

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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VARIOUS Districts

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

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

In accordance with §222.104(b), Transportation Code and §§5.54-5.55 of the rules, the commission granted preliminary approval on May 26, 2011, in Minute Order 112685, authorizing the department to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals were selected by the commission in that minute order as providing the best value to the state. The agreements will provide for the payment of pass-through tolls to the selected public entities as reimbursement for the construction of facilities on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

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

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). Payments of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the construction contract (actual cost of construction), subject to the following two exceptions.

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- (a) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated total construction cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
- (b) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated construction of cost, if the following conditions are met:
 - (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's reimbursement amount as set forth in Exhibit A;
 - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
 - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right-of-way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (iv) the public entity receives the department's prior written consent for the expenditures.
- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
- (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
- (4) Construction costs shall have the same meaning as described in the program call.

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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 or 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.

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 Unified Transportation Program, thereby identifying committed funding for the project; (2) must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or designee is authorized to negotiate and execute a pass-through toll agreement with 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, actual cost provision described in this minute order, and such other terms the department determines to be necessary.

Submitted and reviewed by:

John A. Burton, P.E.
Assistant Executive Director for
Engineering Operations

Recommended by:

Amelia Swan
Executive Director
112755 JUL 28 11
Minute Number Date Passed

**EXHIBIT A
PROPOSALS APPROVED FOR AGREEMENT NEGOTIATIONS
2011 PASS-THROUGH TOLL PROGRAM CALL**

DISTRICT	REGION	LOCAL ENTITY NAME	HIGHWAY(S)	PROJECT DESCRIPTION	TOTAL REIMBURSEMENT	REIMBURSEMENT RATE (PER VEHICLE MILE UNLESS OTHERWISE NOTED)	MINIMUM REIMBURSEMENT AMOUNT PER YEAR	MAXIMUM REIMBURSEMENT AMOUNT PER YEAR
AUS	SOUTH	Central Texas RMA	US 183/US 183A	Realign US 183 roadway, US 183A frontage roads, and access road to accommodate future interchange. Project limits are approximately 0.2 miles north of existing US183/US183A intersection to 0.2 miles south of intersection. Project length is approximately 0.4 miles.	\$1,500,000	\$0.016*	\$75,000	\$150,000
FTW	NORTH	City of Fort Worth	SH 199	Reconstruction of SH 199 (Henderson Street) from 890' North of Cullen Street to 270' North of White Settlement Road to include a new bridge over the existing FTWRR Crossing and a proposed new USACE Channel improvement. The project will also include the addition of sidewalks and bicycle lanes. The project length is approximately 0.48 miles.	\$11,685,000	\$0.07*	\$584,250	\$1,168,500
AUS	SOUTH	Travis County	FM 969	Widening and reconstruction of FM 969 from FM 3177 to Hunter's Bend Rd to be done in two phases. Phase I will be to widen the roadway to provide continuous left turn lane, shoulders, and a sidewalk on one side of the roadway from FM 3177 to FM 973. Phase II will provide two additional travel lanes, a continuous left turn lane, shoulders, and a sidewalk on one side of the roadway. Total project length is approximately 3.97 miles.	\$9,538,600	\$0.016	\$476,930	\$953,860
FTW	NORTH	Parker County	IH 20	Demolition of the existing Old Brock Road Bridge and construction of a new 4 lane bridge and Interchange, connecting the Western Loop to IH-20 through the construction of frontage roads, exit and entrance ramps. The project length is approximately 0.9 miles.	\$6,900,000	\$0.12*	\$345,000	\$690,000

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DAL	NORTH	City of Terrell	FM 148 South FM 148 North Spur 557 IH 20	<p>FM 148 South – Widen existing 2-lane roadway to a 4-lane roadway with a continuous left turn lane and shoulders from IH 20 to Spur 557. The project length is approximately 0.34 miles.</p> <p>FM 148 North – Widen existing 2-lane roadway to a 4-lane roadway with a continuous left turn lane and shoulders from Spur 557 to Bachelor Creek. The existing bridge over Spur 557 will be reconstructed. The project length is approximately 1.12 miles.</p> <p>Spur 557 – Construct grade separated interchange at the intersection of CR 305 and construct eastbound frontage road from CR 305 to FM 148. The project length is approximately 1.36 miles.</p> <p>IH 20 – Construct one-way westbound frontage road from FM 148 to Spur 557. There will be a minimum of 2 lanes with a 3-lane section as the frontage road approaches and intersects with FM 148. The project length is approximately 0.93 miles.</p>	\$10,604,000	\$0.013	\$530,200	\$1,060,400
DAL	NORTH	City of Frisco	FM 2478	Expand FM 2478 from a 4-lane roadway to a 6-lane roadway from SH 121 to Stonebridge Parkway. The improvements may possibly require the addition of sidewalks for the length of the project. The project length is approximately 3.00 miles.	\$6,113,769	\$0.008	\$305,688	\$611,377
AUS	SOUTH	Travis County	FM 1626	Widening and reconstruction of FM 1626 from 1,100 feet west of Brodie Lane to FM 2304. From 1,100 feet west of Brodie Lane to the Bear Creek Bridge, the roadway will be a five lane section with a continuous left turn lane and 10' shoulders. From the Bear Creek Bridge to FM 2304, the roadway will be a five lane curb and gutter section with 6' shoulders and a sidewalk on one side of the roadway. Total project length is approximately 1.11 miles.	\$4,203,300	\$0.045	\$210,165	\$420,330
DAL	NORTH	City of Kaufman	SH 34	Relocate SH 34 through the City of Kaufman and construct on new location from south of US 175 to south of FM 1388. The new roadway will consist of a curb and gutter roadway with two lanes in each direction, expandable to a total of six lanes. The project length is approximately 2.6 miles.	\$13,646,876	\$0.15	\$683,344	\$1,364,688
DAL	NORTH	Rockwall County	IH 30	Reconstruction of the IH 30 and FM 3549 Interchange. IH 30 will be reconstructed to pass over FM 3549 and FM 3549 will be reconstructed to a 4-lane urban roadway. The IH 30 frontage roads and ramps will be reconstructed as well. The project length is approximately 1.45 miles.	\$20,792,000	\$0.035*	\$1,039,600	\$2,079,200

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FTW	NORTH	Hood County	US 377	Provide a 4-lane divided relief route for US 377 in the City of Cresson from approximately 1.21 miles northeast of SH 171 to approximately 1.19 miles southwest of SH 171. Grade separations will be provided over SH 171 and the Fort Worth & Western Railroad and at the relief route intersections with Business Route US 377.	\$20,554,000	\$0.11	\$1,027,700	\$2,055,400
PHR	SOUTH	Hidalgo County RMA	US 281	Construct grade separated interchange at the intersection of US 281 and FM 755. US 281 main lanes will go over FM 755 and ramps and one way frontage roads will be provided. The project length is approximately 1.373 miles.	\$8,927,225	\$0.10*	\$446,361	\$892,723
DAL	NORTH	City of Forney	FM 1641	Widen FM 1641 from a 2-lane roadway to a 4-lane roadway. From FM 548 to Nicole Lane, the roadway section will be curb and gutter with no center left turn lane, and from Nicole Lane to IH 20 frontage road, roadway section will have open ditches with 10 foot shoulders and no center left turn lane. The project length is approximately 4.2 miles.	\$13,400,000	\$0.035	\$670,000	\$1,340,000
PHR	SOUTH	Cameron County RMA	US 77	Project will consist of constructing two tolled direct connector ramps each carrying two lanes from US 77/83 at SH 550 to 200 feet east of Baker Lane and then continuing with four main lanes to 2,800 feet east of Old Alice Road. The project will include a grade separation at Old Alice Road. The proposed pavement section will be concrete. The project length is approximately 2.19 miles.	\$27,700,000	\$0.35	\$1,385,000	\$2,770,000
WAC	NORTH	City of Harker Heights	US 190	Construct eastbound to westbound turnaround bridge for US 190 at the FM 2410 interchange. Project will include the overlay of the eastbound and westbound frontage roads at the turnaround location. The project length is approximately 0.47 miles.	\$1,700,000	\$0.20*	\$85,000	\$170,000
TOTAL					\$157,264,770			

* Reimbursement rate is per vehicle