

TEXAS TRANSPORTATION COMMISSION

DALLAS County

MINUTE ORDER

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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). The SH 161 Project is located within the boundaries of the NTTA, and is subject to the market valuation provisions set forth in Transportation Code, §228.0111.

The department and the NTTA have been working together to identify an approach to provide for the funding and development of the SH 161 Project and other transportation improvements within the boundaries of the NTTA and adjacent counties.

The department and the NTTA entered into an Agreement Regarding a Negotiated Value for SH 161 dated April 19, 2008 (Negotiated Value Agreement), pursuant to which the NTTA and the department waived the requirement under Transportation Code, §228.0111 to develop a market valuation for the SH 161 Project and agreed to a negotiated value of \$1.068 billion for the SH 161 Project, with a \$458 million upfront payment (acquisition payment).

Transportation Code, §228.0111(g) grants the NTTA the first option to develop, finance, construct and operate the SH 161 Project, and gives the NTTA six months after the date the negotiated value for the SH 161 Project was mutually approved to decide whether to exercise that option.

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.

Under the Term Sheet, the NTTA would be obligated to design, construct, operate, maintain and finance development of the SH 161 Project in accordance with the Negotiated Value Agreement, except as modified by the Term Sheet (and, pursuant to the Term Sheet, as modified by the project agreement).

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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In Minute Order 112141, dated February 24, 2010, the commission, pursuant to the Term Sheet and the requirements of Transportation Code, §222.103 and Title 43, Texas Administrative Code, §27.50-27.58, granted final approval of a toll equity loan in an aggregate amount in nominal dollars not to exceed \$4,093,677,822, not to exceed the facility costs associated with the SH 161 Project over 52 years, and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law. Minute Order 112141 also authorized the executive director of the department to enter into a Toll Equity Loan Agreement relating to the SH 161 Project with the NTTA. The Toll Equity Loan Agreement provides for the establishment of a toll equity loan commitment to provide support for the NTTA's efforts to develop, construct, operate and maintain the SH 161 Project upon fulfillment of the applicable conditions precedent set forth in the agreement.

The NTTA intends to enter into a Trust Agreement pursuant to which the NTTA will issue debt obligations in order to raise financing for a portion of the development and construction of the SH 161 Project. Pursuant to the Trust Agreement, among other things, the NTTA has assigned to the Trustee for the benefit and security of all owners of the debt obligations, all of the NTTA's right, title and interest in, to and under the Trust Estate, including but not limited to the Toll Equity Loan Agreement.

Pursuant to Transportation Code, §222.103 and Transportation Code, §366.301, the department is only authorized to loan money to the NTTA for the acquisition, construction, maintenance, or operation of an NTTA toll facility. Under Minute Order 112141, the toll equity loan is being made to pay or reimburse costs 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, (3) major maintenance, (4) capital expenditures, and (5) the acquisition payment.

Through the assignment by the NTTA of its right, title and interest in, to and under the Toll Equity Loan Agreement, and pursuant to and under the conditions set out in the Toll Equity Loan Agreement and the Trust Agreement, including limiting the total amount of advances to the aggregate amount of eligible costs, the Trustee may submit a request for an advance under the toll equity loan commitment to be made to the NTTA, in amounts sufficient to make payments to bondholders and TIFIA (as well as to cover pre-defined project costs), in the event that revenue of the SH 161 Project and money in certain reserve and other funds established under the Trust Agreement is insufficient for that purpose.

In reliance on the support for the SH 161 Project provided by the department pursuant to the Toll Equity Loan Agreement and upon the assignment by the NTTA of the Toll Equity Loan Agreement pursuant to the Trust Agreement, the U.S. Department of Transportation (US DOT) may desire to make available to the NTTA a loan pursuant to the Transportation Infrastructure Finance and Innovation Act (TIFIA Loan) for the purpose of financing certain costs in connection with the construction and development of the SH 161 Project.

