

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on February 28, 2007 in Austin, Texas. The meeting opened at 9:09 a.m. with the following commissioners present:

**Texas Transportation Commission:**

Ric Williamson	Chair
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner

**Administrative Staff:**

Michael W. Behrens, Executive Director  
 Bob Jackson, General Counsel  
 Roger Polson, Executive Assistant to the Deputy Executive Director  
 Dee Hernandez, Chief Minute 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 1:40 p.m. on February 20, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**ITEM 1. Approval of Minutes of the January 25, 2007 regular meeting of the Texas Transportation Commission.**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the minutes of the January 25, 2007 regular meeting of the Texas Transportation Commission.

**ITEM 2. AVIATION**

**Approve funding for airport improvement projects at various locations (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Aviation Division Director David Fulton.

110837  
 AVN

The Texas Department of Transportation (department) is authorized under Transportation Code, Chapter 21 and Chapter 22, 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. Due to the interest on the part of the airport sponsors, the department recommends that the improvements be funded.

On Thursday, January 18, 2007, a public hearing was held and 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 \$4,675,140.

Note: Exhibit A on file with minute order clerk.

### **ITEM 3. PUBLIC TRANSPORTATION**

#### **a. El Paso County – Award Rural Transportation Assistance Program funds to El Paso County (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

110838  
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, "Rural Transit Assistance Program" (49 U.S.C. §5311 (b) (2)), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

The commission on October 27, 2005, approved Minute Order 110258 which awarded \$145,000 of 49 U.S.C. §5311 (b)(2) Rural Transit Assistance Program funds to El Paso County in support of the Intelligent Transportation Systems service integration project.

The commission now desires to award an additional \$18,250 of 49 U.S.C. §5311 (b)(2) Rural Transit Assistance Program funds to El Paso County to expand the scope of project to include the five additional counties included in the regional planning service area: Brewster, Culberson, Hudspeth, Jeff Davis and Presidio.

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 authorized to submit the necessary state application to the FTA, and enter into the necessary contracts with El Paso County upon completion of all application requirements.

### **ITEM 7. PASS-THROUGH TOLLS**

#### **AUTHORITY TO EXECUTE AGREEMENT**

#### **b. El Paso County – Authorize the executive director to execute a pass-through toll agreement for the design and construction of Inner Loop from US 54 to Loop 375 in El Paso (MO)**

The commission considered this item and delayed a vote until amendments were made to the proposed minute order (see page 55).

The commission received comments from State Senator Eliot Shapleigh and Representative Joe Pickett.

**b. Various Counties – Award FY 2007 federal §5311, Nonurbanized Area Formula Program, funds to rural transportation operators providing rural public transportation (MO)**

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

110839  
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, “Formula Grant Program for Areas Other than Urbanized” (49 U.S.C. §5311), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

Title 43, Texas Administrative Code (TAC), §31.36(g) establishes a formula by which §5311 program funds shall be distributed to the nonurbanized areas of the state. The distribution of the FY 2007 allocation, including unobligated funds from previous grants, is shown in Exhibit A and has been calculated in accordance with the provisions of §31.36(g).

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 proceed with the allocations as described in Exhibit A, submit the necessary application to FTA and enter into the necessary contracts for the FY 2007 program of projects.

Note: Exhibit A on file with minute order clerk.

**c. Various Counties – Award FY 2007 federal §5310, Elderly and Persons with Disabilities Program, funds to transportation operators serving the elderly and persons with disabilities (MO)**

This item was deferred.

**d. Various Counties – Award federal United We Ride grant funds to two agencies for a public transportation coordination demonstration project addressing standard driver applications and passenger assistance training (MO)**

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

110840  
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administrating agency for the Federal Transit Administration (FTA) grant programs in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

The department received a competitive United We Ride (UWR) grant from FTA to overcome locally-identified constraints to coordinated public transportation. Following evaluation of proposals received in response to a call for projects, the commission desires to make the following awards that address constraints identified in the regional transportation coordination process responding to Texas Transportation Code Chapter 461.

The commission desires to award \$22,500 to the East Texas Center for Independent Living for a uniform driver application and passenger assistance training project, and \$27,500 to Webb County Community Action Agency for an improved vehicle maintenance program project.

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 proceed with the above awards, submit the necessary application to the FTA and notify the agencies in writing of the commission's approval and negotiate the necessary contracts.

**ITEM 4. RECOMMENDATIONS TO CONGRESS**

**Adoption of a report to the United States Congress making recommendations to accelerate the delivery of transportation infrastructure (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Government and Business Enterprises Division Director Coby Chase:

110841  
GBE

The Texas Transportation Commission (commission) has authority over transportation policy development involving the state transportation system.

During reauthorization of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21), the Texas Department of Transportation (TxDOT) offered a number of proposals for the United States Congress to consider. The Congress chose to act on many of those recommendations when it passed the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU). Those recommendations included federal flexibility to match the state flexibility found in legislation signed into law by Governor Rick Perry, minimizing design-build regulations, awarding transportation development credits on a *pro rata* basis, greater discretion in tolling the federal-aid highway system, streamlining the environmental process, and receiving a greater rate of return on the fuel taxes sent to Washington, D.C. Post the bill’s passage, TxDOT continued work with members of Congress and representatives of the United States Department of Transportation to further the commission’s policy initiatives.

The 110<sup>th</sup> United States Congress, First Session, has now convened.

Members of the Texas Congressional Delegation have expressed interest in receiving the commission’s recommendations on federal legislation and executive branch actions. These recommendations are in the attached report, titled “Forward Momentum.”

IT IS THEREFORE ORDERED that the commission adopts this report, attached as Exhibit A, in its entirety and that the chairman of the commission provide the report to the governor, the lieutenant governor, the speaker of the house of representatives, members of the Texas delegation to the United States Congress, the presiding officers of its relevant committees of jurisdiction, the secretary of the United States Department of Transportation, and the administrators of the Federal Highway Administration, Federal Transit Administration and Federal Aviation Administration.

Note: Exhibit A on file with minute order clerk.

The commission received comments from Harris County Judge Robert Eckels.

