

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on September 29, 2011, in Austin, Texas. The meeting was called to order by Chair Delisi. The meeting opened at 9:10 a.m. with the following commissioners present:

Texas Transportation Commission:

Deirdre Delisi	Chair
Ted Houghton	Commissioner
Fred Underwood	Commissioner
Bill Meadows	Commissioner

Commissioner Ned Holmes was absent from the meeting.

Administrative Staff:

John A. Barton Interim Executive Director
Bob Jackson, Office of General Counsel
Roger Polson, Executive Assistant to the Deputy Executive Director
JoLynne Williams, Chief Minute Order Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Order Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 2:16 p.m. on September 21 2011, as required by Chapter 551, of the Government Code, referred to as “The Open Meetings Act.”

ITEM 1. Approval of Minutes of the August 25 meeting of the Texas Transportation Commission

Commissioner Houghton made a motion, which was seconded, and the commission approved the minutes of the August 25, 2011, regular meeting, by a 4-0 vote.

The commission also received comments from Senator Glenn Hegar on the Cane Island Roadway and its intersection with I-10 in Katy.

**ITEM 2. Public Hearing
Review of Rules Relating to Environmental Reviews**

In accordance with Transportation Code §201.604(e), the commission accepted public comments on the department’s rules relating to environmental review of a proposed transportation project (43 TAC Ch. 2, Subchapters A-C). This item was introduced by Design Division Director Mark Marek. The commission received comments from CTRMA Executive Director Mike Heiligenstein, Williamson County

Commissioners Cynthia Long and Valerie Covey, and Hays County Commissioner Will Conley.

ITEM 3. Discussion Item

a. Update on TxDOT's modernization project

This item was presented by Austin District Engineer and Modernization Leadership Team member Carlos Lopez. Comments were also received from Chief Information Officer Louis Carr.

b. Discussion on the development of a 511 Traveler Information Program and other Acknowledgment Programs involving sponsorship opportunities

This item was deferred.

c. Discussion on the update of the Texas Rail Plan

This item was presented by Rail Division Director Bill Glavin.

d. Discussion of applications for the federal Transportation Investment Generating Economic Recovery (TIGER) III grant program

This item was presented by Rail Division Director Bill Glavin.

ITEM 13. Proposition 12 Bond Program

a. Various Counties - Revise the funding allocations for previously approved highway improvement projects funded with the proceeds of general obligation bonds issued under Transportation Code, Section 222.004 (Proposition 12 bonds) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Chair Delisi was absent for the vote.) This item was presented by Tyler District Engineer Randy Hopmann. Comments were also received relating to Item 13a and 13b from Lubbock District Engineer Doug Eichorst, Pharr District Engineer Mario Jorge, NCTCOG Executive Director Michael Morris, City of Temple Mayor Bill Jones, City of Killeen Mayor Pro-tem Scott Cospers, Cameron County Commissioner David Garza, and Orange County Commissioner, Jody Crump.

112822
FIN

Section 49-p, Article III, of the Texas Constitution (constitutional provision) provides that, to provide funding for highway improvement projects, the legislature, by general law, may authorize the Texas Transportation Commission (commission) or its successor to issue general obligation bonds of the State of Texas in an aggregate amount not to exceed \$5 billion and enter into related credit agreements.

Pursuant to the constitutional provision, the Texas Legislature, in House Bill 1, 81st Legislature, First Called Session, 2009, enacted Transportation Code, §222.004 (Enabling Act), the enabling legislation for general obligation bonds, notes and other public securities that may be issued by the commission to fund highway improvement projects (Proposition 12 bonds). House Bill 1 also amended Rider 60 to the appropriations to the Texas Department of Transportation (department) in Senate Bill 1, 81st Legislature, Regular Session, 2009 (General Appropriations Act), to allow the issuance of \$2 billion of these bonds.

In cooperation with the state's transportation partners, the department developed a list of highway improvement projects and work to be performed in connection with highway improvement activities to be funded with the portion of Proposition 12 bond proceeds that is not used to capitalize the SIB. This list was originally approved by the commission in Minute Order 112036, dated November 19, 2009, and was revised by subsequent commission minute orders. A new revised list, with proposed changes contained within the notes to the exhibit, is set forth in this minute order and is identified as Exhibit A.

As directed by the commission, staff worked with the state's transportation partners to develop a list of highway improvement projects to be developed with the \$150 million in bond proceeds approved by the Legislative Budget Board for use in engineering of highway improvement projects on some of Texas' most congested corridors. This list was approved by the commission in Minute Order 112294, dated June 8, 2010, and was subsequently revised by the commission in Minute Order 112473, dated October 28, 2010. A new revised list, with proposed changes contained within the notes to the exhibit, is set forth in this minute order and is identified as Exhibit B.

IT IS THEREFORE ORDERED by the commission that the highway improvement projects and work to be performed in connection with highway improvement activities, as identified in Exhibits A and B, are approved for funding with the proceeds of Proposition 12 bonds.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to proceed in the most feasible manner to ensure that obligation of funds is assigned to the appropriate project for project development or construction related activities, and that the chief financial officer or his designee is authorized and directed to review the planned uses of Proposition 12 bond proceeds prior to expenditure of funds to ensure compliance with the requirements for the use of proceeds of tax-exempt bonds.

Note: Exhibits A and B are on file with minute order clerk.

b. Various Counties – Approval of work to be performed in connection with highway improvement projects that will be funded with the proceeds of general obligation bonds issued under Transportation Code, Section 222.004 (Proposition 12 bonds) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Chair Delisi was

absent for the vote.) This item was presented by Tyler District Engineer Randy Hopmann.

112823
FIN

Section 49-p, Article III, of the Texas Constitution (constitutional provision) provides that, to provide funding for highway improvement projects, the legislature by general law may authorize the Texas Transportation Commission (commission) or its successor to issue general obligation bonds of the State of Texas in an aggregate amount not to exceed \$5 billion and enter into related credit agreements.

Pursuant to the constitutional provision, the Texas Legislature enacted Transportation Code, §222.004, the enabling legislation for general obligation bonds, notes and other public securities that may be issued by the commission to fund highway improvement projects (Proposition 12 bonds), and authorized the issuance of the first \$2 billion in Proposition 12 bonds. Of the initial authorization, almost \$1 billion in principal and premium amount of Proposition 12 bonds were issued in 2010.

In 2011, the 82nd Legislature, Regular Session, authorized the issuance of the unissued remainder of the \$5 billion in bonds stated in the constitutional provision. For FY 2012-2013, the legislature specified that bond proceeds of \$3 billion of the \$5 billion in authorized Proposition 12 bonds are to be used to fund projects that will relieve congestion, enhance bridge and roadway safety, and connect the state's population centers. The legislature directed that the \$3 billion in Proposition 12 bond proceeds reserved for these purposes be allocated as follows: \$300 million to acquire right of way, conduct feasibility studies and project planning, and outsource engineering work on the most congested highways, \$600 million to fund metropolitan and urban mobility projects, \$1.4 billion to fund rehabilitation and safety projects, \$500 million to fund bridge projects, and \$200 million for statewide connectivity projects.

In cooperation with the state's transportation partners, the Texas Department of Transportation (department) developed a funding allocation summary of the proceeds of \$3 billion of Proposition 12 bonds to satisfy the legislature's direction and allocation to the specific purposes and uses.

Projects funded through Category 3 (Non-Traditional Fund Sources) of the department's Unified Transportation Program (UTP) are selected by the commission. However, in order to provide maximum flexibility in the use of the legislatively directed funds, certain projects meeting the specific legislative requirements will not be listed in the UTP and will be selected at the discretion of the districts and the MPOs, subject to a determination by the department that the projects and costs are eligible for funding from the proceeds of tax-exempt bonds issued by the commission.

IT IS THEREFORE ORDERED by the commission that the highway improvement projects and work to be performed in connection with highway improvement activities satisfying the specific purposes directed by the 82nd Legislature, as allocated in Exhibit A, are approved for funding with the proceeds of \$3 billion of the \$5 billion of authorized Proposition 12 bonds.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to proceed in the most feasible manner to ensure that obligation of funds is assigned to the appropriate project for project development, and that the chief financial

officer or his designee is authorized and directed to review the planned uses of Proposition 12 bond proceeds prior to expenditure of funds to ensure compliance with the requirements for the use of proceeds of tax-exempt bonds. Any adjustment of funds between fiscal years, districts, MPOs, strategies (ROW, highway design, construction and consultants) and/or projects is subject to analysis and approval by the chief financial officer or his designee to ensure sufficient debt service is available prior to the movement of any funds and that such adjustment complies with the requirements for use of proceeds of the tax-exempt Proposition 12 bonds. Projects that are selected are authorized with CONSTRUCT authority without the need for further approval by the commission.

Note: Exhibit A is on file with minute order clerk.

15. Unified Transportation Program (UTP)

Approve updates to the 2012 UTP (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Chair Delisi was absent for the vote.) This item was presented by Finance Division Director Brian Ragland.

112824
FIN

Transportation Code, §201.991 provides that the Texas Department of Transportation (department) shall develop a Unified Transportation Program (UTP) covering a period of 10 years to guide the development of and authorize construction of transportation projects.

The Texas Transportation Commission (commission) has adopted rules in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects. The rules include guidance regarding the development of the UTP and any updates to the program, as well as public involvement requirements.

The 2012 UTP was approved by the commission on May 26, 2011, in Minute Order 112696.

On September 1, 2011, the department conducted public video-teleconferences across the state, and a public hearing on September 20, 2011, to receive comments and testimony concerning the proposed updates to the 2012 UTP.

