

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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On February 25, 2010, by Minute Order 112156, 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). The commission further determined that (i) monies available that could be allocated among all proposals selected under the program call would be limited to an estimated total of \$300 million in Category 12 funds, and (ii) only the category of construction costs would be considered as eligible for reimbursement under the program call.

Pursuant to Minute Order 112156 and Title 43 Texas Administrative Code §§5.51-5.60 (rules), the Texas Department of Transportation (department) published in the Texas Register a notice designating a 60-day period commencing on March 12, 2010 for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was May 11, 2010. Department staff evaluated the proposals that were timely submitted under the program call using the items of consideration set forth in §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

In accordance with §222.104(b), Transportation Code, and §§5.54-5.55 of the rules, the commission granted preliminary approval on June 24, 2010 in Minute Order 112305 authorizing the department to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals were selected by the commission in that minute order as providing the best value to the state. The agreements will provide for the payment of pass-through tolls to the selected public entities as reimbursement for the construction of facilities on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

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

(1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). 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.

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(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:

(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.

The department was unable to negotiate financial terms of a pass-through toll agreement with certain of those public entities whose proposals were selected in Minute Order 112305. Negotiations then commenced with other public entities whose proposals were conditionally selected in that same minute order. The department and each of the public entities identified in Exhibit A have agreed to a total reimbursement through pass-through tolls for construction of the projects, a reimbursement rate per vehicle mile, the minimum amount to be reimbursed in any year with all projects open to traffic, and the maximum amount per year as set forth in the exhibit. Each agreement will expire once the total amount of that agreement has been reimbursed. The projects will be authorized and reimbursed from Category 12, Strategic Priority funds.

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

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

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate and execute a pass-through toll agreement with each of the public entities set forth in Exhibit A for the construction of their respective projects as identified in the exhibit, in accordance with the negotiated terms, the actual cost provision described in this minute order, and such other terms the department determines to be necessary, and to amend Category 12, Strategic Priority, of the 2010 Unified Transportation Program (UTP), approved by Minute Order 112237, dated April 29, 2010, to authorize the projects included in each executed agreement.

Submitted and reviewed by:


Assistant Executive Director for
Engineering Operations

Recommended by:


Executive Director
112437 SEP 30 10

Minute Number Date Passed

**EXHIBIT A
2010 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
DAL	North Central Texas Council of Governments	IH 30 HOV/Managed Lanes from SH 360 to Sylvan Avenue - Construct permanent barrier separated managed/HOV lanes, toll gantries, two wishbone ramps, and a two-lane westbound frontage road from Cockrell Hill to Westmoreland.	\$63,134,000	\$0.40	\$3,156,700	\$6,313,400	NORTH
WAC	City of Temple	Loop 363 from 0.5 miles west of IH 35 (North) to FM 2305 - Construct an additional two-12' lanes with an 8' shoulder roadway section (northbound frontage road) to provide an interim four-lane divided highway. Additional improvements will include the construction of two grade separation interchanges with mainlanes, ramps, and frontage roads at Wendland Road and SH 36/53.	\$15,050,000	\$0.08	\$752,500	\$1,505,000	NORTH
PHR	Hidalgo County Regional Mobility Authority	US 281 (Military Road) from 0.45 miles E. of SP 600 to FM 2557 (Stewart Road) - Construct an overpass structure on US 281 at San Juan Road with frontage roads, ramps, turnarounds, and reconstruct US 281 from a 2 lane to a 4 lane divided urban non-tolled facility with a continuous left turn.	\$7,355,735	\$0.09	\$367,787	\$735,574	SOUTH
DAL	Denton County	FM 1171 (sections 2 & 3) from W. of Shiloh Road to IH 35W - Reconstruct FM 1171 from a 2-lane rural roadway to a 6-lane divided urban facility. The improvements also include bridge structures at Graham Branch, Whites Branch, Sharp's Branch and No Name Creek with 6' sidewalks on both sides.	\$41,400,000	\$0.085	\$2,070,000	\$4,140,000	NORTH
		Total =	\$126,939,735				