**ITEM 5. Promulgation of Administrative Rules** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

**a. Proposed Adoption (to be published in the Texas Register for public comment)**

**Chapter 17 – Vehicle Titles and Registration (MO)**

**Amendment to §17.3, Motor Vehicle Certificates of Title (Motor Vehicle Certificates of Title)**

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Vehicle Titles and Registration Division Director Rebecca Davio:

110842  
VTR

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §17.3, relating to motor vehicle certificates of title, 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 at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §17.3 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 A and B on file with minute order clerk.

**b. Final Adoption**

**Chapter 2 – Environmental Policy (MO)**

**New §2.67, Landscape Partnership Program (Public Participation Programs)**

Commissioner Andrade made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Design Division Director Mark Marek:

110843  
DES

The Texas Transportation Commission (commission) finds it necessary to adopt new §2.67, relating to the landscape partnership program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the new §2.67 is adopted and is 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 A and B on file with minute order clerk.

**c. Withdrawal**

**Chapter 8 – Motor Vehicle Distribution (MO)**

**Withdrawal of previously proposed new §8.87, Effect of Criminal Conduct of Applicants and Licensees on Licensure (Licenses, Generally)**

Commissioner Underwood made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Motor Vehicle Division Director Brett Bray:

110844  
MVD

On August 24, 2006, the Texas Transportation Commission (commission) proposed new §8.87, relating to the effect of criminal conduct of applicants and licensees

on licensure. The commission finds it necessary to withdraw proposed new §8.87. The complex issues submitted during the public comment period require further study and consideration.

IT IS THEREFORE ORDERED by the commission that proposed new §8.87 is withdrawn and 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.

**ITEM 6. TRANSPORTATION PLANNING AND PROGRAMMING**

**a. Approve the Relief from Local Matching Funds (Economically Disadvantaged Counties Program) report (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110845  
TPP

Section 222.053(a), Transportation Code defines an “economically disadvantaged county” as a county that has, in comparison to other counties in the state: (1) below average per capita taxable property value; (2) below average per capita income; and (3) above average unemployment.

Section 222.053(c) directs the Texas Transportation Commission (commission), when evaluating a proposal for a highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the political subdivision's effort and ability to meet the requirement.

Section 222.053(e) further directs the commission to report annually to the governor, the lieutenant governor, and the speaker of the house of representatives on the use of matching funds and local incentives and the ability of the commission to ensure that political subdivisions located in economically disadvantaged counties have equal ability to compete for highway funding with political subdivisions in counties that are not economically disadvantaged.

The Texas Department of Transportation has completed the Fiscal Year 2006 Annual Report on the Economically Disadvantaged Counties Program, which is attached as Exhibit A.

IT IS THEREFORE ORDERED that the Fiscal Year 2006 Annual Report on the Economically Disadvantaged Counties Program, as shown in Exhibit A, is approved by the commission and shall be presented to the governor, the lieutenant governor, and the speaker of the house of representatives as required by Section 222.053(e), Transportation Code.

Note: Exhibit A on file with minute order clerk.

**b. Jones and Taylor Counties – Approve revisions to the Abilene Metropolitan Planning Organization metropolitan area boundary (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110846  
TPP

Pursuant to Title 43, Texas Administrative Code (TAC), §15.3, revisions to metropolitan planning area boundaries must be approved by the governor or the governor's designee. The governor and the Texas Department of Transportation (department) must be provided documentation and the rationale supporting any recommended boundary change.

In accordance with Title 23, CFR §450.308, a metropolitan planning area boundary shall, as a minimum, cover the urbanized area and the contiguous geographic area(s) likely to become urbanized within the 20-year forecast period covered by the metropolitan transportation plan.

The United States Census Bureau recently provided information which impacts the Abilene urbanized area. The Adjusted 2000 Urbanized Area Boundary for the Abilene Metropolitan Planning Organization (MPO) increased the size of the current metropolitan planning area boundary. On October 17, 2006, the Abilene MPO Policy Committee approved the adjusted metropolitan area boundary to match the location of the 2000 Urbanized Area Boundary.

On October 4, 2005, Governor Perry delegated authority to the Texas Transportation Commission (commission) to approve metropolitan planning area boundary changes.

The commission has reviewed and accepted the documentation and rationale supporting the metropolitan planning area boundary changes provided by the Abilene MPO.

IT IS THEREFORE ORDERED by the commission that the proposed Abilene MPO metropolitan area boundary changes are hereby approved in accordance with the U.S. Census Bureau Adjusted 2000 Urbanized Area Boundary as shown in Exhibit A.

Note: Exhibit A on file with minute order clerk.

c. **Dallas County** – Amend the 2007 Statewide Mobility Program to authorize the department to fund the Woodall Rodgers Deck Plaza in the Dallas District in Category 9, Transportation Enhancements Program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110847  
DES

Rider 47 to the Texas Department of Transportation's (department's) appropriations for Fiscal Years 2006-2007 (page VII-29, General Appropriations Act, 2005) directed the department to make available \$10 million in federal Transportation Enhancement Program funds for the Woodall Rodgers Deck Plaza (the project) provided that the project meets federal funding requirements of the Transportation Enhancement Program as set forth in Title 23, United States Code.



The department has reviewed the project and determined that it meets the federal guidelines and is eligible for funding. The project was also deemed eligible by the Federal Highway Administration.

The commission approved the 2007 Statewide Mobility Program (SMP) pursuant to Minute Order 110753, dated November 16, 2006. It is necessary to amend the 2007 SMP to provide funding for the project, with programming in Category 9 – Transportation Enhancements.

IT IS THEREFORE ORDERED that funding for the project, in the amount of \$10 million, is hereby included in the 2007 SMP and the executive director is authorized to proceed with the execution of any necessary agreements.

IT IS FURTHER ORDERED that the project shall comply, to the extent applicable, with the provisions of Title 43, Texas Administrative Code §§11.200 –11.205.