It is a condition to the consummation of the TIFIA Loan that that the department and the NTTA enter into an agreement with the Trustee to provide certain assurances and agreements in connection with the Toll Equity Loan Agreement, including the department's consent to the pledge and assignment to the Trustee of all of the NTTA's right, title and interest in, to and under the Toll Equity Loan Agreement, and that as a result of the pledge and assignment, the Trustee shall have the right to enforce directly against the department the obligations of the department under the Toll Equity Loan Agreement (Direct Agreement). The department may also be required, as a condition to the consummation of the TIFIA Loan, to be a party to the grant agreement under which the NTTA has

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obtained a grant under the TIGER Discretionary Grant Program to pay the subsidy and administrative costs associated with the TIFIA Loan (TIGER Grant Agreement).

As additional security for the payment by the NTTA of the toll equity loan and the observance and performance by the NTTA of the terms, covenants and conditions of the Toll Equity Loan Agreement, the department may enter into an agreement with the NTTA and its design-build contractor for the SH 161 Project for the assignment to the department of all of NTTA's right, title and interest, in, to and under the design-build contract, including any and all rights that NTTA has to enforce the obligations of the design-build contractor under the design-build contract and to receive payments, disbursements, distributions or proceeds owing, payable or required to be delivered to the NTTA (Assignment Agreement).

The department may also be required to enter into other necessary agreements in connection with the NTTA's financing of the SH 161 Project, including a continuing disclosure agreement under which the department would be obligated to provide certain updated financial information and operating data annually (Continuing Disclosure Agreement).

Development of the SH 161 Project is a crucial element in responding to considerable population increases and associated development that has resulted in traffic increases that have created significant congestion in the SH 161 area and across the region. The SH 161 Project is designed to improve the transportation network and level of service in the SH 161 area and region, particularly by serving as a reliever route to SH 360.

The successful funding of the SH 161 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 SH 161 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 161 corridor. Without the department's assistance, the timeline to complete the SH 161 Project and realize those benefits could be delayed.

The financial assistance for the SH 161 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 SH 161 Project. This will allow the NTTA to use that equity for other toll projects within its region, such as the Southwest Parkway/Chisholm Trail Project.

IT IS THEREFORE ORDERED by the commission that the executive director of the department is authorized to enter into the Direct Agreement with the NTTA and the Trustee under the Trust Agreement entered into by the NTTA in connection with the SH 161 Project, the form of which is attached as Exhibit A to this order, with such changes as the executive director may approve.

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IT IS FURTHER ORDERED that the executive director of the department is authorized to enter into any other necessary agreements in connection with the NTTA's financing of the SH 161 Project, including the TIGER Grant Agreement, the Assignment Agreement, and the Continuing Disclosure Agreement.

Submitted and reviewed by:

JAMES M. BASS  
Chief Financial Officer

Recommended by:

Amelia Sue  
Executive Director

**112436 SEP 30 10**

Minute  
Number

Date  
Passed

## EXHIBIT A

### DIRECT AGREEMENT

This **DIRECT AGREEMENT** (“*Direct Agreement*”) dated as of [\_\_\_\_\_] [\_\_\_\_], 2010, is made by and among (i) TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas (“*TxDOT*”), (ii) NORTH TEXAS TOLLWAY AUTHORITY, a political subdivision of the State of Texas and a body corporate and politic (the “*Authority*”) and (iii) [\_\_\_\_], a national banking association duly organized and existing under the laws of the United States of America, which is authorized under such laws to exercise corporate trust powers, and is subject to examination by Federal authority, as trustee under the Trust Agreement referred to below (together with its successors, designees and assigns in such capacity, the “*Trustee*”) for the benefit and security of each and all of the holders of the Obligations as defined in the Trust Agreement referred to below.

### PRELIMINARY STATEMENTS

(1) On April 19, 2008, the Authority and TxDOT entered into the Agreement Regarding a Negotiated Value for State Highway 161 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Negotiated Value Agreement*”). Pursuant to the Negotiated Value Agreement, the parties agreed to certain matters relating to the development, construction, operation, maintenance and financing of 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 “*Project*”).

(2) TxDOT has entered into a Toll Equity Loan Agreement, dated as of [\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Toll Equity Loan Agreement*”) with the Authority, pursuant to which TxDOT has undertaken to establish the Toll Equity Loan Commitment (as defined therein) to provide support for the Authority’s efforts to develop, construct, operate and maintain the Project.

