

TEXAS TRANSPORTATION COMMISSION

DALLAS County

MINUTE ORDER

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DALLAS District

The Texas Department of Transportation (department) has been proceeding with the preliminary development, as a candidate toll project, of an extension to 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), and as such is subject to the market valuation provisions set forth in Transportation Code, §228.0111.

The department and the NTTA have attempted to accomplish a market valuation of the SH 161 project pursuant to §228.0111, based upon mutually agreed terms, conditions, and input assumptions. However, while the department and the NTTA agreed to the terms and conditions upon which the market valuation would be based, and the designation of the entity to develop the market valuation, the parties have been unable to conclude the market valuation.

In Minute Order 111309, dated March 27, 2008, the Texas Transportation Commission (commission) awarded a contract for the construction of Phases 2 and 3 of the SH 161 project. In order to facilitate the timely completion of the market valuation and the completion of the SH 161 project, Minute Order 111309 directed the department to construct the project described in the contract as a nontolled project if, by April 16, 2008, a market valuation of the SH 161 project had not been agreed to pursuant to Transportation Code, §228.0111(f).

At a special called meeting on April 7, 2008, the NTTA's Board of Directors approved a proposal containing three alternatives for concluding the market valuation for the SH 161 project, which were further refined in a document styled "North Texas Tollway Authority SH 161 Final Detailed Proposal (4/13/08)".

Responding to a request that it provide input on the resolution of the market valuation process for the SH 161 project, the Regional Transportation Council recommended the approval of "Alternative 2" of the proposal at a special called meeting on April 15, 2008. Alternative 2 of the NTTA Proposal provided for the department and the NTTA to agree on a negotiated value for the SH 161 project, and contained terms and conditions applicable to the negotiated value proposed by the NTTA.

Transportation Code, §228.0111(f-1) authorizes the department and the NTTA to waive the requirement to develop a market valuation, and allows for the department and the NTTA to subsequently agree on the negotiated value of a toll project.

Wishing to be responsive to the region's stated preference, the department determined that it would accept the NTTA's proposal for a negotiated value for the SH 161 project as described in Alternative 2, with the amount of the negotiated value and its terms differing from that set out in the proposal as a result of the parties' further negotiation of and agreement on the terms of and conditions to the negotiated value, as further described in the agreement between the department and the NTTA dated as of April 19, 2008, attached as Exhibit A to this order.

TEXAS TRANSPORTATION COMMISSION

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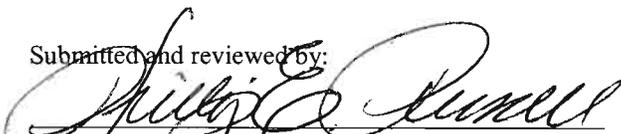
DALLAS District

Waiver of the market valuation and agreement on the negotiated value of the SH 161 project is consistent with the commission's action in Minute Order 111309 that was designed to complete the market valuation process set forth in Transportation Code, §228.0111, and to move forward with the development of a project that is a crucial element in responding to severe traffic congestion that exists in the Dallas/Fort Worth area, particularly as a reliever route to SH 360.

IT IS THEREFORE ORDERED by the commission that the waiver of the requirement to develop a market valuation of the SH 161 project, and the agreement regarding a negotiated value for the SH 161 project, attached as Exhibit A to this order, are approved.

IT IS FURTHER ORDERED that all conditions in Minute Order 111309 regarding the commencement of construction for Phases 2 and 3 of the SH 161 project, as well as the development of the SH 161 project as a toll project, are hereby superseded.

Submitted and reviewed by:



Assistant Executive Director
Innovative Project Development

Recommended by:



Executive Director

111329 APR 24 08

Minute Number Date Passed

**AGREEMENT REGARDING A NEGOTIATED VALUE
FOR STATE HIGHWAY 161**

THIS AGREEMENT REGARDING A NEGOTIATED VALUE FOR STATE HIGHWAY 161, dated April 19, 2008 (the "**Agreement**"), is entered into by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas ("**TxDOT**"), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority authorized under Chapter 366 of the Texas Transportation Code (the "**NTTA**"), whose service area is composed of Dallas, Tarrant, Collin and Denton counties (the "**NTTA Service Area**"). TxDOT and NTTA being sometimes collectively referred to as the "**Parties**" or individually as a "**Party**."