**ITEM 7. PASS THROUGH TOLLS**  
**AUTHORITY TO EXECUTE AGREEMENT**

**a. Comal County – Authorize the executive director to execute a pass-through toll agreement with Comal County for improvements to various highway projects in the county (MO)**

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistance Executive Director Engineering Operations Amadeo Saenz:

110848  
FIN

On April 18, 2005, Comal County (county) submitted a proposal for a pass-through toll agreement. The proposal provided for the county to finance construction improvements to SH 46 from Loop 337 in New Braunfels to west of US 281 in Bulverde and the expansion of US 281 to a 4-lane divided highway from the Guadalupe River to the Blanco County line, with purchase of right of way to accommodate construction of express lanes on US 281 in the future. On May 25, 2006, by Minute Order 110536, the commission granted final approval. This minute order supersedes Minute Order 110536 to clarify the provisions of the pass-through toll agreements.

In accordance with Section 222.104(b), Transportation Code, the Texas Transportation Commission (commission) granted preliminary approval on September 29, 2005 by Minute Order 110236 authorizing 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 public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll 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 a facility. The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

The department and the county have agreed to a reimbursement through pass-through tolls of \$16 million for the financing of each of the projects in their proposal for a total of \$32 million. The reimbursement rate will be \$0.10 per vehicle mile. The minimum amount to be reimbursed in any year is \$2,666,667 and the maximum amount will be \$4 million for each project. Each agreement will expire once the total amount of that agreement has been reimbursed. The project will be authorized and reimbursed from Strategic Priority funds. The department will fund any overruns to the project out of funds other than Strategic Priority funds, and any additional costs due to overruns will not increase the amount to be reimbursed as part of the pass-through toll agreement. The projects may proceed concurrently or consecutively, and they may proceed under one or more agreements.

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

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to execute one or more pass-through toll agreements with Comal County, on SH 46 and US 281, in accordance with the negotiated terms and such other terms the department determines are necessary.

c. Val Verde County – Authorize the executive director to execute a pass-through toll agreement with Val Verde County for the development of a relief route to US 277 around the city of Del Rio (MO)

Commissioner Andrade made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Assistance Executive Director Engineering Operations Amadeo Saenz:

110849  
FIN

On June 16, 2006, Val Verde County (county) submitted a proposal for a pass-through toll agreement. The proposal provided for the county to develop a relief route to US 277, extending from US 90 north of Del Rio southward to US 277 southeast of the city.

In accordance with Section 222.104(b), Transportation Code, the Texas Transportation Commission (commission) granted preliminary approval on August 24, 2006 by Minute Order 110654 authorizing the Texas Department of Transportation (department) to negotiate an agreement that provides for the payment of pass-through tolls to the county as reimbursement for the design, development, financing, construction, maintenance, or operation of this facility on the state highway system by the county. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

The department and the county have agreed to a reimbursement through pass-through tolls of \$75 million for the construction of the project. The reimbursement rate will be 15 cents per vehicle mile. The minimum amount to be reimbursed in any year with all projects open to traffic is \$3.75 million and the maximum amount per year will be \$7.5 million. The agreement will expire once the total amount of that agreement has been reimbursed. The project will be authorized and reimbursed from Strategic Priority funds.

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

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to execute a pass-through toll agreement with Val Verde County, on the development of a relief route to US 277 around the city of Del Rio, in accordance with the negotiated terms and such other terms the department determines are necessary and to amend Category 12, Strategic Priority, of the 2007 Statewide Mobility Program (SMP), approved by Minute Order 110753, dated November 16, 2006, to authorize the project included in the executed agreement.

The commission received comments from Val Verde County Commissioner Beau Nettleton.

#### **ITEM 8. TOLL ROAD PROJECTS**

**Denton and Collin Counties – Approve the selection of the best-value proposal for the development, financing, design, construction, operation, and maintenance of the SH 121 toll project from Business SH 121 to US 75, as well as other potential facilities to the extent necessary for connectivity and financing, and authorize the executive director of the department to execute a comprehensive development agreement with the chosen developer (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110863  
TTA

Transportation Code, Chapter 223, Subchapter E (act) authorizes the Texas Department of Transportation (department) to enter into comprehensive development agreements with private entities that provide for the development, design, construction, financing, maintenance, or operation of a toll project on the state highway system.

Pursuant to that authority, the Texas Transportation Commission (commission) has adopted rules prescribing how the department will obtain and evaluate proposals from private entities to develop a toll project under a comprehensive development agreement, codified in 43 TAC §§27.1-27.6 (rules).

Pursuant to the act and rules, and the authority granted by the commission in Minute Order 109980, on March 25, 2005, the department issued a request for qualifications (RFQ) for the development, design, construction, financing, maintenance and operation of the SH 121 toll project from Business SH 121 to US 75 in Denton and Collin Counties, as well as other potential facilities to the extent necessary for connectivity and financing, through a comprehensive development agreement.

The department determined that four proposer teams submitting qualification submittals were qualified to be on the short list of teams requested to submit detailed proposals. On August 15, 2006, the department issued a request for proposals (RFP). The RFP provided that the comprehensive development agreement will be awarded to the proposer determined to provide the best value to the department.

On January 26, 2007, proposals were received from three of the four short listed proposer teams. The department evaluated technical and financial proposals from Cintra Concesiones de Infraestructuras de Transporte, S.A.; Macquarie 121 Partnership; and Texas Partners 121.

The proposals were evaluated in the categories of Project Development Plan, including project management approach, technical solutions, and quality management approach; financial plan; and schedule. The project development plans were evaluated using qualitative ratings of minimum, fair, good, very good, and excellent, and assigned adjectival ratings and numerical scores in each category. Points were assigned based on those ratings and the weightings of the individual evaluation criteria. The technical score resulting from the evaluation of project development plans were then added to the price score resulting from the evaluation of the financial plans and the schedule score to determine the total number of points received by each proposal. The proposal with the highest total proposal score was deemed to provide the apparent best value.

The evaluations and scoring of each proposal resulted in the proposals being ranked as follows: (1) Cintra Concesiones de Infraestructuras de Transporte, S.A., (2) Macquarie 121 Partnership, and (3) Texas Partners 121. The proposal submitted by Cintra Concesiones de Infraestructuras de Transporte, S.A. was accordingly determined to provide the apparent best value.