(3) The Authority has entered into a Trust Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Trust Agreement*”) with the Trustee, pursuant to which the Authority intends to issue debt obligations in order to raise financing for a portion of the development and construction of the Project.

(4) Pursuant to the Trust Agreement, among other things, the Authority has assigned to the Trustee for the benefit and security of all present and future owners of the Obligations, as collateral security, all of the Authority’s right, title and interest in, to and under the Trust Estate, including but not limited to the Toll Equity Loan Agreement.

(5) In reliance on the support for the Project provided by TxDOT pursuant to the Toll Equity Loan Agreement and upon the collateral assignment by the Authority of the Toll Equity Loan Agreement pursuant to the Trust Agreement, the U.S. Department of Transportation (“*USDOT*”) desires to make available to the Authority a loan pursuant to the Loan Agreement

dated as of [the date hereof] by and between USDOT and the Authority (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Loan Agreement*”) for the purpose of financing certain costs in connection with the construction and development of the Project, which loan shall be secured pursuant to the Trust Agreement as a “Second Tier Obligation” as such term is defined therein.

(6) It is a condition to the consummation of the transactions contemplated by the Trust Agreement and the Loan Agreement that TxDOT and the Authority enter into this Direct Agreement to provide certain assurances and agreements, as further described below, in connection with the Toll Equity Loan Agreement and the transactions contemplated thereby.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TxDOT, the Authority and the Trustee (each, a “*Party*”) hereby agree as follows:

1. All capitalized terms not defined herein shall have the meanings ascribed to them in the Trust Agreement and the Toll Equity Loan Agreement, as the case may be; provided, however, that in the event of any conflict in definitions between the Trust Agreement and the Toll Equity Loan Agreement, the definitions contained in the Trust Agreement shall control; provided, further, that in this Direct Agreement, the term “*Senior Project Indebtedness*” shall mean, collectively, the First-Tier Obligations and the Second-Tier Obligations as such terms are defined in the Trust Agreement.

2. TxDOT consents to the pledge and assignment to the Trustee of, and the grant to the Trustee of a lien on and security interest in, all of the Authority’s right, title and interest in, to and under the Toll Equity Loan Agreement, pursuant to the terms and conditions of the Trust Agreement, as collateral security for all of the obligations secured or purported to be secured by the Trust Agreement.

3. TxDOT agrees that as a result of the pledge and assignment referred to in Section 2 above, the Trustee shall have the full right and power, in the exercise of the Trustee’s rights and remedies under the Trust Agreement, to enforce directly against TxDOT all obligations of TxDOT under the Toll Equity Loan Agreement, to exercise all other rights and remedies of the Authority thereunder and to make all demands and requests and give all notices required or permitted to be made by the Authority or the Trustee thereunder.

4. Until such time as this Direct Agreement is terminated pursuant to Section 16 herein, TxDOT hereby waives:

(a) any defenses it may have to the performance of its covenants and obligations (including its obligation to make advances to the Trustee) under the Toll Equity Loan Agreement as described in Section 7.02 of the Toll Equity Loan Agreement (the “*TxDOT Obligations*”), irrespective of whether such defenses are available to it in law or in equity, including without limitation those defenses available to it in connection with any breach or default by the Authority under the Toll Equity Loan Agreement, any failure of the Authority to perform any of its obligations or satisfy any condition under the Toll Equity Loan Agreement or any other “Event of Default”

as defined in the Toll Equity Loan Agreement, it being understood, however, that the TxDOT Obligations are subject to the following limitations: (i) with respect to any single advance requested by the Trustee under the Trust Agreement, the Trustee shall have submitted a complete, executed Trustee Request in the form provided in the Trust Agreement, (ii) any advance made by TxDOT in connection with such request shall not exceed the Maximum Permitted Amount, (iii) the aggregate amount of advances in any Draw Period shall not exceed the Maximum Available Annual Amount, (iv) the aggregate amount of advances during the term of the Toll Equity Loan Agreement shall not exceed the Maximum Available Aggregate Amount, (v) the aggregate amount of advances during the term of the Toll Equity Loan Agreement shall not exceed the aggregate amount of Eligible Costs, and (vi) the Texas State Legislature shall have appropriated money for such advance in a manner that would allow its use for such purpose (collectively, the “*TxDOT Exposure Limitations*”);

