These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on December 16, 2010 in Austin, Texas. The meeting was called to order by Commissioner Ted Houghton, in Chair Delisi's absence. The meeting opened at 9:05 a.m. with the following commissioners present:

Texas Transportation Commission:

Ted Houghton	Commissioner
Ned Holmes	Commissioner
Fed Underwood	Commissioner
Bill Meadows	Commissioner

Administrative Staff:
Steve Simmons, Deputy Executive Director
Bob Jackson, General Counsel
Roger Polson, Executive Assistant to the Deputy Executive Director
JoLynne Williams, Chief Minute Order Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute 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 4:18 p.m. on December 8, 2010, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the November 18, 2010 regular meeting of the Texas Transportation Commission

Commissioner Holmes made a motion, which was seconded, and the commission approved the minutes of the November 18, 2010 regular meeting by a 4-0 vote.

ITEM 2. Aviation
a. Various Counties – Award federal and state grant funding for airport improvement projects at various locations (MO)

Commissioner Holmes made a motion which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Aviation Division Director Dave Fulton.

112510
AVN

The Texas Department of Transportation (department) is authorized under the federal Aviation Development 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 Wednesday, November 10, 2010, a public hearing was 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 $27,575,597.

Note: Exhibit A on file with minute order clerk.

ITEM 3. Public Transportation

a. Various Counties – Award transportation development credits to Gulf Coast Center and Concho Valley Transit District (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Public Transportation Division Director Eric Gleason:

112511
PTN

The Texas Transportation Commission (commission) desires to award $200,000 in Transportation Development Credits (TDC) to two transit agencies, to be used as the local match for federally funded transit capital projects.

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

Concho Valley Transit District has requested 50,000 in TDC for the construction of the San Angelo Multimodal Transportation Terminal and Administration facility and Gulf Coast Center has requested 150,000 in TDC for the University of Texas Medical Branch Victory Lakes Park and Ride facility. Both TDC requests will serve to provide local match requirements for Fiscal Year 2010 Congressional earmarks.

The commission finds that TDC investments in transit multimodal facility projects will expand economic opportunity by increasing public transportation options for employment and education, and increase the value of transportation assets by investing in new transit infrastructure. The commission also finds that TDC investments in transit park and ride facilities reduces congestion by improving connectivity of transit operations thus decreasing single occupancy vehicles on the roadway additionally improving air quality by reduced emissions.

The commission further finds that the San Angelo and Gulf Coast projects are eligible to receive TDC and satisfy the criteria of 43 TAC §5.72, as described above.

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.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to distribute TDC to the systems as described above and enter into the necessary contracts in accordance with the priorities established in this minute order.

b. Various Counties – Approve changes to public transit projects previously approved for funding from Texas' portion of the American Recovery and Reinvestment Act (ARRA) (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was presented by Public Transportation Division Director Eric Gleason:

112512 PTN

The Texas Transportation Commission (commission) takes note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) program under 49 USC §5311, and has the authority to award approximately $50 million of ARRA nonurbanized (rural) transit funds.

The ARRA created an economic stimulus package that provides $64.1 billion nationwide for infrastructure projects, including $1.5 billion for surface transportation grants to be administered by the Secretary of Transportation. Texas' share of the funding for transit is approximately $372 million.

IT IS THEREFORE ORDERED by the commission that the projects set forth in Exhibit A is hereby approved for funding under the provsion of the ARRA.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with the sub-grant award for the transit agreements for the activities described in Exhibit A, and to enter into any other necessary agreements associated with those projects and activities.

IT IS FURTHER ORDERED that the department shall track the progress of the projects set forth in Exhibit A separately from other ongoing projects and place information regarding the status of these projects on the department's website.

Note: Exhibit A on file with minute order clerk.

ITEM 4. Rail Projects

a. Authorize use of a $5.6 million grant from the Federal Railroad Administration for purposes of studying a proposed passenger rail facility running from Oklahoma City to Dallas/Fort Worth, with possible extension to South Texas (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Rail Division Director Bill Glavin.

112513 RRD

On May 19, 2009, the Texas Department of Transportation (department) submitted three applications for passenger rail funding under the Federal Railroad Administration's (FRA) High-Speed Intercity Passenger Rail grant program. On October 28, 2010, the FRA announced that one of these projects was selected for funding of planning activities.

The FRA awarded $5.6 million to be used for feasibility studies, a service development plan, and environmental review work for a passenger rail facility running from Oklahoma City, Oklahoma to Dallas/Fort Worth, Texas with possible extension to Austin and San Antonio. The Oklahoma Department of Transportation submitted a letter in support of the department's application, agreeing to assist the department concerning planning work in Oklahoma.

The department has received concurrence from the FRA to expand the limits and allow the use of the federal funds for planning the passenger rail facility running from Oklahoma City to South Texas.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is hereby authorized to enter into any necessary agreements to use the federal grant in a manner approved by FRA to complete the feasibility studies, a service development plan, and environmental review work on the corridor.

b. **Galveston County** – Award transportation development credits (TDC) to the City of Galveston for studies related to the proposed Galveston to Houston commuter rail line (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Rail Division Director Bill Glavin.

112514
RRD

The Texas Transportation Commission (commission) desires to award $400,000 in Transportation Development Credits (TDC) to the City of Galveston to be used for studies, including alternatives analysis, and environmental and preliminary engineering work on the proposed Galveston to Houston commuter rail line. The city has received a grant under the Federal Transit Administration's New Starts Program. The city would use the TDC to satisfy the non-federal match requirement of the federal grant.

The commission recognizes that state and federal law permit the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission. The commission finds that the project and the proposed award of TDC has been reviewed to confirm eligibility, benefit to public transportation, and the furtherance of the goals of the Texas Department of Transportation (department) in 43 TAC §5.72(e).