WHEREAS, the State Highway 161 project ("**SH 161**") is located within the NTTA Service Area; and

WHEREAS, SH 161 is subject to the "market valuation" provisions set forth in Section 228.0111 of the Transportation Code (the "**Code**") which were enacted by Senate Bill 792 passed in the 80th Legislative Session ("**SB 792**"); and

WHEREAS, Section 228.0111(f-1) of the Code authorizes the Parties to waive the requirement to develop a market valuation;

NOW, THEREFORE, for and in consideration of these premises, the Parties agree as follows:

1. WAIVER OF MARKET VALUATION

Pursuant to Section 228.0111(f-1) of the Code, NTTA and TxDOT agree to waive the requirement to develop a market valuation, and have in this Agreement agreed on the terms and conditions for the development, construction and operation of SH 161 and the negotiated value of SH 161.

2. TERMS AND CONDITIONS AND NEGOTIATED VALUE

Except as specifically provided in Sections 3 and 5 of this Agreement, NTTA and TxDOT agree to all the terms contained in Alternative 2 ("**NTTA's Alternative 2**") of the "**NTTA SH 161 Final Detailed Proposal (4/13/08)**" (the "**Proposal**"), as set forth on Attachment A to this Agreement and incorporated herein, regarding the resolution of the market-valuation process for SH 161, including, except as modified in NTTA's Alternative 2 and this Agreement, the development, construction, and operation of SH 161 as per the agreed terms and conditions in the Memorandum of Understanding Regarding the Terms and Conditions and Market Valuation for State Highway 161 between NTTA and TxDOT dated January 25, 2008.

3. MODIFICATIONS TO NTTA'S ALTERNATIVE 2

(a) NTTA and TxDOT agree to modify the terms contained in NTTA's Alternative 2 as follows:

- the previous negotiated value of \$548 million is reduced by \$90 million, resulting in a \$458 million upfront payment as may be adjusted pursuant to Section 4 and Subsections 5(a) and (d) below (the "**Upfront Payment**");
- in consideration of that reduction of the previous negotiated value, NTTA and TxDOT shall equally share (50%/50%) all net revenues from SH 161 beginning in the 53rd year following execution of the project agreement;
- net revenues shall be the remainder of SH 161 gross revenues after operation and maintenance costs have been deducted; debt service on any indebtedness secured by SH 161 will not be deducted from gross revenues to yield net revenues;
- for ease of administration, NTTA and TxDOT, before the 53rd year following execution of the project agreement, intend to convert the 50%/50% share of net revenues to a percentage share of gross revenues that yields the same amount of shared payments; and
- beginning in the 53rd year following execution of the project agreement, TxDOT and NTTA will equally share (50%/50%) and promptly discharge all capital improvement costs pertaining to SH 161, including costs for rehabilitation and reconstruction, capacity improvements, and similar capital costs (but excluding resurfacing costs which shall be deemed an operation and maintenance cost).

(b) If NTTA exercises its option to deliver SH 161, NTTA shall pay the Upfront Payment to TxDOT in accordance with the requirements of the project agreement, and within the same time frame set forth in Section 228.0111(g) of the Code as further defined in the project agreement.

4. MARKET INTEREST RATE ADJUSTMENT

(a) TxDOT will bear the risk and have the benefit of changes in market interest rates (either positive or negative) regarding the Upfront Payment. In summary, that means that the amount of the Upfront Payment to be paid pursuant to Subsection 3(b) above will be adjusted up or down based on the change in the interest rates and other costs applicable to NTTA's system revenue bonds from the date of this Agreement to one business day before NTTA prices the system revenue bonds to finance the payment of the Upfront Payment, including base interest rate spreads, credit margins, costs of monoline insurance and other credit enhancement.

(b) A more detailed methodology for determining the interest rate adjustment, and the costs considered in determining the amount of the adjustment, that is agreeable to the

Parties will be set forth in the project agreement, which shall in all events be fully consistent with Subsection 4(a) above and with the applicable provision from NTTA's Alternative 2.

