and dated not earlier than 90 days before the Series 2011 Pricing Date relating to the SH 161 Project concluding that the SH 161 Project remains on budget and on schedule to be completed (i) within six months after the Guaranteed Substantial Completion Date, if as of the date of the final report the SH 161 Project has achieved less than 50% completion, or (ii) within 12 months after the Guaranteed Substantial Completion Date, if as of the date of the final report the SH 161 Project has achieved at least 50% completion, which final report may be subject to such conditions that are customary for such reports; and

(c) a final report of the Consulting Engineer prepared and dated not earlier than 90 days before the Series 2011 Pricing Date relating to the SWP/CT Project concluding that the budget for Project Costs for the SWP/CT Project and the time frame to achieve Substantial Completion for the SWP/CT Project (which the report shall indicate will fall not later than 90 days after the SWP/CT Guaranteed Substantial Completion Date) are reasonable, subject to such conditions that are customary for such reports.

8. Third Party Agreements. On or before the Series 2011 Pricing Date, all third party agreements and approvals, such as but not limited to agreements with railroads, that may be required in order to construct or operate the SWP/CT Project.

9. Attorney General Approval. On or before the Series 2011 Closing Date, approval of the Supplement by the Office of the Attorney General of Texas.

10. Commission Approval. The Texas Transportation Commission has adopted a minute order giving final approval of the execution and delivery of the Supplement and the increase in the Toll Equity Loan Commitment set forth therein, it being recognized that TxDOT does not have the authority to cause such minute order to be adopted.

Section 3.02 Additional Conditions Precedent.

The obligation of TxDOT to enter into the Supplement is subject to the satisfaction of the following additional conditions precedent before the Series 2011 Closing Deadline; provided that, the Borrower shall be deemed to have satisfied the conditions set forth in this Section 3.02(1) to (11) (and as to (11) only as to Borrower) to the extent they have been certified in writing by Borrower's Representative in a certificate in the form attached hereto as Exhibit C:

1. Closing Date Occurred. The Series 2010 Project Debt has been issued.

2. NEPA Finality. The NEPA Finality Date shall have occurred.

3. Bond Purchase Contract. All conditions precedent to the occurrence of the Series 2011 Closing Date under the Series 2011 Bond Purchase Contract shall have been satisfied or waived by the underwriter, other than any conditions solely requiring the satisfaction of all conditions to the increase in the Toll Equity Loan Commitment under the Supplement.

4. TIFIA Loan. All conditions precedent to the making of the first disbursement under the SWP/CT Project TIFIA Loan Agreement shall have been satisfied or waived by the United States Department of Transportation, other than any conditions solely requiring the satisfaction of all conditions to the issuance of the Series 2011 First Tier Bonds or to the increase in the Toll Equity Loan Commitment under the Supplement.

5. Full Funding of SWP/CT Project. On or before the Series 2011 Closing Date, the Borrower has concurrently done, or stands ready to do, all of the following in compliance with the terms and conditions of the Trust Agreement and the SWP/CT Project TIFIA Loan Agreement: (a) issue at a fixed rate of interest all of the Series 2011 First Tier Bonds, (b) enter into the SWP/CT Project TIFIA Loan providing for a fixed rate of interest, and (c) deposit into the SWP/CT Project CIF Account the balance of the \$400 million required under Section 5.05(d)(iii) of the Supplement, or such larger amount as is necessary, based on the final report prepared by the Consulting Engineer referenced in Section 3.017(c) hereof, and after taking into account amounts required to be deposited by the Borrower from sources other than Project Debt, to pay for (i) Project Costs as

set forth in Appendix D to the Supplement, including the contingency for the SWP/CT Project in an amount set forth in Appendix D to the Supplement, and (ii) all amounts required to be deposited in Trust Agreement Funds as provided in Appendix E to the Supplement.

6. Full Funding of Reserves. As a result of the issuance of the Series 2011 Project Debt, the Capital Expenditures Reserve Fund shall be in an amount not less than the Capital Expenditures Reserve Requirement, the Major Maintenance Reserve Fund shall be in an amount not less than the Major Maintenance Reserve Requirement and the Rate Stabilization Reserve shall be in an amount not less than the Rate Stabilization Reserve Requirement.

7. Fund Transfers and Deposits. If any transfers or deposits of funds are required as of the Series 2011 Closing Date under Section 5.05(d) as set forth in the Supplement, the same shall have occurred or shall be ready to occur on the Series 2011 Closing Date.

8. No Default or Event of Default. No “Event of Default” under and as defined in the Trust Agreement shall have occurred and no “Authority Default” on the part of the Borrower under and as defined in the Project Agreement (including the SWP/CT Project Agreement) shall have occurred and be continuing beyond the cure period provided in the Project Agreement.

9. Representations and Warranties. The representations and warranties given by the Borrower in the Supplement shall be true and correct in all material respects on and as of the Series 2011 Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

10. No Default or Event of Default. No Default with respect to the Borrower under the TELA shall have occurred and be continuing, or shall occur as a result of the increase in the Toll Equity Loan Commitment under the Supplement, and no Event of Default with respect to the Borrower shall have occurred or shall occur as a result of the increase in the Toll Equity Loan Commitment under the Supplement.

11. No Material Adverse Effect. No event, development or circumstance shall have occurred or shall have become known to TxDOT or to the Borrower that has had or could reasonably be expected to have a Material Adverse Effect with respect to the SH 161 Project or the SWP/CT Project.