The commission finds that the project will meet the goals of the department through the studying of alternative modes of transportation that could provide reduced emissions, congestion relief, enhanced safety, and system connectivity with local transit and potential high-speed and intercity passenger rail.

Transportation Code, Chapter 201 authorizes the department to coordinate activities regarding the planning, coordination, operation, and maintenance of a statewide passenger rail system.

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.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to distribute TDC to the City of Galveston as outlined above and to enter into any necessary agreements.

c. **Tarrant County** - Authorize funds from the TIGER II Discretionary Grant Program for the final design and construction of the Tower 55 Multimodal Improvement Project (MO)

Commissioner Meadows made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Rail Division Director Bill Glavin.

112515
RRD

On August 23, 2010, the Texas Department of Transportation (department) submitted six applications to the U.S. Department of Transportation's (USDOT) National Infrastructure Investments under the FY 2010 Appropriations Act, known as the TIGER II Program. One application concerned the Tower 55 Multimodal Improvement Project.

On October 20, 2010, the USDOT announced that the Tower 55 project would receive $34 million in federal funds through the grant program. These funds will be combined with $55.2 million provided by BNSF Railway (BNSF) and Union Pacific Railroad (UP), $1 million from the department, and $1 million from the City of Fort Worth to fully fund the final design and construction of this $91.2 million project.

The project is for improvements to rail and roadway infrastructure at and near the Tower 55 at-grade rail/rail crossing near downtown Fort Worth to improve rail system capacity, fluidity, and reliability while improving community livability. These improvements specifically include an additional track through the interlocker, sidings, improved highway/rail grade separations to allow for emergency vehicle access, and pedestrian walkways.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is hereby authorized to enter into any necessary agreements to proceed in the most feasible and economic manner to complete the development and construction of the improvements along the BNSF Fort Worth Subdivision and UP's Dallas and Choctaw Subdivisions and in the area of their crossing at Tower 55

ITEM 5. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. **Final Adoption**

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

Repeal of §§9.100-9.117 (Subchapter G, Highway Improvement Contract Sanctions) and New §9.101, Purpose and Application of Subchapter, §9.102, Definitions, §9.103, Notification of Rules, §9.104, Delivery of Written Notice or Requests to the Department, §9.105, Act of Individual or Entity Imputed to Contractor, §9.106, Compliance Program, §9.107, Grounds for Sanction, §9.108, Procedure, §9.109, Notice of Sanction, §9.110, Available Sanctions, §9.111, Application of Sanction, §9.112, Appeal of Sanction, §9.113, Indirect Sanction on an Affiliated Entity, §9.114, Lessening or Removal of Sanction, §9.115, List of Debarred or Suspended Contractors (Subchapter G, Highway Improvement Contract Sanctions)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Deputy Executive Director Steve Simmons.

112516 ADM The Texas Transportation Commission (commission) finds it necessary to repeal existing 43 TAC Chapter 9, Subchapter G, §§9.100 - 9.117, Highway Improvement Contract Sanctions, and simultaneously replace the repealed subchapter with new Subchapter G, §§9.101-9.115, Highway Improvement Contract Sanctions, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the 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 §§9.100 - 9.117 and new §§9.101-9.115 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 are on file with minute order clerk.

(3) **New Chapter 10 - Ethical Conduct by Entities Doing Business with the Department (MO)**

New Chapter 10, New Subchapter A, General Provisions, §§10.1 - 10.7; New Subchapter B, Other Entities' Internal Ethics and Compliance Procedures, §10.51; New Subchapter C, Required Conduct by Entities Doing Business with the Department, §§10.101 - 10.102; New Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, §§10.151 - 10.160; New Subchapter E, Removal of Precertification of Architectural, Engineering, and Surveying Service Providers for Ethical Violations, §§10.201 - 10.206; and New Subchapter F, Sanctions for Ethical Violations by Other Entities, §§10.251 - 10.257

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Deputy Executive Director Steve Simmons.

112517 ADM The Texas Transportation Commission (commission) finds it necessary to adopt new Chapter 10, Ethical Conduct by Entities Doing Business with the Department, New Subchapter A, General Provisions, §§10.1 - 10.7; New Subchapter B, Other Entities' Internal Ethics and Compliance Procedures, §10.51; New Subchapter C, Required Conduct by Entities Doing Business with the Department, §§10.101 - 10.102; New Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, §§10.151 - 10.160; New Subchapter E, Removal of Certification of

Architectural, Engineering, and Surveying Service Providers for Ethical Violations, §§10.201 - 10.206; and New Subchapter F, Sanctions for Ethical Violations by Other Entities, §§10.251 - 10.257, all to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A - G, 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 §§10.1 - 10.7, §10.51, §§10.101 - 10.102, §§10.151 - 10.160, §§10.201 - 10.206, and §§10.251 - 10.257 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 are on file with minute order clerk.

(1) Chapter 1 - Management (MO)

Repeal of §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program (Other Entities' Internal Ethics and Compliance Procedures)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Deputy Executive Director Steve Simmons.

112518
ADM

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program, both relating to other entities' internal ethics and compliance procedures, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted repeals, 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 repeal of §1.8 and §1.9 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 are on file with minute order clerk.

(4) **Chapter 15 - Financing and Construction of Transportation Projects, Chapter 26 - Regional Mobility Authorities, Chapter 27 - Toll Projects, and Chapter 31 - Public Transportation (MO)**
Amendments to §15.92, Miscellaneous Powers and Duties of Corporations (Transportation Corporations), §26.56, Required Internal Ethics and Compliance Program (Miscellaneous Operation Provisions), §27.53, Request (Financial Assistance for Toll Facilities), and §31.39, Required Internal Ethics and Compliance Program (Program Administration)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Deputy Executive Director Steve Simmons.

