TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties **MINUTE ORDER**

DALLAS AND FORT WORTH Districts

Transportation Code, §366.002 provides that one of the purposes of the creation of regional tollway authorities, such as the North Texas Tollway Authority (NTTA), is to reduce the burdens and demands on the limited money available to the Texas Transportation Commission (commission) and to increase the commission's effectiveness and efficiency.

Consistent with that purpose, various provisions of the Transportation Code authorize the Texas Department of Transportation (department) to enter into contracts with a regional tollway authority relating to the (1) improvement by the authority of segments of the state highway system, (2) authority's design, development, financing, construction, maintenance, repair or operation of department toll projects, (3) department's contribution to the costs of authority turnpike projects, and (4) joint study of the feasibility of turnpike projects or their acquisition, design, financing, construction, maintenance, repair, operation, extension or expansion.

On July 27, 2006, the commission adopted Minute Order 110609, under which the commission authorized the department to issue requests for qualifications to develop, design, construct, finance, maintain, and operate as toll projects segments of SH 190 and SH 121 in Dallas, Tarrant, and Johnson counties.

Department staff has negotiated a proposed TxDOT/NTTA Regional Protocol, attached as Exhibit A to this order, for the purpose of implementing a procedure to allocate and speed delivery of transportation projects identified in the regional transportation plan of the North Central Texas Council of Governments (NCTCOG).

The protocol (1) permits the department to proceed with comprehensive development agreement (CDA) procurements for various projects in the region and confirms that the NTTA would not submit a public sector alternative for those projects, (2) confirms the delivery of various projects in the region as NTTA projects, subject to regional toll revenue sharing, (3) commits the department and the NTTA, working with the Regional Transportation Council (RTC), to implement a procedure to determine appropriate financial plans, regional revenue sharing, and delivery methods for transportation projects in the region for recommendation to the commission, (4) commits the department and the NTTA to implement a procedure for allocating responsibility for conducting feasibility analyses for candidate toll roads in the NCTCOG regional plan, and to make joint recommendations on project delivery and timing to the RTC and the commission, and (5) provides that the NTTA will provide toll collection services, defined as back office, clearinghouse and customer services, for CDA projects for the first five years of revenue service.

Under the protocol, the department will proceed with its CDA procurements for SH 121 in Collin and Denton counties, SH 161 in Dallas County, I-635/I-35E in Dallas County, SH 121/SH 114/I-635 in Tarrant, Dallas and Denton counties, and SH 183/I-820/I-35W in Tarrant County. NTTA will proceed with project delivery for the Eastern Extension of the President George Bush Turnpike in Dallas County (SH 190), the Lewisville Lake Bridge in Denton County, and Southwest Parkway (SH 121) in Tarrant County.

The protocol recognizes the acknowledged benefit to the region of a financially strong department CDA program and a financially strong NTTA system of toll roads, and recognizes that project implementation decisions must be made so that maximum financial benefits can be realized for the region. The NTTA Board of Directors adopted the protocol at its August 10, 2006 special board meeting.

IT IS THEREFORE ORDERED by the commission that the proposed TxDOT/NTTA Regional Protocol, attached as Exhibit A to this order, is approved, and authorizes and directs the department to implement the provisions of the protocol, including the negotiation and execution of project development, revenue sharing, and other agreements contemplated under the protocol.

IT IS FURTHER ORDERED that this order supersedes and rescinds all previously adopted orders authorizing or directing a CDA delivery of SH 190 in Dallas County and SH 121 in Tarrant and Johnson counties, including the applicable provisions of Minute Order 110609.

Submitted and reviewed by:

Director, Texas Turnpike Authority Division

Recommended by:

M. W. Behrens

Executive Director

110653 AUG 24 06

Minute Number Date Passed

THE PROPOSED TxDOT/NTTA REGIONAL PROTOCOL

PURPOSE

In order to:

- permit TxDOT to proceed with its Comprehensive Development Agreement (CDA) procurements for SH121 (Collin and Denton Counties) and SH 161 (Dallas County), and its CDA procurements for managed lane projects on IH 635/IH 35E (Dallas County), SH 121/SH 114/ IH 635 "Funnel" project in (Tarrant, Dallas and Denton Counties), and SH 183/IH 820/IH 35W (Tarrant County);
- allow TxDOT and the NTTA to work together to implement a timely interim tolling solution for SH121 (Denton County), thereby accelerating its opening to traffic;
- confirm TxDOT's and the NTTA's existing obligations regarding several specified toll projects;
- commit to discuss and implement a procedure by which TxDOT and the NTTA, working with the RTC, can allocate and thereby speed the delivery of transportation projects identified on the regional plan;
- commit to identify projects for which the NTTA and TxDOT will begin conducting feasibility analysis for the review of, and future action by, TxDOT, the RTC and the NTTA; and
- clarify for the region and potential private sector partners the role the NTTA will perform in delivering high-performance toll collection services for North Texas toll roads and managed lanes, ensuring seamless experiences for North Texas toll road customers.
- move toward expanded regional control and responsibility for toll road procurement and oversight, in which NTTA acts as the region's implementing agent in partnership with the RTC and TxDOT. While the actions below begin this effort, it is fully recognized additional actions will be necessary.

ACTIONS

1. NTTA Support of Pending CDAs: The NTTA and TxDOT commit to support the CDA delivery by TxDOT of SH121 (Collin and Denton Counties) and SH 161 (Dallas County), and managed lane projects on IH 635/IH 35E (Dallas County), SH 121/SH 114/ IH 635 "Funnel" project in (Tarrant, Dallas and Denton Counties), and SH 183/IH 820/IH 35W (Tarrant County) in accordance with CDA MOU executed by those parties (subject to any mutually agreed revisions to that MOU as contemplated by this document in paragraph 7 below) and NTTA would not be making a proposal as a public sector comparator

2. NTTA's Projects: TxDOT and the NTTA commit to support the delivery of the Eastern Extension of the President George Bush Turnpike in Dallas County, the Lewisville Lake Bridge (and portions of SHS FM 720 Widening projects) in Denton County, and Southwest Parkway (SH121) in Tarrant County as NTTA projects, subject to regional toll revenue sharing. The NTTA, RTC and TxDOT will agree on the project delivery mechanism offering best value to the region for the Trinity Parkway in Dallas County and SH 121 in Johnson County after final environmental clearance.

3. Future Projects: TxDOT and the NTTA commit to work with the RTC to determine appropriate financial plans, regional revenue sharing, and delivery methods of each transportation project within the region for recommendation to the Texas Transportaion Commission (TTC). This includes freeways, tollways and managed lane projects and will follow appropriate goals and strategies.

4. Joint Development of Regional Toll Projects: The NTTA and TxDOT commit to work with one another to determine which agency will undertake appropriate feasibility analysis and project development functions on toll roads in the NCTCOG's regional plan. The following steps will generally be followed in this project development process for toll projects in the NCTCOG plan:

   - TxDOT and the NTTA will apply TxDOT sketch-level project evaluation models under jointly agreed conditions and assumptions to determine early estimates of project feasibility.
   - TxDOT and the NTTA will apply TxDOT models to estimate a project's possible returns if developed under a CDA delivery.
   - Based on early analyses, TxDOT and NTTA staff will make every effort to jointly recommending to its governing bodies whether the project is timely to proceed, and then agree on a lead agency to manage necessary environmental reviews for the project.
   - As the project proceeds, TxDOT and the NTTA will agree when more thorough project feasibility analyses should be performed.
   - TxDOT and the NTTA will work together in an effort to make joint recommendations on project delivery methods and timing to NCTCOG and the Texas Transportation Commission based on, but not limited to, the following considerations:
     - Results of models and estimates on project feasibility and possible CDA applicability;
     - TxDOT and NTTA staff resources available to manage various procurement methods given other projects under development;
     - Project construction schedule with respect to other surface transportation projects in the region; and
     - Financial capacity of the NTTA, TxDOT and private sector investors.

   TxDOT and the NTTA both acknowledge the benefit to the region of 1) a financially strong NTTA system of toll roads, and 2) a financially strong CDA program. Therefore, project implementation decisions will be made so that the maximum financial benefits can be realized for the region.

Subject to the concurrence of the Texas Transportation Commission, the NTTA, TxDOT and the RTC shall determine at a later time whether TxDOT or the NTTA shall undertake the delivery of those projects, and the party ultimately delivering the project shall reimburse the other party for its previously incurred feasibility and project development costs (if any) and assume all such future costs.

5. Collaboration on Regional Plan: TxDOT and the NTTA, working in concert with the RTC, will cooperatively advance the projects on the regional plan by meeting regularly and sharing feasibility studies and other project development tasks.

6. Revenue Sharing: The NTTA acknowledges the need for, and adopts the concept of, revenue sharing with the region on future NTTA projects TxDOT and/or the RTC supports. The NTTA and TxDOT will develop project specific or programmatic revenue sharing methods that reflect the relative and actual contributions of project sponsors (right-of-way, infrastructure and toll equity). The terms of this item 6 do not affect existing project agreements which will remain in effect and are affirmed as written

7. Toll Collection and Customer Services: TxDOT and the NTTA acknowledge the convenience for North Texas toll road users to have consistent and seamless toll collection and customer services on all tolled projects on the NCTCOG plan. For that reason, the NTTA and TxDOT agree that the NTTA shall be the provider for toll collection services (for those projects on which the NTTA has chosen not to offer a public sector comparator or compete as a potential developer) for the first five years of a CDA contract,after which time a CDA developer and NTTA will be free to negotiate mutully acceptable terms, failing which a CDA developer may choose another alternative. Toll collection services are defined as back office, clearinghouse and customer services.

   In order to ensure that these services are delivered cost-effectively, the NTTA will prepare a price list of cost for services (similar to the Exhibit A of the NTTA-TxDOT CDA MOU) which will be applicable to all North Texas projects. All toll road operators shall use these services for the first five years of operations at pre-set prices subject to specified performance standards, as set forth in the RFP documents, after which time a developer may choose NTTA or any other alternative. In addition, the NTTA and TxDOT will agree to 1) amend the current CDA MOU in the next 30 days to develop processes for the pricing, performance standards and evaluation of both current projects under procurement and future projects, and 2) finalize a tolling services agreement including pricing of services for the SH 121 CDA so as not to impact the SH 121 procurement scehdule.

   Both the NTTA and TxDOT disclaim any intention to limit the NTTA to merely be a toll road operator pursuant to this paragraph 7 or otherwise.

8. Managed Lanes: The NTTA and TxDOT will agree on cooperative approaches (including funding participation) to managed lane development, particularly those projects that connect to or influence other revenue-producing facilities.

9. Protocol Approval: TxDOT and the NTTA promptly shall submit this Proposed TxDOT/NTTA Regional Protocol to the Texas Transportation Commission and the NTTA

Board of Directors, respectively, for formal action at the TTC meeting on August 24, 2006 and the NTTA Board Meeting on August 10, 2006. Thereafter the terms of this Protocol shall be affirmed and incorporated by reference in future TxDOT/NTTA project agreements.

10. Protocol Expiration: The ability to apply this Protocol arrangement to additional projects will expire five years from the date of execution unless both parties agree to extend the Protocol.