#### **ARTICLE IV** **MISCELLANEOUS**

Section 4.01     Notice.

All notices and other communications provided for hereunder shall be in writing and sent by United States certified or registered mail, return receipt requested, private delivery service, or by email or facsimile (provided that the sender receives confirmation of receipt of the email or facsimile by email or facsimile or confirms the email or facsimile by sending an original copy by certified or registered mail or private delivery service within two (2) Business Days after transmission) addressed as follows:

If to the Borrower: North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093-4694  
Attn: Executive Director  
Fax: 972-930-2622  
Email: [aclemson@ntta.org](mailto:aclemson@ntta.org)

With a copy to: North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093-4694  
Attn: General Counsel  
Fax: 972-930-3332  
Email: [jdahill@ntta.org](mailto:jdahill@ntta.org)

If to TxDOT: Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483  
Attn: Chief Financial Officer  
Fax: 512-463-0283  
Email: [jbass@dot.state.tx.us](mailto:jbass@dot.state.tx.us)

With a copy to: Texas Department of Transportation  
Dallas District Office  
4777 East Highway 80  
Mesquite, Texas 75150  
Attn: District Engineer  
Fax: 214-320-6117  
Email: [whale@dot.state.tx.us](mailto:whale@dot.state.tx.us)

Texas Department of Transportation  
Ft. Worth District Office  
2501 Southwest Loop  
Fort Worth, Texas 76133  
Attn: Maribel P. Chavez, P.E.  
Fax: (817) 370-6787  
Email: [mchavez@dot.state.tx.us](mailto:mchavez@dot.state.tx.us)

Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483  
Attn: General Counsel  
Fax: 512-475-3070

Email: [bjackson@dot.state.tx.us](mailto:bjackson@dot.state.tx.us)

The Borrower or TxDOT may change the address to which notices to it are to be sent by notice given to the other persons listed in this Section 4.01.

All notices shall, when mailed or given by private delivery service, be effective on the date indicated on the return or delivery receipt, respectively, and all notices given by email or facsimile shall be effective when received if confirmation of receipt, by email or facsimile, is received by the sender the same business day. If confirmation of receipt of email or facsimile notices is not received the same business day, the notices shall be effective when confirmation is received, or on the date indicated on the return or delivery receipt if the facsimile or email notices have been confirmed by mailing or private delivery service, whichever is earlier. Whenever in this Agreement the giving of notice is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 4.02      Binding Effect; Successors and Assigns.

This Agreement shall become effective when it shall have been executed by the Borrower and TxDOT and thereafter shall be binding upon and inure to the benefit of the Borrower and TxDOT and their respective successors and assigns. The Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of TxDOT. TxDOT shall not have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the Borrower and confirmation from each rating agency then rating the Senior Project Debt (as defined in the TELA) that any such assignment will not negatively affect the then current ratings on the Senior Project Debt (as defined in the TELA).

Section 4.03      Counterparts.

The execution and delivery hereof by the parties hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement.

Section 4.04 Governing Law.

This Agreement shall be governed by, and construed in accordance with the internal laws of the State of Texas, without reference to choice of law doctrine.

Section 4.05 Offering Document for Series 2011 First Tier Bonds.

The Borrower and TxDOT agree to work cooperatively in the preparation and distribution of any offering document delivered in connection with the Series 2011 First Tier Bonds which shall be in a form reasonably satisfactory to TxDOT. The Borrower and TxDOT shall be deemed to make, as of the date of the issuance of any Series 2011 First Tier Bonds, the same representations and warranties with respect to any such offering document as the parties have made under the TELA with respect to the Official Statement.

Section 4.06 Amendment and Waiver.

No amendment to or waiver of any provision of this Agreement, nor consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by TxDOT and the Borrower.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

*(Remainder of page intentionally left blank)*

**NORTH TEXAS TOLLWAY AUTHORITY**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Allen Clemson  
Executive Director

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ruby Franklin,  
Secretary

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
Kevin L. Twining

**EXHIBIT A**

**FORM OF SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT**

**SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT**

dated as of [\_\_\_\_], 20\_\_

between

**North Texas Tollway Authority,**  
as Borrower,

and

**Texas Department of Transportation,**  
as TxDOT,

relating to

**SOUTHWEST PARKWAY/CHISHOLM TRAIL PROJECT**

**and**

**[COMBINED SH 161/SOUTHWEST PARKWAY/  
CHISHOLM TRAIL PROJECT]**

This SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT (this "Supplement"), dated as of [\_\_\_\_], 20\_\_ (the "Effective Date" of this Supplement) is made by and between the North Texas Tollway Authority (the "Borrower") and the Texas Transportation Commission, acting by and through the Texas Department of Transportation ("TxDOT"), and constitutes a credit agreement under Chapter 1371, Texas Government Code.

**PRELIMINARY STATEMENTS:**

(1) On \_\_\_\_\_, 2010, the Borrower and TxDOT entered into that certain Toll Equity Loan Agreement for the SH 161 Project (the "Original Agreement") pursuant to which TxDOT established the Toll Equity Loan Commitment (as defined in the Agreement) to provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for 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 as a "turnpike project" under Chapter 366, Texas Transportation Code, off of the state highway system (the "SH 161 Project").

(2) On \_\_\_\_\_, 2010, the Borrower and TxDOT entered into that certain Project Agreement for the Southwest Parkway/Chisholm Trail Project (the "SWP/CT Project Agreement") assigning certain rights and responsibilities with respect to the development, construction, operation, maintenance and financing of the SWP/CT Project.