The updates to the 2012 UTP, as shown in Exhibit A, include revised funding allocations based on funds transfer requests and applied fiscal year 2011 carryover balances. In addition, the updates address the reconciliation of Category 5 (Congestion Mitigation and Air Quality Improvement) and Category 7 (Metropolitan Mobility and Rehabilitation), additional Proposition 12 funding and other funding for various projects, and other minor revisions or technical corrections.

IT IS THEREFORE ORDERED by the commission that the updates to the 2012 UTP, as shown in Exhibit A, are hereby approved.

Note: Exhibit A is on file with minute order clerk.

Here the commission received comments from House Representative Lois Kolkhorst pertaining to the Plantersville overpass.

OPEN COMMENT PERIOD

A group of citizens from Grimes County notified the department that they would attend the meeting to speak on the proposed overpass in Plantersville on SH 105 and FM 1774 and their comments were recorded above.

Comments were received from Grimes County Commissioner Randy Krueger, Grimes County Sheriff Donald G. Sowell, Plantersville Townhall President Karen Hale, business owner Lester Underwood, Grimes County Justice of the Peace Joe Imhoff, Good Neighbor Joe Fauth and Senator Ogden’s Chief of Staff Constance Allison.

4. Aviation

a. Various Counties – Award federal and state grant funding for airport improvement projects at various locations (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Chair Delisi was absent for the vote.) This item was presented by Aviation Division Director Dave Fulton. Comments were received from Harrison County Judge Hugh Taylor.

112825
AVN

The Texas Department of Transportation (department) is authorized under the federal Aviation Development Act and the state Aviation Facilities Development and Financial Assistance Act to award federal and state funding for capital improvement projects and to assist in the development and establishment of airports in the state of Texas.

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. The department recommends the award of federal and state grant funds for the improvements.

On Thursday, Thursday, August 18, 2011, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director’s designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$23,211,210.

Note: Exhibit A is on file with minute order clerk.

b. Appoint members to the Aviation Advisory Committee (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Chair Delisi was absent for the vote.) This item was presented by Aviation Division Director Dave Fulton.

112826
AVN

Transportation Code §21.003, requires the Texas Transportation Commission (commission) to appoint a six-member Aviation Advisory Committee (committee) to advise the commission and the Texas Department of Transportation (department) on aviation matters.

Transportation Code §21.003, further provides that each member of the committee must have five years of successful experience as an aircraft pilot, an aircraft facilities manager or a fixed-base operator.

The department's administrative rules governing advisory committees (Title 43, TAC, §§1.80-1.85) provide that committee members serve three-year terms.

The terms of two members expire on August 31, 2011; therefore, it is necessary for the commission to reappoint them for terms to expire on August 31, 2014.

The commission has determined that the individuals listed below fulfill the statutory requirements to serve as members of the committee:

Gordon Richardson, Chairman	Michael Collier
Caldwell, Texas	Lakeway, Texas

IT IS THEREFORE ORDERED by the commission that the individuals identified above are hereby appointed for three-year terms as members of the Aviation Advisory Committee with terms effective September 1, 2011, and expiring on August 31, 2014.

5. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Final Adoption

Chapter 25 - Traffic Operations (MO)

Amendments to §25.21, Introduction, §25.22, Regulatory and Advisory Speeds, §25.23, Speed Zone Studies, §25.24, Speed Zone Approval, and New §25.26, Provisional Traffic and Engineering Investigation Requirements (Procedures for Establishing Speed Zones)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Traffic Operations Division Director Carol Rawson.

112827
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§25.21-25.24 and new §25.26 relating to Procedures for Establishing Speed Zones to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§25.21-25.24 and new §25.26 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B are on file with minute order clerk.

b. Proposed Adoption

(1) Chapter 2 - Environmental Policy and New Chapter 12 - Public Participation in Landscaping and Litter Removal (MO)

Repeal of §§2.61 – 2.71 (Public Participation Programs) and New §§12.1 – 12.11 (Public Participation Programs)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by General Counsel Bob Jackson.

112828
OGC

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§2.61 - 2.71 and propose new Chapter 12, Public Participation in Landscaping and Litter Removal, new Subchapter A, Public Participation Programs, new §§12.1-12.11 to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the repeal of §§2.61 - 2.71 and new §§12.1 - 12.11 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and D are on file with minute order clerk.

(2) Chapter 9 - Contract and Grant Management (MO)

Amendments to §9.33, Notice of Intent and Letter of Interest (Contracting for Architectural, Engineering, and Surveying Services); and Amendments to §9.83, Notice and Letter of Interest (Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by OGC Attorney Joanne Wright.

112829
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.33 relating to contracting for architectural, engineering, and surveying services and §9.83 relating to contracts for scientific, real estate appraisal, right of way acquisition, and landscape architectural services to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.33 and §9.83 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through C are on file with minute order clerk.

(3) Chapter 9 - Contract and Grant Sanctions (MO)

Amendments to §9.133, Procedure for Imposing Sanctions (Grant Sanctions)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Interim Compliance Office Director Angie Parker.

112830
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.133 relating to Procedure for Imposing Sanctions to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.133 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B are on file with minute order clerk.

(4) Chapter 21 - Right of Way, Chapter 25 - Traffic Operations, and Chapter 27 - Toll Projects (MO)

Amendments to §21.406, Exemptions for Certain Populous Counties (Control of Signs Along Rural Roads), §25.103, Routing Designations by Political Subdivisions (Hazardous Material Routing Designations), §27.40, Purpose and §27.42, Creation (Regional Tollway Authorities), and §27.73, Commission Approval of County Toll Project (County Toll Roads and Ferries)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by General Counsel Bob Jackson.

112831
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.406, §25.103, §27.40, §27.42, and §27.73 relating to updates to statutory population references to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - G, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.406, §25.103, §27.40, §27.42, and §27.73 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through G are on file with minute order clerk.

(5) Chapter 26 - Regional Mobility Authorities (MO)

Amendments to §26.61, Written Reports, §26.62, Annual Audits, §26.63, Other Reports, and New §26.65, Annual Reports to the Commission (Reports and Audits)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112832
TTA

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§26.61 - 26.63 and new §26.65 relating to regional mobility authorities' reports and audits to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this

minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§26.61 - 26.63 and new §26.65 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B are on file with minute order clerk.

(6) Chapter 28 - Oversize and Overweight Vehicles and Loads (MO)
Amendments to §§28.90 - 28.92 (Port of Brownsville Port Authority Permits)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Motor Carrier Division Director Carol Davis.

112833
MCD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§28.90 - 28.92, relating to Port of Brownsville Port Authority Permits to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§28.90 - 28.92, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B are on file with minute order clerk.

6. Internal Compliance Program (ICP) Report

This item was presented by Interim Compliance Office Director Angie Parker.

7. Historically Underutilized Businesses (HUB)
Establish statewide annual participation goals for the HUB Program (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by DBE/HUB/SBE Programs Director Tamela Saldaña.

112834
OCR

The Historically Underutilized Business (HUB) Program was developed by the Texas Department of Transportation (department), under authority of Transportation Code, §201.702, and intended to be consistent where practicable with both Government Code, Chapter 2161, and the department's Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) programs.

Title 43, Texas Administrative Code, §9.54, requires the Texas Transportation Commission (commission) to establish annual goals for HUB participation in state and locally funded contracts (other than highway construction and maintenance contracts). The goals are set based on a percentage of the total costs of these contracts, the most current state disparity study described in Government Code §2162.002(c), and availability of HUBs. Accordingly, the current annual goals are as follows: 21.1 percent for building construction contracts; 32.7 percent for special trade contracts; 23.6 percent for professional services contracts; 24.6 percent for other service contracts and 21 percent for commodity purchases.

IT IS THEREFORE ORDERED that the HUB goals stated in this order are effective for Fiscal Year 2012.

8. Toll Road Projects

a. Accept the Report of Actual Traffic and Revenue for the Central Texas Turnpike System (CTTS) (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Toll Operations Division Interim Director Doug Woodall.

112835
TTA

Transportation Code, Chapter 228 and other applicable law authorizes the Texas Transportation Commission (commission) to issue toll revenue bonds, bond anticipation notes, and other obligations to finance turnpike projects on the state highway system, and to enter into trust agreements and indentures of trust governing matters relating to the issuance of such obligations.

The commission has previously issued \$2,199,993,781.80 in obligations to finance a portion of the costs of the Central Texas Turnpike System (system), a turnpike project composed initially of the SH 130, SH 45, and Loop 1 project elements (2002 Project), pursuant to an Indenture of Trust and four supplemental indentures. The Indenture of Trust dated July 15, 2002 (Indenture), prescribes the terms, provisions and covenants related to the issuance of turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Section 501(c) of the Indenture covenants that for the first five full years of operation of the 2002 Project, the commission will provide to the Trustee a report showing the traffic and revenue of the system for the previous quarter.

Pursuant to Minute Order 111081, dated September 27, 2007, the 2002 Project was declared Substantially Complete as defined within the Indenture.

A report of actual traffic and revenue for the required period, attached as Exhibit A, has been prepared in accordance with Section 501(c) of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the report of actual traffic and revenue attached as Exhibit A is accepted.

Note: Exhibit A is on file with minute order clerk.

b. Johnson and Tarrant Counties - Consider the final approval of a request for financing from the North Texas Tollway Authority (NTTA) to pay for eligible costs associated with the development, design, construction, operation, and maintenance of the SH 121 toll project from the Fort Worth Central Business District at I-30 south to US 67 in Cleburne (Chisholm Trail Parkway), and authorize the executive director to enter into a Supplement to Toll Equity Loan Agreement and other necessary agreements and to execute other necessary documents in connection with the financing of the Chisholm Trail Parkway Project (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Finance Division Deputy Director John Muñoz.