IT IS THEREFORE ORDERED by the commission that the determination that the proposal submitted by Cintra Concesiones de Infraestructuras de Transporte, S.A. provides the apparent best value to the department is approved, and the department is authorized and directed to commence and complete negotiations with Cintra Concesiones de Infraestructuras de Transporte, S.A. necessary to finalize the comprehensive development agreement to develop, design, construct, finance, maintain and operate the SH 121 toll project from Business SH 121 to US 75 in Denton and Collin Counties, as well as other potential facilities to the extent necessary for connectivity and financing, and to modify the comprehensive development agreement as necessary as a result of such negotiations.

IT IS FURTHER ORDERED that the comprehensive development agreement is awarded to Cintra Concesiones de Infraestructuras de Transporte, S.A., subject to, and effective upon the occurrence of, all of the following: (1) the successful completion of negotiations, (2) concurrence in award by FHWA and any other applicable FHWA approvals as identified by the department, including NEPA approval, (3) receipt by the department of all of the documents and payment required to be provided under the RFP prior to execution of the comprehensive development agreement, and (4) the mutual execution and delivery of the comprehensive development agreement by the executive director of the department and the proposer.

IT IS FURTHER ORDERED that if the executive director determines that the negotiations with Cintra Concesiones de Infraestructuras de Transporte, S.A. cannot be successfully completed, and that therefore the proposal submitted by Cintra Concesiones de Infraestructuras de Transporte, S.A. will not provide the apparent best value, the department is authorized to commence and complete negotiations with Macquarie 121 Partnership, the next highest ranked proposer, with award to the next highest ranked proposer subject to the terms and conditions in the immediately preceding paragraph of this order.

IT IS FURTHER ORDERED that if the executive director determines that the negotiations with Macquarie 121 Partnership cannot be successfully completed, and that therefore the proposal submitted by Macquarie 121 Partnership will not provide the apparent best value, the department is authorized to commence and complete discussions with Texas Partners 121 the next highest ranked proposer, with award to the next highest ranked proposer subject to the terms and conditions in the paragraph preceding the immediately preceding paragraph of this order.

The commission reconsidered this item and voted to approve this minute order (see page 65).

The commission received comments from Dallas Regional Mobility Coalition Secretary Grady Smithey.

**ITEM 9. FINANCE**

a. **Harris County** – Accept the annual report of financial information and operating data relating to the Lease with An Option to Purchase for the Houston District Headquarters Complex Project (MO)

Commissioner Holmes made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110850  
FIN

Transportation Code, Section 201.1055, authorized the Texas Department of Transportation (department) to enter into an agreement that includes design and construction of a district office headquarters facility in a county with a population of 3.3 million or more; lease department-owned real property in such a district to a private

entity; authorize a private entity to construct and retain ownership of a building on the leased property and enter into a lease with an option to purchase such a building.

The commission by Minute Order No. 110121, authorized the department to execute various transaction documents including a lease with an option to purchase (LWOP) in connection with renovating and constructing buildings for the Houston District Headquarters.

Article XVI of the LWOP requires the department to provide within six months after the end of the fiscal year certain updated financial information and operating data.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data, attached as Exhibit A, is accepted.

Note: Exhibit A on file with minute order clerk.

**b. Travis and Williamson Counties – Accept the annual report of financial information and operating data relating to the Central Texas Turnpike System, as required by the indenture of trust governing the obligations issued for the 2002 Project of the Central Texas Turnpike System (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110851  
FIN

Transportation Code, Chapter 228 and other applicable law authorizes the Texas Transportation Commission (commission) to issue turnpike 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 issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike System (System), a turnpike project composed initially of the 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 four 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 turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Section 716 of the indenture requires the commission to provide annually, within 6 months after the end of each fiscal year, updated financial information and operating data with respect to the commission and the System of the general type included in specified sections of the final official statement relating to the Series 2002 First Tier Obligations and Series 2002 Second Tier Bond Anticipation Notes issued for the 2002 Project (annual report). The annual report is required to include a copy of the General Engineering Consultant's quarterly progress report for the last quarter of the fiscal year and investment earnings on funds in the Construction Fund, as defined in the indenture, for such fiscal year. The August 31, 2006 General Engineering Consultant's quarterly

progress report has been previously filed with the central post office for filing with each Nationally Recognized Municipal Securities Information Repository and State Information Depository in accordance with the indenture, and, therefore, the annual report contains a more current version (November 30, 2006) of the General Engineering Consultant's quarterly progress report. The annual report is attached as Exhibit 1.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data with respect to the commission and the System, attached as Exhibit 1, is accepted.

Note: Exhibit 1 on file with minute order clerk.

c. Accept the annual report of financial information and operating data relating to the Texas Mobility Fund, as required by the first supplemental resolution to the master resolution governing the obligations issued for the Texas Transportation Commission Mobility Fund Revenue Financing Program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110852  
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.

Pursuant to a Master Resolution, a First Supplemental Resolution, and a Second Supplemental Resolution each adopted on May 4, 2005; a Third Supplemental Resolution adopted on May 25, 2006; and a Fourth Supplemental Resolution and a Fifth Supplemental Resolution each adopted on September 28, 2006, the commission issued five series of obligations under Transportation Code, Chapter 201 and other applicable law, which obligations are secured by and payable from a pledge of and lien on all or part of the moneys in the Mobility Fund, and a full faith and credit pledge of the state, and which obligations were issued in the name and on behalf of the state to (i) 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) 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; and (iii) pay the costs of issuance.

Under provisions of the First, Third and Fourth Supplemental Resolutions, the commission has covenanted to provide annually, within six months after the end of each fiscal year, financial information and operating data with respect to the Mobility Fund of the general type in the attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data, attached as Exhibit B, is accepted.

Note: Exhibits A and B on file with minute order clerk.

d. Accept the annual report of financial information and operating data relating to the State Highway Fund, as required by the first and second supplemental resolutions to the master resolution governing the obligations issued for the Texas Transportation Commission State Highway Fund First Tier Revenue Bonds (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110853  
FIN

Article III, Section 49-n of the Texas Constitution authorized the Legislature to authorize the Commission to issue bonds and other public securities to (i) finance State highway improvement projects that are eligible for funding with revenues dedicated under Section 7-a and (ii) pay the costs of issuing the bonds. The bonds are payable from certain revenues deposited to the credit of the State Highway Fund held in the treasury of the State of Texas.

