

THE STATE OF TEXAS §

COUNTY OF CAMERON §

BE IT REMEMBERED on the 4th day of April 2005, there was conducted a SPECIAL Meeting of the Regional Mobility Authority of Cameron County, Texas, at the Old Levi Building thereof, in the City of San Benito, Texas, for the purpose of transacting any and all business that may lawfully be brought before the same.

THE BOARD MET AT:

12:00 P.M.

PRESENT:

DAVID E. ALLEX
CHAIRPERSON

LAURA BETANCOURT
MEMBER

SCOTT CAMPBELL
MEMBER

RAY RAMON
MEMBER

VICTOR ALVAREZ
MEMBER

MICHAEL SCAIEF
MEMBER

DAVID N. GARZA
MEMBER

Maricruz Robles
Secretary

ABSENT:

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The meeting was called to order by Mr. David Alex, Chairperson, at 12:08 P.M. He asked Mr. Victor Alvarez for the invocation, and a moment of silence was held in memory of Judge Betancourt, Mr. Campbell, Pope John Paul II. The Board then considered the following matters posted and filed for Record in the Office of the County Clerk on March 29, 2005 at 9:43 A.M.:



AGENDA

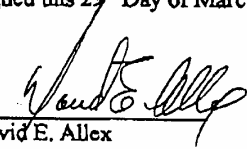
**Special Meeting of the Board of Directors
of the
Cameron County Regional Mobility Authority**

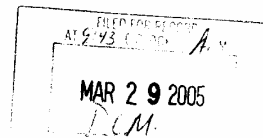
**Old Levis Building
1390 Scott Brown Blvd.
San Benito, Texas 78586**

**Monday April 4, 2005
12:00 P.M.**

- I. Welcome and Opening Remarks
- II. Discussion and possible adoption of Bylaws
- III. Election of Officers
 - 1. Vice-Chairman
 - 2. Treasurer
 - 3. Secretary
- IV. Discussion and possible action on procurement procedures policy
- VI. Approval of Minutes (February 25, 2005)
- VII. Chairman's Report
- VIII. Public Comment

Signed this 29th Day of March 2005


David E. Alex
Chairman



TENTATIVE AGENDA ITEMS

- 1. WELCOME AND OPENING REMARKS**
- 2. DISCUSSION AND POSSIBLE ADOPTION OF BYLAWS**

Mr. Ray Ramon, Board Member, suggested that board members be able to form their own committee to work on assigned projects instead of the board appointing committees. He stated that postings would be required for committee meetings if a certain number of board members serve, and that his intent was to have every individual member exercise as much input as possible.

Mr. Ramon suggested that some language in Section § 27 Executive Director be modified.

Mr. David E. Allex, Chairperson, noted that he had no problem with the board appointing a committee because a committee structure was needed to operate.

NOTE: MR. SCOTT CAMPBELL, BOARD MEMBER, ARRIVED AT THIS TIME.

Mr. Allex explained that Mr. Ramon was suggesting that Section §15 Committees be eliminated.

Mr. Doug Wright, Commissioners' Court Legal Counsel, stated that according to the Open Meetings Act meetings of advisory committees do not require public notices. He explained that elimination of Section §15 Committees from the bylaws would not prevent the board from gathering and preparing information from and by individuals other than board members. Mr. Wright stated that the board could easily run into a quorum (4 members) situation where a committee meeting must follow the Open Meeting Act if they discuss business. He stated that the board would need outside help and should expect staff to do much of the leg work. Mr. Wright suggested that the board consider having only advisory committees, leaving decision making authority strictly to the board. He advised that the recommendations not be looked at as a personality issue regarding who serves on the board at this time since members will change in the future.

Mr. Ramon asked what the advantages of having a committee in place would represent.

Mr. Michael Scaief, Board Member, stated that Section §15 Committees does not prohibit the board from appointing committees but rather controls the committees' authority.

Mr. Wright stated that the board may not delegate policy making authority unless specified in the bylaws. He explained that the board would create its guidelines subject to the statutes as it goes, and that use of all available resources by the board was common sense, yet ultimately the depository of all policy making powers would be with the board. Mr. Wright explained that four of the seven board members would form a quorum at any time and that



three of the four would have the ability to make a decision, adding that meetings with four board members or more require postings.

NOTE: MR. DAVID GARZA, BOARD MEMBER, ARRIVED AT THIS TIME.

Mr. Scaief clarified that committees with three board members or less could be formed.

Mr. Ramon reiterated that committees would not be needed if a board member was delegated work for which he/she seeks outside help, and that committees could be formed without authority.

