

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 2

ALL Districts

On February 26, 2009 by Minute Order 111710 the Texas Transportation Commission (commission) approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call).

On September 24, 2009 by Minute Order 111977 the commission authorized the executive director or his designee to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals under the program call were selected by the commission in that minute order as providing the best value to the state. On October 29, 2009 by Minute Order 112016 and on December 17, 2009 by Minute Order 112074 the commission authorized the executive director or his designee to negotiate and execute a pass-through toll agreement with each of the public entities set forth in Exhibit A (selected public entities) for the construction of their respective projects as identified in the exhibit. The agreements will provide for payment of pass-through tolls by the Texas Department of Transportation (department) to the selected public entities as reimbursement for the construction of facilities on the state highway system in accordance with §222.104(b), Transportation Code, and Title 43 Texas Administrative Code §§5.51-5.60 (rules).

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

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). Payment of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the construction contract (actual cost of construction), subject to the following two exceptions.
 - (A) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
 - (B) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated cost of construction, if the following conditions are met:

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

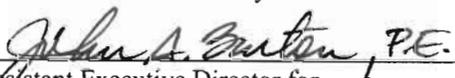
Page 2 of 2

ALL Districts

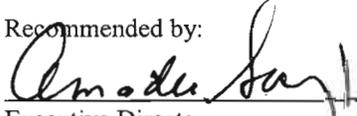
- (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's estimated total reimbursement amount as set forth in Exhibit A;
 - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
 - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (iv) the public entity receives the department's prior consent for the expenditures.
- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
- (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
- (4) Construction costs shall have the same meaning as described in the program call.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized and directed to include in each pass-through toll agreement to be executed with the public entities set forth in Exhibit A an actual cost provision that complies with the findings described in this minute order.

Submitted and reviewed by:


 Assistant Executive Director for
 Engineering Operations

Recommended by:


 Executive Director

112293 JUN 8 10

Minute	Date
Number	Passed

**EXHIBIT A
PASS-THROUGH TOLL PROGRAM CALL PROJECTS**

District	County/City Name	Project Description	Total Reimbursement	Reimbursement Rate (per vehicle mile unless otherwise noted)	Minimum Reimbursement Amount per Year	Maximum Reimbursement Amount per Year	Region
HOU	FT. BEND CO.	<p>FM 1093 - Phase I from SH 99 to the east city limits of Fulshear - Construct a pair of one-way frontage roads.</p> <p>FM 1093 - Phase II from SH 99 to the east city limits of Fulshear - Construct a highway section. <i>(The Fort Bend County Toll Road Authority will fund all of the stages of development, including construction of Phase 2.)</i></p> <p>FM 1093 - Phase III from James Lane to FM 359/FM 1093, and then continuing to the east city limits of Fulshear - Construct a "parkway" section.</p>	\$39,600,000	\$0.08	\$1,980,000	\$3,960,000	EAST
HOU	BRAZORIA CO.	<p>SH 36 in City of West Columbia from the northern city limits of West Columbia to south of SH 35 - Construct a four-lane overpass at future SH 35, with access roads, etc.</p> <p>SH 36 in City of Brazoria from North of CR 348 to South of CR 310 - Widen from a two lane to four-lane undivided rural roadway, where necessary, overlay and restripe, and add a two-way left turn lane as warranted.</p> <p>SH 36 at FM 1495 Port Freeport Entrance - Construct a four-lane elevated T intersection at SH 36 and FM 1495, with access roads.</p>	\$29,406,000	\$0.055	\$1,470,300	\$2,940,600	EAST
WAC	CITY of KILLEEN	<p>US 190 from 0.2 miles east of the US 190/FM 3470 interchange to 0.3 miles west of the US 190/FM 2410 interchange - Construct a new interchange at US 190 and Rosewood Drive, etc.</p> <p>FM 2410 from the intersection of FM 2410 and FM 3470 to Roy Reynolds Drive - Widen the existing two lane rural section to a five lane urban section.</p>	\$20,150,000	\$0.03	\$1,007,500	\$2,015,000	NORTH

**EXHIBIT A
PASS-THROUGH TOLL PROGRAM CALL PROJECTS**

District	County/City Name	Project Description	Total Reimbursement	Reimbursement Rate (per vehicle mile unless otherwise noted)	Minimum Reimbursement Amount per Year	Maximum Reimbursement Amount per Year	Region
FTW	HOOD CO.	US 377 from SW of the SH 144 interchange to NE of Old Acton Highway - Reconstruct a four-lane undivided roadway to a six-lane divided roadway, etc.	\$31,000,000	\$0.055	\$1,550,000	\$3,100,000	NORTH
FTW	CITY of HUDSON OAKS	IH 20/US 180 from Center Point Road/IH 20 to the interchange of IH 20, US 180 and Lakeshore Drive - Construct a new frontage road between Center Point Road and Lakeshore Dr and construct intersection improvements at US 180/IH 20 and Lakeshore Dr., etc.	\$7,954,000	\$0.25	\$397,700	\$795,400	NORTH
ATL	BOWIE CO.	US 82 from FM 1840 to SH 98 – Reconstruct and widen this existing non-freeway facility to either a two lane section with a two-way left turn lane or to add passing lanes.	\$26,200,000	\$0.07	\$1,310,000	\$2,620,000	NORTH
DAL	CITY of MIDLOTHIAN & MIDLOTHIAN DEVELOPMENT AUTHORITY	US 67 at Rail Port Parkway/Miller Road - Construct a grade separated interchange over Rail Port Parkway/Miller Road in Ellis County.	\$9,831,000	\$0.05	\$491,550	\$983,100	NORTH
DAL	CITY of MIDLOTHIAN	FM 663 at US 287 Relief Route - Reconstruct and widen the existing bridge and approaches on FM 663 at the interchange with the US 287 Relief Route in the city of Midlothian.	\$2,542,192	\$0.10	\$127,110	\$254,220	NORTH
YKM	CITY of VICTORIA	Loop 463 (Zac Lentz Parkway) from 0.60 miles West of Salem Road to 0.50 miles East of Mockingbird Lane – Construct main lanes, frontage roads, and grade separated structures along Loop 463 (Zac Lentz Parkway) at Salem Road (FM 1315) and Mockingbird Lane.	\$17,561,000	\$0.12	\$878,050	\$1,756,100	SOUTH