Pursuant to a Master Resolution and a First Supplemental Resolution, each adopted on March 30, 2006, and Second and Third Supplemental Resolutions adopted on October 26, 2006, the commission issued three series of obligations under Transportation Code, Section 222.003 and other applicable law.

Under provisions of the First and Second Supplemental Resolutions, the commission has covenanted to provide annually, within 180 days after the end of each fiscal year, financial information and operating data with respect to the State Highway Fund of the general type in the attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data, attached as Exhibit B, is accepted.

Note: Exhibits A and B on file with minute order clerk.

**ITEM 10. STATE INFRASTRUCTURE BANK**

**a. El Paso County – Consider granting preliminary approval of an application from the city of El Paso to borrow \$12,463,000 from the State Infrastructure Bank to pay for improvements to three international bridges in El Paso (MO)**



Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110854  
FIN

The City of El Paso (city) submitted an application for \$12,463,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the department. The city intends to use the financial assistance to pay for improvements to three international bridges in El Paso (project).

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the commission makes the following findings: 1) the city has offered its bridge toll revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2002-2004 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of El Paso meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$12,463,000 from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

**b. Guadalupe County – Consider granting preliminary approval of an application from the City of Seguin to borrow \$550,000 from the State Infrastructure Bank to pay for improvements to the I-10 westbound exit ramp and frontage road at the SH 123 intersection in Seguin (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110855  
FIN

The City of Seguin (city) submitted an application for \$550,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the corporation of a resolution authorizing submission of the application to the department. The city intends to use the financial assistance to pay for improvements to

the INTERSTATE 10 westbound exit ramp and frontage road at the SH 123 intersection (project).

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the commission makes the following findings: 1) the city has offered its ad valorem tax revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2004-2006 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Seguin meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$550,000 from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

#### **ITEM 11. TRUCK LANE USE RESTRICTIONS**

**Various Counties – Approve lane use restrictions for trucks on I-35 from the southern city limits of Live Oak in Bexar County to the southern city limits of San Marcos in Hays County**

Commissioner Holmes made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

110856  
TRF

In accordance with Transportation Code §545.0651 and 43 Texas Administrative Code (TAC) §§25.601-25.604, the Texas Department of Transportation (department) is proposing a lane restriction applicable to trucks with three or more axles, and to truck tractors, regardless of whether the truck tractor is drawing another vehicle or trailer as defined in Transportation Code, §541.201. The proposed lane restriction prohibits those vehicles from using any traffic lane, other than the second, third, and fourth controlled access lanes on each side of I-35 as counted from the center (inside left lane) of the highway from the southern city limits of Live Oak, northward through Bexar, Guadalupe, Comal, and Hays counties to the southern city limits of San Marcos, which is 0.455 miles north of the Hays/Comal county line.

Transportation Code, §545.0651, authorizes the department to restrict through traffic, by class of vehicle, to two or more designated lanes of traffic on certain portions of the designated state highway system, and requires the Texas Transportation

Commission (commission) to adopt rules. The commission adopted these rules, 43 TAC §§25.601-25.604 that became effective on January 8, 2004.

In accordance with TAC §25.604(e)(3), the department conducted a traffic study to evaluate the impact of the lane restriction. In accordance with §25.604(d), the department published a notice in the Texas Register for a 30 day comment period on December 15, 2006 and held a public hearing on the proposed restriction on January 4, 2007. The proposed lane restriction would be in effect 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604(h)(2), the executive director may temporarily suspend the lane restriction in an emergency.

The commission, having evaluated the truck lane restriction proposal based on the safety of the traveling public and the factors listed in 43 TAC §25.604(f), finds that the proposed lane restriction should be approved.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the proposed lane restriction in Bexar, Guadalupe, Comal, and Hays Counties is approved and shall become effective upon placement of all necessary traffic control devices.

#### **ITEM 12. TRAFFIC OPERATIONS**

**Various Counties** - Consider a donation from TXU Corporation to reimburse costs the department incurs that are associated with reviewing right-of-way, engineering, and environmental plans for possible grade separations and other modifications to state highways where spur track rail lines intersect state highways, and other possible modifications to state highways at entrance roads to potential or existing TXU power plants (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

110857  
TRF

TXU Corporation proposes to donate to the Texas Department of Transportation (department) an estimated \$195,000 necessary for costs the department incurs that are associated with reviewing right-of-way, engineering, and environmental plans for possible grade separations and other modifications to state highways where spur track rail lines intersect state highways, and other possible modifications to state highways at entrance roads to potential or existing TXU power plants.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that it is in the best interest and welfare of the traveling public. 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 will further 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. Periodically, TXU Mining Company, L.P., which is indirectly wholly-owned by TXU Corporation, has funded projects that improve the state roadways as well as facilitates the donor's mining operations. Agreements have been entered into with the department to accept the donations, and there haven't been any issues.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$195,000 by TXU Corporation 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.

### **ITEM 13. CONTRACTS**

#### **a. Award or Reject Highway Improvement Contracts**

##### **(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order rejecting Project No. RMC 6154-54-001 in Travis County as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110858  
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 February 8 and 9, 2007.

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.

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, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

**(2) Highway and Transportation Enhancement Building Construction (see attached itemized list) (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110859  
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 February 8 and 9, 2007 as shown on Exhibit A.

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.

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, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

**b. (1) Archer County – Project RMC 6156-36-001. Award of maintenance contract to second lowest bidder (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order as recommended by staff and presented by Maintenance Division Director Zane Webb:

110860  
MNT

Project RMC 6156-36-001 (Mowing Right of Way) was let on January 11, 2007 in the Wichita Falls District. Randall W. Tyler was the low bidder but failed to execute the contract. The second lowest bidder, Billy Benson, has indicated in writing that he is willing to perform the work at the unit bid prices set forth in the lowest bid.

Section 221.0041 of the Transportation Code allows the Texas Transportation Commission (commission), under certain conditions, to award a maintenance contract of less than \$300,000 to the second lowest bidder when the lowest bidder does not execute a contract.