(3) The Texas Transportation Commission has given preliminary and final approval for an increase in the Toll Equity Loan Commitment to provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for the SWP/CT Project.

(4) In order to provide financing for a portion of the development and construction of the SWP/CT Project under and pursuant to the SWP/CT Project Agreement, the Borrower intends to issue, pursuant to the Trust Agreement and supplement thereto, up to \$[\_\_\_\_\_] aggregate principal amount of the Borrower's [Southwest Parkway/Chisholm Trail First Tier Revenue Bonds] (the "Series 2011 First Tier Bonds"), and up to \$[\_\_\_\_\_] aggregate principal amount of the Borrower's [Southwest Parkway/Chisholm Trail Second Tier Revenue Bonds] (the "SWP/CT Project TIFIA Bonds") which evidence a loan from the United States Department of Transportation to the Borrower pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998 (the "SWP/CT Project TIFIA Loan").

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter appearing, and in order to induce TxDOT to increase the Toll Equity Loan Commitment

to include the SWP/CT Project, the parties hereby amend and supplement the Original Agreement as follows:

## **ARTICLE I** **DEFINITIONS**

Section 1.01 Certain Defined Terms. Section 1.01 of the Original Agreement is hereby supplemented to add or amend the following capitalized terms as they relate to the Toll Equity Loan Commitment including the SWP/CT Project. Capitalized terms used herein and not defined have the meaning given in the Original Agreement. TERMS DEFINED IN THE ORIGINAL AGREEMENT AND ALSO DEFINED IN THIS SUPPLEMENT HAVE THE RESPECTIVE MEANINGS GIVEN IN THIS SUPPLEMENT, AND THE CORRESPONDING DEFINITIONS IN THE ORIGINAL AGREEMENT ARE SUPERSEDED.

“Agreement” means the Original Agreement as amended and supplemented by this Supplement, except where the context in the Original Agreement clearly indicates otherwise (such as in the definitions of “Effective Date” and “Material Adverse Effect” in the Original Agreement and in the first sentence of Section 8.04 of the Original Agreement).

“Contract” means each or all, as the context indicates, of (a) the Design/Build Agreement (SH 161 Project) bearing contract No. 02622-SH161—00-DB-PM between the Borrower and the Design-Build Contractor and (b) each construction contract between the Borrower and a construction contractor for construction of any portion of the SWP/CT Project.

“Contractor” means each or all, as the context indicates, of (a) Prairie Link Constructors Joint Venture, or its successor or assign, in its capacity as the company with primary responsibility to provide design and construction services under the Contract for the SH 161 Project and (b) each contractor that is a party to a Contract for construction of any portion of the SWP/CT Project.

“Design-Build Contract” means “Contract”.

“Design-Build Contractor” means “Contractor”.

“Direct Agreement” means each direct agreement entered into between TxDOT, the Borrower and each Contractor or the contingent assignment of the Borrower’s rights to TxDOT as consented to by each Contractor, all in relation to each Contract.

“Finance Documents” means each of the Trust Agreement, the Series 2010 First Tier Bonds, the Original Agreement, the TIFIA Loan Agreement, the Series 2010 TIFIA Bond, the Master Custodial Account Agreement, the Account Control Agreement, the supplement to the Trust Agreement entered into in connection with the Supplement, the

Series 2011 First Tier Bonds, the Supplement, the SWP/CT Project TIFIA Loan Agreement, the SWP/CT Project TIFIA Bonds, the Master Custodial Agreement document delivered in connection with the Supplement, the Account Control Agreement document delivered in connection with the Supplement, and the Toll Equity Loan Note in the form of Appendix A to the Supplement.

“Financial Model” means the financial model prepared by the Borrower and delivered to TxDOT as of the dates specified in Section 3.01 – 2 of the Agreement to Enter into Supplement to Toll Equity Loan Agreement between the parties for the purposes of consummating the Supplement, which contains the details of the Series 2010 Project Debt, the proposed Series 2011 Project Debt, the Project Budget, the Maximum Available Annual Amount and the Maximum Available Aggregate Amount, all as defined in this Supplement.

“Maximum Available Aggregate Amount” has the meaning set forth in Section 2.01 of this Supplement.

“Maximum Permitted Amount” means the lesser of (i) debt service payments associated with the Senior Project Debt for the applicable period for which an advance is requested, plus Operating Expenses, Major Maintenance Expenses and Capital Expenditures up to the amounts for the applicable period as set forth in the Project Budget, but minus balances available in the Capitalized Interest Fund for the payment of interest on the Series 2010 First Tier Bonds and the Series 2011 First Tier Bonds for the applicable period to the extent that a portion of a requested advance is to be used to pay interest on the Series 2010 First Tier Bonds and the Series 2011 First Tier Bonds, minus any Revenues deposited into the Revenue Fund during the applicable period, minus any available amounts in the Annual Operating Budget Account of the Operating Fund, Annual Operating Budget Account of the Major Maintenance Fund, Annual Operating Budget Account of the Capital Expenditures Fund, Major Maintenance Reserve Fund, Rate Stabilization Fund, Capital Expenditures Reserve Fund and General Fund; and (ii) the Maximum Available Annual Amount for the applicable period for which an advance is requested, minus balances in the Capitalized Interest Fund for the payment of interest on the Series 2010 First Tier Bonds and the Series 2011 First Tier Bonds for the applicable period to the extent that a portion of a requested advance is to be used to pay interest on the Series 2010 First Tier Bonds and the Series 2011 First Tier Bonds, minus any Revenues deposited into the Revenue Fund during the applicable period, minus any available amounts in the Annual Operating Budget Account of the Operating Fund, Annual Operating Budget Account of the Major Maintenance Fund, Annual Operating Budget Account of the Capital Expenditures Fund, Major Maintenance Reserve Fund, Rate Stabilization Fund, Capital Expenditures Reserve Fund and General Fund.