Mr. Scaief stated that committees can be formed even if not documented in the bylaws; however, provision in the bylaws prohibits them from doing certain things.

Mr. Wright stated that having no provision in the bylaws could have the same result as if the situation was created because the board would not be able to do all needed background work. He stated that the bylaws were guidelines of how the board would operate and that they could be modified as needed.

Mrs. Betancourt suggested that the bylaws be adopted with exception of Section §15 Committees and that it be reconsidered upon Mr. Wright recommending language for it.

There was a brief discussion concerning whether the provision should speak of appointment of a chairperson of a committee.

Mr. Wright advised against the board locking itself too much to specific controls and suggested that some flexibility be allowed, noting that changes to the guidelines would be needed if set to ridged.

Mr. David Garza, Board Member, suggested that only advisory committees be formed and that the board make all final decisions. He commented that he could see the board making big mistakes by giving committees decision making authority.

Mr. Scott Campbell, Board Member, requested direction from Mr. Alex since he has served on numerous committees.

Mr. Alex stated that he has served on many state and national committees, but never on a committee having as much monetary responsibility as the Cameron County RMA. He reiterated the need to have some form of committee structure, and perhaps a form of provision making reference to an "advisory committee." Mr. Alex commented that he does not know of any public or private organization in which he has served that has no form of committee structure. He pointed that the language does not need to be deleted since according to Mr. Wright the board has the authority to appoint a committee regardless.



Mr. Campbell suggested that appointment of an advisory committee be allowed and enlarged as the board becomes more comfortable with it.

Mr. Garza suggested that language relating to committees be included in the bylaws and that it be modified as needed. He noted the need to set bylaws that allow for growth through modifications.

At this time, Mr. Scaief moved that the bylaws be adopted, inclusive of changes to §27 Executive Director (replacement of *shall* to *must*) and excluding Section §15 Committees until Mr. Wright presents recommendation relating to the language.

Mr. Alvarez asked if recommendation was that the board be able to designate non voting advisory committees.

Mr. Ramon responded in the affirmative, and added that the Chairperson should have the power to appoint a committee.

Mr. Alex recommended that Mr. Wright and Mrs. Betancourt prepare the provision relating to committees.

Mr. Wright requested input from all members in order to prepare and provide information for review prior to the next meeting. He asked if the board wanted to include language stating that "it is the intent of the board that no policy making decision shall be made [by committees] and it's only recommendation and advisory to the entire board."

Mr. Alex responded in the affirmative.

NOTE: NO ACTION WAS TAKEN AT THIS TIME.

4. DISCUSSION AND POSSIBLE ACTION ON PROCUREMENT PROCEDURES POLICY

Mr. Pete Sepulveda, Interim Director, recommended adoption of Procurement Procedures Policy that has been adopted by Cameron County as set by State. He stated that Cameron County follows state guidelines when acquiring professional services for state and Texas Department of Transportation (TXDOT) projects since state and federal funds were used, adding that a letter was usually sent to TXDOT providing the process to be used for their approval.

Mr. Garza asked if any procedure set out in the recommended Procurement Procedures Policy could be changed to simplify the process.

Mr. Sepulveda responded negatively. He explained that the process to obtain a purchase order was most time consuming within the county because of the large demand, but would, nevertheless, be minimal for the RMA because of its present size. Mr. Sepulveda reiterated that the biggest demand would be to acquire professional



services and that the process for doing so was laid out in the Procurement Procedures Policy from which deviation was not permissible.

Mr. David E. Allex, Chairperson, suggested that the Procurement Procedures Policy be reviewed and considered for adoption during the meeting of April 14, 2005, once the bylaws were adopted.

Mr. Michael Scaief, Board Member, suggested that the Alamo RMA be consulted to compare Procurement Procedures Policy.

Upon motion duly made by Mr. Scaief that the bylaws be adopted, inclusive of changes to Section §27 Executive Director (replacement of *shall* to *must*) and that action concerning Section §15 Committees be **TABLED**.

The motion was seconded by Mr. Campbell and carried unanimously.

The Bylaws are as follows:



BYLAWS OF THE CAMERON COUNTY REGIONAL MOBILITY AUTHORITY

§ 1. The Authority

These Bylaws are made and adopted for the regulation of the affairs and the performance of the functions of the Cameron County Regional Mobility Authority (the "Authority"), a regional mobility authority authorized and existing pursuant to the provisions of House Bill 3588, enacted by the 78th Legislature of Texas, and codified in Texas Transportation Code, Chapter 370, as the same may be amended from time to time (the "Regional Mobility Authority Act"), as well as rules adopted by the Texas Department of Transportation concerning the operation of regional mobility authorities, located at 43 Tex. Admin. Code § 26.1, et seq. (the "RMA Rules").

