

These are the minutes of the regular meeting of the Texas Transportation Commission held on June 28, 2012, in Austin, Texas. The meeting was called to order by Chairman Houghton at 9:02 a.m. with the following commissioners present:

**Texas Transportation Commission:**

Ted Houghton	Chairman
Fred Underwood	Commissioner
Bill Meadows	Commissioner
Jeff Austin III	Commissioner
Jeff Moseley	Commissioner

**Administrative Staff:**

Phil Wilson, Executive Director  
 Bob Jackson, General Counsel  
 Rose Walker, Chief Clerk  
 Kristen Webb, 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 3:50 pm on June 20, 2012, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

Chairman Houghton read a letter from Commissioner Holmes for the record and introduced new Commissioner Jeff Moseley. The commission heard comments from Commissioner Moseley.

**ITEM 1. Safety Briefing**

This item was presented by Occupational Safety Division Director Jerral Wyer.

**ITEM 2. Approval of Minutes of the May 31, 2012, meeting of the Texas Transportation Commission and corrected minutes from the April 26, 2012, meeting.**

Commissioner Underwood made a motion, which was seconded, and the commission approved the corrected minutes of the April 26 regular meeting and the minutes of the May 31 regular meeting.

**ITEM 3. Strategic Plan**

**Adopt final 2013-2017 Strategic Plan for official submission to the Legislative Budget Board and Governor's Office (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by

Executive Director Phil Wilson. The Commission also received comments from Jennifer McPhail from ADAPT of Texas.

113142  
CAO

Texas Government Code, Chapter 2056, requires that each state agency prepare a five-year strategic plan every biennium. The Governor's Office and the Legislative Budget Board require certain items to be covered in the plan.

The strategic plan represents the commitment by the Texas Department of Transportation (department) to work with others to provide safe and reliable transportation solutions for Texas.

The mission, philosophy, goals, objectives, priorities, and measures contained in this plan focus on delivering safe, well-maintained, and reliable transportation systems to connect Texas communities and making the department a best in class state agency.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the document entitled Agency Strategic Plan for the Fiscal Years 2013-2017 Period, as shown in Exhibit A, is adopted and approved for submission to the Governor's Office, the Legislative Budget Board, and other required officials.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to approve alterations to the plan if any such alterations are requested by the Legislative Budget Board.

IT IS FURTHER ORDERED that the executive director or his designee shall proceed with the publication of the plan on the agency's website, as required by the Governor's Office and the Legislative Budget Board.

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

**ITEM 4. Aviation**

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

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Aviation Division Director Dave Fulton. The commission also received comments from Harrison County Judge Hugh Taylor.

113143  
AVN

The Texas Department of Transportation (department) is authorized under the federal Airport and Airway Improvement 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, May 24, 2012, and Thursday, June 21, 2012, public hearings were 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 \$2,482,500.

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

**ITEM 5. Public Transportation**

**a. Various Counties - Award state funds to public transportation providers for FY 2013 as appropriated by the 82nd Texas Legislature (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason.

113144  
PTN

The General Appropriations Act enacted by the 82nd Texas Legislature, Regular Session, appropriated \$60,682,735 for public transportation grants for small urban and nonurbanized areas of the state.

The Texas Transportation Commission (commission) desires to award \$29,655,567 for FY 2013.

Title 43, Texas Administrative Code, §31.11 establishes a formula by which public transportation funds shall be distributed to the small urban and nonurbanized areas of the state. The FY 2013 awards are shown in Exhibit A and have been calculated in accordance with the provisions of §31.11.

The General Appropriations Act enacted by the 82nd Texas Legislature, Regular Session, appropriated additional funds for public transportation grants to help mitigate formula allocation impacts when using the 2010 Census. This minute order includes award of funds from that appropriation.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the awards as described in Exhibit A, and to enter into the necessary contracts for the FY 2013 program of projects upon completion of all application requirements by the local public transportation operators.

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

**b. Various Counties - Various Counties - Award federal §5303 Metropolitan Transportation Planning funds, and award transportation development credits for FY 2013 (MO)**

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason.

113145

The Texas Transportation Commission (commission) was designated by the

PTN

governor as the administering agency for the Federal Transit Administration (FTA) grant program, Metropolitan Planning Program (49 U.S.C. §5303) in a letter dated October 4, 2005, and is required to ensure that these grant funds are distributed and utilized in accordance with guidance from FTA.

Title 43, Texas Administrative Code (TAC), §31.21(c) establishes a formula through which §5303 program funds shall be distributed to the metropolitan planning organizations (MPO) of the state by the Texas Department of Transportation (department). The distribution of the available federal FY 2012 apportionment is shown in Exhibit A and has been calculated in accordance with the provisions of §31.21(c).

The United States Congress has passed a Continuing Resolution for a nine-month period; the FTA has available funds for this period. As soon as authorizing legislation and appropriation covering the remainder of the fiscal year or a portion of it has been enacted, the additional funds will be made available.

Title 43, Texas Administrative Code, §5.73, establishes the process for which Transportation Development Credits (TDC) may be awarded at the discretion of the commission. The commission finds that TDC investments in metropolitan planning will:

- Expand the availability of funding for transportation projects by leveraging the federal funding awards in this minute order thus allowing use of scarce local and state dollars for other prioritized projects; and
- Reduce congestion and improve air quality by coordinated planning of multimodal transportation projects that reduce the need for single occupant vehicle travel.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the department.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

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

c. **Bell County** - Award transportation development credits to Hill Country Transit District to provide match to federal funds financing fuel as a capital expense for the Killeen and Temple Urbanized Areas (MO)

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason.

113146  
PTN

The Texas Transportation Commission (commission) desires to award 93,690 Transportation Development Credits (TDC) to the Hill Country Transit District, on behalf of the urbanized areas of Killeen and Temple, to be used as the local match for federal funding to purchase fuel.

The commission recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code, §5.73 establishes a process by which TDC may be awarded at the

discretion of the commission. The commission finds that TDC investments in higher match ratios for capital expenses will expand the availability of funding for transportation projects by leveraging federal funding thus allowing use of scarce local and state dollars for other prioritized projects.

The commission finds that Hill Country Transit District is eligible to receive TDC and satisfies the criteria of 42 TAC §5.73 as described above.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation (department).

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the award to the Hill Country Transit District and enter into the necessary contract in accordance with the priorities established in this minute order.

## **ITEM 6. Promulgation of Administrative Rules**

### **a. Final Adoption**

#### **(1) Chapter 9 - Contract and Grant Management (MO)**

Repeal of §§9.50 - 9.57 (Business Opportunity Programs) and New Subchapter J, Disadvantaged Business Enterprise (DBE) Program, New §§9.200-9.242; New Subchapter K, Small Business Enterprise (SBE) Program, New §§9.300-9.302 and §§9.304-9.333; Withdrawal of §9.303; and New Subchapter L, Historically Underutilized Business (HUB) Program, New §§9.350-9.367

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by DBE & SBE Programs Section Director Tamela Saldana.