(b) any rights or remedies under the Toll Equity Loan Agreement or otherwise (whether in law or in equity) to the extent the exercise of any such right or remedy would result in or could reasonably be expected to result in (i) an impairment of, or the failure of TxDOT to perform, any of the TxDOT Obligations, (ii) the suspension, termination, invalidity or repudiation of any of the TxDOT Obligations, (iii) a Non-Appropriation Event, (iv) a conflict with any of the Financing Documents (other than the Toll Equity Loan Agreement) or (v) an interference in any material respect with the exercise by the Trustee or the TIFIA Lender of its rights and remedies as provided under the Trust Agreement or the TIFIA Loan Agreement, as the case may be;

(c) any right to require any arrangement for the collection and deposit of Revenues to the Revenue Fund pursuant to Section 5.03(b) of the Toll Equity Loan Agreement and any related payment mechanisms that would impair the Trust Estate or conflict with any of the Financing Documents (other than the Toll Equity Loan Agreement); and

(d) any right to assert its discretion or provide its consent under Section 5.04(a) of the Toll Equity Loan Agreement in any manner inconsistent with the terms of the Trust Agreement.

5. Upon [approval of the Toll Equity Loan Agreement by the Attorney General of Texas and] satisfaction of all conditions precedent in the Toll Equity Loan Agreement by the Authority, TxDOT will be unconditionally bound to perform the TxDOT Obligations in accordance with the terms of the Toll Equity Loan Agreement, including without limitation, the satisfaction of the TxDOT Exposure Limitations applicable to each advance, irrespective of the value, genuineness or regularity of the Trust Agreement or the Toll Equity Loan Agreement or, to the extent of a non-constitutional defect, the validity or enforceability of the Trust Agreement or the Toll Equity Loan Agreement and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable defense of a surety or guarantor, and, without limiting the generality of the foregoing, shall not be terminated, released, impaired or affected by any of the following, whether with or without notice to or assent by TxDOT:

(a) any change in the time, manner, terms or place of payment of the Senior Project Indebtedness, or in any other terms of the Financing Documents or any other waiver of or consent to departure therefrom or from any other agreement or instrument referred to herein or therein, or any absence of notice to, or knowledge by, TxDOT of the existence or occurrence of any matter or event

(b) any modification, extension or waiver of any of the terms of the Financing Documents;

(c) any sale, exchange, release, impairment, non-perfection, failure to maintain perfection or recordation or invalidity of any direct or indirect security for any obligation or duty of the Authority under the Financing Documents or any substitution, exchange, release, impairment or invalidity of any other guarantee or other credit enhancement in respect of any of the Senior Project Indebtedness;

(d) any change in the existence or structure of the Authority, or any insolvency, bankruptcy, reorganization, liquidation or other similar proceeding affecting the Authority, its assets or the enforceability of obligations of the Authority, or any assignment of any Financing Document to any Person, or any release or discharge of any obligation or duty of the Authority contained in the Financing Documents;

(e) the existence of any claim, set-off or other rights which the Authority or TxDOT may have at any time against any Person or each other, whether in connection herewith or with any unrelated transactions;

(f) any impairment of the Authority's duty of performance, the Authority's duty to reimburse TxDOT (including but not limited to the Authority's obligations under the Toll Equity Loan Agreement) or TxDOT's right of restitution or subrogation (if any); or

(g) the failure, omission, delay, waiver or refusal by any Person to exercise, in whole or in part, any right or remedy held by it with respect to the Senior Project Indebtedness or any agreement or instrument executed in connection therewith.

6. Until such time as the Direct Agreement is terminated pursuant to Section 16 herein, TxDOT hereby waives any condition requiring corroboration or verification of any amounts specified by the Trustee in an executed Trustee Request or any other condition to the performance of the TxDOT Obligations (it being understood the TxDOT Obligations are subject to the TxDOT Exposure Limitations). TxDOT hereby acknowledges that it will be obligated to make advances to the Trustee under the Toll Equity Loan Agreement subject only to the TxDOT Exposure Limitations.