Title 43, Texas Administrative Code §9.17(d) allows the commission to accept the withdrawal of the lowest bid and award the contract to the second lowest bidder on the recommendation of the executive director when the executive director determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder, the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices.

The memorandum attached as Exhibit A to this minute order and incorporated in this order by reference contains the executive director's recommendation and written

determination, required by 43 TAC §9.17(d), that the contract is eligible for award to the second lowest bidder in accordance with the law and the rules.

The commission concurs with the executive director's determinations as set forth in attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that Randall W. Tyler be allowed to withdraw his bid for the contract for Project RMC 6156-36-001.

IT IS FURTHER ORDERED that the contract for Project RMC 6156-36-001 be awarded to Billy Benson in the low bid amount of \$77,259.00.

Note: Exhibit A on file with minute order clerk.

**b. (2) Fort Bend County – Project RMC 6153-99-001. Award of maintenance contract to second lowest bidder (MO)**

Commissioner Underwood made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order as recommended by staff and presented by Maintenance Division Director Zane Webb:

110861  
MNT

Project RMC 6153-99-001 (Cleaning and Sweeping Highways) was let on December 12, 2006 in the Houston District. Strand Engineering, Maintenance & Construction, L.L.C. was the low bidder but was unable to fulfill the bonding requirements. The second lowest bidder, Sweeping Services of Texas – Operating, L.P., has indicated in writing that it is willing to perform the work at the unit bid prices set forth in the lowest bid.

Section 221.0041 of the Transportation Code allows the Texas Transportation Commission (commission), under certain conditions, to award a maintenance contract of less than \$300,000 to the second lowest bidder when the lowest bidder does not execute a contract.

Title 43, Texas Administrative Code §9.17(d) allows the commission to accept the withdrawal of the lowest bid and award the contract to the second lowest bidder on the recommendation of the executive director when the executive director determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder, the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices.

The memorandum attached as Exhibit A to this minute order and incorporated in this order by reference contains the executive director's recommendation and written determination, required by 43 TAC §9.17(d), that the contract is eligible for award to the second lowest bidder in accordance with the law and the rules.

The commission concurs with the executive director's determinations as set forth in attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that Strand Engineering, Maintenance & Construction, L.L.C be allowed to withdraw its bid for the contract for Project RMC 6153-99-001.

IT IS FURTHER ORDERED that the contract for Project RMC 6153-99-001 be awarded to Sweeping Services of Texas – Operating, L.P. in the low bid amount of \$180,377.50.

Note: Exhibit A on file with minute order clerk.

**ITEM 7. PASS THROUGH TOLLS**  
**AUTHORITY TO EXECUTE AGREEMENT**

**b. El Paso County – Authorize the executive director to execute a pass-through toll agreement for the design and construction of Inner Loop from US 54 to Loop 375 in El Paso (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Assistance Executive Director Engineering Operations Amadeo Saenz:

110862  
FIN

On December 1, 2005, J. D. Abrams, L. P. (developer) submitted a proposal for a pass-through toll agreement. The proposal provided for the developer to design and construct STATE SPUR 601, the Inner Loop, from US 54 to Loop 375 in El Paso County (project).

In accordance with Section 222.104(b), Transportation Code, and 43 TAC §§5.51-5.59, the Texas Transportation Commission (commission), in Minute Order 110391, dated January 26, 2006, authorized the executive director of the Texas Department of Transportation (department) or his designee to issue a notice of request for competing proposals to private entities to design and construct the project under a pass-through toll agreement.

The commission also authorized the executive director or his designee to negotiate a pass-through toll agreement with the private entity whose proposal, based on the department's evaluation, provides the best value to the department. Upon completion of negotiations, the commission directed the executive director to submit to the commission a summary of the final terms of the agreement so that the commission could consider final approval under 43 TAC §5.56.

The department received two proposals in response to the request for competing proposals, from J.D. Abrams, L.P. and Zachry Construction Corporation. After an evaluation of the two proposals, the department determined that the proposal provided by J.D. Abrams, L.P. provided the best value to the department.

The department proposes to reimburse the developer through pass-through tolls of an amount not to exceed \$350,000,000 for the construction of the project. The term of the reimbursement will not exceed twenty (20) years and the maximum amount to be reimbursed per year will not exceed \$35,000,000. The agreement will expire once the agreed total amount has been reimbursed. The project will be authorized and reimbursed from Strategic Priority funds.

In accordance with 43 TAC §5.56(a), the commission finds that:

- (1) the project serves the public interest and not merely a private interest;
- (2) the proposed pass-through agreement is in the best interest of the state;



(3) the project is compatible with existing and planned transportation facilities; and

(4) the project furthers state, regional, and local transportation plans, programs, policies, and goals.

The commission recognizes the importance and priority of projects that enhance the military value of military installations and facilities in Texas.

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

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to execute a pass-through toll agreement with J. D. Abrams, L. P., for the design and construction of State Spur 601, in accordance with the terms set out in this order and such other terms the department determines are necessary, and to amend Category 12, Strategic Priority, of the 2007 Statewide Mobility Program (SMP), approved by Minute Order 110753, dated November 16, 2006, to authorize the project included in the executed agreement.

#### **ITEM 14. ROUTINE MINUTE ORDERS**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute orders with the exception of Item 14.b. presented by Executive Director Michael W. Behrens.

##### **a. Donations to the Department**

**(1) Bridge Division – Acknowledge a donation from the American Iron & Steel Institute for a department employee's travel expenses related to participating in the Bridge Task Force/AASHTO T-14 meeting held in Orlando, Florida on February 21-23, 2007 (MO)**

110864  
OGC

This minute order acknowledges a donation to the Texas Department of Transportation (department) from the American Iron & Steel Institute (AISI) for an estimated \$771.20 in travel expenses related to a department employee's participation in a Bridge Task Force/AASHTO T-14 Meeting that was held in Orlando, Florida from February 21-23, 2007.

