TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

ALL Districts

The Texas Department of Transportation (department) has a long-standing reputation for integrity and ethical behavior. This reputation is a great source of pride for the department as well as one of the department's greatest assets because it instills the necessary trust and confidence that the public must have in any governmental agency. It is of utmost importance to the Texas Transportation Commission (commission) to continue to be good stewards of the taxpayer resources entrusted to the department.

The federal Sarbanes–Oxley Act (SOX) was signed into law in July of 2002, in large part as a response to the corporate and accounting scandals occurring in 2001 and 2002. SOX required publicly traded companies to adhere to significant new governance standards that broadened the roles of board members of those companies in overseeing financial transactions and auditing procedures. While SOX does not apply to private or non-profit companies or to governmental entities, the application of its general principles relating to internal financial controls and professional responsibility would enhance the level of accountability for department actions and reliability of department financial information.

Section 302 of SOX requires that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify (the "302 certifications") to the Securities and Exchange Commission (SEC) in each annual or quarterly report filed or submitted under the Act that:

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the company as of, and for, the periods presented in the report;

(4) the signing officers:

- (A) are responsible for establishing and maintaining internal controls,
- (B) have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared,
- (C) have evaluated the effectiveness of the company's internal controls as of a date within 90 days prior to the report, and
- (D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

- (A) all significant deficiencies in the design or operation of internal controls which could adversely affect the company's ability to record, process, summarize, and report financial data and have identified for the company's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

The department is not required to submit reports to the SEC, but it regularly prepares comparable annual financial reports which are subject to audit and which contain a complete set of basic financial statements. The executive director and chief financial officer currently incorporate most of the SOX requirements in their certifications to the auditors of the department's annual financial statements in the form of a management representation letter.

Section 404 of SOX sets out requirements for an internal control report. The report is to: (1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) contain an assessment, as of the end of the most recent fiscal year of the company, of the effectiveness of the internal control structure and procedures of the company for financial reporting.

It is expected that outside assistance would be required to complete an internal control assessment for the first year and that future assessments could be prepared by department staff. Department staff has already established and currently maintains internal controls for financial reporting. In the course of auditing the department's annual financial statements, independent auditors (primarily state auditors) evaluate the department's system of internal controls to determine whether it can relied upon as a basis for expressing an opinion on the financial statements. The auditors do not, however, perform sufficient audit work to express an opinion on the system of internal controls.

As part of maintaining an adequate internal control structure, the role of the chief financial officer in ensuring that the executive director has sufficient reliable financial information to make appropriate budgetary and spending adjustments should be specified and monitored for its effectiveness.

Section 406 of SOX requires that a code of ethics be adopted for senior financial officers. As defined in that section, a code of ethics means such standards as are reasonably necessary to promote:

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the company; and

(3) compliance with applicable governmental rules and regulations.

Establishing a code of ethics for senior financial officers would define the standards to which they are held in order to ensure full, fair, accurate, timely and understandable financial reports and documents that the department submits to the commission, the Governor and the Texas Legislature, or disseminates to the public.

The commission desires to implement the spirit of Sarbanes-Oxley by implementing policies and procedures, including a code of ethics for senior finance personnel, that are designed to maintain and build on the department's commitment to transparency and reliability of financial information and to ethical behavior and integrity, and to enhance the level of accountability for department action.

IT IS THEREFORE ORDERED by the commission that the chief financial officer or his designee is directed to:

(1) Develop and implement policies and procedures to expand the practice of providing certifications by the executive director and chief financial officer to include certifications to the commission for all quarterly and annual financial reports filed with the commission, including the operating budget, investment report, and cash forecasting report, with the certification to contain, as applicable, the 302 certifications or similar certifications that the chief financial officer considers applicable to department operations.

(2) Develop and implement policies and procedures: (a) for establishing and maintaining an adequate internal control structure and procedures for financial reporting, (b) for assessing, as of the end of each fiscal year, the effectiveness of the internal control structure and financial reporting procedures, (c) setting forth the responsibility of management for the internal control structure and for financial reporting procedures, and (d) specifying the role of the chief financial officer in ensuring that the executive director has sufficient reliable financial information to make appropriate budgetary and spending adjustments and providing for monitoring of this role for its effectiveness.

(3) Develop a code of ethics for senior finance personnel that includes such standards as are reasonably necessary to promote: honest and ethical conduct; full, fair, accurate, timely, and understandable disclosure in reports and other documents; and compliance with applicable rules and regulations.

IT IS FURTHER ORDERED by the commission that the chief financial officer shall report to the commission on the status of implementation of this order no later than May 1, 2009.

Submitted and reviewed by:

Deputy Executive Director

Recommended by:

Executive Director

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