5. ADMINISTRATIVE REFINEMENTS TO NTTA'S ALTERNATIVE 2

NTTA and TxDOT further agree to update NTTA's Alternative 2 regarding the following two (2) minor, administrative matters:

(a) if NTTA exercises its option to deliver SH 161, it will pay all properly submitted construction draw requests for Phases 2 and 3, and the Upfront Payment shall be reduced accordingly; once NTTA pays the Upfront Payment, the Regional Transportation Council (the "RTC") will be solely responsible for all Phases 2 and 3 draws thereafter;

(b) without in any manner affecting the amount of the Upfront Payment, the Union Pacific railroad bridge will be taken out of Phase 4 at a cost not to exceed \$22,622,544 and, if NTTA exercises its option to deliver SH 161, it will fund the actual cost of completing the bridge (up to \$22,622,544) from amounts it initially allocated to build Phase 4, which funding obligation shall continue to completion and not be affected by NTTA paying the Upfront Payment; as provided in NTTA's Alternative 2, NTTA will be responsible for the remaining actual cost of Phase 4;

(c) Phases 2 and 3 and the Union Pacific railroad bridge will be constructed by TxDOT; if NTTA exercises its option to deliver SH 161, NTTA will receive reasonable rights to participate in any review processes for that TxDOT work, and the remainder of Phase 4 will be constructed by NTTA; and

(d) if NTTA, having exercised its option to deliver SH 161, is unable or otherwise fails to timely pay any properly submitted construction draw request for work performed for Phases 2 or 3 or the Union Pacific railroad bridge, the RTC will fund those costs and NTTA shall reimburse the RTC, together with interest which would have accrued on those costs paid by the RTC (assuming those funds had remained in the project subaccount in Fund 6) from the date the RTC funds those costs out of Fund 6 to the date the NTTA reimbursement is deposited in Fund 6.

6. NTTA TO SEEK AUTHORIZATION OF THIS AGREEMENT

NTTA's obligations under this Agreement are explicitly subject to approval of this document by NTTA's Board of Directors. Provided this Agreement is fully executed by the parties by 1:00 P.M. on Sunday, April 20, 2008, NTTA will hold an Emergency Meeting of its Board to consider authorizing this Agreement no later than noon on Monday, April 21, 2008.

7. OTHER AGREEMENTS REGARDING SH 161

(a) All references in "Alternative 2" of the Proposal and set forth in Attachment A to the "proposed 'Negotiated Value'" are deemed amended to delete "proposed" and, similarly, all references to "if TxDOT approves the 'Negotiated Value'" or "[s]hould TxDOT choose Alternative 2 and accept the terms and conditions stated herein" are deemed deleted to reflect TxDOT having provided that approval and acceptance pursuant to this Agreement. "MV" as used in "Alternative 2" of the Proposal and set forth in Attachment A to this MOU refers to the SH 161 market valuation. Finally, subparts (a), (b), (g) and (j) of "Alternative 2" of the Proposal and set forth in Attachment A are deleted.

(b) If NTTA subsequently exercises its option to deliver SH 161 in accordance with this Agreement and Section 228.0111 of the Code, no provision of any project agreement between the Parties shall conflict with any provision of this Agreement.

(c) All conditions of Minute Order 111309 passed on March 27, 2008 regarding the commencement of construction for Phases 2 and 3, and the Union Pacific Bridge, of SH 161, as well as the construction of that project as a tolled facility, have been fully satisfied in accordance with that Minute Order.

8. AMENDMENTS

This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

9. ENFORCEABILITY

The Parties acknowledge and agree that this Agreement is fully enforceable in accordance with its terms.

10. ENTIRE AGREEMENT

This Agreement, together with the attachment hereto and any materials incorporated by reference herein, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all other prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

11. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

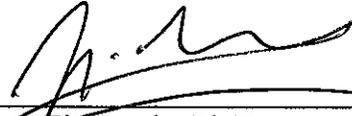
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives to be effective as of date first set forth above.

NTTA:

NORTH TEXAS TOLLWAY AUTHORITY,
a regional tollway authority

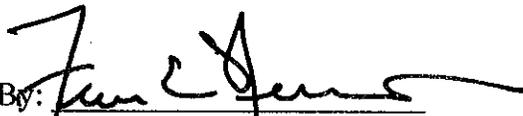
ATTEST:


Ruby Franklin,
Secretary

By: 
Jorge Figueredo, Ph.D.
Executive Director

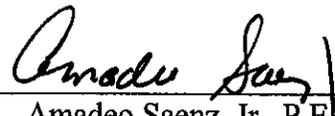
APPROVED AS TO FORM:

Locke Lord Bissell & Liddell LLP
General Counsel to NTTA

By: 
Frank E. Stevenson, II

TxDOT:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: 
Amadeo Saenz, Jr., P.E.
Executive Director