113147  
OCR

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §§9.50-9.57 and new Subchapter J, Disadvantaged Business Enterprise (DBE) Program, new §§9.200-9.242; new Subchapter K, Small Business Enterprise (SBE) Program, new §§9.300-9.302 and §§9.304-9.333; the withdrawal of previously proposed new §9.303; and new Subchapter L, Historically Underutilized Business (HUB) Program, new §§9.350-9.367, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted repeals, withdrawal, and new sections, attached to this minute order as Exhibits A - E, 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 §§9.50-9.57; new Subchapter J, Disadvantaged Business Enterprise (DBE) Program, new §§9.200-9.242; new Subchapter K, Small Business Enterprise (SBE) Program, new

§§9.300-9.302 and §§9.304-9.333; the withdrawal of §9.303; and new Subchapter L, Historically Underutilized Business (HUB) Program, new §§9.350-9.367 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-E are on file with minute order clerk.

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

Amendments to §9.152, General Rules for Design-Build Contracts and §9.153, Solicitation of Proposals (Design-Build Contracts) (concerning the Evaluation of Contractor Performance and Consideration of Past Performance in the Evaluation of Qualification Statements and Proposals)

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Planning and Project Officer Russell Zapalac.

113148  
SPD

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.152, General Rules for Design-Build Contracts and §9.153, Solicitation of Proposals, relating to Design-Build Contracts, 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 §9.152 and §9.153 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.

**(3) Chapter 27 – Toll Projects (MO)**

Amendments to §27.3, General Rules for Private Involvement and §27.4, Solicited Proposals (Comprehensive Development Agreements) (concerning the Evaluation of Developer Performance and Consideration of Past Performance in the Evaluation of Qualification Statements and Proposals)

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Planning and Project Officer Russell Zapalac.

113149  
SPD

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §27.3, General Rules for Private Involvement and §27.4, Solicited Proposals, relating to Comprehensive Development Agreements, 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 §27.3 and §27.4 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.

**(4) Chapter 27 – Toll Projects (MO)**

**Amendments to §27.92, Financial Terms (Determination of Terms for Certain Toll Projects) (concerning Eligibility to Serve as a Member of a Committee Established to Determine Financial Terms for Certain Department Toll Projects)**

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by TxDOT Attorney Jack Ingram.

113150  
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §27.92, Financial Terms, relating to Toll Projects 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 §27.92 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 5 - Finance (MO)****Repeal of §§5.70 - 5.74 and New §§5.101 - 5.111 (Transportation Development Credit Program)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass. The commission also received comments from Shawna Russell of Texas Transit Association and General Manager of Longview Transit Rob Stephens.

113151  
FIN

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§5.70-5.74 and propose new §§5.101-5.111, all relating to the Transportation Development Credit Program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, 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 repeal of §§5.70-5.74 and propose new §§5.101-5.111 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 - C are on file with minute order clerk.

**(2) Chapter 7 - Rail Facilities and Chapter 25 - Traffic Operations (MO)****New §§7.101 - 7.106 (Railroad Crossings) and Repeal of §§25.70 - 25.76 (Railroad Crossings)**

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Director of Rail Division Bill Glavin.

113152  
RRD

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§25.70 - 25.76 and propose new §§7.101 - 7.106 all relating to railroad grade crossings to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, 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 §§25.70 - 25.76 and new §§7.101 - 7.106 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 - D are on file with the minute order clerk.

**(3) Chapter 9 - Contract and Grant Management (MO)**

Amendments to §9.2, Contract Claim Procedure and §9.6, Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts (General).

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Planning and Project Officer Russell Zapalac.

113153  
SPD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.2, Contract Claim Procedure, and §9.6, Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts, 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 §9.2 and §9.6 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 the minute order clerk.

**(4) Chapter 28 - Oversize and Overweight Vehicles and Loads (MO)**

New §28.40, Purpose, §28.41, Definition, and §28.42, Districts Powers and Duties, §28.43, Permit Eligibility, §28.44, Permit Issuance Requirements and Procedures, §28.45, Permit Weight Limits for Axles, §28.46, Movement Requirements and Restrictions, §28.47, Records (Victoria County Navigation District Permits)

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Interim Maintenance Director Carol Rawson.

113154  
MNT

The Texas Transportation Commission (commission) finds it necessary to propose new §§28.40 - 28.47, all relating to Victoria County Navigation District Permits to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and proposed new sections, 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 new §§28.40 - 28.47 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 the minute order clerk.

#### **ITEM 7. Office of Compliance and Ethics Report**

This item was presented by Director of the Office of Compliance and Ethics Suzanne Mann.

#### **ITEM 8. Transportation Planning**

##### **Adopt the Texas Rural Transportation Plan 2035 (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Engineering Supervisor Peggy Thurin.

113155  
TPP

In compliance with Title 23 U.S.C. §135, as implemented by 23 C.F.R. Part 450, and Transportation Code §201.601, the Texas Department of Transportation (department) developed a statewide long-range transportation plan (SLRTP) covering a period of 24 years that provides for the development and implementation of a transportation system and contains all modes of transportation, including: (1) the systems and facilities for highways and turnpikes, aviation, public transportation, railroads and high-speed railroads, waterways, pedestrian walkways, and bicycle transportation facilities; and (2) the transportation users of each type of transportation facility. The SLRTP was adopted by the Texas Transportation Commission on November 18, 2010, by Minute Order 112495.

Metropolitan planning organizations are required to develop long-range transportation plans for urbanized areas that identify and prioritize future transportation projects within funding constraints; however, no equivalent rural long-range plan exists. While the SLRTP included an overall assessment of rural transportation needs and a

prioritization of Texas Highway Trunk System corridors, added-capacity highway projects were not identified or ranked.

The department has developed the Texas Rural Transportation Plan 2035 (TRTP) as a rural component of the SLRTP. The TRTP has been developed in cooperation with a representative rural stakeholder group comprised of county judges, mayors, public works directors, regional planning organizations, chambers of commerce officials, economic development officials and individuals with an interest in transportation. The TRTP includes an assessment of needs for non-highway modes in rural areas and an analysis of unfunded added-capacity highway projects.

The TRTP has been presented for public comment by means of various stakeholder meetings held throughout the process to solicit input and one round of public meetings conducted in each department district throughout the state. A public hearing on the TRTP was held in Austin on

May 21, 2012, and written comments were accepted through June 4, 2012. A summary of the comments is included in the TRTP.

IT IS THEREFORE ORDERED that the TRTP, which is attached as Exhibit A to this order, is hereby adopted as a rural component of the SLRTP.