§ 2. Principal Office

The domicile and principal office of the Authority shall be in Cameron County, Texas.

§ 3. General Powers

The activities, property, and affairs of the Authority will be managed by its Board of Directors (the "Board"), which may exercise all powers and do all lawful acts permitted by the Constitution and statutes of the State of Texas, the RMA rules, these bylaws, and the Authority shall act through the Board in the performance of its duties and functions.

§ 4. Initial Board

a) The initial Board of the Authority shall be composed of seven Directors, appointed as follows:

1) The Governor shall appoint one (1) director, who shall serve as the presiding officer of the Board. The Governor's Appointee must be a resident of Cameron County.

2) The Commissioners Court of Cameron County shall appoint six (6) directors, two (2) with terms of six (6) years, two (2) with terms of four (4) years and two (2) with terms of two (2) years.

b) The terms of the initial Directors of the Authority shall begin on the date of their appointment through February 1 of the year in which the term of each initial Board member expires.

- c) Directors may be reappointed at the discretion of the Cameron County Commissioners Court.
- d) Each initial Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these bylaws.

§5. Subsequent Directors.

- a) When the term of an initial Director of the Authority expires, and thereafter, when the term of each Director subsequently appointed expires, the Cameron County Commissioners Court shall appoint a successor to that Director whose term is expiring.
- b) Each Director appointed by a Commissioners Court must be a resident of the county governed by that Commissioners Court at the time of their appointment.
- c) Subject to § 7 of these bylaws and except as may be otherwise provided by law (including any amendment to the Regional Mobility Authority Act or the RMA Rules), each successor to an initial Director, and each Director thereafter appointed, shall be appointed for a six-year term. Each Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these bylaws.
- d) Directors qualified to serve under applicable law and these bylaws may be reappointed following the expiration of their terms. Except as otherwise provided by applicable law, there is no limitation on the number of terms a Director may serve.

§ 6. Qualifications of Directors

- a) All Directors will have and maintain the qualifications set forth in this § 6 and in the Regional Mobility Authority Act or RMA Rules.
- b) All appointments to the Board shall be without regard to disability, sex, religion, age, or national origin.
- c) An elected official is not eligible to serve as a Director.
- d) An employee of a city or county located wholly or partly within the boundaries of the Authority is not eligible to serve as a Director.
- e) A person who is an officer, employee, or paid consultant of a Texas trade association in

the field of road construction or maintenance, public transportation or aviation, or whose spouse is an officer, manager, or paid consultant of Texas trade association in the aforementioned fields, is not eligible to serve as a Director or as the Authority's Executive Director.

f) A person is not eligible to serve as a Director or as the Authority's Executive Director if the person or the person's spouse:

1) is employed by or participates in the management of a business entity or other organization, other than a political subdivision, regulated by or receives money from TxDOT or the Authority;

2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by or receives money from TxDOT or the Authority, other than compensation for acquisition of turnpike right-of-way;

3) uses or receives a substantial amount of tangible goods, services, or money from TxDOT or the Authority, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses, or for compensation for acquisition of turnpike right-of-way;

4) is an officer, employee, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation; or

5) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TxDOT or the Authority.

§ 7. Vacancies

A vacancy on the Board shall be filled promptly by the Cameron County Commissioners Court. Each Director appointed to a vacant position shall be appointed for the unexpired term of the Director's predecessor in that position.

§ 8. Resignation and Removal

A Director may resign at any time upon giving written notice to the Authority and the Cameron County Commissioners Court. A Director may be removed from the Board if the Director does not possess at the time the Director is appointed, or does not maintain, the qualifications required by the Regional Mobility Authority Act, the RMA Rules, or these bylaws, or if the Director violates any of the foregoing. In addition, a Director who cannot discharge the Director's duties

for a substantial portion of the term for which he or she is appointed because of illness or disability, or a Director who is absent from more than half of the regularly scheduled Board meetings during a given calendar year, may be removed. If the Executive Director of the Authority knows that a potential ground for removal of a Directors exists, the Executive Director shall notify the Chairman of the potential ground for removal. The Director shall be considered removed from the Board only after the Authority receives notice of removal from the Cameron County Commissioners Court.

§ 9. Compensation of Directors

Directors shall serve without compensation, but will be reimbursed for their actual expenses of attending each meeting of the Board and for such other expenses as may be reasonably incurred in their carrying out the duties and function as set forth herein.