“Original Agreement” has the meaning set forth in paragraph (1) of the Preliminary Statements to this Supplement.

“Project” means both the SH 161 Project and the SWP/CT Project.

“Project Agreement” means both the SH 161 Project Agreement and the SWP/CT Project Agreement.

“Project Agreement Standards” means the minimum standards for operation and maintenance of the Project set forth in the Project Agreement; provided that the Borrower’s “System-wide Design Guidelines” for landscaping and aesthetics that the Borrower is permitted to implement under Section 9(b) of the SH 161 Project Agreement shall not be considered to be minimum standards and the Borrower’s “Roadside Customer Service” shall be considered to be minimum standards.

“Project Documents” means, collectively, the Project Agreement and the Contracts.

“Senior Project Debt” means as at any date, the Series 2010 Project Debt, the Series 2011 Project Debt, and any Additional Senior Project Debt and Refunding Bonds incurred as of such date and as permitted in this Agreement.

“Series 2011 First Tier Bonds” has the meaning set forth in paragraph (4) of the Preliminary Statements to this Supplement.

“Series 2011 Project Debt” means the Series 2011 First Tier Bonds and the SWP/CT Project TIFIA Bonds.

“Service Commencement Date” means, respectively, (a) for the SH 161 Project, the date when all Phases of the SH 161 Project are open for normal and continuous operations and use by the traveling public and (b) for the SWP/CT Project, the date when all sections of the SWP/CT Project are open for normal and continuous operations and use by the traveling public.

“SH 161 Project” means the “Project” described in paragraph (2) of the Preliminary Statements to the Original Agreement.

“SH 161 Project Agreement” means the “Project Agreement” described in paragraph (3) of the Preliminary Statements to the Original Agreement.

“Substantial Completion” means, respectively, (a) for the SH 161 Project, the date when the Borrower has completed or caused the completion of all acquisition, equipping and construction of the SH 161 Project, other than the low volume direct connectors in Phase 4, in accordance with the requirements of the SH 161 Project Agreement, such that the SH 161 Project, other than the low volume direct connectors in Phase 4, is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable electronic toll collection system meeting the technical standards of the SH 161 Project Agreement, and (b) for the SWP/CT Project,

the date when the Borrower has completed or caused the completion of all acquisition, equipping and construction of the SWP/CT Project in accordance with the requirements of the SWP/CT Project Agreement, such that the SWP/CT Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable electronic toll collection system meeting the technical standards of the SWP/CT Project Agreement.

"Supplement" means this Supplement to Toll Equity Loan Agreement dated as of \_\_\_\_\_, 20\_\_.

"SWP/CT Guaranteed Substantial Completion Date" for the SWP/CT Project means [\_\_\_\_\_, 20\_\_].

"SWP/CT Project Agreement" has the meaning set forth in paragraph (2) of the Preliminary Statements to this Supplement

"SWP/CT Project TIFIA Bonds" has the meaning set forth in paragraph (4) of the Preliminary Statements to this Supplement.

"SWP/CT Project TIFIA Loan" has the meaning set forth in paragraph (4) of the Preliminary Statements to this Supplement.

"SWP/CT Project TIFIA Loan Agreement" means the agreement, if any, between the Borrower and the TIFIA Lender relating to the SWP/CT Project TIFIA Loan.

## **ARTICLE II**

### **AMOUNT AND TERMS OF THE TOLL EQUITY LOAN COMMITMENT**

Section 2.01 Establishing the Toll Equity Loan Commitment. The second sentence of Section 2.01 of the Original Agreement is hereby amended in its entirety to read as follows:

"The Toll Equity Loan Commitment shall not exceed in total principal amount [\$\_\_\_\_\_] (the "Maximum Available Aggregate Amount") and no advance thereunder shall cause the aggregate principal amount of all advances in any of the Draw Periods as set forth in Appendix B to exceed the Maximum Available Annual Amount set forth in Appendix B for any of such Draw Periods."

Section 2.03 Toll Equity Loan. The third and fourth paragraphs in Section 2.03 of the Original Agreement are amended to read as follows:

"Any advances under the Toll Equity Loan Commitment relating to amounts anticipated to be expended or incurred by the Borrower must be accompanied by documentation or other evidence demonstrating to the reasonable satisfaction of TxDOT that such amounts are reasonably likely to be expended or incurred, provided that, after Substantial Completion of each of the SH 161 Project and the

SWP/CT Project and subject to the following paragraph, amounts in the Project Budget for that portion of the Project for subsequent years shall be considered to be amounts reasonably anticipated to be expended or incurred.