112519
GSD

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.92, Miscellaneous Powers and Duties of Corporations, §26.56, Required Internal Ethics and Compliance Program, §27.53, Request, and §31.39, Required Internal Ethics and Compliance Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted amendments, attached to this minute order as Exhibits A - H, 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 §15.92, §26.56, §27.53, and §31.39 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 are on file with minute order clerk.

(5) **Chapter 21 - Right of Way (MO)**
New §21.301, Purpose, §21.302, Definitions, §21.303, Request for Proposals, §21.304, Proposals, §21.305, Selection of Entity, §21.306, Negotiation with Selected Entity, §21.307, Agreement, §21.308, Termination of Agreement, §21.309, Payment, §21.310, Sublease, and §21.311, General Requirements (New Subchapter J, Leasing of Highway Assets for Transportation Facility)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Turnpike Authority Division Director Mark Tomlinson.

112520
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt new §§21.301-21.311 relating to Leasing of Highway Assets for Transportation Facility to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted 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 §§21.301-21.311 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 are on file with minute order clerk.

(6) **Chapter 23 - Travel Information (MO)**
Amendments to §23.1, Purpose and §23.2, Definitions (General Provisions) and §23.10, Travel Literature, §23.12, Texas Official Travel Map, and §23.14, Display of Travel Literature in the Texas Travel Information Centers (Travel Information)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Travel Information Division Director Doris Howdeshell.

112521
TRV

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §23.1, Purpose, §23.2, Definitions, §23.10, Travel Literature, §23.12, Texas Official Travel Map, and §23.14, Display of Travel Literature in the Texas Travel Information Centers, be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, 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 amendments to §23.1, §23.2, §23.10, §23.12, and §23.14 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 are on file with minute order clerk.

b. **Proposed Adoption**
Chapter 15 - Financing and Construction of Transportation Projects (MO)
Amendments to §15.52, Agreements (Federal, State, and Local Participation)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Commissioner Holmes absent).

This item was recommended by staff and presented by Assistant Executive Director for Field and District Operations David Casteel.

112522
GSD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §15.52, Agreements, relating to federal, state, and local participation 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 §15.52 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 are on file with minute order clerk.

ITEM 6. Sale of Access Rights

Establish a policy for determining the fair value of access rights to a state highway when the department sells access rights to an adjoining property owner (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Commissioner Holmes absent). This item was recommended by staff and presented by Assistant Executive Director for Engineering Operations John Barton.

112523
AEO

The Texas Department of Transportation (department) is committed to an access management policy that balances the needs of mobility and safety on the state highway system with the needs of access to adjacent land uses. Access management involves not only the control of access through the designation of locations at which access to or from the highway is permitted or denied, but also the state's acquisition of an adjoining landowner's right of ingress and egress to the highway as needed for a state highway purpose, and sale of those access rights that are no longer needed.

Transportation Code, §§201.103, 203.002, and 203.003 authorize the Texas Transportation Commission (commission) to plan and make policies for the location, construction, maintenance, and operation of a comprehensive system of state highways and public roads. Transportation Code, §§203.051 and 203.052 authorize the commission to acquire an interest in real property that the commission determines is necessary or convenient to a state highway, including a landowner's right of ingress and egress to the highway. The appraisal method for valuing the landowner's access rights in an acquisition is based on legal doctrines of state and federal eminent domain and inverse condemnation law.

Transportation Code, §202.021 authorizes the commission to recommend the sale of access rights to the adjoining landowner if those access rights are owned by the state and the commission determines that the rights are no longer needed for a state highway purpose Section 202.021 also requires the commission to determine the fair value of the state's interest in the access rights as a condition of the sale. The method for determining the value of the state's access rights in a surplus sale is not prescribed by law.

To emphasize the department's commitment to a balanced and fair approach, the commission desires to implement a policy that is designed to apply the same standard for determination of value to both the state's acquisition and sale of an adjoining landowner's right of ingress and egress to a state highway.

IT IS THEREFORE ORDERED by the commission, for a sale or transfer of access rights occurring after January 1, 2011, that the standard for determination of fair value of the state's interest in the sale of access rights to a highway right of way under Transportation Code, §202.021 (d) shall be the same standard that is required by law to be used by the department in the acquisition of access rights under Transportation Code, Chapter 203, Subchapter D, and the payment of damages in the exercise of authority under Transportation Code, Chapter 203, Subchapter C for impairment of highway access to or from particular adjoining land.

ITEM 7. Property Exchange

Palo Pinto, Somervell and Tarrant Counties - Award a Development and Exchange Agreement with the top-ranked design-build firm for the design, construction and renovation of buildings at various locations in the Fort Worth District (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Commissioner Holmes absent). This item was recommended by staff and presented by Director of Facilities Management Uly Flores.

112524
MNT

Transportation Code, Section 201.1055, authorizes agreements with private entities for the acquisition, design, construction or renovation of buildings for the Texas Department of Transportation (department) by various methods. The methods include the exchange of existing department-owned property and improvements with a private entity in return for the design and construction of a building or other facility required to support department operations on department-owned property.

Pursuant to this authority, Minute Order 112403, passed August 26, 2010, authorized the department to select a qualified private entity to design, construct, renovate and provide other facility-support structures in exchange for the existing property at I-30 and Collins Road, Arlington, Tarrant County. If the design and construction cost is less than the appraised value of the property, the private entity will be required to pay the difference in cash upon the exchange. If the estimated costs are more that the appraised value of the property, the private entity shall have the option to donate the difference or rescind the Development and Exchange Agreement (DEA) prior to commencement of construction.

