

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 negotiated terms for the development of a toll project that will extend STATE HIGHWAY 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 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, and as authorized by Transportation Code, §222.103 and §366.301, 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 Special Project System Trust Agreement (SPS 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 SPS 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 SPS 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 the U.S. Department of Transportation (US DOT) (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 SPS 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 SPS Trust Agreement, US DOT desires 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.

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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).

In Minute Order 112436, dated September 30, 2010, the commission, in addition to authorizing other agreements in connection with the NTTA's financing of the SH 161 Project, authorized the executive director of the department to enter into the Direct Agreement with the NTTA and the Trustee under the SPS Trust Agreement in the form of Direct Agreement available to the department as of September 30, 2010.

Since that date, US DOT determined that it should be an additional party to the Direct Agreement and that the Direct Agreement be amended to set forth additional provisions beneficial to the interest of US DOT. As negotiated, the Direct Agreement in the form attached as Exhibit A includes intercreditor provisions governing the respective rights of US DOT under the TIFIA Loan and the department under the Toll Equity Loan Agreement; certain agreements and waivers from the department related to the department's administration of the Toll Equity Loan Agreement and its exercise of rights and remedies against NTTA pursuant to the Toll Equity Loan Agreement; and certain consent and approval rights of US DOT in connection with changes to the NTTA plan of finance and the Toll Equity Loan Agreement; and the right of US DOT to direct the Trustee in connection with any occurrence or termination of a "Third Tier Subordination Event" limiting the department's rights under the SPS Trust Agreement and the Toll Equity Loan Agreement.

In addition, certain additional provisions were incorporated in the Toll Equity Loan Agreement, in the form attached as Exhibit B, including indemnification of the department by the NTTA, which additional provisions make reference to rights of US DOT under the Direct 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.

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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, US DOT and the Trustee under the SPS 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.

Submitted and reviewed by:

JAMES M. BASS  
Chief Financial Officer

Recommended by:

Amadeo Saenz Jr  
Executive Director

**112655 APR 12 11**

Minute  
Number

Date  
Passed