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

#### **ITEM 9. Design Build Projects**

**a. Dallas and Denton Counties - Authorize the department to issue a request for proposals for the development, design, construction, and, potentially, maintenance of all or any portion of the I-35E managed lanes project in Dallas and Denton counties from I-635 to US 380, and approve a stipulated amount as payment for the work product of unsuccessful proposers (MO)**

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Strategic Projects Division Director Ed Pensock.

113156  
SPD

Transportation Code, Chapter 223, Subchapter E, 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, construction, financing, maintenance, or operation of a toll project on the state highway system.

Transportation Code, § 223.203, prescribes requirements for a solicited proposal and requires the department to publish a request for qualifications (RFQ) in the Texas Register that includes the criteria that will be used to evaluate any received qualifications statements, the relative weight given to the criteria, and a deadline by which qualifications statements must be received.

On September 29, 2011, by Minute Order 112840, the Texas Transportation Commission (commission) authorized the department to issue a RFQ for the development of the

I-35E Managed Lanes Project from I-635 in Dallas County to US 380 in Denton County. The department issued the RFQ on January 23, 2012, and subsequently

determined that four of the five teams submitting qualifications statements in response to the RFQ were qualified to be on the short list of teams that will be requested to submit detailed proposals to develop, design, construct, and, potentially, maintain the project.

Transportation Code, § 223.203 and 43 TAC § 27.4 provide that, if authorized by the commission, the department will issue a request for proposals (RFP) from all private entities qualified for the short list. The department intends to issue an RFP for the I-35E Managed Lanes Project and request detailed proposals from the four short-listed teams to develop, design, construct, and, potentially, maintain the project.

Transportation Code, § 223.203(m) and 43 TAC § 27.4(f) authorize the department to pay an unsuccessful private entity who submits a detailed proposal that is responsive to the requirements of the RFP a stipulated amount in exchange for the work product contained in that proposal. The stipulated amount must be stated in the RFP and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the I-35E Managed Lanes Project or other department projects without further payment to the unsuccessful proposer.

IT IS THEREFORE ORDERED that the department is authorized and directed to issue an RFP to develop, design, construct, and, potentially, maintain the I-35E Managed Lanes Project from I-635 in Dallas County to US 380 in Denton County.

IT IS FURTHER ORDERED that the department is authorized to pay each proposer who submits a responsive, but unsuccessful, proposal for the I-35E Managed Lanes Project an amount based upon the value of the work product provided in the proposal that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$1 million.

IT IS FURTHER ORDERED that payment for work product may only be paid to the extent that the work product submitted meets the minimum criteria and other conditions of payment identified by the department in the I-35E Managed Lane Project procurement documents.

**b. Dallas County - Authorize the department to issue a request for proposals for the development, design, construction, and, potentially, maintenance of the Dallas Horseshoe project, on I-30 from Sylvan Avenue to west of I-45 and on I-35E from north of Eighth Street to north of I-30, and approve a stipulated amount as payment for the work product of unsuccessful proposers (MO)**

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Strategic Projects Division Director Ed Pensock.

113157  
SPD

Transportation Code, Chapter 223, Subchapter F prescribes the process by which the Texas Department of Transportation (department) may enter into a design-build contract with a private entity that provides for the design, construction, expansion,

extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project.

Transportation Code, §223.245 prescribes requirements for the procurement of a project to be developed under a design-build contract and requires the department to publish a request for qualifications in the Texas Register and on the department's Internet website that includes the criteria that will be used to evaluate any received qualifications statements, the relative weight given to the criteria, and a deadline by which qualifications statements must be received.

On October 27, 2011, by Minute Order 112874, the Texas Transportation Commission (commission) authorized the department to issue a request for qualifications (RFQ) for the development, design, construction, and, potentially, maintenance of the Dallas Horseshoe Project on I-30 from Sylvan Avenue to west of I-45 and on I-35E from north of Eighth Street to north of I-30 (project). The department issued the RFQ on December 9, 2011, and subsequently determined that three of the seven teams submitting qualifications statements in response to the RFQ were qualified to be on the short list of teams that will be requested to submit detailed proposals to develop, design, construct, and, potentially, maintain the project.

Transportation Code, §223.246 and 43 TAC §9.153(d) provide that, if authorized by the commission, the department will issue a request for proposals (RFP) from all private entities qualified for the short list. The department intends to issue an RFP for the Dallas Horseshoe Project and request detailed proposals from the three short-listed teams to develop, design, construct, and, potentially, maintain the project.

Transportation Code, §223.249 and 43 TAC §9.153(f) require the department to pay an unsuccessful private entity that submits a detailed proposal that is responsive to the requirements of the RFP a stipulated amount in exchange for the work product contained in that proposal. The stipulated amount must be stated in the RFP and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the Dallas Horseshoe project or other department projects without further payment to the unsuccessful proposer. Transportation Code, § 223.249 and 43 TAC §9.153(f) require the department to pay a partial stipend in the event that a procurement is terminated before the execution of a design-build contract.

IT IS THEREFORE ORDERED that the department is authorized and directed to issue an RFP to develop, design, construct, and, potentially, maintain the Dallas Horseshoe Project on I-30 from Sylvan Avenue to west of I-45 and on I-35E from north of Eighth Street to north of I-30 in Dallas County.

IT IS FURTHER ORDERED that, after consideration of the criteria in 43 TAC §9.153(f), the department is authorized to pay each proposer that submits a responsive, but unsuccessful, proposal for the Dallas Horseshoe Project an amount based upon the value of the work product provided in the proposal that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of 0.25% of the price for all work under the design-build agreement.

IT IS FURTHER ORDERED that in the event the procurement is terminated prior to the execution of the design-build agreement, and after consideration of the criteria in 43 TAC §9.153(f), the department is authorized to pay each proposer a partial stipend based upon the value of the work product provided in the proposal that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$728,000.

IT IS FURTHER ORDERED that payment for work product may only be paid to the extent that the work product submitted meets the minimum criteria and the proposer satisfies the conditions for payment identified by the department in the Dallas Horseshoe Project procurement documents.

**ITEM 10. Toll Road Projects**

**a. Dallas County - Concur in the election of a chair and vice-chair of the committee formed pursuant to Transportation Code, §228.013 to make certain determinations concerning the distribution of financial risk, the method of financing, and the tolling structure and methodology for the SH 183 Managed Lanes Project (MO)**

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Strategic Projects Division Director Ed Pensock.

113158  
SPD

The Texas Department of Transportation (department) and local stakeholders are currently analyzing options for the financing and delivery of the SH 183 Managed Lanes Project in Dallas County that includes the construction of tolled managed lanes, general purpose main lanes and frontage roads.