The construction and renovation of buildings on state-owned property will provide needed replacement facilities required to support department operations and mission.

The department's existing property located at I-30 and Collins Road, Arlington, Tarrant County, more particularly described by metes and bounds in Exhibit A, having an appraised value of $12,003,000, will no longer be needed for the purposes for which it was acquired.

The following improvements will be procured in exchange for the property that is no longer needed.

- Construction of a new area engineer and maintenance building and renovation of an existing laboratory building to be completed on department-owned property located at 2501 Southwest Loop 820 in the city of Fort Worth, Tarrant County, Texas, more particularly described by meters and bounds in Exhibit B.
- Construction of a new maintenance facility to be completed on department-owned property located at SH 144 in the city of Glen Rose, Somervell County, Texas, more particularly described by metes and bounds in Exhibit C.
- Construction of a new maintenance facility to be completed on department-owned property located at 2400 US 180 West, Mineral Wells, Palo Pinto County, Texas, more particularly described by metes and bounds in Exhibit D.

The department proposes to negotiate a DEA with the selected proposer, PRA Arlington I-30, LLC (PRA), to procure the new facilities. The value of the improvements will be based on cost estimates for site development, professional design services, construction cost and all associated costs for the above stated improvements. Actual value will be determined by financial documentation from PRA. In the event the actual value exceeds the appraised value of the property to be exchanged, PRA will donate the additional value to the department. In the event the actual value is less than the appraised value of the property, PRA will pay the difference to the department.

IT IS THEREFORE ORDERED by the commission that the determination that the proposal submitted by PRA, provides the best value to the department is approved and the department is authorized to complete negotiation on the terms of the DEA that are satisfactory to the department; and the executive director is authorized to execute a DEA and a deed of the subject property to PRA upon the completion and acceptance by the department of the stated improvements.

Note: Exhibits are on file with minute order clerk.

. **ITEM 8. Port Capital Program**

Accept the annual 2011-2012 Port Capital Program submitted by the Port Authority Advisory Committee (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Transportation Planning and Programming Division Director James Randall. The commission received comments from chairman of the Port Authority Advisory Committee John LaRue.

112525 TPP

Transportation Code, §55.006 requires the Texas Transportation Commission (commission) to appoint a seven-member Port Authority Advisory Committee (committee). Transportation Code, §55.007 provides that the committee shall:

(1) prepare a port mission plan;

(2) review each project eligible to be funded under Transportation Code, Chapter 55 and make recommendations for approval or disapproval to the Texas Department of Transportation (department);

(3) maintain trade data information that will assist ports in this state and international trade;

(4) annually prepare a list of projects that have been recommended by the committee, including: (A) the recommended funding level for each project; and (B) if staged implementation of the project is appropriate, the funding requirements for each stage; and

(5) advise the commission and the department on matters relating to port authorities.

Transportation Code, §55.008 requires the committee to develop a two-year Port Capital Program defining the goals and objectives of the committee concerning the development of port facilities and an intermodal transportation system. In addition, this section requires the committee to update the Port Capital Program annually and submit it to the governor, the lieutenant governor, the speaker of the house of representatives, and the commission.

The committee met on November 3, 2010 and formally adopted the 2011-2012 Port Capital Program and submitted the program to the department.

IT IS THEREFORE ORDERED by the commission that the 2011-2012 Port Capital Program as shown in Exhibit A is accepted and will be further distributed as required by law.

Note: Exhibit is on file with minute order clerk.

ITEM 9. Pass-Through Toll Program

Authorize the designation of a period of time in 2011 for public and private entities to submit proposals under the pass-through toll program to develop highway projects on the state highway system and prescribe the conditions that will be applicable to the proposals under Title 43, Texas Administrative Code, Section 5.54 (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 This item was recommended by staff and presented by Assistant Executive Director for Engineering Operations.John Barton.

112526 AEO

Section 222.104(b), Transportation Code authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity. 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.

On January 29, 2009 by Minute Order 111669 the Texas Transportation Commission (commission) adopted revised rules, codified as Title 43 Texas Administrative Code §§5.51-5.60 (rules), that prescribe the policies and procedures governing the department's implementation of the pass-through toll program (program) under Section 222.104(b), Transportation Code.

Section 5.54 of the rules provides that if the commission determines that funds available for use in the program are limited, it may periodically limit the periods of time during which the department will accept proposals for pass-through toll projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement (agreement).

The commission finds that monies available under the program for allocation to new pass-through toll projects are limited to an estimated $250 million in funds from Category 12, Strategic Priority, of the 2010 Unified Transportation Program (Category 12 funds). In order to extend use of the funds to the greatest number of highway improvement projects and to allow both public and private entities to have an equal chance to participate in the program, the commission determines that from the date of this minute order until the expiration of the 2011 fiscal year, or such additional time as needed for negotiation and execution of the individual agreements, proposals for projects to be developed under the program will only be accepted in accordance with the terms of this minute order.

Pursuant to §5.54 of the rules, the department will publish in the Texas Register notice of the designated period for acceptance of proposals for projects to be developed under the program. The notice will specify the deadline for submitting proposals, the estimated amount of funds available in the program that can be allocated to the proposals submitted, whether submissions will be accepted from only public entities, or from both public and private entities, whether submissions will be accepted for highway projects, railroad projects, or both, the categories of project costs that will be eligible for reimbursement, and any other condition deemed appropriate by the commission.

After evaluation of properly submitted proposals, the department will present its analyses to the commission which may, after consideration of the criteria set forth in §5.55 of the rules and the conditions established in this minute order, select the entities whose proposals provide the best value to the state. The department will attempt to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers, and will solicit competitive proposals under §5.56 of the rules for the selected private entity proposers.