ATTACHMENT A

**SH 161 – Dallas County
Toll Project Market Valuation
“Alternative 2” of the Proposal**

- a. This is a proposed “Negotiated Value” for SH 161 to meet TxDOT’s April 16 deadline for when a MV must be completed;
- b. Since TxDOT set that deadline, NTTA has worked continuously with its staff and consultant resources to maximize its proposed “Negotiated Value” for SH 161;
- c. As a result, NTTA offers the following “Best and Final” Proposal with a total value to the region of approximately \$1.158 billion, which includes a \$548 million upfront payment; NTTA utilized innovative financing and other tools to maximize the SH 161 “Negotiated Value” for the benefit of the region;
- d. The \$548 million upfront payment is composed of:

- i. \$250 million (approx.) to reimburse the region for Phases 2 and 3 (\$213 million contract award plus construction management and other features); and
 - ii. \$298 million (*i.e.*, the balance) upfront payment to the region;
- e. NTTA builds Phase 4 (including UP crossing) at its cost (currently estimated at \$610 million), assuming all risk for cost increases;
- f. The "Negotiated Value" includes the following specific terms and conditions:
 - i. NTTA holds SH 161 in perpetuity;
 - ii. consistent with previous partnered projects, NTTA receives from TxDOT fee simple title to SH 161 right-of-way;
 - iii. in 53rd year, NTTA will share 20% of gross revenues with the region; no revenue bands/sharing in previous years;
 - iv. TxDOT will be responsible for the full interest rate risk regarding the "Negotiated Value;" that, in summary, means with respect to NTTA, that the amount of the "Negotiated Value" to be paid at closing will be adjusted up or down based on the change in the interest rates and other costs applicable to NTTA's system revenue bonds from the date the "Negotiated Value" is agreed upon and one business day before NTTA prices the system revenue bonds to finance the payment of the "Negotiated Value," including base interest rate spreads, credit margins, costs of monoline insurance and other credit enhancement; and
 - v. in all other respects, SH 161 is constructed and operated as per agreed terms and conditions in the MOU between NTTA and TxDOT dated January 25, 2008 (the "MOU");
- g. Unless and until TxDOT approves the "Negotiated Value" as outlined in this Alternative 2, there is no completed "market valuation" for SH 161 as described in SB 792 or otherwise;
- h. if TxDOT approves the "Negotiated Value":
 - i. to the extent that, in the judgment of NTTA's or TxDOT's counsel, any of the features described in this Alternative 2 requires a permissible waiver of SB 792 to be effective, that waiver shall be provided;
 - ii. the SH 161 MV process will be described by NTTA and TxDOT only as it actually occurred – *i.e.*, that the SB 792 market valuation procedure was arrested prior to its conclusion and the KPMG financial model was run using

two different (NTTA's and TxDOT's) sets of assumptions which yielded two different amounts; the "Negotiated Value" resulted from the negotiation of those two amounts by the parties in an effort to maximize benefit to the region;

- iii. no Market Valuation Report under SB 792 shall be prepared;
 - iv. in no event will the KPMG financial model or its inputs be adjusted in order to generate the "Negotiated Value," nor shall any terms and conditions, assumptions or other inputs used by either or both parties serve as precedent with respect to future market valuations, except as agreed by the parties in the MOU; and
 - v. the "Negotiated Value" shall be payable within the same time frame set forth in Subsection 228.0111(g) of SB 792;
- i. Should TxDOT choose Alternative 2 and accept the terms and conditions stated herein, the NTTA Board will complete its due diligence of the documents required for final Board approval as expeditiously as possible; until this review is completed and the Board takes action by written resolution, NTTA cannot exercise or waive its option to deliver SH 161:
- i. NTTA will exercise or waive its option to deliver SH 161 at the "Negotiated Value" by or before mid-summer; and
 - ii. NTTA will exercise its option after it obtains and reviews: an acceptable investment-grade traffic and revenue study, other final engineering and financing reports, an analysis of impact on NTTA's System, and a determination by rating agencies that SH 161 will not adversely affect ratings on issued bonds or bonds proposed for SH 121;
- j. The proposed "Negotiated Value" will remain in effect through April 16 to coincide with TxDOT's imposed deadline for the conclusion of a MV:
- i. maintaining this "Negotiated Value" proposal indefinitely constrains NTTA's ability to commit to other projects; and
 - ii. TxDOT believes that deadline of April 16 is an absolute cutoff date due to the SH 161 delivery schedule and TxDOT's interpretation of SB 792.