

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).

The SH 161 Project and a portion of the Southwest Parkway/Chisholm Trail Project are located within the boundaries of the NTTA, and the SH 161 Project and the southern section of the Southwest Parkway/Chisholm Trail Project are subject to the market valuation provisions set forth in Transportation Code, §228.0111. 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.

The department, the NTTA, and the Regional Transportation Council (RTC) of the North Central Texas Council of Governments (NCTCOG), the metropolitan planning organization designated for the Dallas-Fort Worth metropolitan area, have been working closely together to identify an approach to provide for the funding and development of these projects and other transportation improvements within the boundaries of the NTTA and adjacent counties.

The successful delivery of both the SH 161 Project and the Southwest Parkway/Chisholm Trail Project is dependent on the financial feasibility of each project and the completion of project financing plans. Current financial models indicate that the delivery by the NTTA of both projects cannot be advanced without financial support in the form of credit enhancement or other financial mechanisms, such as financial assistance provided pursuant to Transportation Code, §222.103 and Title 43, Texas Administrative Code, §27.50-27.58 (toll equity loans), TIFIA credit assistance or loans from public or private sources.

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).

The department and the NTTA 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.

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Under the Term Sheet, the department would provide a toll equity loan to the NTTA for the SH 161 Project, which could be drawn upon only under certain circumstances. The Term Sheet also 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 and (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.

In Minute Order 111557, dated October 30, 2008, the Texas Transportation Commission (commission) approved the Term Sheet and, pursuant to the Term Sheet and the requirements of Transportation Code, §222.103 and Title 43, Texas Administrative Code, §27.50-27.58, granted preliminary approval of a toll equity loan in an aggregate amount in nominal dollars not to exceed the facility costs associated with the SH 161 Project over 52 years, under mutually approved projections set forth in the official statement 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, (3) major maintenance, (4) capital expenditures, and (5) the acquisition payment.

Subsequent to the adoption of Minute Order 111557, the commission directed department staff to work cooperatively with the NTTA and NCTCOG staffs 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.

Those funding mechanisms could possibly include a toll equity loan to the NTTA for either the SH 161 Project, the Southwest Parkway/Chisholm Trail Project, or a system that includes both projects, potential loans from public or private sources, the proceeds of project revenue bonds issued by the NTTA or NTTA equity, and financial assistance from the region, including through the deferral of the payment or all or a portion of the acquisition payment.

In NTTA Resolution 10-26 and RTC Resolution R10-02, the NTTA and the RTC, desiring to reduce the department's risk in providing financial assistance for the SH 161 Project and the Southwest Parkway/Chisholm Trail Project, committed to provide a regional financial backstop for both projects as described in the joint resolution, and recognized that the financial feasibility of the projects could be positively impacted by events, market conditions, and occurrences not considered in the current traffic and revenue studies.

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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 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.

Financial assistance for the SH 161 Project and 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 with NTTA equity.

IT IS THEREFORE ORDERED by the commission that the executive director is authorized and directed to proceed with negotiations with the NTTA and the RTC for (1) the development and implementation by the NTTA of the SH 161 Project from SH 183 to I-20 in Dallas County and the Southwest Parkway/Chisholm Trail Project from I-30 to US 67 in Tarrant and Johnson Counties 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.

IT IS FURTHER ORDERED that any financial assistance from the department is 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.

IT IS FURTHER ORDERED 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 this order. 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.

IT IS FURTHER ORDERED that if a toll equity loan is approved by the commission, for the NTTA, for both the SH 161 Project and the Southwest Parkway/Chisholm Trail Project, any portion of these two projects cannot be removed from the toll equity loan commitment without terminating the toll equity loan commitment provided by the department for both projects.

IT IS FURTHER ORDERED that the executive director is directed to explore options to reduce the department's risk in providing financial support for both projects.

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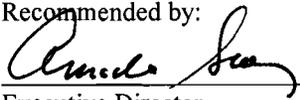
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IT IS FURTHER ORDERED that if a toll equity loan or other financial assistance is provided to the NTTA, the agreements to provide such assistance shall contain financial incentives or other provisions, as negotiated by the executive director, to encourage the removal of the department's commitment at the earliest feasible time, by refinancing of both projects by the NTTA or by other means.

Submitted and reviewed by:


Assistant Executive Director for
Engineering Operations

Recommended by:


Executive Director

112114 JAN 28 10

Minute Date
Number Passed