For certain toll projects of the department in which a private entity has a financial interest in the project's performance, Senate Bill 1420, 82nd Legislature, Regular Session, 2011, added Transportation Code, §228.013 requiring that the distribution of the project's financial risk; the method of financing for the project; and the tolling structure and methodology must be determined by a committee comprised of representatives from the department; any local toll project entity for the area in which the project is located; the applicable metropolitan planning organization; and each municipality or county that has provided revenue or right of way for the project (SB 1420 Committee).

The Texas Transportation Commission (commission) has adopted 43 TAC §§27.90-27.92 to implement Section 228.013 and define the process for the issuance of these determinations by an SB 1420 Committee (committee rules).

Under Section 27.92(a) of the committee rules, the requirement to form an SB 1420 Committee for the purpose of issuing a report containing the committee's determinations applies to department toll projects that will be developed under a concession agreement or availability payment contract. As the department and local stakeholders are analyzing options for the financing and delivery of the SH 183 Managed Lanes Project that include the development, construction, and operation of the SH 183 Managed Lanes Project under a concession agreement, a SB 1420 Committee for the project was formed.

On June 21, 2012, the SB 1420 Committee for the SH 183 Managed Lanes Project in Dallas County met and elected Michael Morris, representing the North Central Texas Council of Governments (NCTCOG), as chair of the committee and Alberta Blair, representing Dallas County, as vice chair of the committee. Under Section 27.92(c) of the committee rules, an SB 1420 Committee's election of a chair and vice-chair is subject to the concurrence of the commission.

IT IS THEREFORE ORDERED that the Texas Transportation Commission hereby concurs with the election of Michael Morris as chair and Alberta Blair as vice chair of the SH 183 Managed Lanes Project in Dallas County SB 1420 Committee

b. Tarrant County - Authorize the executive director to execute a Facility Agreement for the North Tarrant Express, Segments 3A and 3B Facility, a facility extending along the I-35W corridor from North US 287 (North Tarrant Parkway) to north of I-30 in the City of Fort Worth (MO)

Commissioner Meadows made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Strategic Projects Division Director Ed Pensock.

113159  
SPD

Transportation Code, Chapter 223, Subchapter E, 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 a toll project on the state highway system.

On January 29, 2009, by Minute Order 111661, the Texas Transportation Commission (commission) conditionally awarded to NTE Mobility Partners (NTEMP) comprehensive development agreements to develop, design, construct, finance, maintain, and operate the North Tarrant Express project along I-820 and SH 121/SH 183 from I-35W to SH 161, along I-820 east from SH 121/SH 183 to Randol Mill Road, and along I-35W from I-30 to SH 170 in Tarrant and Dallas counties, as well as other potential facilities to the extent necessary for connectivity, safety, and financing. The commission authorized the department to commence and complete negotiations with NTEMP necessary to finalize any agreement for the construction of a proposed facility under the North Tarrant Express (NTE) Segments 2-4 CDA and stated that commission approval is required before the executive director may enter into any such agreement.

The CDA for NTE Segments 2-4 includes developing a master plan for the corridor along I-35W from I-30 to SH 170 in Tarrant and Dallas counties, as well as other facilities for connectivity, safety and financing. Under the terms of the CDA, NTEMP has the right to propose self-performance of facilities ready for development. On May 19, 2010, NTEMP submitted a Ready for Development proposal for the NTE Segments 3A and 3B Managed Lanes, a facility that extends along the I-35W corridor from north US 287 (North Tarrant Parkway) to north of I-30 in the city of Fort Worth. Subsequent negotiations have resulted in an agreement regarding the facility agreement terms and conditions.

IT IS THEREFORE ORDERED by the commission that the executive director is authorized to enter into a Facility Agreement (FA) with an affiliate of NTEMP to develop, design, construct, finance, maintain and operate the NTE Segments 3A and 3B Managed Lanes Project (NTE 3A/3B). Under the FA an affiliate of NTEMP will (1) finance, develop, design, construct, operate and maintain Segment 3A, and (2) upon satisfaction of certain conditions set forth in the agreement and upon TxDOT Substantial Completion of Segment 3B, operate and maintain Segment 3B in Tarrant County.

IT IS FURTHER ORDERED that the execution of the FA is subject to, the occurrence of all of the following: (1) the successful conclusion of negotiations; (2) applicable FHWA and any other governmental approvals as identified by the department; (3) a determination by the Office of the Attorney General that the proposed FA is legally sufficient, in accordance with Transportation Code, §371.051; (4) notification to, and written approval from, the Legislative Budget Board, in accordance with Transportation Code, §371.052 and Riders 22 and 24, Page VII-33, Chapter 1355, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act); and (5) the mutual execution and delivery of the FA by the executive director of the department and the developer.

**ITEM 11. Regional Mobility Authorities**

Hidalgo County - Approve the Hidalgo County Regional Mobility Authority's (HCRMA) request for an exception to the requirements of 43 TAC §26.51(b)(1)(A), concerning eligibility to serve as a director or chief administrative officer of a regional mobility authority, in connection with the HCRMA's appointment of a new Executive Director (MO)

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Strategic Projects Division Director Ed Pensock. The commission also received comments from Hidalgo County Regional Mobility Authority (HCRMA) Chairman Dennis Burleson, HCRMA Director Ricardo Perez, HCRMA Executive Director Pilar Rodriguez and Hidalgo County Judge's Office Director of Economic Development Bobby Villarreal.

113160  
SPD

Title 43, Texas Administrative Code, §26.51(b) prescribes conditions for a person to serve as a director or chief administrative officer of a regional mobility authority (RMA). Under 43 TAC §26.51(b)(1)(A), a person is not eligible to serve as a director or chief administrative officer of an RMA if the person or the person's spouse is employed by or participates in the management of a business entity or other organization, other than a political subdivision, that is regulated by or receives funds from the Texas Department of Transportation (department), the RMA, or a member county.

The Hidalgo County Regional Mobility Authority (HCRMA) has recently hired Pilar Rodriguez as its Executive Director. Mr. Rodriguez participates, in a voluntary capacity, in the management of the City of Pharr Volunteer Fire Department and the

Rio Grande Valley Communications Group, both of which receive funds from Hidalgo County, a member county of the HCRMA. Both the Fire Department and the Rio Grande Valley Communications Group serve their respective regions during emergency situations.

Section 26.51(b)(4) provides that the Texas Transportation Commission (commission) may approve an exception to the requirements of Section 26.51(b)(1)(A) if (1) the RMA or the applicable county has properly disclosed to the public the details of the potential conflict, (2) the potential conflict concerns employment with an entity that receives funds from a member county, and (3) the commission determines that the employment will not result in the director or chief administrative officer incurring any obligation of any nature that is in substantial conflict with the director or officer's proper discharge of his or her duties on behalf of the RMA.