7. All payments or distributions upon or with respect to the TxDOT Obligations which are received by TxDOT contrary to the provisions of this Direct Agreement or the Trust Agreement shall be received by TxDOT in trust for the benefit of the holders of the Senior Project Indebtedness, shall be segregated from other funds and property held by TxDOT and shall be paid over to the Trustee promptly for the account of the Senior Project Indebtedness

in the same form as so received (with any necessary endorsement) to be applied by the Trustee to the payment, repayment or prepayment of the Senior Project Indebtedness in accordance with the terms of the Trust Agreement.

8. (a) TxDOT will not seek to recover from the Trustee for any reason any payments made by TxDOT under the Toll Equity Loan Agreement, except that the Authority may instruct the Trustee to return certain excess proceeds of an advance by TxDOT as described in the first sentence of the third paragraph of Section 2.04 of the Toll Equity Loan Agreement from funds available to the Authority for such use.

(b) TxDOT will not offset from any payments made or to be made by it under the Toll Equity Loan Agreement for any reason any amounts TxDOT claims are owed to it from the Trustee or the Authority, except that TxDOT may offset only the amount of excess proceeds that it could recover in accordance with Section 8(a) to the extent such amount is still outstanding as of the time of the offset.

9. In connection with the right of the Trustee to submit a Trustee Request and the performance of the TxDOT Obligations, TxDOT hereby unconditionally waives, and agrees to waive at any future time promptness, diligence, presentment, demand for payment or performance and protest; notice of acceptance of and reliance on this Direct Agreement or the Toll Equity Loan Agreement, notice of the creation of any Senior Project Indebtedness, notice of protest, acceleration or dishonor, and any other notice whatsoever (other than the delivery by the Trustee of a Trustee Request in accordance with the Toll Equity Loan Agreement); any requirement that the Trustee or any holder of any Senior Project Indebtedness exercise or exhaust any right, remedy, power or privilege or proceed or take any other action against the Authority or any other Person or any lien or encumbrance on, or any claim of payment against, any property of the Authority or any other Person under any lien securing, or claim for payment of, any of the Senior Project Indebtedness (except as to recourse to the Available Funds in accordance with the terms of the Trust Agreement); any requirement to mitigate the damages resulting from a default in connection with any Obligation; any claims of waiver, release, surrender, alteration or compromise; and any other claim, defense or cause of action which TxDOT may now have or hereafter may have.

10. TxDOT hereby represents and warrants to the Trustee that:

(a) The Toll Equity Loan Agreement and this Direct Agreement are in full force and effect, and neither TxDOT nor, to the best of TxDOT's knowledge, the Authority is in default of any of its obligations thereunder. No event has occurred or is continuing that would give any party the right to terminate or rescind the Toll Equity Loan Agreement or this Direct Agreement.

(b) TxDOT is an agency of the State of Texas, as authorized by the Texas Transportation Commission, and has taken all necessary action authorizing it to execute, deliver and perform its obligations under the Toll Equity Loan Agreement and this Direct Agreement. Each of the Toll Equity Loan Agreement and this Direct Agreement has been duly executed and delivered by TxDOT.

(c) The execution, delivery and performance by TxDOT of the Toll Equity Loan Agreement and this Direct Agreement do not violate or conflict with, or result in a default under, its organizational documents, or any agreement by which it is bound which is material to the performance of its obligations under the Toll Equity Loan Agreement or this Direct Agreement or any provision of applicable law.

(d) TxDOT has obtained, maintains in full force and effect, and has complied in all material respects with, all necessary governmental authorizations and consents and approvals of any other Person that are required for TxDOT to execute, deliver and perform its obligations under the Toll Equity Loan Agreement and this Direct Agreement, other than, in the case of the Toll Equity Loan Agreement, any governmental authorizations that are the responsibility of the Authority under the terms of the Toll Equity Loan Agreement. TxDOT has no reason to believe that any of the governmental authorizations so expected to be obtained by it in the ordinary course of business by the time they are necessary will not be so obtained.

