



Texas Transportation Commission

125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483

February 23, 2010

The Honorable Joe C. Pickett
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Representative Pickett:

Thank you for your letter regarding the negotiations between the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA) related to the SH 161 and Southwest Parkway/Chisholm Trail projects, and inquiring about what options other than a State Highway Fund (Fund 6) "backstop" might be available for delivering these projects. TxDOT staff and members of the Texas Transportation Commission have been analyzing how to carefully leverage all available resources to deliver these very important projects to the North Texas region.

First, know that the Commission plans to consider preliminary approval of such a "backstop" for the Southwest Parkway/Chisholm Trail project and final approval for the SH 161 project at its February 24 meeting.

You inquired as to what other financial options might be available to proceed with the SH 161 project. It should be noted a primary reason for both entities continuing to research and negotiate the Fund 6 "backstop" is to ensure NTTA may make the \$458 million upfront payment to the region as determined by the Market Valuation provisions required by SB 792 from the 80th Legislative Session, as opposed to making the payment over time. The "backstop" also allows NTTA to achieve a better financial rating, thereby reducing borrowing costs which will facilitate the financing of the project. Other options for delivery of both projects – SH 161 and Southwest Parkway/Chisholm Trail – are listed below; however, some of them would be dependent upon market conditions.

Delivery Options for SH 161

NTTA delivers the SH 161 project and makes the \$458 million upfront payment as a part of the existing NTTA system.

- o NTTA would take the risk of a downgrade to their existing system credit rating, resulting in a higher cost of debt for the SH 161 project and future bond issuances.

NTTA delivers the project as a tolled facility through a long-term lease competitively procured with the private sector.

- This would include the private sector providing the \$458 million upfront payment. If the competitive process resulted in a payment in excess of \$458 million, NTTA would only make the \$458 million available to the region. However, if the competitive process resulted in a payment of less than the \$458 million, then NTTA would need to make up the difference from their system.

TxDOT delivers the project as a tolled facility through a long-term lease with the private sector.

- TxDOT is authorized to enter into a comprehensive development agreement for SH 161 as long as the agreement is entered into by August 31, 2011.
- Again, this would include the private sector providing the \$458 million upfront payment. If the competitive process resulted in a payment in excess of \$458 million, the region would receive the \$458 million plus the additional amount to deliver additional projects in the region. However, if the competitive process resulted in a payment of less than the \$458 million, TxDOT would then need to make up the difference from other sources.

The RTC could reallocate funds from the SH 121 Regional Toll Revenues to develop the project.

- The RTC has already committed these funds to other projects, but they do possess the ability to reallocate the revenues at their discretion to address regional transportation needs.
- These revenues can only be used within the TxDOT Dallas District boundaries per state law, and this option would delay those projects already slated to receive these allocations.

Delivery Options for Southwest Parkway/Chisholm Trail

NTTA could deliver the Southwest Parkway/Chisholm Trail project as a part of the existing NTTA system, rather than as a stand-alone project.

- NTTA would take the risk of a downgrade to their existing system credit rating, resulting in a higher cost of debt for the project and future bond issuances.

NTTA could wait until they have the financial capacity to develop the project.

NTTA could deliver the project as a tolled facility through a long-term lease with the private sector.

- TxDOT does not have the statutory authority to deliver this project under a comprehensive development agreement.

TxDOT could deliver the Southwest Parkway/Chisholm Trail project as a tolled facility through our pass-through financing program.

- o The terms of delivering the project under this program would need to be carefully reviewed and analyzed to determine what risks the state would need to assume under such an agreement.
- o At this time NTTA and TxDOT do not have as thorough an understanding of the financial feasibility of the Southwest Parkway/Chisholm Trail project as they do for the SH 161 project.
- o Amendments to the existing rules for the pass-through financing program would be necessary to use this option.

NTTA could deliver the Southwest Parkway portion of the project in accordance with existing law as a tolled facility, and TxDOT could deliver the Chisholm Trail project as a tolled facility.

- o TxDOT would likely deliver the project as a design-build project with toll revenue bonds and public funds covering any funding gap.
- o NTTA could deliver their portion of the project as a tolled facility through the design build or design-bid-build process with toll revenues and funds from their existing system covering any funding gap.
- o Breaking up the project in this manner would spread the risk, rewards and costs for delivering the project between TxDOT and NTTA.

TxDOT could deliver the Southwest Parkway/Chisholm Trail project in segments over time utilizing the design-bid-build process in phases, with or without tolling of the facilities.

- o This option would require many years to complete the entire facility, and if not tolled would forego the toll revenue potential of the Chisholm Trail portion of the project which has the potential for generating an upfront payment from the private sector if it was delivered through a long-term lease with the private sector.

In response to your concerns about using Fund 6 as a "backstop" for the projects, TxDOT, with the help of NTTA, has done its best to minimize the risk that Fund 6 will actually need to provide funds through the "backstop" to the SH 161 facility. Based on everything TxDOT knows today about the SH 161 project, it is believed a draw on the "backstop" (or loan) is unlikely, and TxDOT is beginning the process of developing a similar level of confidence for the Southwest Parkway/Chisholm Trail project. Enclosed please find a document that lists various provisions included in the draft Toll Equity Loan Agreement for SH 161 that are intended to protect Fund 6 from being drawn upon for your reference.