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 90th 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.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

The commission finds that the donation furthers the department's responsibilities and that the donors are 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 donors are interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation will nonetheless provide a significant public benefit and 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 approximately \$771.20 by AISI is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) **Bridge Division** – Acknowledge a donation from Auburn University for a department employee's travel expenses related to making a presentation at the 2007 Alabama Transportation Conference held in Auburn, Alabama on February 21-22, 2007 (MO)

110865  
OGC

This minute order acknowledges a donation to the Texas Department of Transportation (department) from Auburn University for an estimated \$749.88 in travel expenses related to a department employee who gave a presentation at the 2007 Alabama Transportation Conference. The conference was held from February 21-22, 2007 in Auburn, Alabama.

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 90th 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.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

The commission finds that the donation will further the department's responsibilities and that the donors are 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 donors are not interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of approximately \$749.88 by Auburn University is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) **Travel Division** – Consider a donation to the department from the Grapevine Convention & Visitors Bureau, solicited from various sponsors, to provide food, beverage, admission and transportation to area attractions as part of its hosting the 52nd Annual Texas Travel Counselors Conference in Grapevine on April 16-19, 2007 (MO)

110866  
OGC

This minute order considers a donation of food, beverage, and admission and transportation to area attractions from the Grapevine Convention & Visitors Bureau (GCVB) to the Texas Department of Transportation (department). The estimated \$36,213 donation was solicited from various sponsors and is part of GCVB hosting the 52<sup>nd</sup> Annual Texas Travel Counselors Conference in Grapevine, Texas on April 16-19, 2007.

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 will further 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 some of the sponsors may be interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. Nonetheless, the commission finds 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 worth an estimated \$36,213 by GCVB 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.

**c. Load Zones & Postings**

**Various Counties – Revise load restrictions on various bridges on the state highway system (MO)**

110868  
CST

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 loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits 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 removal of signs as appropriate, making the removal of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

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

**(1) Brazoria County – SH 288 north of SH 332 in Lake Jackson – Consider the sale of surplus access rights (MO)**

110869  
ROW

In BRAZORIA COUNTY, on STATE HIGHWAY 288, a designated controlled access highway, the State of Texas (state) owns and controls certain access rights to the highway facility to and from the abutting lands.

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

Brazos Outlets Center LLC, a Delaware limited liability company (Brazos Outlets), owner of a 67.8646 acre tract of land conveyed by deed recorded under Brazoria County Clerk's File Number 2004075012 of the Official Records of Brazoria County, Texas (Brazos Outlets Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to Brazos Outlets for \$130,680.

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

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to Brazos Outlets for a cash consideration of \$130,680.

NOW, THEREFORE, the commission finds that the surplus access rights 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 conveying the state's interest in the surplus access rights to Brazos Outlets for \$130,680.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the Brazos Outlets Tract and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the Brazos Outlets Tract.

Note: Exhibit A on file with minute order clerk.

(2) Colorado County – US 90/I-10 at Live Oak Creek east of Alleyton – Consider the sale of surplus right of way (MO)

110870  
ROW

In COLORADO COUNTY, on US 90/INTERSTATE 10, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 98, Page 128, Deed Records of Colorado 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 sale of surplus land.

Lurlene J. Bowden and husband, Frank Bowden, are the abutting landowners and have requested that the surplus land be sold to them for \$16,910.

The commission finds \$16,910 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

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 Lurlene J. Bowden and husband, Frank Bowden, for \$16,910; 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: Exhibit A on file with minute order clerk.

(3) Denton County – I-35W at SH 114 in Northlake – Consider the exchange of right of way (MO)

110871  
ROW

In the city of Northlake, DENTON COUNTY, on INTERSTATE 35W, the State of Texas (state) acquired certain land for a state highway purpose by instrument recorded under County Clerk's File Number 97-0064701 of the Deed Records, Denton County, Texas.

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

Northport Commercial, Ltd., a Texas limited partnership (owner), has conveyed to the state land needed for a state highway purpose (new land), described in Exhibits B and C, and desires to make a partial donation to the state of the difference in value between the new land and the surplus land.

V.T.C.A., Transportation Code, Chapter 201, Subchapter D, authorizes the Texas Department of Transportation (department) to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept by majority vote at an open meeting any gift or

donation valued at over \$500, and the commission hereby finds that acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new land provided by the owner, which is \$1,255,707, exceeds the value of the surplus land, which is \$1,045,500.

The owner has executed and delivered a conveyance document under the terms of the donation agreement to convey the new land to the state and has requested that the state's rights, title and interest in the surplus land be conveyed to the owner.

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

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus land to the owner in exchange and as consideration for the partial donation and the conveyance of the new land to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new land and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, 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 the owner in exchange and as consideration for the conveyance of the new land to the state.

Note: Exhibits A, B, and C on file with minute order clerk.

**(4) Gregg County – US 80 at Nottingham Drive in White Oak – Consider the sale of a surplus right-of-way easement (MO)**

110872  
ROW

In the city of White Oak, GREGG COUNTY, on US 80, the State of Texas acquired an easement interest in certain land needed for highway purposes by instrument recorded in Volume 228, Page 505, Deed Records of Gregg 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.

Highway 80 Plaza, a Texas general partnership composed of Bob Anderson and The Donald Jones Trust, is the underlying fee owner and has requested that the surplus easement be sold for \$5,336.

The commission finds \$5,336 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, 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 releasing all of the state's rights and interest in the surplus easement to Highway 80 Plaza, a Texas general partnership composed of Bob Anderson and The Donald Jones Trust, for a cash consideration of \$5,336.

Note: Exhibit A on file with minute order clerk.

**(5) Johnson County – US 67 one mile west of Venus – Consider the sale of surplus right of way (MO)**

110873  
ROW

In JOHNSON COUNTY, on US 67, the State of Texas acquired certain land needed for state highway purposes by instrument described in Cause No. 5103, L.M. Rice vs. the State of Texas, County Court Records of Johnson 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 sale of surplus land.

Billy C. Roten and Joyce Roten are the abutting landowners and have requested that the surplus land be sold to them for \$1,400.

The commission finds \$1,400 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Billy C. Roten and Joyce Roten for \$1,400; 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: Exhibit A on file with minute order clerk.