Pursuant to 43 TAC §26.51(b)(4), the HCRMA has disclosed to the public the details of the potential conflict by posting a notice on the HCRMA website. The notice informs the public that Mr. Rodriguez while employed as the HCRMA Executive Director, will also continue serving as the Deputy Volunteer Fire Chief for the City of Pharr and Chairman of the Board of Directors of the Rio Grande Valley Communications Group, and that Mr. Rodriguez is not compensated for either of these roles.

IT IS THEREFORE DETERMINED by the commission, pursuant to 43 TAC §26.51(b)(4), that by serving as Deputy Volunteer Fire Chief for the City of Pharr and Chairman of the Board of Directors of the Rio Grande Valley Communications Group, Mr. Rodriguez will not incur any obligation of any nature that is in substantial conflict with the proper discharge of his duties as Executive Director of the HCRMA.

IT IS FURTHER ORDERED that an exception to the requirements of 43 TAC §26.51(b)(1)(A) is approved, and therefore Pilar Rodriguez is eligible to serve as Executive Director of the HCRMA.

#### **ITEM 12. Unified Transportation Program (UTP)**

##### **a. 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 5 – 0. This item was presented by Director of Planning Marc Williams. The commission also received comments from Bexar County Judge Nelson W. Wolff, San Antonio City Councilman Ray Lopez, Chairman for the Advanced Transportation District Board of Trustees Henry R. Muñoz, founding chairman of the San Antonio Mobility Coalition Sam Dawson, Cameron County Commissioner David Garza, Cameron County Judge Carlos Cascos, Navarro County Judge H.M. Davenport, and Corsicana Mayor Chuck McClanahan.

113161  
TPP

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, and revisions to the 2012 UTP were approved by the commission on September 29, 2011, in Minute Order 112824; December 15, 2011, in Minute Order 112943; and April 26, 2012 in Minute Order 113073.

On May 8, 2012, the department conducted public video-teleconferences across the state, and a public hearing was held on May 30, 2012, to receive comments and testimony concerning the proposed updates to the 2012 UTP, including the candidate projects for the additional \$2 Billion allocation.

The updates to the 2012 UTP, as shown in Exhibit A, include revised funding allocations based on funds transfer requests in multiple categories. In addition, this minute order authorizes projects for additional state and federal funding, including projects selected for the \$2 billion allocation, 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 the minute order clerk.

b. Approve updates to the 2013 UTP (MO)

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Director of Planning Marc Williams.

113162  
TPP

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 2013 UTP was approved by the commission on April 26, 2012, in Minute Order 113074.

On May 8, 2012, the department conducted public video-teleconferences across the state, and a public hearing was held on May 30, 2012, to receive comments and testimony concerning the proposed updates to the 2013 UTP.

The updates to the 2013 UTP, as shown in Exhibit A, include revised funding allocations based on funds transfer requests in multiple categories. In addition, this minute order addresses updates to project specific program lists and other minor revisions or technical corrections.

IT IS THEREFORE ORDERED by the commission that the updates to the 2013 UTP, as shown in Exhibit A, are hereby approved.

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

**ITEM 13. Finance**

**a. Bond-Funded Project Allocation Flexibility**

Authorize the department's Chief Financial Officer (CFO) to optimize the use of bond funds for the benefit of the department's transportation program and to efficiently manage annual federal-aid apportionment and obligation authority (MO)

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

113163  
FIN

Section 49-k, Article III of the Texas Constitution and Transportation Code, Chapter 201, Subchapter M, and other applicable law, including Government Code, Chapter 1371, authorize the Texas Transportation Commission (commission) to issue bonds (TMF bonds) and other obligations secured by all or part of the money in the Texas Mobility Fund. Obligations may be issued to 1) pay all or part of the costs of constructing, reconstructing, acquiring, and expanding State highways; 2) provide participation by the State in the payment of part of the costs of constructing and providing publicly owned toll roads and other public transportation projects; 3) create debt service accounts; 4) pay interest on obligations for a period of not longer than two years; 5) refund or cancel outstanding obligations and 6) pay the commission's costs of issuance.

Section 49-n, Article III, of the Texas Constitution provides that the Texas Legislature may authorize the commission to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the state highway fund to fund state highway improvement projects and pursuant to such constitutional provision, the Texas Legislature enacted Section 222.003, Texas Transportation Code, which authorizes the commission to issue bonds (Proposition 14 bonds) and other public securities secured by a pledge of and payable from revenue deposited to the credit of the highway fund.

Section 49-p, Article III of the Texas Constitution and Transportation Code, Section 222.004, and other applicable law, including Government Code, Chapter 1371, and HB 1 General Appropriation Bill, 82nd Legislature, Regular Session, authorize the commission to issue general obligation bonds, notes and other public securities (Proposition 12 bonds) and to enter into credit agreements. The commission may issue general obligation bonds for one or more of the following purposes: 1) to pay, or reimburse the State Highway Fund for payment of, all or part of the costs of highway improvement projects including loans for highway improvement projects; 2) to pay (a) the costs of administering projects authorized under Section 222.004 and HB 1 General Appropriation Bill, 82nd Legislature, (b) the costs or expense of the issuance of the bonds or (c) all or part of a payment owed or to be owed under a credit agreement and

3) refunding outstanding bonds. The TMF bonds, the Proposition 14 bonds, and the Proposition 12 bonds are the commission's bond programs.

A practice of the Texas Department of Transportation (department) is to make best use of the available funding for projects in achieving its overall goals. This is often a challenge given the dynamic nature of the availability of funding sources, change orders, and economic factors. In making the best use of available funding, it is at times necessary to adjust the bond funding on projects that have been or may be designated to be funded from one or more of the commission's bond programs. The greater flexibility will result in an overall approach in managing the department's financial resources, not only on projects funded from bond proceeds, but also on the federal-aid apportionment and obligation authority level, that is efficient and responsive.

IT IS THEREFORE ORDERED by the commission that, it being necessary to allow the department to make best use of the available funding sources and subject to the limitations of 43 TAC §§ 15.170-15.174, the chief financial officer (CFO) is delegated the authority to vary the amount of bond funds allocated to projects in order to manage project overruns and under runs and to move projects in and out of the commission's bond programs as needed to optimize the effective and efficient use of annual federal-aid apportionment and obligation authority, within the requirements of the federal income tax laws and the constitutional and statutory provisions governing each bond program. This delegation of authority does not provide the CFO with the authority to select or reject projects to be developed by a bond program except as necessary to comply with applicable legal requirements. In the exercise of this authority, the CFO is directed to administer the funding of projects from current and future bond issues and to ensure the efficient attainment of bond program goals.