Five years after Substantial Completion of both the SH 161 Project and the SWP/CT Project, and at the end of each year thereafter, (i) the amount of Operating Expenses for the immediately preceding five year period as a percentage of the Project Budget amounts for that period shall be calculated and, if such percentage (the “calculated percentage”) is less than 100%, the amount considered to be reasonably anticipated to be expended or incurred for each year thereafter will be the Project Budget amount for each year thereafter multiplied by the calculated percentage, (ii) the amount of Major Maintenance Expenses reasonably anticipated to be expended or incurred for each year thereafter will be the amount of Major Maintenance in the Project Budget, after taking into account any advancement or deferment of Major Maintenance in the Project Budget, and (iii) the amount of Capital Expenditures reasonably anticipated to be expended or incurred for each year thereafter will be the amount of Capital Expenditures in the Project Budget taking into account any advancement or deferment of Capital Expenditures in the Project Budget.”

Section 2.06 Release of Toll Equity Loan Commitment. The “Service Commencement Date” referred to in the second paragraph of Section 2.06 of the Original Agreement shall be the last Service Commencement Date to occur. The “Effective Date” referred to in the third paragraph of Section 2.06 of the Original Agreement shall be the later of the Effective Date or the Effective Date of this Supplement.

### **ARTICLE III**

#### **CONDITIONS OF ESTABLISHING TOLL EQUITY LOAN COMMITMENT**

Article III of the Original Agreement is not applicable to the SWP/CT Project.

### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES**

Section 4.01 Representations and Warranties of the Borrower. The Borrower hereby reaffirms all of the representations and warranties set forth in Section 4.01 of the Original Agreement as of the date hereof (except to the extent that any representation and warranty set forth in Section 4.01 of the Original Agreement specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date), provided that (a) Section 4.01(j) of the Original Agreement shall include the Series 2011 First Tier Debt, the SWP/CT Project TIFIA Bonds and the Toll Equity Loan Note in the form of Appendix A to this Supplement, and (b) Section 4.01(z) of the Original Agreement shall refer only to the Official Statement for the Series 2011 First Tier Debt.

Section 4.02 Representations and Warranties of TxDOT. TxDOT hereby reaffirms all of the representations and warranties set forth in Section 4.02 of the Original Agreement as of the date hereof (except to the extent that any representation and warranty set forth in Section 4.02 of the Original Agreement specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date), provided that (a) no representations and warranties are reaffirmed respect to the Direct Agreement with the Contractor for the SH 161 Project, and (b) Section 4.01(g) of the Original Agreement shall refer only to the Official Statement for the Series 2011 First Tier Debt.

## **ARTICLE V**

### **COVENANTS OF THE BORROWER**

Section 5.01(b) Limitation on Use of Funds to Pay for Certain Operation and Maintenance Expenses and Capital Expenditures. Section 5.01(b) of the Original Agreement is supplemented by adding the following paragraph at the end of said section:

“Notwithstanding anything herein to the contrary, in no event shall amounts held in any of the Project Reserve Funds be used to pay Capital Expenditures for the SWP/CT Project; provided that the Borrower shall be permitted to pledge amounts held in the General Fund for repayment of debt service on indebtedness incurred to pay for Capital Expenditures for the SWP/CT Project. Any such pledge shall comply with the last paragraph of Section 5.06(c) of the Agreement.”

Section 5.02(b)(ii) Covenant re Traffic Engineer. The “Service Commencement Date” referred to in Section 5.02(b)(ii) of the Original Agreement shall be the first Service Commencement Date to occur.

Section 5.02(c)(iii) Consultant Reports; Appointment of Replacement Consultants. The “Service Commencement Date” referred to in Section 5.02(c)(iii) of the Original Agreement shall be each Service Commencement Date.

Section 5.05(d) Use of Proceeds and Amounts Remaining in the Construction Fund After Completion of the Authority Structures. The second paragraph of Section 5.05(d) of the Original Agreement is replaced in its entirety with the following:

“(i) Any amounts remaining in the Series 2010 Construction Account and the TIFIA Construction Account of the Construction Fund held by the Trustee under the Trust Agreement after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SH 161 Project shall be transferred to the SWP/CT Project Construction Account and, unless prohibited by applicable law or the TIFIA Loan Agreement, the SWP/CT TIFIA Construction Account of the Construction Fund if the SWP/CT Project is not completed at the time of submission of such final completion certificate. Any

amounts remaining in the SWP/CT Project Construction Account and the SWP/CT Project TIFIA Construction Account of the Construction Fund held by the Trustee under the Trust Agreement after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SWP/CT Project shall be transferred to the Series 2010 Construction Account and, unless prohibited by applicable law or the SWP/CT Project TIFIA Loan Agreement, the TIFIA Construction Account of the Construction Fund if the SH 161 Project is not completed at the time of submission of such final completion certificate.

(ii) After the Borrower submits to the Trustee both final completion certificates with regard to construction of the Authority Structures for the Project, any amounts remaining in applicable Construction Accounts shall remain in such accounts and be used to pay for Project Capacity Improvements; provided, if and to the extent such use of such amounts on deposit in the Series 2010 Construction Account or SWP/CT Project Construction Account (as applicable) is not permitted by applicable federal tax laws or regulations, by the TIFIA Loan Agreement or by the SWP/CT Project TIFIA Loan Agreement, at the option and direction of the Borrower such amounts shall be used by the Trustee to redeem, defease or purchase and cancel Outstanding Senior Project Debt.

(iii) The Borrower shall provide as the first contribution of equity to develop the SWP/CT Project an amount equal to the difference between \$400 million and the amount of funds deposited by Borrower in the CIF Account for the SH 161 Project prior to the Effective Date of this Supplement.