**(6) Tarrant County – US 377 approximately 0.3 mile north of North Tarrant Parkway – Consider the exchange of drainage easements (MO)**

110874  
ROW

In the city of Fort Worth, TARRANT COUNTY, on US 377, the State of Texas acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 13587, Page 247, Deed Records of Tarrant County, Texas.



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

KBL II Partners, a Texas limited partnership, is the underlying fee owner and has conveyed to the state an easement interest in land needed for the realignment and reconstruction of a new drainage facility (new easement), described in Exhibit B, and desires to make a partial donation to the state of the value of the new easement.

V.T.C.A., Transportation Code, Chapter 201, Subchapter D, authorizes the Texas Department of Transportation (department) to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept by majority vote at an open meeting any gift or donation valued at over \$500, and the commission hereby finds that acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new easement provided by the owner, which is \$11,500, exceeds the value of the surplus easement, which is \$8,100, by more than \$500.

The owner has executed and delivered a conveyance document under the terms of the donation agreement to convey the new easement to the state and has requested that the state's rights and interest in the surplus easement be released.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the release of surplus easements and the exchange of surplus easements as partial or full consideration for other land needed by the state for highway purposes.

It is the opinion of the commission that it is proper and correct that the state release its rights and interest in the surplus easement in exchange and as consideration for the partial donation and the conveyance of the new easement to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new easement and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement 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 releasing all of the state's rights and interest in the surplus easement in exchange and as consideration for the conveyance to the state of the new easement.

Note: Exhibit A 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)**

110875  
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 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.

Note: Exhibits A and B on file with minute order clerk.

At Commissioner Underwood's request, Commissioner Houghton moved to reconsider Item 8 and Commissioner Andrade seconded the motion and the commission voted to reconsider. Then, Commissioner Houghton moved to approve the minute order and Commissioner Andrade seconded. Commissioner Underwood stated that he might have a conflict and abstained from the vote and the remaining commissioners voted to approve the minute order.

**ITEM 14. ROUTINE MINUTE ORDERS**

**b. Eminent Domain Proceedings**

**Various Counties – noncontrolled and controlled access highways (see attached itemized list) (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Andrade to approve the following minute order presented by Executive Director Michael Behrens. Commissioner Holmes stated he might have a conflict and abstained from voting on this item:

110867  
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

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Collin	US 75	0047-14-058	23
2	Collin	US 75	0047-14-058	31
3	Wise	US 380	0134-08-038	2 & 2E
4	Wise	US 380	0134-08-038	3B
5	Wise	US 380	0134-08-038	5
6	Wise	US 380	0134-08-038	8
7	Wise	US 380	0134-08-038	20
8	Wise	US 380	0134-08-038	23
9	Caldwell	US 183	0152-02-067	3
10	Brazoria	SH 35	0178-02-072	3
11	Brazoria	SH 35	0178-02-072	6
12	Brazoria	SH 35	0178-02-072	7
13	Brazoria	SH 35	0178-02-072	21
14	Brazoria	SH 35	0178-02-072	40
15	Brazoria	SH 35	0178-02-072	66
16	Anderson	US 79	0205-07-065	18
17	Anderson	US 79	0205-07-065	24 & 24E
18	Anderson	US 79	0205-07-065	26
19	Anderson	US 79	0205-07-065	29
20	Anderson	US 79	0205-07-065	62
21	Coryell	US 190	0231-02-044	19
22	Bastrop	SH Loop 230	0265-13-018	2
23	Tarrant	SH 26	0363-01-123	51
24	Tarrant	SH 26	0363-01-123	55
25	Tarrant	SH 26	0363-01-123	57
26	Tarrant	SH 26	0363-01-123	126
27	Rockwall	SH 205	0451-01-043	15
28	Rockwall	SH 205	0451-01-043	22
29	Brazoria	SH 332	0847-03-032	1
30	Brazoria	SH 332	0847-03-032	6

## NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
31	Brazoria	SH 332	0847-03-032	8
32	Williamson	RM 2338	2211-01-021	33
33	Williamson	RM 2338	2211-01-021	39
34	Williamson	RM 2338	2211-01-021	44
35	Williamson	RM 2338	2211-01-021	69

## CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Johnson	IH 35W	0014-03-085	2AC
B	Johnson	IH 35W	0014-03-085	3AC
C	Johnson	IH 35W	0014-03-085	4AC
D	Harris	US 90	0028-02-045	61
E	Harris	US 90	0028-02-045	103
F	San Jacinto	US 59	0177-02-072	43
G	Montgomery	US 59	0177-05-100	6C
H	Dallas	IH 35E	0196-03-231	41
I	Angelina	US 69	0200-03-027	17
J	Angelina	US 69	0200-03-027	19 & 19RR
K	Angelina	US 69	0200-03-027	20
L	Angelina	US 69	0200-03-027	23 & 23RR
M	Angelina	US 69	0200-03-027	24 & 24RR
N	Angelina	US 69	0200-03-027	26
O	Galveston	IH 45	0500-04-119	5
P	Galveston	IH 45	0500-04-119	6
Q	Galveston	IH 45	0500-04-119	8
R	Galveston	IH 45	0500-04-119	9
S	Galveston	IH 45	0500-04-119	11
T	Tarrant	SH 121	0504-02-018	20
U	Tarrant	SH 121	0504-02-018	21
V	Tarrant	SH 121	0504-02-018	32
W	Tarrant	SH 121	0504-02-018	48
X	Tarrant	SH 121	0504-02-018	92
Y	Dallas	IH 635	2374-01-150	15
Z	Dallas	IH 635	2374-01-150	16

Note: Exhibits 1 through 35 and A through Z on file with minute order clerk.

**ITEM 15. Executive Session Pursuant to Government Code, Chapter 551**

- a. **Section 551.071** - Consultation with and advice from legal counsel
- b. **Section 551.072** - Discussion of real property purchase, exchange, lease, donations
- c. **Section 551.074** - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

**OPEN COMMENT PERIOD – Texas Bicycle Coalition Executive Director Robin Stallings signed up to speak before the commission but was unable to.**

The regular meeting of the Texas Transportation Commission adjourned at 2:09 p.m.

APPROVED:

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Ric Williamson, 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 February 28, 2007, in Austin, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation