



NORTH TEXAS TOLLWAY AUTHORITY

RESOLUTION NO. 11-146

**A RESOLUTION CONFIRMING WAIVER OF MARKET VALUATION
AND FIRST OPTION REGARDING A MANAGED LANES PROJECT
ON IH 35E IN DALLAS AND DENTON COUNTIES**

September 21, 2011

WHEREAS, the North Texas Tollway Authority (the "NTTA"), is a regional tollway authority created and operating pursuant to Chapter 366 of the Texas Transportation Code, known as the Regional Tollway Authority Act, under which Act the NTTA is authorized to study, design, construct, operate, maintain, expand, enlarge, and extend turnpike projects in Collin, Dallas, Denton, and Tarrant counties; and

WHEREAS, Chapters 228 and 373 of the Texas Transportation Code (the "Code") pertain to the development, construction, and operation of toll projects, including NTTA turnpike projects, located within the boundaries of local toll project entities, including the NTTA; and

WHEREAS, Senate Bill 19, passed by the 82nd Legislature and effective June 17, 2011, created a streamlined primacy determination for the allocation of toll projects between the Texas Department of Transportation ("TxDOT") and the local toll project entities, such as the NTTA, replacing the market valuation and primacy determination created by Senate Bill 792, passed by the 80th Legislature and codified as Section 228.0111 of the Code; and

WHEREAS, while Section 11 of Senate Bill 19 repealed Section 228.0111 of the Code effective September 1, 2011, Section 13 of that bill provided that such repeal did not affect any agreement, resolution, or minute order previously entered into or adopted by TxDOT and any local toll project entity under that repealed section; and

WHEREAS, the NTTA and TxDOT, pursuant to former Section 228.0111 of the Code, have previously taken actions and entered into or adopted the materials described below which, pursuant to Section 13 of Senate Bill 19, are intended to remain in effect, and by which the NTTA waived both the market valuation and the NTTA's first option to develop, finance, construct, and operate the IH 35E Managed Lanes (defined below), subject to certain conditions; and

WHEREAS, under former Section 228.0111(c) of the Code, the NTTA is the local toll project entity with primary responsibility for the financing, construction, and operation of toll projects located in its boundaries, and under former Section 228.0111(g) of the Code, the NTTA has the first option (the "first option") to develop, finance, construct, and operate a toll project within its boundaries; and

WHEREAS, the proposed reconstruction and redevelopment of Interstate Highway (IH) 35E from IH 635 in Dallas County to U.S. 380 in Denton County currently is planned to include two concurrent-flow managed lanes in each direction in the median, hereinafter referred to as the “IH 35E Managed Lanes;” and

WHEREAS, the IH 35E Managed Lanes constitute a “toll project” under Chapter 228 of the Code and was subject to the market valuation and first option provisions of that chapter; and

WHEREAS, under former Section 228.0111(f-1) of the Code, TxDOT and the NTTA may agree to waive the requirement to develop a market valuation for a proposed toll project; and

WHEREAS, under former Section 228.0111(i) of the Code, the NTTA may elect not to exercise its first option with respect to a proposed toll project within its boundaries, and in such event, TxDOT shall have the option to develop, finance, construct, and operate the toll project; and

WHEREAS, by Court Order Number 08-0153 dated March 4, 2008, the Commissioners Court of Denton County (the “County”) approved a resolution requesting that TxDOT and the NTTA waive the market valuation for the IH 35E Managed Lanes and that the NTTA waive its first option to develop the IH 35E Managed Lanes and support TxDOT’s development of the IH 35E Managed Lanes in accordance with the Regional Transportation Council’s generally applicable Managed Lanes Policy (the “RTC Policy”); and

WHEREAS, on March 17, 2008, the City of Lewisville (the “City”) adopted Resolution No. 3554-03-2008(R), requesting that TxDOT and the NTTA waive the market valuation for the IH 35E Managed Lanes and that the NTTA waive its first option to develop the IH 35E Managed Lanes and support TxDOT’s development of the IH 35E Managed Lanes; and

WHEREAS, the NTTA’s Board of Directors (the “Board”) reviewed and considered the foregoing resolutions of the County and the City, and, in an effort to be fully responsive to the requests of the County and the City in advancing the IH 35E Managed Lanes to expand and improve transportation facilities in North Texas, the Board adopted NTTA Resolution 08-235, under which the Board authorized and agreed that the NTTA waived both the market valuation the NTTA’s first option to develop, finance, construct, and operate the IH 35E Managed Lanes, subject, however to TxDOT similarly waiving the market valuation and to the NTTA and TxDOT’s entering into an “Option Agreement” IH 35E Managed Lanes; and