SB 883 from the 81st Legislative Session exempted the SH 161 and Southwest Parkway/Chisholm Trail projects from the prohibition of utilizing state highway funds as security to allow a public or private entity to develop a toll project. While this is not an option for every project, the legislature made it clear they are willing to consider alternative solutions to deliver these important projects to the region.

I appreciate your continued interest in Texas transportation and we look forward to working with you on future endeavors to address the demands and challenges we face. In your letter, you asked that we seek input from the House and Senate budget writers and Chairman Carona, and I have copied them on this letter to provide the details requested. If you have additional questions or need further information, please contact me at (512) 305-9509, or your staff may contact Caroline Love, Government and Public Affairs Division, at (512) 463-1965.

Sincerely,



Deirdre Delisi
Chair
Texas Transportation Commission

Enclosure

cc: The Honorable John Carona, Texas Senate, Capitol and District Offices
The Honorable Steve Ogden, Texas Senate, Capitol and District Offices
The Honorable Jim Pitts, Texas House of Representatives, Capitol and District Offices
Leigh Anne Lauderdale, Texas House of Representatives Transportation Committee, Capitol Office
Paul N. Wageman, Chairman, NTTA
Michael Morris, Director of Transportation, Regional Transportation Council
Texas Transportation Commission
Amadeo Saenz Jr., P.E., Executive Director, TxDOT

Texas Department of Transportation

Protections for the State Highway Fund In the Toll Equity Loan Agreement (TELA) for SH 161

The risks to the State Highway Fund have been addressed in the Agreement between the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA) by:

- Requiring funds (proceeds from bond and TIFIA loans + NTTA System equity) to pay for debt service through the construction period and the first year of operations (also known as capitalized interest) to be available at the initial financing;
- Requiring the establishment of a Rate Stabilization Fund to be funded upon initial financing at a level equal to projected revenues in the 3rd Year of operations;
 - Thereafter, the size of this particular reserve will grow such that it will be equal to the following year's projected revenue. For example, in Year 3 it will be sized for projected revenue in Year 4, and in Year 4 it will be sized for projected revenue in Year 5, etc.
- Requiring NTTA to have the Traffic & Revenue (T&R) report and financial model updated at least once every two years. If the updated T&R forecast shows that within the next five years it is projected that all reserves will not be fully funded, then NTTA must take actions (e.g., increase tolls) to make it so that it is projected for all reserves to be fully funded;
- Requiring all revenues to remain in the project until the TELA is terminated;
 - Including requiring any excess revenues to be retained in the project's General Fund.
 - However NTTA may be reimbursed costs higher than budgeted due to inflation and if funds are available in the project's General Fund.
- Requiring the NTTA System to fund construction cost overruns and operations and maintenance costs in excess of budgets established prior to entering into the backstop agreement.

Additional risk mitigations in the Agreement include the following:

- The maximum amount that can actually be drawn by NTTA in any year is the projected revenue in that year less the actual revenue collected, and draws on the TELA may only be made for actual costs incurred by NTTA or those reasonably expected to be incurred.
- NTTA is required to use good faith efforts to terminate the TELA through a full refunding of the debt.
 - As soon as the project achieves two investment grade ratings without the benefit of the NTTA system or the TELA.
 - TxDOT may require NTTA to request ratings at any time after the first five years of operations.
- Additional debt backed by the TELA is prohibited, *except for*:
 - Funding the cost of the approved Capacity Improvements for SH161 but only to the extent project revenues are insufficient and up to a maximum amount;
 - Refinancing for interest rate savings but only with TxDOT's approval and with no extension of the term of the TELA; or

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- To finance the project budget costs for the construction of the Southwest Parkway/Chisholm Trail project (1C configuration only), if the project is added to the TELA.
- NTTA Reporting requirements include:
 - Annual budget:
 - Identify O&M standards and sources of funds if NTTA chooses to operate and maintain to standards higher than the Project Agreement;
 - TxDOT retains review rights; and
 - Must show if a TELA draw is expected.
 - Quarterly reports:
 - Project operating data;
 - Explanation for variances of greater than 5% of budgeted items including revenues; and
 - Traffic report detailing project performance
 - Semi-annual reports:
 - Prepared during construction by the General Engineering Consultant; and
 - Will show construction progress with respect to time and budget
- Toll elasticity provisions are included:
 - Initial toll rate is 14.5 cents per mile and T&R report shows rates can be increased considerably without experiencing a decline in overall revenue.
- TxDOT step-in rights include:
 - If construction not completed within 12 months of substantial completion date (10/11/2012);
 - During the construction phase if NTTA abandons the project for more than 90 days; and
 - During the operations phase if NTTA suspends operations for 90 continuous days or fails to operate the project in accordance with the Project Agreement in a manner that would have a material adverse effect on the project or the revenues.

In addition, for the SH 161 project, TxDOT and its consultants have performed significant review of information provided by NTTA and its consultants. Based on this review, TxDOT believes that the chances of a draw on the TELA during the term of the agreement are low.