IT IS THEREFORE ORDERED that during the period of time beginning on December 16, 2010 and continuing until August 31, 2011, or such additional time as needed for negotiation and execution of the individual agreements, proposals for pass-through toll projects to be developed under the program will only be accepted if the proposals are in compliance with the following conditions:

(1) proposals may be submitted by both public and private entities;

(2) submissions will be for highway projects on the state highway system only;

(3) proposals for a new location facility or realignment of an existing roadway will only be considered if a commission minute order exists at the

time of submission that designates the new location or realignment as part of the state highway system;

(4) only the following category of project costs described in §5.53(a)(11) of the rules will be considered as eligible for reimbursement under the program: 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;

(5) 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;

(6) 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;

(7) the estimated total amount of funds available to be allocated among the selected proposals will be $250 million in Category 12 funds for the entire reimbursement period of all selected proposals;

(8) the deadline for submitting proposals will be 60 days after publication of notice in the Texas Register soliciting proposals in accordance with this minute order;

(9) in the event that an alternative funding source or a significant increase in Category 12 funding becomes available for use in the program prior to August 31, 2011 or any extended date, the commission may authorize an additional deadline period for submitting proposals to be in compliance with conditions specific to the new period, in accordance with the requirements of §5.54 of the rules; and

(10) in the event that a critical transportation need arises which can be addressed with a pass-through toll agreement, or an alternative funding source becomes available for a specific transportation project, the commission may, at any time and irrespective of the limitations above, authorize acceptance of an individual proposal for development of a pass-through toll project to meet that need or utilize those funds, provided that the proposal otherwise complies with the rules.

IT IS FURTHER ORDERED that the executive director or his designee is directed to take the necessary steps to implement the actions as ordered in this minute order.

ITEM 10. I-69 Corridor Advisory Committee

Various Counties - Consider the appointment of new members to the I-69 Corridor Advisory Committee (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Turnpike Authority Division Director Mark Tomlinson.

112527 TTA

Pursuant to 43 TAC §1.86 and Minute Order 111294, dated March 27, 2008, the Texas Transportation Commission (commission) created an advisory committee to assist the Texas Department of Transportation (department) in the transportation planning process for the corridor planned as part of Interstate Highway 69 (I-69).

The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of the transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor.

As provided in 43 TAC §1.86, the I-69 Corridor Advisory Committee will provide advice and recommendations to the department on the planning and development of the I-69 corridor. The advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the I-69 corridor, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

In Minute Order 111294, the commission appointed 18 members to the I-69 Corridor Advisory Committee. One member has asked to be removed from the committee and one member is now deceased. These individuals will be replaced by two new members appointed by the commission.

Under 43 TAC §1.86(b), the commission may appoint members of a corridor advisory committee from the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

The individuals identified in Exhibit A as new members of the I-69 Corridor Advisory Committee have been selected because they will ensure the members of the committee represent a geographic distribution across the corridor area and reflect a diverse cross section of the widely varying stakeholder groups needed to help the department identify and reach consensus on corridor needs and potential transportation solutions.

IT IS THEREFORE ORDERED by the commission that the individuals identified as new members on the attached Exhibit A are appointed as members of the I-69 Corridor Advisory Committee.

ITEM 11. Toll Roads

a. **Chambers County** - Consider the approval of the department's determination to exercise its option to develop, construct, and operate the portion of State Highway 99 (Grand Parkway) in Chambers County, pursuant to Transportation Code, §228.0111(i) (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0. (Commissioner Underwood absent). This item was recommended by staff and presented by Turnpike Authority Division Director Mark Tomlinson.

112528
TTA

Transportation Code, §228.0111, establishes a process for providing local toll project entities, defined as regional tollway authorities, regional mobility authorities, or counties acting under Transportation Code, Chapter 284, with the first option to develop, construct, and operate toll projects located within the boundaries of the local toll project entity.

In Minute Order 111410, dated June 26, 2008, the Texas Transportation Commission (commission) adopted policies relating to the implementation of this process, which determines whether the Texas Department of Transportation (department) or a local toll project entity will develop, construct, and operate a toll project located within the boundaries of the local toll project entity.

In accordance with the requirements of Transportation Code, §228.0111 and the policies included in Minute Order 111410, the department and the counties in which State Highway 99 (Grand Parkway) is located entered into a Market Valuation Waiver Agreement, effective March 25, 2009, in which the parties agreed on the terms and conditions for the development, construction, and operation of the Grand Parkway, agreed to waive the development of a market valuation of the Grand Parkway, and agreed to certain other provisions applicable to the development, construction, and operation of the Grand Parkway.

As required by Transportation Code, §228.0111(e), the agreed terms and conditions were approved by the Houston-Galveston Transportation Policy Council, the metropolitan planning organization for the area in which the Grand Parkway is located, in Resolution No. 2008-08, dated August 22, 2008.

In accordance with the requirements of Transportation Code, §228.0111(g), on September 22, 2009, Chambers County (county) elected to exercise its option to develop, construct, and operate the portion of the Grand Parkway located within the territory of the county (project). By resolution and order adopted on July 13, 2010, the county withdrew its previous election to exercise that option, effectively failing to exercise its option, and providing for the reversion to the department of the right to develop, construct, and operate the Project.

Transportation Code, §228.0111(i) provides that if a local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project, or does not enter into a contract for the construction of the project and make a commitment described in Transportation Code, §228.0111(g)(2) within the prescribed two-year period, the department has the option to develop, finance, construct, and operate the toll project under the agreed terms and conditions.

The department did not exercise its option to develop, finance, construct, and operate the project within two months of the county's July 13, 2010 election not to exercise its option, as required by Transportation Code, §228.0111(i). Under Transportation Code, §228.0111(j), if the department does not exercise its option, the department and the local toll

project entity may meet again for the purpose of agreeing on terms and conditions for the development, construction, and operation of a toll project, and shall follow the process prescribed in Transportation Code, §228.0111(f)-(i).