§ 10. Conflict of Interest

A Director shall not: (a) accept or solicit any gift, favor, or service that might reasonably tend to influence that Director in the discharge of official duties on behalf of the Authority or that the Director knows or should know is being offered with the intent to influence the Director's official conduct; or (b) accept other compensation that could reasonably be expected to impair the Director's independence of judgment in the performance of the Director's official duties. Director's shall familiarize themselves an comply with all applicable laws regarding conflicts of interest, including any conflict of interest policy adopted by the Board.

§ 11. Meetings

All regular meetings of the Board shall be held in Cameron County, at a specific site, date, and time to be determined by the Chairman. The Chairman may postpone any regular meeting if it is determined that such meeting is unnecessary or that a quorum will not be achieved, but no fewer than four regular meetings shall be held during each calendar year. Special meetings and emergency meetings of the Board may be called, upon proper notice, at any time by the Chairman or at the request of any three Directors. Special meetings and emergency meetings shall be held at such time and place as is specified by the Chairman, if the Chairman calls the meeting, or by the three Directors, if they call the meeting. The Chairman shall set the agendas for meetings of the Board, except that the agendas of meetings called by three Directors shall be set by those Directors.

§ 12. Voting; Quorum

A majority of the Directors constitutes a quorum, and the vote of a majority of the Directors present at a meeting at which a quorum is present will be necessary for any action taken by the

Board. No vacancy in the membership of the Board will impair the right of a quorum to exercise all of the rights and to perform all of the duties of the Board. Therefore, if a vacancy occurs, a majority of the Directors then serving in office will constitute a quorum.

§ 13. Meetings by Telephone

Subject to the notice requirements of the Texas Open Meetings Act, the Board and committees of the Board may participate in and hold meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other and at which public participation is permitted by a speaker telephone at a conference room of the Authority or other facility in Cameron County that is accessible to the public. Participation in a meeting pursuant to the § 13 constitutes being present in person at such meeting, Except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened as generally provided under § 16 these bylaws. Each part of the telephone conference call meeting that by law must be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded, preserved by other methods, or documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

§ 14. Procedure

All meetings of the Board and its committees shall be conducted in accordance with Robert's Rules of Order pursuant to statutorily proper notice of meeting posted as provided by law. The Chairman at any time may change the order of items to be considered from that set forth in the notice of meeting, provided that all agenda items that require a vote by the Board shall be considered at the meeting for which they have been posted. To the extent procedures prescribed by applicable statutes, the RMA Rules, or the bylaws conflict with Robert's Rules of Order, the Statutes, the RMA Rules, or these bylaws shall govern.

§ 15. Committees

The Chairman at any time may designate from among Directors one or more ad hoc or standing committees, each of which shall be comprised of three (3) Directors, and may designate one or more Directors as alternate members of such committees, who may, subject to any limitations imposed by the Chairman, replace absent or disqualified members at any meeting of that committee. If approved by a resolution passed by a majority vote of the Board, a committee shall have and may exercise all of the authority of the Board, to the extent provided in such resolution and subject to the limitations imposed by applicable law. The Chairman shall appoint the chairman of each committee, as well as Directors to fill any vacancies in the membership of the committees. At the next regular meeting of the Board following the Chairman's formation of a

committee, the Chairman shall deliver to the Directors and the Secretary a written description of the committee, including (a) the name of the committee, (b) whether it is an ad hoc or standing committee, (c) its assigned function(s) and/or task(s), (d) whether it is intended to have a continuing existence or to dissolve upon the completion of a specified task and/or the occurrence of certain events, (e) the Directors designated as members and alternate members to the committee, and its chairman, and (f) such other information as requested by any Director. The Secretary shall enter such written description into the official records of the Authority. The Chairman shall provide a written description of any subsequent changes to the name, function, tasks, term, or composition of any committee in accordance with the procedure described in the preceding two sentences. A committee also may be formed by a majority vote of the Board, which vote (and not the Chairman) also shall specify the committee's chairman and provide the descriptive information otherwise furnished by the Chairman in accordance with the preceding three sentences. A meeting of any committee formed pursuant to this Section 15 may be called by the Chairman, the chairman of the applicable committee, or by any two members of the committee. All committees shall keep regular minutes of their proceedings and report the same to the Board as required. The designation of a committee of the Board and the delegation thereto of authority shall not operate to relieve the Board, or any Director, of any responsibility imposed upon the Board or the individual Director by law. To the extent applicable, the provisions of these bylaws relating to meetings, quorums, meetings by telephone, and procedure shall govern the meetings of the Board's committees.