(iv) Any amounts remaining in the SH 161 Project CIF Account of the Construction Fund after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SH 161 Project shall be transferred to the SWP/CT Project CIF Account of the Construction Fund if the SWP/CT Project is not completed at the time of submission of such final completion certificate. If prior to such transfer the Borrower transferred funds contributed by Borrower from the Borrower's turnpike system (the "NTTA System") from the SH 161 Project CIF Account to the Construction Fund to fund Project Capacity Improvements pursuant to the second paragraph of Section 5.05(d) of the Original Agreement, then the Borrower shall also contribute from NTTA System funds to the SWP/CT Project CIF Account, concurrently with the foregoing transfer of funds from the SH 161 Project CIF, an amount equal to such previously transferred funds. Any amounts remaining in the SWP/CT Project CIF Account of the Construction Fund after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SWP/CT Project shall be transferred to the SH 161 Project CIF Account of the Construction Fund if the SH

161 Project is not completed at the time of submission of such final completion certificate.

(v) After the Borrower submits to the Trustee both final completion certificates with regard to construction of the Authority Structures for the Project, any amounts remaining in applicable CIF Account of the Construction Fund shall be transferred first to the Revenue Fund and used as provided for “Revenues” in Appendix E of this Supplement, provided that the amount so transferred plus amounts previously expended from the CIF Accounts for both the SH 161 Project and the SWP/CT Project is not required to exceed \$400 million, and second, the balance to the Borrower.”

Section 5.05(e) Change Orders. The first sentence of Section 5.05(e) of the Original Agreement is hereby amended in its entirety to read as follows:

“The Borrower shall not enter into any Change Order (or any similar term as defined in each Contract) or any Scope Change (or any similar term as defined in each Contract except in compliance with the applicable requirements of federal law and the Project Agreement.”

Section 5.05(f) Tolling System. The “Service Commencement Date” referred to in Section 5.02(f) of the Original Agreement shall be each Service Commencement Date.

Section 5.06(a) Senior Project Debt. Section 5.06(a) of the Original Agreement is amended to add the following:

“Series 2011 Project Debt. The Borrower shall issue all of the Series 2011 First Tier Bonds and concurrently enter into the SWP/CT Project TIFIA Loan all on the same day and in compliance with the terms and conditions of the Trust Agreement and the SWP/CT Project TIFIA Loan Agreement, respectively. Series 2011 Project Debt shall only be issued as fixed rate debt. On the date of the issuance of the Series 2011 Project Debt, there shall be no event of default by the Borrower under the Trust Agreement, this Agreement, or the Project Agreement. The Borrower shall deposit proceeds of the Series 2011 First Tier Bonds and the SWP/CT Project TIFIA Loan with the Trustee in an amount sufficient, after taking into account amounts required to be deposited by the Borrower from sources other than Series 2011 Project Debt, (a) to pay for Project Costs on the SWP/CT Project as set forth in the Project Budget, including the contingency in an amount set forth in the Project Budget, and (b) all amounts required to be deposited in Trust Agreement Funds as provided in Appendix E.”

Section 5.06(b). Refunding of Senior Project Debt. Section 5.06(b)(iii) of the Original Agreement is amended in its entirety to read as follows:

“(iii) Unless expressly approved by TxDOT, no refunding transaction involving Project Debt that extends the final maturity of the Series 2010 First Tier Bonds, the TIFIA Loan, the Series 2011 First Tier Bonds or the SWP/CT Project TIFIA Loan beyond their original final Maturity Date shall be permitted so long as the Toll Equity Loan Commitment will not be terminated in conjunction with such refunding or any amount due and payable under the Toll Equity Loan Note would be outstanding after the issuance of the refunding obligations.”

Section 5.06(c) Additional Project Debt. The first paragraph of Section 5.06(c) of the Original Agreement is amended in its entirety to read as follows:

“The issuance of Senior Project Debt (other than the Series 2010 Project Debt, the Series 2011 Project Debt as provided in Section 5.06(a), the Additional Senior Project Debt as provided in this Section 5.06(c) and Refunding Bonds under the circumstances described in Section 5.06(b)) is not permitted. Additional Senior Project Debt in one or more series bearing interest at a fixed rate and with a final maturity no longer than 2 years after the final maturity of the 2010 Senior Project Debt, but in no event longer than 40 years after the execution of the Original Agreement, may be issued by the Borrower at one time or from time to time but only to finance the costs relating to the Project Capacity Improvements in principal amounts that will produce net proceeds in an aggregate amount not to exceed \$53,302,298, plus an amount sufficient to pay the costs of issuance of such Additional Senior Project Debt (the “Aggregate Maximum Principal Amount”); provided that prior to the issuance of such Additional Senior Project Debt Borrower shall first use funds on deposit in the Construction Fund, the Capital Expenditures Reserve Fund, and the General Fund, in that order of priority, to pay such costs of the Project Capacity Improvements. If the Borrower issues Additional Senior Project Debt to pay for the Project Capacity Improvements, the Borrower shall not be entitled to obtain advances under the Toll Equity Loan Commitment to also pay for the cost of the Project Capacity Improvements if the principal amount of the Additional Senior Project Debt and the amount of such advance would exceed \$53,302,298.”

Section 5.07 Sources of Funds. The “Service Commencement Date” referred to in Section 5.07 of the Original Agreement shall be the last Service Commencement Date to occur. If the Service Commencement Date for the SH 161 Project has occurred prior to the Effective Date of this Supplement, then the right to reimbursements under the second sentence of Section 5.07 of the Original Agreement shall cease on the Effective Date of this Supplement and shall again arise only after the Service Commencement Date occurs for the SWP/CT Project.

## **ARTICLE VI**

### **EVENTS OF DEFAULT BY THE BORROWER**

Section 6.01(l) Events of Default. Section 6.01(l) of the Original Agreement is replaced in its entirety with the following:

“(i) Substantial Completion with respect to the Authority Structures under the SH 161 Project Agreement has not occurred by the date that occurs twelve months after the Guaranteed Substantial Completion Date.

(ii) Substantial Completion with respect to the Authority Structures under the SWP/CT Project Agreement has not occurred by the date that occurs twelve months after the SWP/CT Guaranteed Substantial Completion Date.”

Section 6.01(n) Events of Default. Section 6.01(n) of the Original Agreement is replaced in its entirety with the following:

“(i) Prior to Substantial Completion of the Authority Structures under the SH 161 Project Agreement, the construction of such Authority Structures is abandoned; provided that, for the purposes of this Section 6.01(n)(i), abandonment of the construction of such Authority Structures is deemed to have occurred if no significant construction on such Authority Structures (taking into account the construction schedule and permitted delay as a result of force majeure) is carried out without reasonable cause, for a continuous period of 90 days.

(ii) Prior to Substantial Completion of the Authority Structures under the SWP/CT Project Agreement, the construction of such Authority Structures is abandoned; provided that, for the purposes of this Section 6.01(n)(ii), abandonment of the construction of such Authority Structures is deemed to have occurred if no significant construction on such Authority Structures (taking into account the construction schedule and permitted delay as a result of force majeure) is carried out without reasonable cause, for a continuous period of 90 days.”

Section 6.01(o) Events of Default. The “Service Commencement Date” referred to in Section 6.01(o) of the Original Agreement shall be the first Service Commencement Date to occur.

Section 6.02(a)(v) Remedies upon an Event of Default. Section 6.01(a)(v) of the Original Agreement is replaced in its entirety with the following:

“(i) Upon the occurrence of an Event of Default under Section 6.01(l)(i) or (n)(i), TxDOT shall have the right, but not the obligation, upon notice to Borrower but without waiving or releasing Borrower from any obligations, for so long as substantial completion of the Authority Structures under the SH 161 Project Agreement has not occurred, regardless of whether the Borrower is continuing or resumes construction work with respect to such Authority Structures, to step-in and undertake completion of such Authority Structures using any and all

reasonable means necessary to achieve substantial completion of such Authority Structures substantially in accordance with the plans and specifications for the Authority Structures approved under the SH 161 Project Agreement and to pay or direct the Trustee to pay or reimburse TxDOT for the costs thereof out of funds in the accounts in the Construction Fund related to the SH 161 Project, the General Fund or the Capital Expenditure Fund, in that order of priority, and should such costs amount to more than the total available in such funds at the time of the request for payment, then TxDOT shall have the right (but not the obligation) to pay such additional costs by expenditure of TxDOT's funds for which it shall be entitled to reimbursement from any future deposits to the General Fund or the Capital Expenditure Fund;

(ii) Upon the occurrence of an Event of Default under Section 6.01(l)(ii) or (n)(ii), TxDOT shall have the right, but not the obligation, upon notice to Borrower but without waiving or releasing Borrower from any obligations, for so long as substantial completion of the Authority Structures under the SWP/CT Project Agreement has not occurred, regardless of whether the Borrower is continuing or resumes construction work with respect to such Authority Structures, to step-in and undertake completion of such Authority Structures using any and all reasonable means necessary to achieve substantial completion of such Authority Structures substantially in accordance with the plans and specifications for the Authority Structures approved under the SWP/CT Project Agreement and to pay or direct the Trustee to pay or reimburse TxDOT for the costs thereof out of funds in the accounts in the Construction Fund related to the SWP/CT Project, the General Fund or the Capital Expenditure Fund, in that order of priority, and should such costs amount to more than the total available in such funds at the time of the request for payment, then TxDOT shall have the right (but not the obligation) to pay such additional costs by expenditure of TxDOT's funds for which it shall be entitled to reimbursement from any future deposits to the General Fund or the Capital Expenditure Fund; and"

**ARTICLE VII**  
**COVENANTS AND EVENTS OF DEFAULT BY TXDOT**

No changes are made to Article VII of the Original Agreement.

**ARTICLE VIII**  
**MISCELLANEOUS**

Section 8.01 Notices. Copies of notices to TxDOT also shall be delivered to the following:

Texas Department of Transportation  
Ft. Worth District Office  
2501 Southwest Loop  
Fort Worth, Texas 76133  
Attn: Maribel P. Chavez, P.E.  
Fax: (817) 370-6787  
Email: [mchavez@dot.state.tx.us](mailto:mchavez@dot.state.tx.us)

**APPENDICES**

Appendix A Form of Toll Equity Loan Note. Appendix A of the Original Agreement is replaced in its entirety with Appendix A to this Supplement.

Appendix B Schedule of Maximum Available Amounts. Appendix B of the Original Agreement is replaced in its entirety with Appendix B to this Supplement.

Appendix C Form of Certificate of Borrower Re Advances. Appendix C of the Original Agreement is replaced in its entirety with Appendix C to this Supplement.

Appendix D Project Budget. Appendix D of the Original Agreement is replaced in its entirety with Appendix D to this Supplement.

Appendix E Funds and Accounts. Appendix E of the Original Agreement is replaced in its entirety with Appendix E to this Supplement.

Except as expressly amended and supplemented by this Supplement, the Original Agreement remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

**NORTH TEXAS TOLLWAY AUTHORITY**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Allen Clemson  
Executive Director

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ruby Franklin,  
Secretary

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
Kevin L. Twining

**APPENDIX A**

**FORM OF TOLL EQUITY LOAN NOTE**

**APPENDIX B**

**SCHEDULE OF MAXIMUM AVAILABLE ANNUAL AMOUNTS**

## **APPENDIX C**

### **CERTIFICATE OF BORROWER RE ADVANCES**

The undersigned, a Board Representative as such term is defined in that certain Toll Equity Loan Agreement dated as of \_\_\_\_\_, 2010, as amended and supplemented by that certain Supplement to Toll Equity Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (together the "Agreement") by and between the Texas Department of Transportation ("TxDOT") and the North Texas Tollway Authority ("Borrower"), hereby certifies on behalf of the Borrower with respect to the advance requested by the Trustee pursuant to Section 2.03 of the Agreement, as follows:

- (a) The Trustee has no amounts or insufficient amounts on deposit in the Capitalized Interest Fund for payment of interest on the Series 2010 First Tier Bonds or the Series 2011 First Tier Bonds for the period for which an advance is hereby requested to the extent that any portion of the advance will be used to pay interest on the Series 2010 First Tier Bonds or the Series 2011 First Tier Bonds.
- (b) Borrower has accessed and depleted all funds held in applicable Project Reserve Funds for the purposes permitted therefor under the Trust Agreement and the Agreement.
- (c) The requested advance under the Toll Equity Loan Commitment is no greater than the Maximum Permitted Amount.
- (d) The requested advance under the Toll Equity Loan Commitment when added to other amounts advanced under the Toll Equity Loan Commitment during the current Draw Period will not exceed the Maximum Available Annual Amount for such Draw Period.
- (e) The requested advance, when added to the amount of all prior advances under the Toll Equity Loan Commitment will not exceed the aggregate amount of Eligible Costs.
- (f) Documentation required by Section 2.03 of the Agreement is attached hereto if the requested advance, when added to the amount of all prior advances under the Toll Equity Loan Commitment, exceeds the aggregate of amounts expended or incurred by the Borrower for Capital Expenditures, Major Maintenance and Operating Expenses (not to exceed amounts set forth in the Project Budget), for Project Costs, and for the Upfront Payment (and therefore relates to amounts anticipated to be expended).
- (g) The aggregate amount of Capital Expenditures, Major Maintenance and Operating Expenses expended or incurred by the Borrower (not to exceed amounts set forth in the Project Budget), Project Costs expended or incurred,

and the amount of the Upfront Payment paid, as of the date of the requested advance under the Toll Equity Loan Commitment is \$\_\_\_\_\_.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

Dated: \_\_\_\_\_,\_\_\_\_\_.

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NORTH TEXAS TOLLWAY AUTHORITY

**APPENDIX D**  
**PROJECT BUDGET**

**APPENDIX E**  
**FUNDS AND ACCOUNTS**

**EXHIBIT B**  
**GOVERNMENTAL APPROVALS**

Section 1.FHWA Requirements

- Concurrence and Award of Design Build-Contract
- FHWA/TxDOT Oversight Agreement
- Environmental Clearance

Section 2.Permitting Documents

- 404 Permits (As Applicable)
- Environmental Permits (As Required)
- NWP #14 – (As Applicable)
- NOI to TCEQ (As Applicable)
- Notification to USACE (As Applicable)

Section 3.Applications and Approvals

- Interstate Access Justification (IAJ) (As Needed based on any revisions)
- Mega Project - Project Management Plan (PMP)
- Mega Project - Financial Plan (FP)
- NTTA SWP/CT Project Specific Pavement Design Approval
- Design Exceptions (As identified and submitted)
- [Railroad Joint Use and Force Account Agreement]

**EXHIBIT C**

**FORM OF CERTIFICATE OF BORROWER  
RE SATISFACTION OF SECTION 3.02 CONDITIONS**

The undersigned, a Board Representative, as such term is defined in that certain Toll Equity Loan Agreement dated as of \_\_\_\_\_, 2010, by and between the Texas Department of Transportation (“TxDOT”) and the North Texas Tollway Authority (the “Borrower”), hereby certifies for and on behalf of the Borrower that (i) the conditions set forth in Sections 3.02(1), (2), (5), (6) and (7) of the Agreement to Enter into Supplement to Toll Equity Loan Agreement dated as of \_\_\_\_\_, 2010 by and between TxDOT and the Borrower (the “Agreement”) have been satisfied, (ii) the conditions set forth in Section 3.02(3) and (4) of the Agreement have been satisfied or waived, (iii) there has been no default or event of default described in Section 3.02(8) or (10) of the Agreement such that the condition precedent in either such Section is not satisfied, (iv) the representations and warranties given by the Borrower in the Supplement (as defined in the Agreement) are true and correct in all materials respects on and as of the dates specified in Section 3.02(9) of the Agreement, and (v) no event, development or circumstance as to the Borrower described in Section 3.02(11) of the Agreement has occurred or become known to the Borrower.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NORTH TEXAS TOLLWAY AUTHORITY