In accordance with the requirements of Transportation Code, §228.0111, the department and the county, by letter agreement dated November 16, 2010, confirmed (1) their agreement on the terms and conditions for the development, construction, and operation of the portion of the Grand Parkway in the county, (2) their agreement to waive the development of a market valuation for the Grand Parkway project, and (3) the county's election not to exercise its option to develop, construct, operate, and maintain the portion of the Grand Parkway located within the county.

The department has determined that its option to develop, finance, construct, and operate the portion of the Grand Parkway located within the county should be exercised. Minute Order 111410 provides that the commission must approve any department determination to exercise an option to develop, finance, construct, and operate a toll project under Transportation Code, §228.0111.

IT IS THEREFORE ORDERED by the commission that the department's determination to exercise its option to develop, finance, construct, and operate the portion of State Highway 99 (Grand Parkway) in Chambers County, pursuant to Transportation Code, §228.0111(i), is approved.

ITEM 11. Toll Roads

b. **Travis and Williamson Counties –** Accept the quarterly Report of Actual Traffic and Revenue for the Central Texas Turnpike System (CTTS) (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Turnpike Authority Division Director Mark Tomlinson.

112529
TTA

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 is on file with minute order clerk.

ITEM 11. Toll Roads

c. **Travis and Williamson Counties** – Accept the audited financial statements of the CTTS, as required by the CTTS Indenture of Trust (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Finance Division Director Brian Ragland.

112530
FIN

Transportation Code, Chapter 228 and other applicable law authorizes the Texas Transportation Commission (commission) to issue toll project revenue bonds, bond anticipation notes, and other obligations to finance toll 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 issued toll project revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike System (system), a toll project composed initially of SH 130 (Segments 1 through 4), SH 45 North, and Loop 1 project elements (2002 Project). The commission also authorized the execution of an indenture of trust and five supplemental indentures to secure revenue bonds and other obligations issued for the 2002 Project. The Indenture of Trust dated July 15, 2002 (indenture) prescribes the terms, provisions and covenants related to the issuance of toll project revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Under Section 712 of the indenture, the commission covenants to prepare, or cause to be prepared, no more than 120 days after the last day of each fiscal year, a financial report of the results of operations of the system for such fiscal year. The financial report is required to be certified by a certified public accountant and to contain an audited balance sheet, an audited statement of operations, and an audited statement of cash flows for such fiscal year. Audited financial statements, contained in the attached Exhibit A, have been prepared for the fiscal year ended August 31, 2010.

IT IS THERFORE ORDERED by the commission that the audited financial statements of the system, attached as Exhibit A, is accepted.

Note: Exhibit is on file with minute order clerk.

ITEM 12. Unified Transportation Program (UTP)

a. Approve adjustments to the FY 2011, FY 2012, FY 2013 and FY 2014 obligation limit funding levels in the UTP (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Finance Division Director Brian Ragland.

112531
FIN

The 2010 Unified Transportation Program (UTP) of the Texas Department of Transportation (department) is an 11-year plan that authorizes project planning and development, and is submitted to the Texas Transportation Commission (commission) for approval.

The 2010 UTP, which was approved by the commission on April 29, 2010 in Minute Order 112237, established obligation limits (also known as letting caps) by category and by district. To more effectively manage available funding levels and optimize construction and maintenance project lettings, the commission adopted Minute Order 112445, dated September 30, 2010, which adjusted the FY 2011 district/category allocations.

To account for changes to district allocations based on funds transfer requests that have been approved by the department's Chief Financial Officer, it is necessary to adjust the FY 2011, FY 2012, FY 2013 and FY 2014 obligation limit funding levels as shown in Exhibits A, B, C and D.

IT IS THEREFORE ORDERED by the commission that the adjusted funding levels set forth in Exhibits A, B, C and D are approved

Note: Exhibits are on file with minute order clerk.

ITEM 13. Texas Mobility Fund

Accept the audited financial statements of the Texas Mobility Fund (TMF) as required by the governing master resolution (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Finance Division Director Brian Ragland.

112532
FIN

Article III, Section 49-k of the Texas Constitution created the Texas Mobility Fund (Mobility Fund) within the treasury of the State of Texas (state) to be administered by the Texas Transportation Commission (commission) as a revolving fund to (i) provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways, including costs of any necessary design and costs of acquisition of rights of way, as determined by the commission in accordance with standards and procedures established by law and (ii) provide participation by the state in the payment of a portion of the costs of constructing and providing publicly-owned toll roads and other public transportation projects in accordance with the procedures, standards, and limitations established by law.

Transportation Code, Chapter 201 and other applicable law authorizes the commission to issue obligations secured by and payable from a pledge of and lien on all or part of the moneys in the Mobility Fund in the name and on behalf of the state and the Texas Department of Transportation (department) in multiple series and issues from time to time for one or more of the following purposes: (i) to pay all or part of the costs of constructing, reconstructing, acquiring, and expanding state highways, including any necessary design

and acquisition of rights of way, in the manner and locations determined by the commission that, according to conclusive findings of the commission, have an expected useful life, without material repair, of not less than 10 years; (ii) to 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 that are determined by the commission to be in the best interests of the state in its major goal of improving the mobility of the residents of the state; (iii) to create debt service reserve accounts; (iv) to pay interest on obligations for a period of not longer than two years; (v) to refund or cancel outstanding obligations; and (vi) to pay the commission's costs of issuance. The commission also authorized the execution of a Master Resolution, an amendment to the Master Resolution and eight supplemental Resolutions (Resolutions) to authorize bonds for the Mobility Fund Revenue Financing Program. The Resolutions pledge a variety of dedicated statutory fees and other revenues as security and sources of payment for the Mobility Fund bonds and additionally pledge the general revenue of the state. The Resolutions also prescribe the terms, provisions and covenants related to the general obligation Mobility Fund bonds.

Under Section 5 (j) of the Resolution, the commission covenants to prepare, or cause to be prepared, no more than 120 days after the last day of each fiscal year, a financial report of the Mobility Fund. The financial report is required to be prepared in accordance with generally accepted accounting principles and certified by a certified public accountant. Audited financial statements, contained in the attached Exhibit A, have been prepared for the year ended August 31, 2010.

IT IS THEREFORE ORDERED by the commission that the audited financial statements of the Mobility Fund, attached as Exhibit A, are accepted

Note: Exhibit is on file with minute order clerk.

ITEM 14. Obligation Limit Report

Status report on the FY 2011 Obligation Limit, the actual obligations utilized through the current month, proposed remaining highway maintenance and construction contract letting for the fiscal year and an update on motor fuel tax receipts

The report was given by Finance Division Director Brian Ragland.

ITEM 15. Contracts

a. Award or Reject Highway Improvement Contracts

(1) **Highway Maintenance and Department Building Construction (MO)**

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Construction Division Director Russel Lenz.

112533 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 December 7 and 8, 2010.

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 minute order clerk.

a. Award or Reject Highway Improvement Contracts
(2) **Highway and Transportation Enhancement Building Construction (MO)**

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. This item was recommended by staff and presented by Construction Division Director Russel Lenz.

112534
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 December 7 and 8, 2010.

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.

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 minute order clerk.

16. **Routine Minute Orders**

Commissioner Holmes made a motion, which was seconded, and the commission approved the following routine minute orders by a 4-0 vote (Item 16d(3) was deferred). The items were recommended by staff and presented by Executive Director Amadeo Saenz

a. **Donations to the Department**

(1) **Traffic Division** – Consider a donation from the American Traffic Safety Services Association for department employees' registration and travel expenses to attend the 41st Annual Convention & Traffic Expo in Phoenix, Arizona on February 14-17, 2011 (MO)

112535
GSD

This minute order considers a donation of an estimated $2,741.86 to the Texas Department of Transportation (department) from the American Traffic Safety Services Association for department employees' registration and travel expenses to attend the 41st Annual Convention & Traffic Expo in Phoenix, Arizona on February 14-17, 2011.

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.

IT IS THEREFORE ORDERED by the commission that the donation of an estimated $2,741.86 from the American Traffic Safety Services Association is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation

(2) **Travel Information Division –** Consider a donation of a photo scanner from the Taylor Public Library (MO)

112536
GSD

This minute order considers a donation from the Taylor Public Library of an Epson Expression 10000XL Flatbed Photo Scanner valued at an estimated $2,600 to scan archival black and white historical images for the Portal to Texas History as partial fulfillment of a "Train to Share" grant.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and provides 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.

IT IS THEREFORE ORDERED by the commission that the donation of equipment valued at an estimated $2,600 from the Taylor Public Library is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

b. **Eminent Domain Proceedings**
Various Counties – noncontrolled and controlled access highways (MO)

112537
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or

from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Dallas	SH 78	3	0009-02-056	15
Denton	FM 2181	1	2054-02-018	21
Denton	FM 423	2	1567-02-030	62

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	X	0015-07-078	21
Bell	IH 35	Y	0015-07-078	20
McLennan	IH 35	S	0014-08-082	68,68E,68AC
McLennan	IH 35	R	0014-08-082	85,85AC
McLennan	IH 35	Q	0014-08-082	35
McLennan	IH 35	P	0014-08-082	71,71AC
Tarrant	IH 820	N	0008-14-093	96
Tarrant	IH 820	H	0008-14-093	160
Tarrant	IH 820	I	0008-14-093	101
Tarrant	IH 820	J	0008-14-093	14
Tarrant	IH 820	K	0008-14-093	104
Tarrant	IH 820	M	0008-14-093	51
Tarrant	IH 820	T	0008-14-093	175
Tarrant	IH 820	U	0008-14-093	116
Tarrant	IH 820	V	0008-14-093	25
Tarrant	SH 121	W	0364-01-119	606
Tarrant	SH 121	G	0364-01-119	504
Tarrant	SH 121	D	0364-01-119	624

Tarrant	SH 121	B	0364-01-119	500
Tarrant	SH 121	A	0364-01-119	596
Tarrant	SH 183	L	0364-05-038	649
Tarrant	SH 183	O	0364-05-038	640
Tarrant	SH 183	F	0364-05-038	650
Tarrant	SH 183	E	0364-05-038	661
Tarrant	SH 183	C	0364-05-038	638

Note: Exhibits are on file with minute order clerk.

c. **Load Zones & Postings**
Ochiltree County – Revise a load restriction on a bridge on the state highway system (MO)

112538 BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state-highway system.

It has been determined from this investigation that the load limit on a bridge on the state- highway system in Ochiltree County should be removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limit which may be moved over the bridge described in Exhibit A be removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection of signs as appropriate, making the removal of this load limitation effective and operative

Note: Exhibit is on file with minute order clerk.

d. **Right of Way Dispositions and Donations**
(1) **Eastland County -** FM 571 at FM 2214 northeast of Gorman - Consider the exchange of right of way (MO)

112539 ROW

In EASTLAND COUNTY, on FARM TO MARKET ROAD 571, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 469, Page 163, Volume 469, Page 170; and Volume 470, Page 116, Deed Records of Eastland County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of surplus land as whole or partial consideration for other land needed for a state highway purpose.

Leo Clayton Williams, Donna Beth Moore, David Clayton Williams, Delores Helms, and Enid K. Williams and husband, Paul S.Yanko, are owners of land needed by the state for highway purposes (new land), described in Exhibit B. They have conveyed the new land to the state and have requested that the surplus land be conveyed to them. The state has paid the owners the $19,210 cash difference in value between the surplus land and the new land pursuant to an executed exchange agreement.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to the owners in exchange and as partial consideration for the conveyance of the new land to the state and the state's cash payment to the owners of $19,210.

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 Leo Clayton Williams, Donna Beth Moore, David Clayton Williams, Delores Helms, and Enid K. Williams and husband, Paul S.Yanko, in exchange and as partial consideration for the conveyance of the new land to the state and the state's cash payment of $19,210 to the owners; 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: Exhibits are on file with minute order clerk.

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

(2) **Fort Bend County -** on US 59, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instruments recorded in Volume 460, Page 77, and Volume 503, Page 329, Deed Records of Fort Bend County, Texas. (3 MOs)

112540 ROW

In the city of Sugar Land, FORT BEND COUNTY, on US 59, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instruments recorded in Volume 460, Page 77, and Volume 503, Page 329, Deed Records of Fort Bend County, Texas.

Portions of the easement (surplus easements), described in Exhibit A, are no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus easements.

NNP-Telfair LP, a Texas limited partnership f/k/a NNP-Keepsake, L.P., is the fee owner and has requested that the surplus easements be sold for $60,670.

The commission finds $60,670 to be a fair and reasonable value for the state's rights and interest in the surplus easements.

NOW, THEREFORE, the commission finds that the surplus easements are no longer needed for a state highway purpose and recommends, subject to approval of the attorney

general, that the Governor of Texas execute a proper instrument releasing the state's rights and interest in the surplus easements to NNP-Telfair LP, a Texas limited partnership f/k/a NNP-Keepsake, L.P., for $60,670

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

112541 ROW

In the city of Sugar Land FORT BEND COUNTY, on US 59, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 503, Page 329, Deed Records of Fort Bend County, Texas.

A portion of the easement (surplus easement), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus easements.

Fort Bend Levee Improvement District No.17 is the fee owner and has requested that the surplus easement be sold for $2,902.

The commission finds $2,902 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and that the value of the surplus easement is less than $10,000 and authorizes the executive director to execute a proper instrument partially releasing the state's rights and interest in the surplus easement to Fort Bend Levee Improvement District No.17 for $2,902.

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

112542 ROW

In the city of Sugar Land, FORT BEND COUNTY, on US 59, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 460, Page 77, Deed Records of Fort Bend County, Texas.

A portion of the easement (surplus easement), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus easements.

Taylor Morrison of Texas, Inc., is the fee owner and has requested that the surplus easement be sold for $29,217.

The commission finds $29,217 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends, subject to approval of the attorney general, that the Governor of Texas execute a proper instrument releasing the state's rights and interest in the surplus easement to Taylor Morrison of Texas, Inc., for $29,217.

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

DEFERRED (3) **Montgomery County** - I-45 at FM 1097 north of Conroe – Consider the sale of access rights to the abutting landowner (MO)

(4) **Tarrant County** – Business US 287-P in Fort Worth - Consider the designation of Business US 287-P on a new alignment, remove a portion of the existing alignment from the system and transfer control, jurisdiction and maintenance of a portion of the existing alignment to the city. In addition, the MO will authorize the transfer and quitclaim of surplus right of way to the city (MO)

112543
ROW

In the city of Fort Worth, TARRANT COUNTY, on US 287-P, the State of Texas used certain land for highway purposes.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended the designation of BU 287-P on a new location. The executive director has also recommended that a section of existing BU 287-P, shown in Exhibit A, be removed from the state highway system and that control, jurisdiction and maintenance be transferred to the city.

The surplus land, described in Exhibits B and C, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property and may recommend the quitclaim to the city of any interest that might have accrued to the state by use of the property, if there is no record title to the property.

The fair value of the surplus state land has been determined to be $580,000, and the cost of future maintenance over the next 30 years is estimated to be $2.3 million.

The commission finds $580,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus state land.

IT IS THEREFORE ORDERED by the commission that:

1. Existing BU 287-P, along Houston Street from 5th Street and along Commerce from 4th Street to Lancaster Avenue, then along South Main to Rosedale Street, then along Rosedale Street to Interstate 35W, in Fort Worth is removed from the state highway system and transferred to the city for control, jurisdiction and maintenance; and

2. BU 287-P is designated on a new location along 4th Street from Commerce Street and along 5th Street from Houston Street to State Spur 280, then along State Spur 280 and I-35W south to the existing location of BU 287-P.

FURTHER, 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 transferring the state's rights, title and interest in the surplus state land to the City of Fort Worth, Texas, in consideration of the savings to the state of future maintenance costs, and a proper instrument quitclaiming the surplus no-title land to the City of Fort Worth, Texas; 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 state land

Note: Exhibits are on file with minute order clerk.

e. Speed Zones

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

112544
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 are on file with minute order clerk.

18. **Executive Session** Pursuant to Government Code, Chapter 551, **Section 551**

a. **Section 551.071** – Consultation with and advice from legal counsel regarding any item on this agenda

The commission did not meet in executive session.

OPEN COMMENT PERIOD

There were no open comments.

The regular meeting of the Texas Transportation Commission adjourned at 10:10 a.m.

APPROVED:

_____

Ted Houghton, Acting Chair
Texas Transportation Commission

xxx

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 December 16, 2010, in Austin, Texas.

_____

JoLynne Williams, Chief Minute Order Clerk
Texas Department of Transportation