



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

October 15, 2008

Jorge Figueredo, Ph.D.
Executive Director
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

Dear Dr. Figueredo:

The Texas Department of Transportation (TxDOT) is pleased to provide the attached amended and restated final Term Sheet for TxDOT's provision of a toll equity loan from Fund 006 to the NTTA for the SH 161 project, and for development of the Southwest Parkway and Chisholm Trail projects as a single project. Based on the NTTA's estimates of facility costs, TxDOT currently estimates that the toll equity loan could be up to \$3.5 billion. TxDOT has not completed its review of those estimates, and thus the maximum amount of financial assistance remains subject to refinement.

As noted in my October 13, 2008, letter, this Term Sheet may be accepted by NTTA only by adoption of a resolution of the NTTA Board not later than October 15, 2008. That resolution must indicate that (1) the NTTA is exercising its option to develop the SH 161 project pursuant to the Agreement Regarding a Negotiated Value for State Highway 161 dated April 19, 2008, as modified by the attached Term Sheet, and (2) the attached Term Sheet is accepted. Absent such a resolution, TxDOT's proposed Term Sheet is withdrawn and the terms of the April 19 agreement will remain applicable, without modification.

Subsequent to the NTTA's resolution to proceed, the NTTA will be required to complete a toll equity loan application. The toll equity loan application and the NTTA approved Term Sheet in the form attached will then be presented to the Texas Transportation Commission for action, in consultation with the RTC. We appreciate the assistance and cooperation of the NTTA in the development of this Term Sheet.

Sincerely,

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

Attachment

cc: Michael Morris, P.E., Transportation Director, NCTCOG
Texas Transportation Commission
William L. Hale, P.E., Dallas District Engineer, TxDOT

FINAL TERM SHEET FOR
TXDOT TOLL EQUITY LOAN FOR SH 161 PROJECT,
NTTA PROJECT DELIVERY, AND
DISPOSITION OF SOUTHWEST PARKWAY AND CHISHOLM TRAIL

TxDOT and the NTTA, acting reasonably and working collaboratively, intend that the support for the SH 161 project provided by the transaction outlined in this Term Sheet will lessen the stress on the NTTA System resulting from NTTA's election to undertake the SH 161 project and, since the SH 161 project is expected to be ultimately a revenue-positive project, strengthen NTTA's ability to undertake additional projects. Accordingly, TxDOT and NTTA set forth the following terms and conditions:

- NTTA will own, design, construct, operate, maintain and finance development of the SH 161 project as a "turnpike project" under Chapter 366, Texas Transportation Code, off of the state highway system and in accordance with the Agreement Regarding a Negotiated Value for State Highway 161, dated as of April 19, 2008 (the "Negotiated Value Agreement"), except as modified by this Term Sheet.
- TxDOT and NTTA acknowledge that, after exercising its option for the SH 161 project, the NTTA retains the discretion, as allowed under Section 228.0111(g), Texas Transportation Code, to not proceed for any reason, including negative rating impacts to the NTTA System, with entering into a contract for the construction of the SH 161 project and making the \$458 million acquisition payment to TxDOT, in which case, after the expiration of the two-year time frame prescribed in Section 228.0111(g), or earlier as agreed by TxDOT and the NTTA, the right to design, construct, operate, maintain and finance development of the SH 161 project will revert to TxDOT, as provided in Section 228.0111(i).
- TxDOT will support NTTA's efforts to develop the facility by committing a toll equity loan of Fund 006 monies in an aggregate amount in nominal dollars (the "Maximum Available Aggregate Amount") no greater than the facility costs, 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 Fund 006 under applicable law (projected SH 161 facility costs for 52 years), which may only include costs for:
 - Construction
 - Design
 - Operations & maintenance
 - Major maintenance
 - Capital expenditures; and
 - The \$458 Million acquisition payment (the "Negotiated Value").
- Once the Maximum Available Aggregate Amount is determined, as provided herein, that amount may not be increased.
- The NTTA, in turn, will pledge the toll equity loan to the bond trustee for SH 161.

- The maximum available annual toll equity loan amounts shall not exceed 100% of the projected toll revenue stream for that period in the mutually approved investment grade traffic and revenue study identified in the official statement for the bonds (the “Maximum Available Annual Amount”).
- Once the Maximum Available Annual Amount is determined, as provided herein, that amount may not be increased.
- The debt for the SH 161 project (“SH 161 Project Debt”) (a) shall not exceed the amount required to enable NTTA to accomplish financing of the facility costs, including a commercially reasonable contingency for design and construction cost overruns, (b) shall bear interest at fixed rates and (c) may consist only of the following types of debt:
 - Current interest bonds, limited in use for facility costs;
 - TIFIA loan (if received), limited in use for facility costs; and/or
 - Capital appreciation bonds (if needed), limited in use for facility costs.
- Debt service for the SH 161 Project Debt shall be structured such that the total debt service payments in each annual period plus the operations and maintenance expenses for that period as set forth in an O&M budget mutually approved prior to financial close, including budgeted amounts set aside for major maintenance expenses and for future capital expenditures, but excluding any required reserves therefor, do not exceed 100% of the projected revenue stream for that period in the mutually approved investment grade traffic and revenue study identified in the official statement for the bonds.
- Closing of the toll equity loan will occur concurrently with closing of the SH 161 Project Debt and be subject to commercially reasonable conditions, including TxDOT’s review and approval of the official statement(s), TIFIA loan documents (if applicable) and other bond documents.
- Periodic draws will be funded directly to the bond trustee and will equal the lesser of:
 - (1) debt service payments associated with the SH 161 Project Debt for the period, plus operations and maintenance expenses up to the budgeted amount for the period, including budgeted amounts for the period for major maintenance expenses and for capital expenditures, but excluding any required reserves therefor, minus balances in the capitalized interest fund for debt service for the period, minus any revenues deposited into the Revenue Fund during that period, including but not limited to toll revenues, fees, interest earnings, insurance payments, liquidated damages, and other revenues received by the NTTA as a result of its ownership and operation of the SH 161 project, minus any available amounts in the TxDOT toll equity loan payments reserve, and minus any available amounts in any operations and maintenance reserves; and
 - (2) Maximum Available Annual Amount, minus balances in the capitalized interest fund for debt service for the period, minus any revenues deposited into the Revenue Fund during that period, including but not limited to toll revenues, fees, interest earnings, insurance payments, liquidated damages, and other revenues received by the NTTA as a result of its ownership and operation of the SH 161 project, minus any available amounts

in the TxDOT toll equity loan payments reserve, and minus any available amounts in any operations and maintenance reserves;

in each case subject to the Maximum Available Aggregate Amount.

- If the total amount of periodic draw(s) in any year are less than the Maximum Available Annual Amount, the difference will not be carried forward, nor shall it be available for future periodic draws.

Each draw of toll equity loan amounts will accrue interest from the date drawn until repaid at a rate equal to the ten-year AAA MMD in effect at the time of the draw plus 100 basis points.

- SH 161 gross revenue (including capitalized interest deposits and interest thereon) in each annual period will be applied in the following order of priority:
 - Until the earlier of the date the SH 161 Project Debt is repaid or 30 years (or 40 years if NTTA becomes authorized prior to financial close to issue bonds with that term), to (1) pay current debt service for the SH 161 Project Debt, (2) pay or reimburse operations and maintenance expenses for the period up to the amount set forth in an O&M budget mutually approved prior to financial close, including up to the amount budgeted for the period for major maintenance expenses and for capital expenditures in excess of then available reserves therefor, but excluding funding of any required reserves therefor, (3) pay TxDOT's accrued unpaid interest, applied to interest accruing in the order of the draws on the toll equity loan starting with the earliest draw with principal outstanding, (4) reimburse TxDOT's toll equity loan payments, applied to principal in the order of the draws on the toll equity loan starting with the earliest draw, (5) pay or reimburse operations and maintenance expenses for the period that exceed the amount set forth in the O&M budget mutually approved prior to financial close, excluding major maintenance expenses, capital expenditures, and any required reserves, (6) fund a TxDOT toll equity loan payments reserve until it reaches an aggregate amount mutually approved prior to financial close, (7) pay or reimburse major maintenance expenses and capital expenditures for the period that exceed the amount set forth in the O&M budget mutually approved prior to financial close, (8) fund a major maintenance and future capital expenditure reserve until it reaches an aggregate amount mutually approved prior to financial close, (9) as NTTA determines for any other reasonably required reserves for the SH 161 project, and (10) the balance to be held in the project revenue fund for application to the flow of funds in following periods.
 - After the earlier of the date the SH 161 Project Debt is repaid or 30 years (or 40 years if NTTA becomes authorized prior to financial close to issue bonds with that term), until 52 years from the date of the project agreement, to (1) pay TxDOT's accrued interest, (2) reimburse TxDOT's toll equity loan payments, (3) pay current debt service, (4) pay or reimburse O&M, and (5) as NTTA determines.
 - After the later of the date TxDOT's outstanding draws and interest are fully repaid and 52 years from the date of the project agreement, in accordance with the Negotiated Value Agreement.

- NTTA commits to provide upfront equity or debt necessary (a) to bridge any initial funding shortfall for the project that cannot be financed within the Maximum Available Aggregate Amount and Maximum Available Annual Amount or (b) to fund any cost overruns or other shortfall in project costs. Additional debt required for any such purpose will be secured separately by NTTA and not by project revenue (unless subordinate to the flow of funds defined herein).
- To the extent they exceed their applicable budgeted amounts for the annual period and are not paid or reimbursed from the foregoing flow of funds, SH 161 project annual operating and maintenance expenses, including all major maintenance expenses, future capital expenditures, and any required reserves shall be guaranteed by the NTTA System's "Capital Improvement Fund."
- TxDOT will work with the NTTA and the rating agencies to ensure that the highest possible ratings are achieved for the debt secured by TxDOT toll equity loan, based on the:
 - adequacy and availability of Fund 006;
 - fact that TxDOT toll equity loan payment obligation is a long-term, subordinate, and subject to appropriation obligation of the state highway fund;
 - development of an acceptable mechanism to assure timely draws from Fund 006 and application of such draws by the bond trustee directly to debt service and other permitted costs as set forth in this Term Sheet; and
 - assumption that rating agencies will be comfortable with Fund 006 support for the term the SH 161 bonds are outstanding.
- It is TxDOT's objective that it be relieved of its toll equity loan payment obligations as soon as possible.
- TxDOT and NTTA will cooperate to include in the project agreement and bond documents terms for facilitating refinancing under circumstances described in the project agreement.
- TxDOT assumes no liability with respect to NTTA's efforts to develop the SH 161 project or any additional project.
- During the period prior to financial close, NTTA shall provide TxDOT with completely open and transparent access to and review of NTTA's records and reports pertaining to the SH 161 project costs and revenue projections, calculations and estimates, including draft and final traffic and revenue studies, detailed cost breakdowns, and existing historic NTTA System data supporting SH 161 cost and revenue estimates. Financial close shall be subject to TxDOT's due diligence review, including an audit of cost and revenue projections for the SH 161 project. Consistent with TxDOT requirements for toll equity loans, until the toll equity loan is repaid in full, NTTA shall deliver to TxDOT periodic reports on SH 161 acquisition, design and construction progress and expenditures, on operating and maintenance budgets and expenditures, and on other matters affecting the SH 161 project, and TxDOT shall have the right to audit NTTA's books and records pertaining to the SH 161 project. The parties will set forth such reporting and audit rights in more detail in the project agreement.

- In consideration of TxDOT's support of the NTTA's efforts to develop the SH 161 project, and to provide the full benefit expected by the region as a result of the NTTA's delivery of the SH 161 project, TxDOT and the NTTA agree that the market interest rate adjustment provisions in Section 4 of the Negotiated Value Agreement shall not apply to the Negotiated Value, and the NTTA shall pay to TxDOT the full \$458 million acquisition payment, as adjusted pursuant to Section 5 of the Negotiated Value Agreement, and within the time frame provided in the Negotiated Value Agreement.
- To support the delivery of the Southwest Parkway and the Chisholm Trail:
 - TxDOT and NTTA will waive the development of a market valuation for the Chisholm Trail project;
 - TxDOT and the NTTA shall combine those two projects in a single project to be undertaken by the NTTA, subject to NTTA establishing its feasibility and to potential phasing of development, and in compliance with the time frames for actions relating to the Chisholm Trail prescribed in Section 228.0111(g), Texas Transportation Code; provided that if NTTA cannot establish feasibility for the combined project it nevertheless shall not be entitled to exercise an option to develop only the Chisholm Trail project;
 - NTTA commits to provide as the first contribution of equity to develop the combined Southwest Parkway/Chisholm Trail project an amount up to \$400 million minus so much thereof as is necessary to commit as an equity contribution to the SH 161 project;
 - TxDOT is relieved of its contingent obligation to build two interchanges under the interlocal agreement between TxDOT, the NTTA, and the City of Fort Worth concerning the development of the Southwest Parkway;
 - the provisions of this Term Sheet do not affect the approximately \$250 million in planning funds identified for the Southwest Parkway and Chisholm Trail by the RTC, but the contribution of those funds to develop the combined Southwest Parkway/Chisholm Trail project is subject to the continued allocation of those funds by the RTC;
 - the approach to financing and delivering the combined project will be defined at a later date, and TxDOT and NTTA will cooperatively develop and evaluate strategies to support and accelerate the financial feasibility of the combined project; and
 - the provisions of this Term Sheet and the resulting project agreement supersede, to the extent of any conflict, all prior agreements between TxDOT and the NTTA relating to the Southwest Parkway or the Chisholm Trail.
- The provisions of this Term Sheet and TxDOT's support of the NTTA's development of the SH 161 project as provided in this Term Sheet are subject to the Attorney General's approval of the bonds issued as part of the SH 161 Project Debt and any supporting contract, pursuant to Section 366.116, Texas Transportation Code and/or Chapter 1371, Texas Government Code. TxDOT and NTTA shall collaborate to address any legal issues raised in connection with obtaining the Attorney General's approval in order to achieve the support contemplated by this Term Sheet, without obligation, however, of either TxDOT or NTTA to change the terms of this Term Sheet.

- NTTA hereby waives the condition set forth in Section i., subsection ii. of Attachment A of the Negotiated Value Agreement.
- TxDOT and NTTA will expeditiously negotiate and enter into a binding project agreement consistent with this Term Sheet and the provisions of the Negotiated Value Agreement as modified by this Term Sheet. For the avoidance of doubt, Section 7(b) of the Negotiated Value Agreement is modified to require that the project agreement not conflict with the Negotiated Value Agreement as modified by this Term Sheet.