**b. Texas Mobility Fund Bonds - Approve an amended and restated Tenth Supplemental Resolution authorizing the issuance of one or more series of General Obligation Mobility Fund Bonds (MO)**

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

113164  
FIN

Minute Order 113090 adopted by the commission on April 26, 2012, authorized, among other matters, a "Tenth Supplemental Resolution to the Master Resolution Establishing the Texas Transportation Commission Mobility Fund Revenue Financing Program" (original tenth supplement), which prescribes the terms, provisions and covenants related to the issuance of additional bonds in one or more series secured by all or part of the money in the Texas Mobility Fund (fund) entitled "Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds" (bonds) with such name and series designation as set forth in the original tenth supplement, in the aggregate principal amount not to exceed \$600 million. Any terms not otherwise defined herein have the meanings given in the "Master Resolution Establishing the Texas Transportation Commission Mobility Fund Revenue Financing Program" approved by the commission pursuant to Minute Order 110081 dated May 4,

2005, as amended by the "First Amendment to the Master Resolution Establishing the Texas Transportation Commission Mobility Fund Revenue Financing Program" pursuant to Minute Order 111083 dated September 27, 2007 (as may be further amended from time to time, the master resolution).

The commission may consider issuing bonds in one or more series in an aggregate principal amount greater than the \$600 million originally authorized in the original tenth supplement, should market conditions and fund revenues permit issuance of such additional bonds.

Additionally, the master resolution can be amended at any time without notice or consent of the owners of the outstanding parity debt to increase the mobility fund revenue financing program size so long as the commission determines that the dedicated revenues defined in the master resolution, will be sufficient to pay all amounts to be payable from the dedicated revenues.

The commission has determined it to be in the best interest of the state to issue additional obligations, on parity with the previously issued outstanding parity debt, secured by revenues and money dedicated to the fund and on deposit in the fund under the constitutional provision and by a pledge of the full faith and credit of the state and to amend the master resolution in a Second Amendment to the Master Resolution (second amendment to the master resolution) to increase the projected debt capacity to more than the current \$6.5 billion.

The commission has also determined it to be in the best interest of the state to amend and restate the original tenth supplement (as amended and restated, tenth supplement) to increase the amount of the bonds that may be issued if it is determined by the department representative, as defined in the tenth supplement, to be in the best interest of the commission and to further amend the master resolution to increase the projected debt capacity thereunder.

IT IS THEREFORE ORDERED by the commission that the tenth supplement is hereby approved with an aggregate principal amount of bonds to be issued in one or more series as set forth therein and that the chairman and executive director are authorized and directed to execute and deliver each series of the bonds and the department representative, as defined in the tenth supplement, is authorized to execute the tenth supplement and the second amendment to the master resolution.

IT IS FURTHER ORDERED by the commission that, except as modified or amended by this order, Minute Order 113090 remains in full force and affect.

IT IS FURTHER ORDERED by the commission that each member of the commission, each department representative, the executive director and general counsel are authorized and directed to perform all such acts and execute such documents and notices, including execution of certifications to the underwriters or purchasers, the Attorney General, the Comptroller of Public Accounts, the Texas Bond Review Board and other parties, as may be necessary to carry out the intent of this order and other orders of the commission relating to the mobility fund revenue financing program and the program documents.

#### **ITEM 14. Traffic Operations**

**Highway Safety Plan - Approve funding for the 2013 Highway Safety Plan (MO)**

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Traffic Operations Division Director Carol Rawson.

113165  
TRF

The Texas Traffic Safety Act of 1967 (House Bill 353, 60th Legislature) and the United States Code, Title 23, Section 402, require a highway safety program designed to reduce traffic crashes and deaths, injuries and property damage.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) also appropriated various traffic safety incentive programs to the states.

The Texas Department of Transportation has, in compliance with these requirements, developed the FY 2013 Highway Safety Plan (HSP).

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the HSP is approved and the executive director is directed to enter into any necessary agreements and proceed in the most feasible and economical manner with program development at an estimated total cost of

\$142,491,343.67 as shown in Exhibit A. The estimated cost for this program is contingent upon the appropriation of funds by the U.S. Congress and could increase or decrease from the requested amount.

IT IS FURTHER ORDERED that, should additional federal funds become available, the director of the Traffic Operations Division is authorized to approve an increase in the HSP up to

10 percent of the total approved budget and the executive director or the director's designee is authorized to approve an increase in the HSP up to 50 percent of the total approved budget, or to the extent of the additional federal funds.

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

#### **ITEM 15. Contracts**

Award or reject contracts for maintenance, highway and building construction

##### **a. Highway Maintenance and Department Building Construction (MO)**

Commissioner Austin made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Construction Division Director John Obr.

113166  
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 June 5 and 6, 2012.

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 the minute order clerk.

**b. Highway and Transportation Enhancement Building Construction (MO)**

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Construction Division Director John Obr.

113167  
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 June 5 and 6, 2012.

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.

Government Code, §669.003, provides that a state agency may not enter into a contract with an entity that employs a person who was the executive head of the agency within the previous four years unless the governing board of the agency approves the

contract in an open meeting. J.D. Abrams, L.P. (Abrams), the apparent low bidder for Dallas District, Ellis County, Job Number 3005, Project Number C 261-1-37 as described in Exhibit A, employs Amadeo Saenz, a former executive director of the department. Mr. Saenz served as the department's executive director within the previous four years.

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 the minute order clerk.

**ITEM 16. Eminent Domain**

**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 Moseley 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 Commissioner Houghton, Commissioner Underwood, Commissioner Meadows, Commissioner Austin and Commissioner Moseley (a vote of 5 – 0). This item was presented by Right of Way Division Director John Campbell.

113168  
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 - QQ. 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 as 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 - 5, 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

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Bell	SH 317	5	0398-04-064	58
Denton	FM 2181	1	2054-02-017	27
Denton	FM 2181	3	2054-02-017	28
Denton	FM 2181	4	2054-02-018	120E

Denton FM 2181 2 2054-02-018 89E

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	HH	0015-04-083	121
Bell	IH 35	II	0015-04-084	6
Bell	IH 35	PP	0015-07-078	77,77AC
Bell	IH 35	NN	0015-07-078	12
Bell	IH 35	MM	0015-07-078	2,2AC
Bell	IH 35	OO	0015-07-078	11
Bell	IH 35	O	0015-14-123	101
Bell	IH 35	M	0015-14-123	8
Bell	IH 35	K	0015-14-123	28
Bell	IH 35	P	0015-14-123	47
Bell	IH 35	C	0015-14-123	72
Bell	IH 35	R	0015-14-123	90
Bell	IH 35	A	0015-14-123	45
Bell	IH 35	J	0015-14-123	12
Bell	IH 35	I	0015-14-123	18
Bell	IH 35	D	0015-14-123	95
Bell	IH 35	H	0015-14-124	3
Bell	IH 35	B	0015-14-124	8
Bell	IH 35	N	0015-14-124	4
Denton	IH 35E	F	0196-01-097	40
Falls	IH 35	LL	0015-02-058	127E,127TE
Harris	IH 45	E	0500-03-546	212
Harris	IH 45	L	0500-03-546	308
Harris	IH 610	G	0271-14-225	308
McLennan	IH 35	BB	0015-01-220	73
McLennan	IH 35	FF	0015-01-220	83,83E
McLennan	IH 35	EE	0015-01-220	77,77E
McLennan	IH 35	CC	0015-01-220	75
McLennan	IH 35	Z	0015-01-220	74
McLennan	IH 35	Y	0015-01-220	39,39E

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
McLennan	IH 35	X	0015-01-220	38
McLennan	IH 35	W	0015-01-220	29,29TE
McLennan	IH 35	QQ	0015-01-220	15
McLennan	IH 35	DD	0015-01-220	76
McLennan	IH 35	GG	0015-01-221	109
McLennan	IH 35	AA	0015-02-058	73
McLennan	IH 35	JJ	0015-02-058	36
McLennan	IH 35	KK	0015-02-058	32
Shelby	SL 500	Q	3315-01-017	32
Tarrant	IH 35W	T	0014-16-267	794

Tarrant	IH 35W	V	0014-16-267	753
Tarrant	IH 35W	U	0014-16-267	783
Tarrant	IH 35W	S	0014-16-267	777

Note: Exhibits A-QQ and 1-5 are on file with minute order clerk.

**ITEM 17. Routine Minute Orders**

Commissioner Underwood made a motion, which was seconded, and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Executive Director Phil Wilson.

**a. Donations to the Department**

**(1) Corpus Christi District - Consider a donation from Haas-Anderson Construction of embankment material for roadway purposes to be delivered within the limits and right of way of a proposed project (MO)**

113169  
GSD

This minute order considers a donation from Haas-Anderson Construction, of embankment material for roadway purposes to be delivered within the limits and right of way of a proposed project. The amount is estimated to be \$100,000.

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 from Haas-Anderson Construction estimated at \$100,000 is approved for acceptance. 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) Dallas District - Consider a donation from HPT CW Properties Trust, for the design and construction of a deceleration lane for an in-bound only right turn lane on the westbound frontage road of I-635 near the donor's property on Greenville Avenue adjacent to Candlewood Suites (MO)

113170  
GSD

This minute order considers a donation from HPT CW Properties Trust, for the design and construction of a deceleration lane for an in-bound only right- turn lane on the westbound frontage road of I-635 near the donor's property on Greenville Avenue adjacent to Candlewood Suites. All design and construction work will be provided by the donor, its consultant or its contractor. The estimated value of the donation is \$125,900.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would 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 by HPT CW Properties Trust, estimated at \$125,900 is approved for acceptance. 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) Houston District - Consider a donation from Cockrell Interest, Inc., for the design and construction of a traffic signal light and left-turn lanes from Beltway 8 to Greens Crossing Boulevard and from Greens Crossing Boulevard to Beltway 8 (MO)**

113171  
GSD

This minute order considers a donation from Cockrell Interest, Inc., for the design and construction of a traffic signal light and left-turn lanes from Beltway 8 to Greens Crossing Boulevard and from Greens Crossing Boulevard to Beltway 8 to the donor's property. All design and construction work will be provided by the donor, its consultant or its contractor. The donor will pay for all of the department's direct and indirect costs associated with the review and oversight of this work. The estimated value of the donation, including direct and indirect costs is \$700,000.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would 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 by Cockrell Interest, estimated at \$700,000 is approved for acceptance. 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) Houston District - Consider a donation from Farouk Alattar for the design and construction of a right-turn lane from US 59 to Grand Estates Drive in Fort Bend County to access donor's commercial development (MO)**

113172  
GSD

This minute order considers a donation from Farouk Alattar, for the design and construction of a right-turn lane from US 59 to Grand Estates Drive in Fort Bend County to access the donor's commercial development. All design and construction work will be provided by the donor, its consultant or its contractor. The donor will pay for all of the department's direct and indirect costs associated with the review and oversight of this work. The estimated value of the donation, including direct and indirect costs is \$35,000.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would 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 by Farouk Alattar, estimated at \$35,000 is approved for acceptance. 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.

**(5) Houston District - Consider a donation from Perry Homes, LLC, for the design and construction of a right-turn lane from SH 6 to North Creekmont Drive for future residents of the Perry Homes development (MO)**

113173  
GSD

This minute order considers a donation from Perry Homes, LLC, for the design and construction of a right-turn lane from State Highway 6 to North Creekmont Drive for future residents of the Perry Homes development. All design and construction work will be provided by the donor, its consultant or its contractor. The donor will pay for all of the department's direct and indirect costs associated with the review and oversight of this work. The estimated value of the donation, including direct and indirect costs is \$60,000.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would 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 by Perry Homes, LLC, estimated at \$60,000 is approved for acceptance. 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.

**(6) Houston District - Consider a donation from TAVAX, Inc., for the design and construction of a left-turn lane and median break from SH 6 to the donor's commercial development in Fort Bend County (MO)**

113174  
GSD

This minute order considers a donation from TAVAX, Inc., for the design and construction of a left-turn lane and median break from State Highway 6 to the donor's commercial development in Fort Bend County. All design and construction work will be provided by the donor, its consultant or its contractor. The donor will pay for all of the department's direct and indirect costs associated with the review and oversight of this work. The estimated value of the donation, including direct and indirect costs is \$20,000.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would 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 by TAVAX, Inc., estimated at \$20,000 is approved for acceptance. 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.

(7) Odessa District - Consider a donation from Agri-Empresa, LLC for an amount sufficient to cover all expenses incurred for the addition of two (2) railroad spur tracks across FM 662 in Midland County (MO)

113175  
GSD

This minute order considers a donation from Agri-Empresa, LLC, for an amount sufficient to cover all expenses incurred for the addition of two (2) railroad spur tracks across FM 662 in Midland County. The amount is estimated to be \$10,000.

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 from Agri-Empresa, LLC estimated at \$10,000 is approved for acceptance. 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.

(8) Yoakum District - Consider a donation from Enterprise Products Operating, L.P., for the design and construction of turn lanes from UA 77 to the gas plant just north of Yoakum (MO)

113176  
GSD

This minute order considers a donation from Enterprise Products Operating, L.P., for the design and construction of turn lanes from UA 77 to the donor's gas plant just north of Yoakum. All design and construction work will be provided by the donor, its consultant or its contractor. The estimated value of the donation is \$300,000.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would 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 by Enterprise Products Operating, L.P., estimated at \$300,000 is approved for acceptance. 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. Highway Designations**

**Denton County - Remove FM 3504 from the state highway system in the city of Lewisville (MO)**

113177  
TPP

In DENTON COUNTY, officials from the City of Lewisville have requested the removal of FARM TO MARKET ROAD 3504 (FM 3504) from the state highway system, from Main Street southward to Business State Highway 121-H, a distance of approximately 1 mile. The Dallas District has determined that FM 3504 is no longer significant to the statewide system of roads.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director of the Texas Department of Transportation (department) has recommended that FM 3504 be removed from the state highway system. The right of way will be retained by the department on a temporary basis.

The Texas Transportation Commission (commission) finds that FM 3504 is no longer needed for the development and operation of the state highway system.

IT IS THEREFORE ORDERED by the commission that FM 3504 is removed from the state highway system, from Main Street southward to Business State Highway 121-H, a distance of approximately 1 mile, as shown in Exhibit A.

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

**c. Release of Access Rights**

**Fort Bend County - I-10, immediately east of FM 1463 in Katy - Consider the designation of two locations on the highway at which access will be permitted to the abutting property (MO)**

113178  
DES

In FORT BEND COUNTY, on INTERSTATE HIGHWAY 10, a designated controlled-access highway, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 453, Page 251 of the Deed Records of Fort Bend County, Texas with denial of access to the abutting remainder property as described in the instrument.

Woodcreek Retail Associates, L.P., the current owner of the abutting property, has requested access to and from the eastbound frontage road of I-10 be permitted along their north property line at two new access points, described in Exhibit A.

Transportation Code, §201.103, empowers the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002, authorizes the commission to lay out, construct, maintain, and operate a modern state highway system, with an emphasis on the construction of controlled-access highways.

Transportation Code, §203.031, authorizes the commission to designate locations on a controlled-access highway at which access to or from the highway is permitted and determine the type and extent of access permitted at each location.

NOW, THEREFORE, the commission finds that the two new access points will not compromise the mobility, safety or operation of the existing state highway facility, and designates the two new access points as locations where ingress and egress are permitted to and from the eastbound frontage road of I-10.

IT IS FURTHER ORDERED by the commission that the executive director or his designee is hereby authorized to execute any necessary documents containing terms consistent with the provisions of this order.

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

**d. Right of Way Dispositions and Donations**

**(1) Bexar County - I-37 at SE Military Drive - Consider the sale of surplus right of way to an abutting landowner (MO)**

113179  
ROW

In the city of San Antonio, BEXAR COUNTY, on INTERSTATE-37, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 4835, Page 453; Volume 5367, Page 989; and Volume 5243, Page 245, Deed Records of Bexar County, Texas.

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

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 the abutting landowner.

The Trails RV Resort, Repair Shop, and Parts Sales, LLC, is an abutting landowner and has requested to purchase the surplus land for \$63,105.

The commission finds \$63,105 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 Trails RV Resort, Repair Shop, and Parts Sales, LLC, for \$63,105; 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 the minute order clerk.

**(2) Collin County - FM 455 From US 75 northbound frontage road to SH 5 - Consider the acceptance of a donation of land for a highway improvement project (MO)**

113180  
ROW

In COLLIN COUNTY, on FARM TO MARKET ROAD 455 from US 75 north bound frontage road to State Highway 5, 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.

John Bradley (owner) is the owner of the property described in Exhibit A and wants to donate this property, estimated at \$22,225, 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) Colorado County - US 90, 2.5 miles east of FM 949 - Consider the sale of surplus right of way to abutting landowners (MO)

113181  
ROW

In COLORADO COUNTY, on US 90, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 98, Page 291, Deed Records of Colorado County, Texas.

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

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 the abutting landowners.

Anthony A. Kuhn and Glendeline Kuhn are the abutting landowners and have requested to purchase the surplus land for \$1,488.

The commission finds \$1,488 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value is less than \$10,000. The commission authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Anthony A. Kuhn and

Glendeline Kuhn for \$1,488; 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) Coryell County - US 190 at FM 1113 in Copperas Cove - Consider the sale and quitclaim of surplus right of way to the abutting landowners (MO)**

113182  
ROW

In the city of Copperas Cove, CORYELL COUNTY, on US 190, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 138, Page 556, Deed Records of Coryell County, Texas, and the state used other land for highway purposes to which there is no record title.

Portions of the land (surplus land), described in Exhibit A, are no longer needed for highway purposes.

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 the abutting landowner and may recommend, if there is no record title, the quitclaim of any interest that might have accrued to the state to abutting landowners at the request of the county or municipality.

Lightfoot Oil, Inc., is the abutting landowner and has requested that the surplus land shown in Exhibit A as Tract 1 be sold to the company for \$69,500.

The city has requested that the surplus land shown in Exhibit A as Tract 2 be quitclaimed to the abutting landowner.

The commission finds \$69,500 to be a fair and reasonable value of the state's rights, title and interest in Tract 1.

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 Tract 1 to Lightfoot Oil, Inc., for \$69,500, and that Tract 2 be quitclaimed to Lightfoot Oil, Inc.; 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 Tract 1.

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

**(5) Tarrant County - I-30 at Collins Street in Arlington - Consider the sale of surplus right of way to the abutting landowner (MO)**

113183  
ROW

In the city of Arlington, TARRANT COUNTY, on INTERSTATE-30, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 2919, Page 253, and Volume 2925, Page 164, Deed Records of Tarrant County, Texas.

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

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 the abutting landowner.

GIC-Turnpike, L.P., is the abutting landowner and has requested to purchase the surplus land for \$3.55 million.

The commission finds \$3.55 million 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 GIC-Turnpike, L.P., for \$3.55 million; 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.

**e. Reports**

**(1) Report on Environmental Review of Projects**

**(2) Accept the annual Inspection Report for the Central Texas Turnpike System (MO)**

113184  
TOD

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 the minute order clerk.

**f. Speed Zones**

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

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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 various 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.

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 portion of the minute order establishing the speed zones shown on the attached Exhibit C are canceled.

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

**OPEN COMMENT PERIOD - At the conclusion of all other agenda items, the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the commission. No action will be taken. Each speaker will be allowed a maximum of three minutes. Speakers must be signed up prior to the beginning of the open comment period.**

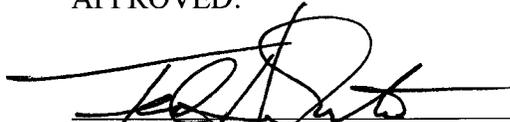
The commission received comments from Jim Von Wolske of Austin in the Open Comment Period.

**ITEM 17. Executive Session Pursuant to Government Code, Chapter 551**  
**Section 551.071 - Consultation with and advice from legal counsel regarding any item**  
**on this agenda**

The commission did not meet in executive session.

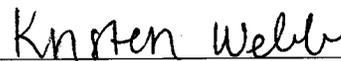
The regular meeting of the Texas Transportation Commission was adjourned at 11:18 a.m.

APPROVED:

  
\_\_\_\_\_  
Ted Houghton, Chairman  
Texas Transportation Commission

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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 June 28, 2012, in Austin, Texas.

  
\_\_\_\_\_  
Kristen Webb, Chief Minute Order Clerk  
Texas Department of Transportation