112836
FIN

The Texas Department of Transportation (department) and the North Texas Tollway Authority (NTTA) have been proceeding with the development of the SH 121 toll project, a continuous express-lane facility extending from the Fort Worth Central Business District at I-30 to US 67 in Johnson County, a total length of approximately 27.6 miles (Chisholm Trail Parkway). The NTTA has exercised its option to develop, construct, and operate the project.

The department, the NTTA and the Regional Transportation Council (RTC) of the NCTCOG have cooperatively engaged in efforts to determine capital cost savings needed to make the Chisholm Trail Parkway project financially feasible. This includes the deferral of some of the direct connect bridges in Section 3B of the project and a reduction in the number of lanes to be constructed in Sections 5 and 6 of the project. This corridor configuration, which balances needed cost reductions with corridor functionality and mobility, has been titled Scenario 1C. The remaining direct connect bridges and additional lanes would be constructed when travel demand warrants.

In Minute Order 112142, dated February 24, 2010, the Texas Transportation Commission (commission) authorized the executive director of the department to enter into an Agreement to Enter into Supplement to Toll Equity Loan Agreement (Agreement) that provides for the department and the NTTA to enter into a supplement to the Toll Equity Loan Agreement for the SH 161 Project (Supplement) upon the fulfillment of the conditions precedent set forth in the Agreement. The Supplement would amend the Toll Equity Loan Agreement to increase the amount of the toll equity loan commitment for the SH 161 (PGBT Western Extension) project to provide financial assistance for the Chisholm Trail Parkway project. The effect of the Supplement is to provide a toll equity loan commitment for a single project comprised

of the PGBT Western Extension and the Scenario 1C configuration of the Chisholm Trail Parkway project. The Agreement was entered into effective April 15, 2011.

Transportation Code, §366.301 authorizes the department to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system by the NTTA on terms agreed to by the department and the NTTA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §§27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Sections 27.53 and 27.54(a) of the toll equity rules, the commission, in Minute Order 112142, granted preliminary approval of financial assistance comprised of (a) \$91 million in Proposition 14 bond proceeds that have been identified for the Chisholm Trail Parkway project and (b) an aggregate amount in nominal dollars no greater than the facility costs associated with Scenario 1C of the Chisholm Trail Parkway project, under mutually approved projections and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law, and which may only include costs for (1) design and construction, (2) operations and maintenance, and (3) major maintenance.

In Minute Order 112560, dated January 27, 2011, the commission granted final approval of financial assistance comprised of the \$91 million in Proposition 14 bond proceeds that have been identified for the Chisholm Trail Parkway project, to be used on segments of the Chisholm Trail Parkway project that have been environmentally cleared.

The NTTA has entered into a Trust Agreement and certain supplemental agreements to the Trust Agreement, pursuant to which the NTTA has issued debt obligations in order to finance a portion of the development and construction of the PGBT Western Extension project. The NTTA intends to enter into additional supplemental agreements under which the NTTA will issue additional debt obligations secured by all or a portion of the Trust Estate to finance the development and construction of the Chisholm Trail Parkway project.

The U.S. Department of Transportation (U.S. DOT) previously made a loan to the NTTA pursuant to the Transportation Infrastructure Finance and Innovation Act (TIFIA) for the purpose of financing certain costs in connection with the construction and development of the PGBT Western Extension project. Under the TIFIA Loan Agreement, the NTTA has covenanted that it will not issue any additional indebtedness that is payable from or secured by a lien on all or any portion of the Trust Estate without the U.S. DOT's prior written approval. Such approval is also a condition precedent to the department's obligation to enter into the Supplement.

As additional security for the payment of the toll equity loan, the department may enter into an agreement with the NTTA and its construction contractors for the assignment to the department of all of NTTA's right, title and interest, in, to and under the construction contracts for the Chisholm Trail Parkway project, including any and all rights that NTTA has to enforce the obligations of the contractors under the construction contracts and to receive payments, disbursements, distributions or proceeds owing, payable or required to be delivered to the NTTA (Assignment Agreements).

The department may also be required to enter into other necessary agreements in connection with the NTTA's financing of the Chisholm Trail Parkway project, including a continuing disclosure agreement under which the department would be obligated to provide certain updated financial information and operating data annually (Continuing Disclosure Agreement), and to execute other necessary documents in connection with the financing.

In accordance with Section 27.54, negotiations have been conducted with the NTTA and the form of agreed Supplement is attached as Exhibit A to this order. The Supplement provides for an increase in the toll equity loan commitment in an amount not to exceed \$1,926,655,828, an aggregate amount in nominal dollars no greater than the facility costs associated with Scenario 1C of the Chisholm Trail Parkway project eligible to be paid from the state highway fund under applicable law. With this increase, the toll equity loan commitment provided under the Supplement for the combined project comprised of the PGBT Western Extension and the Scenario 1C configuration of the Chisholm Trail Parkway is an amount not to exceed \$6,020,333,650.

Section 27.54(b) of the toll equity rules provides that prior to receiving final approval of the grant or loan of funds for the construction of a project, (1) a study of the social, economic, and environmental impacts of the project be completed, and public involvement be provided for in the manner required in the department's rules relating to environmental review and public involvement for transportation projects, and (2) an investment grade traffic and revenue report for the project be obtained from a nationally recognized traffic engineer. The executive director may waive those requirements if the director determines that the study or report is inapplicable or unnecessary due to the nature of the requested assistance.

The department previously conducted environmental studies and analyses of the Chisholm Trail Parkway project, and has secured environmental clearance in the form of a Re-evaluation of the Final Environmental Impact Statement for the section of the project from I-30 to FM 1187 in Fort Worth, which was approved by the Federal Highway Administration on June 3, 2009, and a Reevaluation of the Environmental Assessment for the section of the project from FM 1187 to US 67, which was approved by the Federal Highway Administration on May 10, 2011.

The Agreement provides that, as conditions precedent to the department's obligation to enter into the Supplement, the NTTA provide the department with a copy of the final report of the Traffic Engineer relating to the Chisholm Trail Parkway project and the Project as defined in the Supplement (both the PGBT Western

Extension project and the Chisholm Trail Parkway project), and that the date on which a record of decision, finding of no significant impact, or other action, as applicable has been obtained for the entire Chisholm Trail Parkway project, and any applicable period to challenge such action shall have lapsed with no challenge being brought (NEPA Finality Date).

The department has received a copy of the investment grade traffic and revenue report for the Chisholm Trail Parkway project and a letter update of the traffic and toll revenue estimates for the PGBT Western Extension project. Provided there is no challenge, the NEPA Finality Date will occur on January 23, 2012.

As required by Section 27.53, the NTTA has an internal ethics and compliance program that satisfies the requirements set forth in 43 TAC §1.8. The NTTA has committed that during construction of the portions of the Chisholm Trail Parkway project for which the NTTA is responsible, the NTTA will assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals necessary for the development of that portion of the project, and for compliance with all applicable federal and state laws, regulations, and policies.

The Chisholm Trail Parkway project is consistent with the Statewide Transportation Plan, the Statewide Transportation Improvement Program, and the approved plan of the North Central Texas Council of Governments (NCTCOG), the metropolitan planning organization of the Dallas-Fort Worth region, and is consistent with the transportation improvement program of the NCTCOG and with the State Implementation Plan.

The timely extension of SH 121 south and west from I-30 in Fort Worth to US 67 in Cleburne is a crucial element in the development of the cities of Fort Worth and Cleburne, Johnson and Tarrant counties, and the surrounding region. Development of the Chisholm Trail Parkway project will benefit the region by reducing congestion and improving air quality in those areas.

The financial assistance for the Chisholm Trail Parkway project is critical to the NTTA's overall plan of finance. The successful funding of the Chisholm Trail Parkway project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by providing for the timely completion of the Chisholm Trail Parkway project, which will enhance mobility and operational efficiency, decrease congestion, increase safety, increase economic development opportunities, decrease travel time, decrease air pollution, and enhance quality of life in the SH 121 corridor. Without the department's assistance, the timeline to complete the Chisholm Trail Parkway project and realize those benefits could be delayed.

The financial assistance for the Chisholm Trail Parkway project should lower the NTTA's capital costs, which will reduce the amount of equity from the NTTA System that will be necessary to complete the Chisholm Trail Parkway project. This will allow the NTTA to use that equity to finance both the Chisholm Trail Parkway project and the PGBT Western Extension project. The Chisholm Trail Parkway project will expand the availability of funding for transportation projects or reduce direct state costs through the NTTA's issuance of bonds to finance project costs, and the potential

payment of certain project expenses by the NTTA System's Capital Improvement Fund. The NTTA and the combined project comprised of the PGBT Western Extension and the Chisholm Trail Parkway are likely to have sufficient revenues to assure repayment of any loan from the department.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the North Texas Tollway Authority meets the requirements of 43 TAC §27.53 and §27.54 and, in accordance with those provisions, the commission grants final approval of financial assistance for the Chisholm Trail Parkway project in an aggregate amount in nominal dollars not to exceed \$1,926,655,828, and authorizes the executive director of the department to execute and deliver the Supplement, the form of which is attached as Exhibit A to this order, with such changes as the executive director may approve.

IT IS FURTHER ORDERED that the executive director of the department is authorized to enter into any other necessary agreements or to execute any other necessary documents in connection with the NTTA's financing of the Chisholm Trail Parkway project, including the Assignment Agreements and the Continuing Disclosure Agreement.

IT IS FURTHER ORDERED that, subject to the satisfaction of all other conditions precedent to the department's obligation to enter into the Supplement, the executive director is authorized to waive the NEPA Finality Date condition precedent and to waive the submission of an investment grade traffic and revenue report for the combined PGBT Western Extension and Chisholm Trail Parkway project.

IT IS FURTHER ORDERED that the actions authorized in this order are subject to the U.S. DOT's written approval of the NTTA's issuance of additional indebtedness to finance the Chisholm Trail Parkway project, as required under the TIFIA Loan Agreement.

Note: Exhibit A is on file with minute order clerk.

9. Debt and Portfolio Management

Authorize the Investment Officer to participate in specific governmental investment pools (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Finance Division Deputy Director John Muñoz.

112837
FIN

Transportation Code, Chapter 228 and other applicable law authorizes the Texas Transportation Commission (commission) to issue turnpike revenue bonds, bond anticipation notes, and other obligations to finance turnpike projects on the state highway system, and to enter into trust agreements and indentures of trust governing matters relating to the issuance of such obligations.

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds

and funds under its control in accordance with investment policies approved by the commission.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy applicable to funds of the commission held by Bank One, N.A., (in such capacity with its successors, currently *Bank of New York Mellon*), as trustee (Trustee) under the Indenture of Trust dated July 15, 2002 (Indenture) between the commission and the Trustee.

The commission has previously issued \$2,199,993,781.80 in obligations to finance a portion of the costs of the Central Texas Turnpike System (System) pursuant to the Indenture and five supplemental indentures. The Indenture prescribes the terms, provisions and covenants related to the issuance of turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Pursuant to Section 402 of the Indenture, the commission contributed approximately \$520 million to the trust to pay a portion of the costs of the 2002 Project. As of the current date, a portion of the bond proceeds, the capital contribution made by the commission, system revenues and investment earnings are held in the trust accounts.

The commission, as a public authority of the State of Texas, is empowered to delegate to the public funds investment pools the authority to invest funds and to act as custodian of investments purchased with eligible investment funds held in trust under the Indenture. It is in the best interest of the commission to invest funds held under the Indenture in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act, in accordance with the terms of the Indenture and the investment policies approved by the commission.

The Texas Local Government Investment Pools (TexPool/TexPool Prime), the Texas Treasury Safekeeping Trust Company, the Lone Star Investment Pool, the Local Government Investment Cooperative (LOGIC) and the Texas Short Term Asset Reserve Program (TexStar), public funds investment pools and management companies, were created on behalf of entities whose investment objectives in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

IT IS THEREFORE ORDERED that the executive director and the designated authorized representatives of the commission under the Indenture are authorized to enter into participation agreements and/or funds management agreements to establish accounts in the name of the Texas Transportation Commission – Central Texas Turnpike System in each of the following investment pools or funds management companies, to the extent allowed by law: TexPool/TexPool Prime, the Texas Treasury Safekeeping Trust Company, the Lone Star Investment Pool, LOGIC and TexStar for the purpose of transmitting eligible funds under the Indenture for investment in the relevant investment pools or accounts, and the executive director and authorized representatives are authorized to take actions and execute documents necessary to carry out the investment of funds held under the Indenture in investment pools or accounts and to instruct the Trustee in respect of such investments.

IT IS FURTHER ORDERED that the executive director and other authorized representatives of the commission under the Indenture are authorized to select one or more investment pools or management companies named above, instruct the Trustee to invest eligible funds under the Indenture in the selected investment pools or management companies, withdraw funds from time to time, issue letters of instruction and execute other documents in connection with the investment of funds under the Indenture and take all other actions deemed necessary or appropriate for the investment and withdrawal of funds under the Indenture that are invested in investment pools and/or management companies.

10. Purchase of Buildings and Property Exchanges

a. Travis County – Consider for approval the department’s option to assume all rights and obligations under the separated ground leases upon payment in full of the lease with option to purchase contract for the buildings at 150 and 200 East Riverside, Austin, Travis County. Authorize the department to accept a deed of the buildings from the Texas Facilities Commission (TFC) and authorize the executive director to enter into an assignment agreement from TFC to assume all rights and obligation for the ground leases (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Maintenance Division’s Facilities Management Director Uly Flores.

112838
MNT

Transportation Code, Chapter 203, authorizes the Texas Department of Transportation (department) to acquire rights and interest in real property and interest for any improvement the department considers necessary, useful or beneficial for highway operations.

The Texas Facilities Commission (TFC), successor agency to the General Services Commission, is authorized under Government Code, Chapter 2167, to lease real property for a state agency by a contract which contains an option to purchase such property. In June 1993, the State of Texas, acting by and through the General Services Commission, entered into a lease with option to purchase contract on behalf of the department, to provide facilities needed to house headquarters operations.

In accordance with the requirements of the lease with option to purchase contract, TFC, on behalf of the department, has elected to exercise its option to purchase the buildings at 150 and 200 East Riverside Drive, Austin, Travis County. In connection with the exercise option to purchase, the department, shall assume all rights and obligations of the ground leases that continue through 2022.

The ground leasehold interest in connection with the conveyed buildings at 150 and 200 East Riverside, together with all improvements of any kind or nature located in, on, or under the land, are collectively referred to and more particularly described by metes and bounds in Exhibits A and B.

The department paid-in-full the obligation for the buildings under the contract terms on September 15, 2011. TFC has agreed to deed all rights, title and interest in

the buildings to TxDOT, and to execute any and all documents necessary to assign the ground leases associated with the interest in real property to the department.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to accept a deed of the buildings from TFC, and to execute any and all documents necessary to assign all rights and obligations of the ground leases associated with the interest in real property, to the department.

Note: Exhibits A and B are on file with minute order clerk.

b. Various Counties – Dallas District Facilities - Authorize the department to issue three Requests for Proposals for separate projects, then select, rank and negotiate a Development and Exchange Agreement with the top-ranked design-build firms for the design and construction of new facilities, buildings and other facility support structures on state-owned property located in Cedar Hill, Garland, Irving, Kaufman, and McKinney (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Maintenance Division's Facilities Management Director Uly Flores.

112839
MNT

Transportation Code, Chapter 201, Section 201.1055, authorizes agreements with private entities for the acquisition, design, construction or renovation of buildings for the Texas Department of Transportation (department) by various methods. The methods include the exchange of existing department-owned property and improvements with a private entity in return for the construction of a building or other facility required to support department operations on department-owned property.

Under that authority, the department intends to issue three separate requests for proposals to select qualified private entities to design, construct, and provide other facility-support structures in exchange for existing properties. If the design and construction cost is less than the appraised value of the property, the private entity will be required to pay the difference in cash upon the exchange. If the costs are more than the value of the exchange, the private entity shall have the option to donate the difference. The construction of buildings on state-owned property will provide critically needed replacement facilities required to support department operations and mission.

The following department-owned properties to be exchanged will no longer be needed for the purposes for which they were acquired:

Property located at 12000 Greenville Avenue, Dallas, Dallas County, Texas, having an appraised value of \$10.2 million, more particularly described by metes and bounds in Exhibit A; will be exchanged for the following improvements:

- Construction of a new area engineer and maintenance facility to be completed on department-owned property located at SH 183 and Peters Road, in the city of Irving, Dallas County, Texas, more particularly described by metes and bounds in Exhibit E;

- Construction of a new area engineer and maintenance facility to be completed on department-owned property located at FM 2728 at SH 34, in the city of Kaufman, Kaufman County, Texas, more particularly described by metes and bounds in Exhibit F;
- Construction of a new engineer and laboratory building on department-owned property located at 2205 SH 5, McKinney, Collin County, Texas, more particularly described by metes and bounds in Exhibit G;
- Property located at 901 I 30, Rockwall, Rockwall County, Texas, having an appraised value of \$2 million, more particularly described by metes and bounds in Exhibit B; and
- Property located at 2750 Washington Street (SH 34), Kaufman, Kaufman County, Texas, having an appraised value of \$1.1 million, more particularly described by metes and bounds in Exhibit C; will be exchanged for the following improvements:
 - Construction of a maintenance facility to be completed on department-owned property located at 1851 SH 66, Garland, Dallas County, Texas, more particularly described by metes and bounds in Exhibit H;
 - Property located at 4202 Corn Valley Road, Grand Prairie, Dallas County, Texas, having an appraised value of \$656,539, more particularly described by metes and bounds in Exhibit D; will be exchanged for the following improvements:
 - Construction of shop and other support facilities on department-owned property located at 1424 High Meadows Way, Cedar Hill, Dallas County, Texas, more particularly described by metes and bounds in Exhibit I;

The department proposes to negotiate three separate development and exchange agreements with the top-ranked proposers to procure the new facilities, buildings and other facility support-structures, based on whose proposal provides the best value to the department. Best value will be based on cost estimates for the site development, design, construction and management services and all other associated cost.

IT IS THEREFORE ORDERED by the commission that the department issue three separate requests for proposals and commence negotiations with the top-ranked proposer to design, construct and provide other facility-support structures as described, in exchange for the department-owned properties located in Dallas, Rockwall, Kaufman and Grand Prairie.

IT IS FURTHER ORDERED that the department may negotiate with the second-ranked proposer or reissue a request for proposal for any of the projects in the event that suitable terms for a development and exchange agreement cannot be accomplished.

Note: Exhibits A through I are on file with minute order clerk.

11. Public Private Partnership Procurements

a. Authorize the department to issue a request for qualifications for the development, design, construction, financing, maintenance, and operation of all or any portion of the I-35E managed lanes project in Dallas and Denton counties from I-635 to US 380,

subject to the North Texas Tollway Authority's decision to waive or decline to exercise its option to develop, finance, construct, and operate the project (MO)

Commissioner Meadows made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112840
TTA

Subchapter E, Chapter 223, Transportation Code prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement (CDA) with a private entity that provides for the design, development, financing, construction, maintenance, repair, operation, extension, or expansion of an eligible project.

The I-35E corridor in Dallas and Denton counties is one of the oldest, most highly congested, demand-critical and mobility-constrained transportation corridors in the region. Since it opened as part of the original national interstate program almost 50 years ago, the northern link of the corridor has been under a constant state of maintenance, upgrade, expansion, evaluation, planning, design and construction.

Senate Bill 1420, 82nd Legislature, 2011, authorized the department to enter into a CDA for all or part of the I-35E Managed Lanes project in Dallas and Denton counties from I-635 to US 380. The project will replace the functionally obsolete, deteriorating infrastructure as well as add capacity for projected future increases in traffic volume.

By Resolution 11-146, adopted on September 21, 2011, the North Texas Tollway Authority (NTTA) confirmed the NTTA's previous waivers of its first option to develop, finance, construct, and operate the I-35E Managed Lanes project, and waived and declined to exercise the NTTA's option to develop, finance, construct, and operate the I-35E Managed Lanes project pursuant to Transportation Code, §373.055, as described, and only upon the terms, in the resolution. Pursuant to Transportation Code, §373.053, the department has determined that its option to develop, finance, construct, and operate the I-35E Managed Lanes project should be exercised.

The development and completion of all or part of the I-35E Managed Lanes project could be expedited through the use of a public-private partnership agreement, and the employment of innovative methods for the development and financing of projects that are available with a public-private partnership agreement. Development of the I-35E Managed Lanes project is a crucial element to responding to traffic congestion throughout the Dallas/Fort Worth Metroplex.

Transportation Code, §223.203 prescribes requirements for a CDA procurement and requires the department to publish a request for qualifications in the *Texas Register* that includes the criteria that will be used to evaluate any qualification submittals, the relative weight given to the criteria, and a deadline by which qualification submittals must be received.

The planned improvements may provide increased capacity through the use of congestion pricing on new managed lanes, and/or the addition of new collector-distributor, general purpose, and frontage road lanes, and are critical to the region's

continued mobility and economic viability. Increasing capacity of the corridor will relieve congestion, reduce travel time, and improve air quality, as well as provide social and economic benefits locally, regionally, statewide, and nationwide. The I-35E Managed Lanes project will also provide a transportation system that will meet the travel needs of people, goods, and services safely, efficiently, and economically.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the department is authorized to publish in the *Texas Register* and in one or more newspapers of general circulation a request for qualifications to develop, design, construct, finance, maintain, and operate all or any portion of the I-35E Managed Lanes project in Dallas and Denton counties from I-635 to US 380.

b. Issuance of a determination as to whether participation by URS Corporation as a member of a proposer team for a comprehensive development agreement (CDA) project while performing consulting services for the department in connection with another CDA project would constitute a conflict of interest (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112841
TTA

Title 43, Texas Administrative Code, Section 27.8 prescribes ethical standards of conduct applicable to private entities, including consultants and subconsultants, participating in the comprehensive development agreement (CDA) program of the Texas Department of Transportation (department).

Section 27.8(c)(8) provides that a consultant actively engaged and performing procurement services to the department with respect to a CDA project may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for another CDA project, or may have a financial interest in any of the foregoing entities with respect to another CDA project, provided the consultant submits a request for a written determination under 43 TAC §27.8(c)(9) that establishes to the satisfaction of the Texas Transportation Commission (commission) that such participation or interest would not constitute a conflict of interest or create the appearance of a conflict of interest, and the consultant institutes ethical walls or other safeguards required by the department.

Pursuant to Section 27.8(c)(9), in determining whether a conflict of interest exists or whether to approve an exception to the applicability of Section 27.8(c) (conflict of interest rules) to services performed by a consultant or subconsultant, the commission shall consider the recommendation of the executive director of the department and:

- (1) the extent to which the firm obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies, and processes concerning the CDA program or a particular project or procurement that could provide an unfair competitive advantage with respect to the procurement or project at issue;

- (2) the type of consulting services at issue;
- (3) the particular circumstances of each procurement;
- (4) the specialized expertise needed by the department and proposers to implement the procurement;
- (5) the past, current, or future working relationship between the consultant and the department;
- (6) the period of time between the potential conflict situation and the project at issue; and
- (7) the potential impact on the procurement and project at issue, including competition.

On August 12, 2011, URS Corporation (URS) submitted a request to the executive director for a determination in accordance with Section 27.8(c)(9) that a conflict of interest does not exist between URS' procurement services and URS' potential participation on a CDA developer team for the Grand Parkway and I-35E projects. URS is currently performing procurement services for the SH 183 CDA project in Dallas County.

In its request letter, URS states that there are limited instances where URS employees could gain confidential knowledge during a procurement that could provide an unfair competitive advantage, and in those instances where information not generally known by the public is presented to URS staff, URS has maintained ethical walls segregating procurement personnel from involvement with personnel associated with URS' CDA or design-build efforts.

URS states that the firm's first project development assignment under the procurement services contract is the current one relating to the SH 183 project. URS further states that TxDOT has implemented protocols to limit the sensitive information available to the procurement engineer by excluding staff from the financial and other committees engaged in the CDA selection process. URS also notes that all URS employees working on the SH 183 procurement have signed a confidentiality agreement and are subject to other firewalls prohibiting the sharing of confidential information with any person who does not have a need to know the information and who has not signed a confidentiality agreement.

URS states that the firm provides procurement services that are highly specialized and address areas of risk analysis, projections of anticipated municipal growth, value engineering and other project specific technical services, including reviewing CDA technical requirements that are publicly available. URS states that the exclusion of URS from participating on a developer team for CDA projects where it has not provided procurement services will result in the loss of expertise and decreased competition.

In its August 19, 2011, response to the department's request for additional information, URS states that URS staff has not participated in any meetings or conference calls in which sensitive information regarding the Grand Parkway and I-35E projects has been discussed or had access to sensitive information. URS states the firm did not participate because of a joint decision by the department and URS to limit the URS team's potential conflict of interest. URS further states that URS team members

have not participated in discussions regarding business strategy and ideas of potential competitors for any CDA procurement.

URS states that URS has not been included in past meetings of legal and financial subcommittees for upcoming procurements, nor will they attend future meetings. The firm will be engaged in specific tasks that may be supplied to these subcommittees, and which involve technical aspects of analysis.

Most of the criteria in Section 27.8(c)(9) are considered when determining whether to grant an exception to the applicability of the conflict of interest rules to the services in question. The criterion of concern in the issuance of a determination in response to URS' request is the extent to which the firm obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies, and processes concerning the comprehensive development agreement program or a particular project or procurement that could provide an unfair competitive advantage with respect to the procurement or project at issue.

A consultant providing procurement services may be privy to discussions concerning sensitive or confidential information, including strategies for structuring the procurement, evaluation criteria and points to be assigned to each evaluation criterion, and what is important to evaluators, that other proposers will not be aware of. Moreover, those consultants may participate in internal discussions the department has concerning issues that come up at one-on-one meetings with proposers during industry review of the draft request for proposals for a CDA project. Those issues typically are not project specific. A consultant providing procurement services will be aware of the department's sensitivities on those issues and how far the department will be willing to go to compromise on those issues. This understanding of the department's procurement and negotiation strategy can be used to the advantage of the consultant and the proposer who uses their consulting services.

In addition, discussions during one-on-one meetings may involve the confidential business strategy of a proposer that is the competitor of the consultant on a different project. Additionally, the department, historically and currently, conducts CDA procurements for multiple projects at the same time. A procurement engineer on a project is tasked to review the confidential alternative technical concepts submitted by proposers for that project. The proposers submitting the alternative technical concepts are potential competitors to the proposer the procurement engineer is a part of. Given the schedule for CDA procurements, it is possible that consultants may be reviewing the alternative technical concepts of their competitors at the same time that they are developing their own alternative technical concepts for a different project.

Department staff has indicated that URS has not been privy to current sensitive information that could be carried forward and valuable in future CDAs. URS has not been involved with the planning of strategy sessions for the current candidate CDA projects, and URS' involvement in past efforts is not directly applicable to the current philosophy in developing CDA procurement strategies. In addition, URS' involvement in past efforts resulted in documents that are now public and available to all prospective bidders. Any sensitive information or knowledge URS may have gained during those activities is either public or no longer current and relevant to future project discussions.

Based on the information provided by URS and department staff, URS has not obtained access to or gained knowledge of confidential or sensitive information, procedures, policies, and processes concerning the CDA program or a particular project or procurement that could provide an unfair competitive advantage with respect to the future procurements and projects URS is seeking to participate as a member of a proposer or developer team, either through never having obtained access to such information, or because the information is no longer sensitive or confidential because it is publicly available or no longer relevant to future project procurements.

In accordance with the requirements of Section 27.8(c)(9), the executive director has recommended that the commission determine that URS' participation on a proposer team with respect to the Grand Parkway and I-35E projects would not constitute a conflict of interest or create the appearance of a conflict of interest. There is insufficient information supporting a conclusion that a conflict of interest exists, or that there is the appearance of a conflict of interest.

Section 27.8(c)(12) provides that in instances where there is a written determination under Section 27.8(c)(9) that a conflict of interest does not exist, or an exception to the application of the conflict of interest rules is granted, the department may still, in its discretion, restrict the scope of services the consultant or subconsultant may be eligible to perform for the department in order to further the intent and goals of the conflict of interest rules.

IT IS THEREFORE DETERMINED by the commission, in consideration of the foregoing facts and the recommendation of the executive director, and pursuant to the requirements of 43 TAC §27.8(c)(8) and (9), that URS' participation as an equity owner, team member, consultant, or subconsultant of or to a proposer for the Grand Parkway and I-35E projects, would not constitute a conflict of interest or create the appearance of a conflict of interest.

IT IS FURTHER ORDERED that the department review the ethical walls that have been or are proposed to be implemented by URS, and existing confidentiality agreements signed by URS staff, and require URS to implement any additional safeguards deemed necessary to ensure that neither a conflict of interest nor the appearance of a conflict of interest is created in the future as a result of URS' participation as part of a proposer team.

IT IS FURTHER ORDERED that the department review URS' scope of services under their procurement engineering contract and restrict that scope as necessary to ensure that neither a conflict of interest nor the appearance of a conflict of interest is created in the future as a result of URS' participation as part of a proposer team.

c. Issuance of a determination as to whether participation by CH2M HILL as a member of a proposer team for a comprehensive development agreement (CDA) project while performing consulting services for the department in connection with another CDA project would constitute a conflict of interest (MO)

This item was deferred.

12. Pass-Through Toll Program

Authorize the executive director or designee to negotiate and execute a final pass-through toll agreement with Bexar County which was successful in negotiating the financial terms of a pass-through agreement following the conditional selection of its proposal under the December 16, 2010, pass-through toll program call by the commission in Minute Order 112685 on May 26, 2011; and discussion on the status of unexecuted agreements and available funding under the 2009 and 2010 pass-through toll program calls (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock. Comments were also received from Orange County Commissioner Jody Crump.

112842
TTA

On December 16, 2010, by Minute Order 112526, the Texas Transportation Commission (commission) approved a program call for highway projects to be developed on the state highway system under a pass-through toll program agreement (program call). The commission further determined that (i) monies available that can be allocated among all proposals selected under this program call will be limited to an estimated total of \$250 million in Category 12 funds; (ii) only the following category of project costs described in 43 TAC §5.53(a)(11) will be considered as eligible for reimbursement under this program call: construction cost, exclusive of construction engineering cost, and, in the case of a pass-through toll project submitted as a design-build project, the construction cost, exclusive of construction engineering costs must be broken out separately as one component of the total project cost; (iii) the value of development and implementation services and products for the project, including but not limited to environmental studies and mitigation, right-of-way acquisition, engineering, and construction inspection services that have been or will be provided by the department, will be deducted from the eligible reimbursement amounts; and (iv) federal and state funding that is otherwise programmed for or committed to a proposed pass-through toll project will not be considered as part of the proposer's contribution, nor may it be reimbursed under the program.

Pursuant to Minute Order 112526 and Title 43 Texas Administrative Code §§5.51-5.60 (rules), the Texas Department of Transportation (department) published a notice in the Texas Register designating a 60-day period commencing on December 31, 2010, for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was March 1, 2011. Department staff evaluated the proposals that were timely submitted under the program call using the items of consideration set forth in §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

In accordance with §222.104(b), Transportation Code and §§5.54-5.55 of the rules, the commission granted preliminary approval on May 26, 2011, in Minute Order 112685, authorizing the department to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals were

selected by the commission in that minute order as providing the best value to the state. The agreements will provide for the payment of pass-through tolls to the selected public entities as reimbursement for the construction of facilities on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

In accordance with §5.58(b)(3)(A) of the rules, the commission finds that it is in the public interest to require all agreements negotiated with the selected public entities to contain a provision that limits reimbursement to the actual costs incurred by the public entity (actual cost provision). The actual cost provision will be based on the following concepts:

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). Payments of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the construction contract (actual cost of construction), subject to the following two exceptions:
 - (a) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated total construction cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
 - (b) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated construction of cost, if the following conditions are met:
 - (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's reimbursement amount as set forth in Exhibit A;
 - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
 - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right-of-way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (iv) the public entity receives the department's prior written consent for the expenditures.

- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
- (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
- (4) Construction costs shall have the same meaning as described in the program call.

The department and Bexar County have agreed to a total reimbursement through pass-through tolls for construction of the project, a reimbursement rate per vehicle mile, the minimum amount to be reimbursed in any year with the project open to traffic, and the maximum amount per year, all as set forth in Exhibit A. The agreement will expire once the total amount of that agreement has been reimbursed. The project will be authorized and reimbursed from Category 12, Strategic Priority funds.

In accordance with §5.57 of the rules, the commission finds that: (1) the project serves the public interest and not merely a private interest; (2) the proposed pass-through agreement is in the best interest of the state; (3) the project is compatible with existing and planned transportation facilities; and (4) the project furthers state, regional, and local transportation plans, programs, policies, and goals.

Before the project in the selected proposal is designed, developed, or constructed using funds administered by the department, the project: (1) must be included in the department's Unified Transportation Program, thereby identifying committed funding for the project; (2) must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or designee is authorized to negotiate and execute a pass-through toll agreement with Bexar County for the construction of its project as identified in Exhibit A, in accordance with the negotiated terms, actual cost provision described in this minute order, and such other terms the department determines to be necessary.

Note: Exhibit A is on file with minute order clerk.

14. Transportation Planning and Financing

a. Appoint members to the Border Trade Advisory Committee (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Transportation Planning & Programming Division Director Jim Randall.

112843
 TPP

Transportation Code, Section 201.114(b), requires the Texas Transportation Commission (commission) to appoint members to the Border Trade Advisory Committee (committee) to assist the commission in defining and developing a strategy and making recommendations for addressing the highest priority border trade transportation challenges.

Texas Department of Transportation administrative rules governing advisory committees, Title 43, Texas Administrative Code, Section 1.84, provide that the committee members serve staggered three-year terms.

The commission has determined that the individuals or positions listed below fulfill the statutory requirements to serve as members of the committee and shall serve the terms specified:

Terms expiring August 31, 2014:

- Brownsville Metropolitan Planning Organization, Policy Board Chair or designee
- El Paso Metropolitan Planning Organization, Policy Board Chair or designee
- Harlingen-San Benito Metropolitan Planning Organization, Policy Board Chair or designee
- Hidalgo County Metropolitan Planning Organization, Policy Board Chair or designee
- Laredo Metropolitan Planning Organization, Policy Board Chair or designee
- Midland Odessa Transportation Organization, Policy Board Chair or designee
- The Honorable Roberto Fernandez, Mayor, City of Del Rio, or designee
- The port director of the Port of Brownsville or the port director's designee

IT IS THEREFORE ORDERED by the commission that the individuals or positions named above are appointed to the Border Trade Advisory Committee for the terms specified.

b. Various Counties – Concurrence with the Regional Transportation Council of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Finance Division Director Brian Ragland.

112844
 TTA

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA) and the surplus revenue of a toll project or system.

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the

region in which the project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may assign the responsibility for allocating money in a subaccount to the metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (SH 121 payments).

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved, and authorized the department's executive director to enter into a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 121 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 121 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009, the commission clarified that commission concurrence in projects selected by the RTC to be financed with surplus toll revenue and CDA concession payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. The minute order requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the Dallas District funded with the SH 121 payments. In Minute Order 111215, dated January 31, 2008; Minute Order 111439, dated July 31, 2008; Minute Order 111528, dated September 25, 2008; Minute Order 111553, dated October 30, 2008; Minute Order 111822, dated May 28, 2009; Minute Order 111854, dated June 25, 2009; Minute Order 111928, dated August 27, 2009; Minute Order 112047, dated November 19, 2009; Minute Order 112121, dated January 28, 2010;

Minute Order 112273, dated May 27, 2010; Minute Order 112568, dated January 27, 2011; Minute Order 112603, dated February 24, 2011, and Minute Order 112758, dated July 28, 2011, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the Dallas District to be funded with the SH 121 payments.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects as shown in Exhibit A that have been selected by the RTC to be funded with the SH 121 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air-quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 121 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right-of-way acquisition, preliminary engineering, and construction engineering, and the costs of department staff incurred in the development, procurement, and construction of the projects.

Note: Exhibits A through C are on file with minute order clerk.

c. **Various Counties** – Concurrence with the Regional Transportation Council of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Finance Division Director Brian Ragland.

112845
FIN

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA) and the surplus revenue of a toll project or system.

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which the project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may

assign the responsibility for allocating money in a subaccount to the metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County (SH 161 payments).

Pursuant to Transportation Code, §228.012, the SH 161 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 161 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved, and authorized the department's executive director to enter into a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 161 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 161 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009 the commission clarified that commission concurrence in projects selected by the RTC to be financed with surplus toll revenue and CDA concession payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. The minute order requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the Dallas District funded with the SH 161 payments. In Minute Order 112759, dated July 28, 2011, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the Dallas District to be funded with the SH 161 payments.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects as shown in Exhibit A that have

been selected by the RTC to be funded with the SH 161 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air-quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 161 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right-of-way acquisition, preliminary engineering, and construction engineering, and the costs of department staff incurred in the development, procurement, and construction of the projects.

Note: Exhibits A through C are on file with minute order clerk.

16. State Infrastructure Bank (SIB)

Final Approval

Montgomery County – City of Magnolia – Consider granting final approval of an application from the City of Magnolia to borrow \$2 million from the SIB to pay for the relocation and rehabilitation of city water and sewer lines along FM 1774 in connection with the reconstruction of FM 1774 from north of FM 1488 to south of West Lost Creek Boulevard (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Finance Division Director Brian Ragland.

112846
FIN

On August 25, 2011, by Minute Order 112795, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the City of Magnolia (city) to borrow \$2 million to pay for the relocation and rehabilitation of city water and sewer lines along FM 1774 in connection with the reconstruction of FM 1774 from north of FM 1488 to south of West Lost Creek Boulevard (project).

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed, and that the Texas Department of Transportation has approved those studies. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the application for SIB financial assistance submitted by the City of Magnolia to borrow \$2 million from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the city. The loan will be repaid over a period of 15 years at 3.0 percent interest per annum. No deferral of repayment is authorized. The final payment will be August 1, 2026.

17. Obligation Limit Report

Status report on the FY 2012 Obligation Limit, the actual obligations utilized through the current month, proposed remaining highway maintenance and construction contract letting for the fiscal year and an update on motor fuel tax receipts

This item was presented by Finance Division Director Brian Ragland.

18. Contracts

Award or reject contracts for maintenance, highway and building construction

a. Highway Maintenance and Department Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Construction Division Interim Director Ken Barnett.

112847
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on September 8 and 9, 2011.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance and department building construction contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any

contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A is on file with minute order clerk.

b. Highway and Transportation Enhancement Building Construction (see attached itemized list) (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Construction Division Interim Director Ken Barnett. Comments were also received from Sundt Construction, Inc., Senior Vice President John Carlson and C.F. Jordan Construction Executive Vice President John Goodrich.

112848
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on September 8 and 9, 2011.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the commission respectively award to the lowest bidder or reject, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract

proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A is on file with minute order clerk.

19. Eminent Domain Proceedings

Various Counties – Authorize the filing of condemnation proceedings to acquire real property by eminent domain for non-controlled and controlled access highways (see attached list) (MO)

Commissioner Houghton made a motion that the Texas Transportation Commission authorize the Texas Department of Transportation to use the power of eminent domain to acquire the properties described in the minute order set forth in the agenda for the current month for construction, reconstruction, maintenance, widening, straightening, or extending the highway facilities listed in the minute order as a part of the state highway system, and that the first record vote applies to all units of property to be condemned. The motion was seconded and the following minute order was approved by Chair Delisi, Commissioner Houghton, Commissioner Underwood, and Commissioner Meadows (a vote of 4 – 0). This item was presented by Right of Way Division Director John Campbell.

112849
ROW

To facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, the Texas Transportation Commission (commission) finds that public necessity requires the laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating of the highway facilities listed below as a part of the State Highway System (highway system).

As provided for by Transportation Code, Chapter 203, Subchapter D, including Sections 203.051, 203.052, and 203.054, the commission finds and determines that each of the parcels of land listed below, and more particularly described in the attached Exhibits (parcels), are necessary or convenient as a part of the highway system to be constructed, reconstructed, maintained, widened, straightened, or extended (constructed or improved) and it is necessary to acquire fee simple title in the parcels or such lesser property interests as set forth in the attached Exhibits.

The commission finds and determines that the highway facilities to be constructed or improved on the parcels identified and listed below under "CONTROLLED ACCESS" are designated as a Controlled-Access Highway in accordance with Transportation Code, Section 203.031; and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits A - I. Where there

is adjoining real property remaining after acquisition of a parcel with respect to the highway facilities to be constructed or improved on the parcels identified and listed below under "NON-CONTROLLED ACCESS," roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits 1 - 15, in accordance with Transportation Code, Sections 203.002 and 203.003.

The commission finds and determines that condemnation of the parcels is required.

IT IS THEREFORE ORDERED that the initiation of condemnation proceedings for the parcels is adopted and authorized by a single order for the parcels, and this first vote by the commission applies to all of the parcels.

IT IS FURTHER ORDERED that the executive director is hereby authorized to proceed to condemnation on the parcels and directed to transmit or cause to be transmitted this request of the commission to the Office of the Attorney General to file or cause to be filed against all owners, lienholders, and any owners of any other interests in the parcels, proceedings in condemnation to acquire in the name of and on behalf of the state, fee simple title to each parcel or such lesser estates or property interests as are more fully described in each of the attached Exhibits, save and excepting oil, gas, and sulfur, as provided by law, as follows:

NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO	PARCEL
Collin	FM 455	12	0816-04-046	1
Collin	FM 455	5	816-04-046	12
Collin	SH 289	7	091-04-056	5
Collin	SH 289	8	91-04-056	6
Collin	SH 78	4	0281-02-064	20
Collin	SH 78	14	0281-02-064	28
Collin	SH 78	11	0281-02-064	42
Collin	SH 78	15	0281-02-064	27
Denton	FM 2181	1	2054-02-017	36
Denton	FM 423	3	1315-02-010	46
Denton	FM 423	2	1315-02-010	24
Jefferson	FM 365	6	0932-01-099	29
Jefferson	FM 365	10	0932-01-099	20
Jefferson	FM 365	9	0932-01-099	73
Jefferson	FM 365	13	0932-01-099	26

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	F	0015-04-083	40
Bell	IH 35	H	0015-07-078	4, 4AC
Bell	IH 35	I	0015-07-078	35

McLennan	IH 35	B	0014-08-083	47, 47TE
McLennan	IH 35	C	0015-01-220	6
McLennan	IH 35	D	0015-01-220	11
McLennan	IH 35	G	0015-01-220	65
McLennan	IH 35	E	0015-02-058	34
Rusk	US 259	A	0138-05-053	1, 1AC

Note: Exhibits 1 through 14 and A through I are on file with minute order clerk.

20. Routine Minute Orders

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Interim Executive Director John Barton.

a. Donations to the Department

(1) Austin District – Acknowledge a donation from Mixon/Hill, Inc., for a department employee’s travel expenses to attend the 2011 Road Weather Management Stakeholder Meeting in Albuquerque, New Mexico, from September 7 – 9, 2011 (MO)

112850
GSD

This minute order acknowledges a donation of an estimated \$847 from Mixon/Hill, Inc., for a Texas Department of Transportation (department) employee’s travel expenses to attend the 2011 Road Weather Management Stakeholder Meeting in Albuquerque, New Mexico, from September 7 – 9, 2011.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department’s acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department’s

responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of an estimated \$847 from Mixon/Hill, Inc. is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) Bridge Division – Acknowledge a donation from the University of Sherbrooke for a department employee's travel expenses to attend the 4th International Conference on Durability and Field Applications of Fibre Reinforced Polymer Composites for Construction and Rehabilitation in Quebec City, Canada, from July 20 – 22, 2011 (MO)

112851
GSD

This minute order acknowledges a donation of an estimated \$2,611 from the University of Sherbrooke for a Texas Department of Transportation (department) employee's travel expenses to attend the 4th International Conference on Durability and Field Applications of Fibre Reinforced Polymer Composites for Construction and Rehabilitation in Quebec City, Canada, from July 20 – 22, 2011.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's

responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of an estimated \$2,611 from the University of Sherbrooke is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) Transportation Planning & Programming Division – Acknowledge a donation from the University of Buffalo for a department employee's travel expenses to attend the 2011 ITE/Highway Data Workshop and Conference in Buffalo, New York from September 21 – 23, 2011 (MO)

112852
GSD

This minute order acknowledges a donation of an estimated \$1,000 from the University of Buffalo for a Texas Department of Transportation (department) employee's travel expenses to attend the 2011 ITE/Highway Data Workshop and Conference in Buffalo, New York, from September 21 – 23, 2011.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's responsibilities and that the donor is not a party to a contested case before the

department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of an estimated \$1,000 from the University of Buffalo is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(4) Travel Information Division – Consider a donation from the Texas Travel Industry Association to provide food, beverage, lodging, admission and transportation to area attractions from various sponsors to the department during a study tour to educate the department's travel counselors in the Eastern Rio Grande Valley Region from October 23-28, 2011 (MO)

112853
GSD

This minute order considers a donation of an estimated \$25,000 from the Texas Travel Industry Association (TTIA) to the Texas Department of Transportation (department) to provide food, beverage, lodging, and admission and transportation to area attractions from various sponsors for department travel counselors to attend the TTIA Study Tour of the Eastern Rio Grande Valley Region from October 23 - 28, 2011.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and provides a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's

responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of an estimated \$25,000 by the Texas Travel Industry Association is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

b. Right of Way Dispositions and Donations

(1) Collin County – SH 289 from US 380 Interchange to north of FM 1461 -Consider the acceptance of a donation of land for a highway improvement project (MO)

112854
ROW

In COLLIN COUNTY, on STATE HIGHWAY 289 from US 380 Interchange to north of FM 1461, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

183 Land Corporation (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$27,151, to the department for construction of a highway improvement project.

The owner may be subject to department regulations or oversight, but is not currently party to a contested case before the department. The owner may also be interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A is on file with minute order clerk.

(2) Coryell County – US 190 from Lampasas/Coryell county line to east of Copperas Cove city limits - Consider the acceptance of a donation of land for a highway improvement project (MO)

112855
ROW

In CORYELL COUNTY, on US 190 from Lampasas/Coryell county line to east of Copperas Cove city limits, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Copperas Cove Economic Development Corporation (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$180,660, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A is on file with minute order clerk.

(3) Denton County – SH 114, northeast corner at I-35W in Northlake - Consider the sale of surplus right of way to the Town of Northlake (MO)

112856
ROW

In the town of Northlake, DENTON COUNTY, on STATE HIGHWAY 114, the State of Texas acquired certain land for highway purposes by instrument recorded as County Clerk Document No. 97-R0064701, Official Records of Denton County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to a governmental entity with the authority to condemn the property.

The Town of Northlake has requested that the surplus land be sold to the town for \$16,216.

The commission finds \$16,216 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all

of the state's rights, title and interest in the surplus land to the Town of Northlake, Texas, for \$16,216; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A is on file with minute order clerk.

(4) El Paso County – SL 375 from 0.038 Miles west of I-10 at SL 375 to 0.479 miles east of Franklin Mountain State Park - Consider the acceptance of a donation of land for a highway improvement project (MO)

112857
ROW

In EL PASO COUNTY, on STATE HIGHWAY LOOP 375 from 0.038 miles west of I-10 at SH Loop 375 to 0.479 miles east of Franklin Mountain State Park, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Hunt El Paso Investments, Ltd. (owner) is the owner of the property described in Exhibits A, B, C and D. The owner wants to donate this property, estimated at \$7,274, \$1,935,024, \$25,872 and \$859,219, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibits A through D are on file with minute order clerk.

(5) El Paso County – SL 375 from 0.038 miles west of I-10 at SL 375 to 0.479 miles east of Franklin Mountain State Park - Consider the acceptance of a donation of land for a highway improvement project (MO)

112858
ROW

In EL PASO COUNTY, on STATE HIGHWAY LOOP 375 from 0.038 miles west of I-10 at SH Loop 375 to 0.479 miles east of Franklin Mountain State Park, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Hill 262 Partners, Ltd. (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$63,657, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A is on file with minute order clerk.

(6) Harris County – US 59 at Hamilton Street in Houston - Consider the amendment of Minute Order 112650, passed March 31, 2011, to revise the value of the surplus land (MO)

112859
ROW

In the city of Houston, HARRIS COUNTY, on US 59, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 4923, Page 438; Volume 4246, Page 397; Volume 4596, Page 559; Volume 4911, Page 395, Deed Records of Harris County, Texas, and Harris County Clerk's File No. F479348.

The Texas Transportation Commission (commission) approved Minute Order 112650 on March 31, 2011, authorizing the sale of surplus land. The value of the surplus land, described in Exhibits A and A-1, was incorrect.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the sale of surplus land to a governmental entity with the authority to condemn the property.

Metropolitan Transit Authority of Harris County, Texas (Metro), has requested that the surplus land be sold to Metro for \$1,789,440.

The commission finds \$1,789,440 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, IT IS ORDERED that Minute Order 112650 be amended only with respect to the incorrect value of the surplus land, and all other provisions of Minute Order 112650 are to remain unchanged.

FURTHER, the commission recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Metropolitan Transit Authority of Harris County, Texas, for \$1,789,440; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibits A and A-1 are on file with minute order clerk.

(7) Lamar County – SL 286 at Clarksville Street in Paris - Consider the exchange of drainage easements (MO)

112860
ROW

In the city of Paris, LAMAR COUNTY, on STATE LOOP 286, the State of Texas acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 386, Page 20, Deed Records of Lamar County, Texas.

A portion of the easement (surplus easement), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of a surplus easement as partial or full consideration for other land needed by the state for highway purposes.

The Robert B. Hayter Trust B (owner), is the property owner and has granted to the state the easement needed for highway drainage purposes (new easement), described in Exhibit B. Owner is the owner of the fee underlying the surplus easement and has requested that the surplus easement be released to owner. In accordance with the terms of an executed exchange agreement, state will pay to owner the \$10 difference in value between the value of the surplus easement and that of the new easement.

It is the opinion of the commission that it is proper and correct that the state partially release its interest in the surplus easement and pay \$10 to owner in exchange and as full consideration for the new easement to the state.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument partially releasing the state's rights and interest in the surplus easement to The Robert B. Hayter Trust B and pay \$10 to owner in exchange and as consideration for the new easement to the state.

Note: Exhibits A and B are on file with minute order clerk.

(8) Live Oak County – US 59 from US 281 to Business US 59 Intersection - Consider the acceptance of a donation of land for a highway improvement project (MO)

112861
ROW

In LIVE OAK COUNTY, on US 59 from US 281 to US 59 Business intersection, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Crocker Harrison West, Inc. (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$1,172, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A is on file with minute order clerk.

(9) Roberts County – FM 282 at East Fourth Street in Miami - Consider the sale of a surplus maintenance site and improvements to Miami Independent School District (MO)

112862
ROW

In the city of Miami, ROBERTS COUNTY, on FARM TO MARKET ROAD 282, the State of Texas acquired certain land for a maintenance site by instrument recorded in Volume 17, Page 465, Deed Records of Roberts County, Texas.

The land and the improvements (surplus land), described in Exhibit A, are no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of real property which is no longer needed for a state highway purpose.

Miami Independent School District has requested that the state sell the surplus land to the school district for \$24,000.

The commission finds \$24,000 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the

attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Miami Independent School District for \$24,000; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A is on file with minute order clerk.

c. Highway Designation

Bexar and Guadalupe Counties – Extend the designation of SH 130 concurrent with I-10 from its present terminus at I-10 east of Seguin, westward to I-410 in San Antonio, then south and west concurrent with I-410 to I-35 (MO)

112863
TPP

In BEXAR AND GUADALUPE COUNTIES, department officials have requested to extend the designation of STATE HIGHWAY 130 (SH 130) concurrent with I-10 from its present terminus at I-10 east of Seguin, westward to I-410, then concurrent with I-410 south and west to a new terminus at I-35 in San Antonio, as shown on Exhibit A, a distance of approximately 53.1 miles.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended extending the designation of SH 130 on the state highway system.

The Texas Transportation Commission (commission) finds that extending the designation of SH 130 will facilitate the flow of traffic, promote public safety, and maintain continuity of the state highway system and is necessary for the proper development and operation of the system.

IT IS THEREFORE ORDERED by the commission that the designation of SH 130 is extended concurrent with I-10 from its present terminus at I-10 east of Seguin, westward to I-410, then concurrent with I-410 south and west to a new terminus at I-35 in San Antonio, a distance of approximately 53.1 miles.

Note: Exhibit A is on file with minute order clerk.

d. Speed Zones

Various Counties – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)

112864
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima

facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that the speed limits on the segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by the city which has the authority to set the speed limits on these sections of the highway.

The department, in consultation with the Texas Commission on Environmental Quality, has also determined that the environmental speed limits on the segments of State Highway 171 and US 380 established by Minute Order 108409, dated January 25, 2001 and listed in Exhibit D, are no longer necessary.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portions of minute orders establishing speed zones shown on the attached Exhibits C and D are canceled.

Note: Exhibits A through D are on file with minute order clerk.

e. Transportation Development Credits (TDC)

Authorize the use of 125,000 TDC as the 20 percent state match on a \$625,000 grant from the Federal Highway Administration to study wait times at the Zaragoza Bridge in El Paso for commercial and private vehicles and provide for dissemination of data (MO)

112865
GPA

The Texas Transportation Commission (commission) desires to award 125,000 in Transportation Development Credits (TDC) to the department to be used as the state match for a federally-funded grant for border wait time study projects. This grant will provide \$625,000 for studies aimed at reducing congestion and expanding economic opportunity.

The commission recognizes that state and federal laws permit the substitution of TDC as the required non-federal match for projects that will relieve congestion problems. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission. TDC investments in border projects will assist in making border crossings more efficient and effective

which should expand economic opportunity, decrease congestion and improve air quality in those areas. Gathering and disseminating crossing time data will increase the public's knowledge about the time required for crossing the border. This information will allow for improved planning by commercial haulers and other border stakeholders including inspection services. In addition, this TDC investment is expanding the funding for transportation projects with grant funding.

The commission further finds that the Zaragoza Wait Time and the Wait Time Data Dissemination study is eligible to receive TDC and satisfy the criteria of 43 TAC §5.73, as described above.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to distribute TDC to the study as described above and enter into the necessary contracts in accordance with the priorities established in this minute order.

The regular meeting of the Texas Transportation Commission adjourned at 12:26 p.m whereupon the commission entered into executive session.

21. Executive Session Pursuant to Government Code, Chapter 551

a. Section 551.071 – Consultation with and advice from legal counsel regarding any item on this agenda

b. Section 551.074 – Interview and discuss the election of the executive director of the Texas Department of Transportation

The executive session of the Texas Transportation Commission concluded at 1:10 p.m and the commission reconvened its regular meeting.

22. Election of Executive Director

Elect the executive director of the Texas Department of Transportation and approve compensation (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0.

112866
COM

Transportation Code, Section 201.301, provides that the Texas Transportation Commission (commission) shall elect an executive director for the Texas Department of Transportation (department), who must be experienced and skilled in transportation planning and development and in organizational management.

Due to the retirement of Executive Director Amadeo Saenz, Jr., it is necessary to elect a successor to assure the orderly transition of duties, thereby protecting the safety and welfare of the traveling public. The department's posted job vacancy notice for the executive director position opened on June 16, 2011, attracting a number of candidates for the position.

indicates that Phil Wilson is best qualified for the position, and possesses the qualities necessary to ensure an orderly transition and assumption of duties as executive director of the department.

Recognizing the proven abilities, professional expertise and qualifications, administrative talents, and leadership qualities, the commission determines that Phil Wilson possesses skills and experience that fully satisfy the requisites of law and policy applicable to the position of chief administrative officer of the department.

The commission finds that it would be in the best interest of the state and the department to exceed the limits of the Group 8 salary classification for the position of executive director set by the Appropriations Act of the 82nd legislature.

NOW THEREFORE, IT IS ORDERED that Phil Wilson is elected as executive director of the department, to assume the full range of duties and responsibilities of that position effective October 17, 2011, conditioned on Phil Wilson meeting the conditions of employment as stated in the job requisition for the position.

IT IS FURTHER ORDERED that the executive director of the Texas Department of Transportation be compensated at an annual salary of \$292,500.

IT IS FURTHER ORDERED that the Chair is authorized to submit for approval to the governor and the Legislative Budget Board, in accordance with Article IX, Section 18.16 of the Appropriations Act of the 82nd legislature, a proposal for additional compensation.

The regular meeting of the Texas Transportation Commission was adjourned at 1:11 p.m.

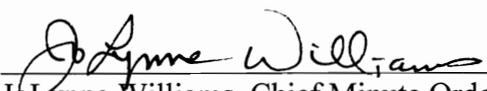
APPROVED:



Ted Houghton, Chairman
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on September 29, 2011, in Austin, Texas.



JoLynne Williams, Chief Minute Order Clerk
Texas Department of Transportation