WHEREAS, the “Option Agreement” described in Resolution 08-235 provides that notwithstanding the above-described waivers, the NTTA shall have a one-time right to elect to undertake the IH 35E Managed Lanes on the same terms as TxDOT is prepared to propose to the private-sector contracting community, with such option to be exercisable only within 30 days after the NTTA’s receipt from TxDOT of a completed Preliminary Financial Feasibility Study for the IH 35E Managed Lanes (the “PFFS”), but not earlier than September 1, 2008; and

WHEREAS, TxDOT delivered the PFFS to the NTTA on September 1, 2008, and NTTA staff and consultants reviewed the PFFS and reported to the Board regarding the PFFS, and the Board adopted NTTA Resolution 08-365, under which the Board waived its one-time right under the Option Agreement to undertake the IH 35E Managed Lanes and confirmed its waiver of the market valuation for, and its first option to develop, finance, construct and operate, the IH 35E Managed

Lanes, but stipulated that the waivers would not apply if all or any portion of the IH 35E Managed Lanes is modified to (a) fail to comply with the RTC Policy or (b) make a majority of the IH 35E lanes (exclusive of service roads) managed or toll lanes; and

WHEREAS, on June 21, 2011, TxDOT sent a letter to the NTTA requesting that it (a) confirm its previous waivers of its first option to develop, finance, construct, and operate the IH 35E Managed Lanes and (b) waive or decline to exercise its similar option under Chapter 373 of the Code; and

WHEREAS, in June 2011 TxDOT issued a Request for Information (“RFI”) to assist TxDOT in developing a strategy for project development and implementing the procurement process for the IH 35E Managed Lanes, which RFI revealed that the scope and potential terms of the IH 35E Managed Lanes changed since the NTTA last waived its right of first option on the IH 35E Managed Lanes and that TxDOT intended to develop the IH 35E Managed Lanes through a comprehensive development agreement approach; and

WHEREAS, TxDOT has delivered further information on the current scope of the IH 35E Managed Lanes and the NTTA staff and consultants have reviewed this information and reported to the Board regarding this information, and the Board has determined that it does not desire to exercise its first option to develop, finance, construct and operate the IH 35E Managed Lanes as defined by TxDOT in the RFI; and

WHEREAS, under Section 373.055(a) of the Code, either TxDOT or the NTTA may at any time before or during the process established by Subchapter B of Chapter 373 waive or decline to exercise any option, step, or other right under that subchapter that solely benefits that entity by notifying the other entity of its decision in writing;

NOW, THEREFORE, BE IT RESOLVED, the Board hereby (a) confirms the NTTA’s previous waivers of the market valuation and its first option to develop, finance, construct, and operate the IH 35E Managed Lanes, and (b) waives and declines to exercise the NTTA’s option to develop, finance, construct, and operate the IH 35E Managed Lanes pursuant to Section 373.055 of the Code, as described, and only upon the terms, in this resolution; and

BE IT FURTHER RESOLVED that the NTTA hereby states its strong support of TxDOT’s development of the IH 35E Managed Lanes, as described above in this resolution and in accordance with the RTC Policy; and

BE IT FURTHER RESOLVED that nothing in this resolution shall be construed to waive a market valuation or any option, step, or other right for any toll project other than the IH 35E Managed Lanes or to waive any right or obligation of the NTTA to develop, finance, construct, or operate any toll project other than the IH 35E Managed Lanes or otherwise signify an intention by the NTTA not to undertake any other toll project that it is authorized to study, finance, construct, operate, or maintain under the Regional Tollway Authority Act, Chapter 228 of the Code, Chapter 373 of the Code, or any other applicable law, or to waive the NTTA’s right to provide customer service and other toll collection and enforcement services for a toll project pursuant to Section 366.038 of the Code or any successor thereto; and

BE IT FURTHER RESOLVED that the foregoing waivers apply solely to the IH 35E Managed Lanes as described above in this resolution and in accordance with the RTC Policy, and such

waivers shall not apply if (a) all or any portion of the IH 35E Managed Lanes is modified to (1) fail to comply with the RTC Policy or (2) make the majority of the IH 35E lanes (exclusive of service roads) managed or toll lanes in their ultimate configuration.

ATTEST:


Victor T. Vandergriff, Chairman


Ruby Franklin, Secretary