(e) Each of the Toll Equity Loan Agreement and this Direct Agreement is the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equitable principles [and to the exercise of remedies against a public agency].

(f) There is no action, suit or proceeding now pending or, to the best of TxDOT's knowledge, threatened against, or affecting, TxDOT before any court or administrative body or arbitral tribunal that could reasonably be expected to materially adversely affect the ability of TxDOT to perform its obligations under the Toll Equity Loan Agreement or this Direct Agreement.

(g) Each of the Toll Equity Loan Agreement and this Direct Agreement is in proper legal form under the laws of the State of Texas for the enforcement thereof against TxDOT under the laws of such jurisdiction.

(h) The conditions set forth in Sections 4.01 and 4.02 of the Toll Equity Loan Agreement shall have been satisfied as of the "Closing Date" as defined therein, and no further modifications, supplements or amendments to the Toll Equity Loan Agreement shall have been made as of the date hereof other than [LIST ALL AMENDMENTS].

11. Notwithstanding anything to the contrary contained in the Toll Equity Loan Agreement, TxDOT shall not, without the prior written consent of the Trustee (which consent may not be given by the Trustee unless directed to do so in accordance with Section [1313] of the Trust Agreement), (a) terminate, cancel, amend, modify, supplement or waive any term of, or consent to or accept any termination of, any amendment, modification or supplement to, or waiver of any term of the Toll Equity Loan Agreement (any such action, a "**Modification**"), provided such Modification shall or could reasonably be expected to (i) in any way modify, have an adverse effect on or otherwise impair any TxDOT Obligation or the ability

of TxDOT to perform any TxDOT Obligation, or (ii) in any way modify any TxDOT Exposure Limitation, (b) suspend its performance of any TxDOT Obligation as the result of any breach or failure by the Authority to perform any obligation or meet any conditions under the Toll Equity Loan Agreement, for any “Event of Default” under the Toll Equity Loan Agreement or for any other reason or (c) sell, assign, delegate or otherwise transfer any of its rights or obligations under the Toll Equity Loan Agreement or this Direct Agreement or consent to or accept any such assignment, delegation or other transfer of such rights and obligations by the Authority under the Toll Equity Loan Agreement. Prior to any proposed Modification, TxDOT shall provide both the Trustee and USDOT with at least 60 days’ prior written notice, along with the proposed terms and conditions of such Modification in full.

12. TxDOT and the Authority shall deliver to the Trustee and USDOT, concurrently with the delivery thereof to the Authority or TxDOT, as the case may be, a copy of each notice, request or demand given by it pursuant to the Toll Equity Loan Agreement.

13. TxDOT agrees that no exercise by the Trustee of any rights or remedies pursuant to Section 3 of this Direct Agreement or any other rights and remedies hereunder or under the Trust Agreement in respect of the Toll Equity Loan Agreement shall be construed as an assumption by the Trustee or any holder of the Senior Project Indebtedness of any present or future covenants, agreements or obligations of the Authority (including, without limitation, any obligation to repay advances under the Toll Equity Loan Agreement), and neither the Trustee nor any holder of the Senior Project Indebtedness shall have any obligation to TxDOT for the performance of any obligations under the Toll Equity Loan Agreement (it being understood, however, that that the Trustee may assume all or part of the rights or obligations of the Authority under the Toll Equity Loan Agreement, in the Trustee’s sole discretion but subject to the terms of the Trust Agreement).

14. TxDOT acknowledges that it will be making advances to the Trustee under the Toll Equity Loan Agreement in consideration of its obtaining an interest in Third Tier Obligations of the Authority and certain other rights as expressly provided under the Trust Agreement and that no payment by TxDOT under the Toll Equity Loan Agreement will give rise to any right by way of subrogation or any other right or remedy arising by reason of any performance by it of the Toll Equity Loan Agreement or this Direct Agreement, including, without limitation, any contractual, statutory or common law right of reimbursement, contribution or indemnity, whether against the Authority or any other Person, other than those permitted rights and remedies set forth in Section 4(b) and those rights and remedies expressly provided to TxDOT pursuant to the Trust Agreement.

15. All notices and other communications hereunder shall be in writing (including by telecopy), shall be deemed to have been duly given when delivered by hand, or in the case of notice given by mail or telecopy, when received, and shall be addressed: (a) if to TxDOT, at [125 E. 11th Street, Austin, Texas 78701-2483, United States of America, Attention: \_\_\_\_\_], telecopier no. +1 [\_\_\_\_\_], email: [\_\_\_\_\_]; (b) if to the Authority, at North Texas Tollway Authority, 5900 West Plano Parkway, Suite 100, Plano, Texas, 75093, United States of America, Attention: Attention: [\_\_\_\_\_], telecopier no. +1 [\_\_\_\_\_], email: [\_\_\_\_\_]; (c) if to the Trustee, at [\_\_\_\_\_], Attention: [\_\_\_\_\_], telecopier

no. [\_\_\_\_], email: [\_\_\_\_\_]; or (d) to such other address or addresses as any Party may designate by notice given pursuant to the Parties hereto.

16. This Direct Agreement shall terminate upon the earliest of (a) termination of the Trust Agreement in accordance with the terms thereof, (b) the indefeasible payment in full of all amounts owed to USDOT as TIFIA Lender under the TIFIA Loan Agreement, (c) the aggregate amount of all advances made by TxDOT under the Toll Equity Loan Agreement equals the lesser of the Maximum Available Aggregate Amount and the aggregate amount of Eligible Costs, and (d) termination of the Toll Equity Loan Agreement in accordance with the terms thereof and subject to the terms hereof.

17. This Direct Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto. Except where a time period for the exercise of any right, power or privilege hereunder is expressly provided herein, no failure or delay by any Party to exercise, and no course of dealing with respect to, any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any provision of this Direct Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

18. This Direct Agreement shall be binding upon the Parties and their respective successors and assigns, and shall inure, together with the rights and remedies of the Trustee hereunder, for the benefit and security of all of the present and future owners of the Obligations and their successors, transferees and assigns.

19. The Trustee is hereby authorized to demand specific performance of this Direct Agreement, whether or not the Authority shall have complied with any of the provisions hereof or of the Toll Equity Loan Agreement applicable to it, at any time when TxDOT shall have failed to comply with any of the provisions of this Direct Agreement applicable to it. TxDOT irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

20. THIS DIRECT 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. WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY OR THE PERFORMANCE OF ANY OF THE PARTIES HEREUNDER, THE AUTHORITY, TXDOT AND THE TRUSTEE HEREBY IRREVOCABLY (A) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN TEXAS; (B) AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE OR FEDERAL COURT; (C) WAIVE THE DEFENSE OF ANY INCONVENIENT FORUM; (D) AGREE THAT A FINAL

JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANOTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW; AND (E) CONSENT TO SERVICE OF PROCESS BY MAILING OR DELIVERING A COPY OF SUCH PROCESS TO THE AUTHORITY, TXDOT OR THE TRUSTEE, AS APPLICABLE, AT ITS ADDRESS SET FORTH HEREIN AND AGREE THAT SUCH SERVICE SHALL BE EFFECTIVE WHEN SENT OR DELIVERED. THE AUTHORITY, TXDOT AND THE TRUSTEE EACH REPRESENTS AND WARRANTS THAT IT HAS CONSULTED WITH COUNSEL AND UNDERSTANDS THE RAMIFICATIONS OF THE FOREGOING.

21. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS DIRECT AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

22. This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Direct Agreement by telecopier or other form of electronic transmission shall be effective as delivery of a manually executed counterpart of this Direct Agreement.

23. Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each of TxDOT, the Authority and the Trustee; provided, however, that the Trustee may not execute any such instrument unless directed to do so in accordance with Section [1313] of the Trust Agreement.

24. TxDOT shall fully cooperate with the Trustee and perform all additional acts reasonably requested by the Trustee to effect the purposes of this Direct Agreement. The Parties hereto agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Trustee may reasonably request to effectuate the terms of this Direct Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Direct Agreement as of the date first above written.

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Name:  
Title:

AUTHORITY:

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

TRUSTEE:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name:

Title: