

TEXAS TRANSPORTATION COMMISSION

DALLAS County

MINUTE ORDER

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The Texas Department of Transportation (department) has 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 North Texas Tollway Authority (NTTA). 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.

Transportation Code, §§228.002-228.003 authorize the department to enter into an agreement with a regional tollway authority, including the NTTA, that permits the regional tollway authority to design, develop, finance, construct, maintain, repair, or operate a toll project on the state highway system.

In Minute Order 111557, dated October 30, 2008, the Texas Transportation Commission (commission): (1) approved a term sheet for providing financial assistance to the NTTA for the SH 161 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; (2) preliminarily approved financial assistance to the NTTA for the SH 161 Project; and (3) authorized the executive director of the department to negotiate a project agreement with the NTTA for 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 between the department and the NTTA, except as modified by the Term Sheet. However, after exercising its option for the SH 161 Project, the NTTA retains the discretion to not proceed for any reason, including negative rating impacts to the NTTA System, with entering into a contract for the construction of the SH 161 Project and making the acquisition payment to the department, in which case the right to design, construct, operate, maintain and finance development of the SH 161 Project will revert to the department as provided in Transportation Code, §228.0111(i).

On October 15, 2008, the NTTA's Board of Directors (Board): (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.

On February 18, 2009, in Resolution No. 09-60, the Board authorized and directed the NTTA's Interim Executive Director to finalize, complete, and, on behalf of the NTTA, enter into the project agreement on the same material terms as described in staff's briefing to the Board, but subject to such non-material modifications as the Interim Executive Director determines to be in the best interest of the NTTA, and further subject to satisfaction of all conditions and taking of all actions by the department and the commission that are required to permit the department to enter into and fulfill its obligations under the project agreement.

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The project agreement contemplates that the main lane portion of the SH 161 Project (that is, exclusive of the portion required for project frontage roads) will be removed from the state highway system and transferred to the NTTA after (1) completion of the required public hearings pertaining to the transfer and approval of the commission and the Governor and (2) satisfaction of the other conditions and requirements set forth in the project agreement.

Transportation Code, §201.113(a) authorizes the commission to enter into an agreement with a regional tollway authority under which the regional tollway authority makes improvements to the state highway system. The commission's rules at Title 43, Texas Administrative Code, §27.44 prescribe requirements for commission approval of a regional tollway authority's request to make improvements to the state highway system.

In Minute Order 111704, dated February 26, 2009, the commission authorized the executive director of the department, subject to commission approval of the NTTA's construction of improvements to the state highway system and the approval of the connection of the SH 161 Project to the state highway system, to enter into the project agreement with the NTTA, and directed the department to present, for the commission's consideration, a minute order providing for the NTTA's construction of improvements to the state highway system and the approval of the connection of the SH 161 Project to the state highway system.

Pursuant to 43 TAC §27.44, the NTTA has submitted a request to the executive director to make improvements to the state highway system required by the SH 161 Project. As the project agreement contemplates that the SH 161 project will remain on the state highway system until the substantial completion of the work required to be performed on each phase of the project, the commission has determined that the requirements of 43 TAC §11.56, concerning the connection of a regionally significant highway to a segment of the state highway system, do not apply to the SH 161 Project.

The department has prepared and approved the schematic design for the SH 161 Project. Under the project agreement, the plans, specifications, and estimates for the SH 161 Project must conform to the approved schematic, and the NTTA is obligated to comply with applicable federal, state, and department requirements.

The commission finds that the NTTA is fully capable of awarding and managing the construction contract for the improvement of the state highway system in a cost effective and timely manner, consistent with applicable federal and state laws and regulations, and finds that the NTTA's improvement of the state highway system will provide for the expeditious completion of a critically needed continuous express-lane facility within this corridor to relieve traffic congestion on the existing state highway system and improve mobility in a rapidly developing area of Dallas County.

Development of the SH 161 Project is a crucial element in responding to considerable population increases and associated development that have 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 SH 161 Project is included in the Dallas-Fort Worth Metropolitan Transportation Plan known as Mobility 2030 and has been in previous metropolitan transportation plans as well, dating back to the 1950s.

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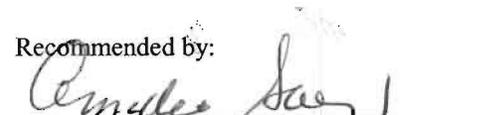
The successful funding of the SH 161 Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by providing for the timely completion of the NTTA's portion of the construction of the SH 161 Project, which will enhance mobility and operational 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.

IT IS THEREFORE ORDERED by the commission that pursuant to Transportation Code, §201.113 and 43 TAC §27.44, the NTTA is authorized to construct improvements to the state highway system required as part of the SH 161 Project, and the executive director is authorized to enter into a project agreement with the NTTA that provides for such improvements to the state highway system. The provisions of Minute Order 111704 are superseded to the extent those provisions are inconsistent with this order.

Submitted and reviewed by:


Director, Texas Turnpike Authority Division

Recommended by:


Executive Director

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Minute
Number

Date
Passed