§ 16. Notice of Directors

Notice of each meeting of the Board or Committee shall be sent by mail, electronic mail, or facsimile to all Directors entitled to vote at such meeting. At least 72 hours advanced notice must be provided prior to Board meetings. If sent by mail, such notice will be deemed delivered when it is deposited in the United States mail with sufficient postage prepaid. If sent by electronic mail or facsimile, the notice will be deemed delivered when transmitted properly to the correct e-mail address or number. Such notice of meetings also may be given by telephone, provided that any of the Chairman, Executive Director, Secretary, or their designee speaks personally to the applicable Director to give such notice.

§ 17. Waiver of Notice

Whenever any notice is required to be given to any Director by statute or by these bylaws, a written waiver of such notice signed by the person or person entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.

§ 18. Attendance as Waiver

Attendance of a Director at a meeting of the Board or a committee thereof will constitute a waiver of notice of such meeting, except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 19. Officers

The officers of the Authority shall consist of a Chairman, a Vice Chairman, a Secretary, and a Treasurer. The offices of Secretary and Treasurer may be held simultaneously by the same person. The individuals elected as officers shall not be compensated for their service as officers. However, officers shall be reimbursed for all expenses incurred in conducting proper Authority business and for travel expenses incurred in the performance of their duties. If desired, the Board may also designate an Assistant Secretary and Assistant Treasurer, who shall also be considered officers of the Authority.

§ 20. Election and Term of Office

Except for the office of Chairman, which is filled by the Governor's appointment, officers will be elected by the Board for a term of two years, subject to § 21 of these bylaws. The election of officers to succeed officers whose terms have expired shall be by a vote of the Directors of the Authority at the first meeting of the Authority held after January 1 of each year or at such other meeting as the Board determines.

§ 21. Removal and Vacancies

Each officer shall hold office until a successor is chosen and qualified, or until the officer's death, resignation, or removal, or, in the case of a Director serving as an officer, until such officer ceases to serve as a Director. Any officer, except the Chairman, may resign at any time upon giving written notice to the Board. The Chairman may resign at any time upon giving written notice to the Board and Governor. Any office except the Chairman may be removed from service as an officer at any time, with or without cause, by the affirmative vote of majority of the Directors of the Authority. The Directors of the Authority may at any meeting vote to fill any officer position except the Chairman vacated due to an event described in this § 21 for the remainder of the unexpired term.

§ 22. Chairman

The Chairman is appointed by the Governor and is a Director of the Authority. The Chairman shall appoint all committees of the Board as specified in these bylaws (except as otherwise provided in § 15 of these bylaws), call all regular meetings of the Board, preside at and set the agendas for all meetings of the Board (except as provided in the concluding sentence of § 11 of

these bylaws), and approve the reimbursement of expenses to the Executive Director.

§ 23. Vice Chairman

The Vice Chairman must be a Director of the Authority. During the absence or disability of the Chairman, upon the Chairman's death (and pending the Governor's appointment of a successor new Chairman), or upon the Chairman's request, the Vice Chairman shall perform the duties and exercise the authority and powers of the Chairman.

§ 24. Secretary

The Secretary need not be a Director of the Authority. The Secretary shall keep true and complete records of all proceedings of the Directors in books provided for that purpose and shall assemble, index, maintain, and keep up-to-date a book of all of the policies adopted by the Authority; attend to the giving and serving of all notices of meetings of the Board, of committees, and such other notices as are required by the office of Secretary and as may be directed by the Regional Mobility Authority Act, any trust indenture binding on the Authority, Directors of the Authority, or the Executive Director; seal with the official seal of the Authority (if any) and attest all documents, including trust agreements, bonds, and other obligations of the Authority that require the official seal of the Authority to be impressed thereon; execute, attest, and verify signatures on all contracts in which the total consideration equals or exceeds an amount established in resolutions of the Board, contracts conveying property of the Authority, and other agreements binding on the Authority which by law or Board resolution require attestation; certify resolutions of the Board and any committee thereof; maintain custody of the corporate seal, minute books, account, and all other official documents and records, files, and contracts that are not specifically entrusted to some other officer or depository; and hold such administrative offices and perform such other duties as the Directors or the Executive Director shall require.

§ 25. Treasurer

The Treasurer need not be a Director of the Authority. The Treasurer shall execute all requisitions to the applicable bond trustee for withdrawals from the construction fund, unless the Board designates a different officer, Director, or employee of the Authority to execute any or all of such requisitions. In addition, the Treasurer shall execute, and if necessary attest, any other documents or certificates required to be executed and attested by the Treasurer under the terms of any trust agreement or supplemental trust agreement entered into by the Authority; maintain custody of the Authority's funds and securities and keep a full and accurate account of all receipts and disbursements, and endorse, or cause to be endorsed, in the name of the Authority and deposit, or cause to be deposited, all funds in such bank or banks as may be designated by the Authority as depositories, render to the Directors at such times as may be required an account of

all financial transactions coming under the scope of the Treasurer's authority; give a good and sufficient bond, to be approved by the Authority, in such an amount as may be fixed by the Authority; invest such of the Authority's funds as directed by resolution of the Board, subject to the restrictions of any trust agreement entered into by the Authority; and hold such administrative offices and perform such other duties as the Directors of the Authority or the Executive Director shall require. If, and to the extent that, the duties or responsibilities of the Treasurer and those of any administrator conflict and are vested in different persons, the conflicting duties and responsibilities shall be deemed vested in the Treasurer.

§ 26. Administrators

The chief administrator of the Authority shall be the Executive Director. Other administrators may be appointed by the Executive Director with the consent of the Board. All such administrators, except for the Executive Director, shall perform such duties and have such powers as may be assigned to them by the Executive Directors or as set forth in Board Resolutions. Any administrator may be removed, with or without cause, at any time by the Executive Director. All administrators will be reimbursed for expenses incurred in performance of their duties as approved by the Executive Director. Notwithstanding the foregoing, all expense reimbursements to the Executive Director shall be subject to the approval of the Chairman, as provided in § 22 of these bylaws.

§ 27. Executive Director

- a) The Executive Director will be selected by the Board and shall serve at the pleasure of the Board, performing all duties assigned by the Board and implementing all resolutions adopted by the Board.
- b) In addition, the Executive Director:
 - 1) shall be responsible for general management, hiring and termination of employees, and day-to-day operations of the Authority;
 - 2) shall be responsible for preparing a draft of the Strategic Plan for the Authority's operations, as described in § 36 of these bylaws;
 - 3) shall be responsible for preparing a draft of the Authority's written Annual Report, as described in § 36 of these bylaws;
 - 4) at the invitation of the Cameron County Commissioners Court, shall appear, with representatives of the Board, before the Commissioners Court to present the Authority's Annual Report and respond to questions and receive comments regarding the Report or the Authority's

operations;

5) may execute inter-agency and interlocal contracts and service contracts not exceeding amounts established in Resolutions of the Board;

6) may execute contracts, contract supplements, contract change orders, and purchase orders not exceeding amounts established in Resolutions of the Board; and

7) shall have such obligations and authority as may be described in one or more Resolutions enacted from time to time by the board.

c) The Executive Director may delegate the foregoing duties and responsibilities as the Executive Director deems appropriate, provided such delegation does not conflict with applicable law or any express direction of the Board.

§ 28. Interim Executive Director

The Board may designate an Interim Executive Director to perform the duties of the Executive Director during such times as the position of Executive Director is vacant. The Interim Executive Director need not be an employee of the Authority.

§ 29. Indemnification by the Authority

Any person made a party to or involved in any litigation, including any civil, criminal or administrative action, suit or proceeding, by reason of the fact that such person is or was a Director, officer, or administrator of the Authority or by reason of such person's alleged negligence or misconduct in the performance of his or her duties as such Director, officer, or administrator shall be indemnified by the Authority, to the extent funds are lawfully available and subject to any other limitations that exist by law, against liability and the reasonable expenses, including attorney's fees, actually and necessarily incurred by him or her in connection with any action therein, except in relation to matters as to which it is adjudged that such Director, officer, or administrator is liable for gross negligence or willful misconduct in the performance of his or her duties. A conviction or judgment entered in connection with compromise or settlement of any such litigation shall not by itself be deemed to constitute an adjudication of liability for such gross negligence or willful misconduct. The right to indemnification will include the right to be paid by the Authority for expenses incurred in defending a proceeding in advance of its final disposition in the manner and to the extent permitted by the Board in its sole discretion. In addition to the indemnification described above that the Authority shall provide a Director, officer or administrator, the Authority may, upon approval of the Board in its sole discretion, indemnify a Director, officer, or administrator under such other circumstances, or may indemnify an employee, against liability and reasonable expenses, including attorney's fees, incurred in

connection with any claim asserted against him or her in said party's capacity as a Director, officer, administrator, or employee of the Authority, subject to any limitations that exist by law. Any indemnification by the Authority pursuant to this § 31 shall be evidenced by a resolution of the Board.

§ 30. Expenses Subject to Indemnification

As used herein, the term "expenses" includes fines or penalties imposed and amounts paid in compromise or settlement of any such litigation only if:

- a) independent legal counsel designated by a majority of the Board, excluding those Directors who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought, shall have advised the Board that, in the opinion of such counsel, such Director, officer, administrator, or other employee is not liable to the Authority for gross negligence or willful misconduct in the performance of his or her duties with respect to the subject of such litigation; and
- b) a majority of the Directors shall have made a determination that such compromise or settlement was or will be in the best interests of the Authority.

§ 31. Procedure for Indemnification

Any amount payable by way of indemnity under these bylaws may be determined and paid pursuant to an order of or allowance by a court under the applicable provisions of the laws of the State of Texas in effect at the time and pursuant to a resolution of a majority of the Directors, other than those who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought. In the event that all of the Directors are made parties to such litigation, a majority of the Board shall be authorized to pass a resolution to provide for legal expenses for the entire Board.

§ 32. Additional Indemnification

The right of indemnification provided by these bylaws shall not be deemed exclusive of any right to which any Director, officer, administrator, or other employee may be entitled, as a matter of law, and shall extend and apply to the estates of deceased Directors, officers, administrators, and other employees.

§ 33. Contracts and Purchases

All contracts and purchases on behalf of the Authority shall be entered into and made in accordance with rules of procedure prescribed by the Board and applicable laws and rules of the State of Texas.

§ 34. Sovereign Immunity

The Authority will not by agreement or otherwise waive or impinge upon its sovereign immunity.

§ 35. Termination of Employees

Employees of the Authority shall be employees at will unless they are party to an employment agreement with the Authority executed by the Chairman upon approval by the Board. Employees may be terminated at any time, with or without cause, by the Executive Director subject to applicable law and the policies in place at the time of termination.

§ 36. Strategic Plan, Annual Report, and Presentation to Commissioners Court

- a) Each even-numbered year, the Authority shall issue a Strategic Plan of its operations covering the next five fiscal years, beginning with the next odd-numbered fiscal year. A draft of each Strategic Plan shall be submitted to the Board for review, approval, and, subject to revisions required by the Board, adoption.
- b) Under the direction of the Executive Director, the staff of the Authority shall prepare a draft of an Annual Report on the Authority's activities during the preceding year and describing all Regional Mobility Authority revenue bond issuances anticipated over the coming year, the financial condition of the Authority, all project schedules, and the status of the Authority's performance under the most recent Strategic Plan. The draft shall be submitted to the Board for review, approval, and, subject to revisions required by the Board, adoption. Not later than January 1 following the conclusion of the preceding fiscal year, the Authority shall file with the Cameron County Commissioners Court the Authority's Annual Report, as adopted by the Board.
- c) At the invitation of the Cameron County Commissioners Court, representatives of the Board and the Executive Director shall appear before the Commissioners Court to present the Annual Report and respond to questions and receive comments.

§ 37. Compliance with Law

jurisdiction of all authority transportation facilities.

b) Involuntary dissolution

- 6) The commission by order may require an authority to dissolve if the commission determines that the authority has not substantially complied with the requirements of a commission rule or an agreement between the department and the authority.
- 7) The commission may not require dissolution unless:
 - A. The conditions described in Sections 42 (3) (A) and (B) have been met; and
 - B. The holders of any indebtedness have evidenced their agreement to the dissolution.



5. **APPROVAL OF MINUTES FOR THE MEETING OF FEBRUARY 25, 2005**

Upon motion by Mr. Garza, seconded by Mr. Alvarez and carried unanimously, the Minutes for the Meeting of February 25, 2005, were approved as presented.

6. **CHAIRMAN'S REPORT**

Mr. David E. Allex, Chairperson, reported that several items were cause for a free flow toll (*Pass Through Toll*) from the Texas Department of Transportation (TXDOT). He suggested that toll free projects and smaller projects that may be funded through bond proceeds be examined prior to the next meeting.

Mr. Allex stated that Mr. David Garcia, Cameron County Department of Transportation Assistant Director, was willing to develop a website for the RMA in concert as the Board Member David Garza.

Mr. Allex reported that the third item relates to travel.

Mr. Pete Sepulveda, Department of Transportation Director, informed that the I-69 Alliance was presently setting up trips to Monterrey, Nuevo Leon, Mexico, and Victoria, Tamaulipas, Mexico, in April and May 2005. He stated that Team Texas, an organization composed of all RMA in Texas and the Dallas and Houston Toll Authorities, scheduled a meeting for April 21-22, 2005, in San Antonio, Texas, adding that joining said organization in the near future would be beneficial. Mr. Sepulveda stated that this was a good conference to attend and requested that interested members inform him in order to make travel arrangements.

Mr. Allex stated that he made arrangement to travel to Victoria, Tamaulipas, Mexico, to meet with the Governor, Secretary of Transportation, and Secretary of Urban Affairs on Thursday, April 7, 2005. He stated that Mr. Sepulveda and he would depart at 6:30 am from the Los Indios Free Trade International Bridge and welcome any other two members willing to attend.

The question arose concerning the number of members that could attend while avoiding a quorum situation, whether business would be discussed, and if posting would be required.

Mr. Allex advised that only two members could accompany him to avoid having a quorum and the need to post because business would be discussed.

Mr. Doug Wright, Commissioners' Court Legal Counsel, advised that board members be cognizant of doing things that don't feel right and provided the *Open Meeting Act Handbook* for review. He stated that members would always be at risk when attending social events because the appearance was always an issue; therefore,



suggested that members closely study anything that might appear to be a problem.

Mr. Sepulveda reported that the Office of the State Comptroller informed that they would be auditing all RMAs and interviewing its directors and chairperson, noting that tentative dates were presently being set. He suggested all members exercise caution by following all proper procedures.

The Report is as follows:



Pass-Through Tolls Applicant Handbook

1. Introduction

HB 3588, 78th Legislature, Regular Session, 2003, enacted Transportation Code §222.104 (b) authorizes the Texas Department of Transportation (TxDOT) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls. Texas Administrative Code §5.51-5.59 prescribes the policies and procedures governing TxDOT implementation of Transportation Code, §222.104(b). A pass-through toll allows a public or private entity to receive reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity.

An off-system project is not eligible to be developed under a pass-through toll agreement and the activities for which the developer may be reimbursed under a pass-through toll agreement must encompass more than just providing the initial financing of a project.

(A) What are Pass-Through Tolls?

A per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a toll or non-toll facility on the state highway system.

(B) How does the program work?

A developer (public or private entity) submits a proposal to TxDOT so that TxDOT and the Texas Transportation Commission (Commission) can properly consider the merit of the proposal. A selection and negotiation process will be followed to attempt to develop a pass-through toll agreement with a developer.

The Commission must first grant approval by minute order for TxDOT to begin negotiations. TxDOT will then submit a summary of the terms of a successfully negotiated pass-through toll agreement to the Commission. If the Commission approves by minute order, TxDOT enters into an agreement with the developer to provide for the payment of pass-through tolls as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system.

(C) Significance to the State

TxDOT has a new method of delivering needed highway projects. Local or private interests can expedite the development of a highway sooner, benefiting the public and the state.

2. Submitting Pass-Through Toll Proposals

The developer (public or private entity) is encouraged to submit a pass-through toll project proposal, in the format requested in the attached form, to TxDOT's District Office where the proposed project will be located. The district staff then reviews project cost estimates and other information provided. The District Office forwards the proposal to the Finance Division, who will coordinate the review of the application with various department divisions such as Environmental Affairs, Right-of-Way, Design, Texas Turnpike Authority,

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Pass-Through Tolls

Applicant Handbook

Transportation Planning and Programming, and the Office of General Counsel. The developer will likely be asked additional information throughout the TxDOT review process. A summary of the proposal is presented to the Commission who may then authorize, by minute order, the Finance Division Director to negotiate an agreement with the public or private entity. The Finance Division Director will submit a summary of the final terms of the negotiated agreement to the Commission. The Commission may then authorize by minute order the Finance Division Director to execute the agreement.

(A) Proposal Requirements

- Description of the project including project limits, connections with other transportation facilities, and a description of the services to be provided by the developer;
- Statement of the benefits anticipated to result from the completion of the project;
- Description of the local support for the project such as a resolution from the county commissioner's court, city council, and if an MTA an MPO resolution, and any local public opposition;
- Proposed project development and implementation schedule;
- Description of the developer's qualifications and experience in developing highway construction projects if a public entity;
- complete information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, and the capability of the proposer to develop the proposed projects, if the proposer is a private entity;
- Proposed pass-through toll payment schedule (if available);
- Developer's intention to toll or not to toll the project and if tolled, approximate date highway will begin to be tolled.
- a statement indicating whether the proposer intends to enter into a comprehensive development agreement, if the proposer is a private entity.

3. Negotiating Pass-Through Toll Agreements

The Commission must first grant approval by minute order to negotiate. In authorizing the Finance Division Director to negotiate an agreement with a private or public entity, the Commission must consider the following:

(A) Eligibility Considerations

- Financial benefit to the state;
- Local public support for the project;
- Whether the project is in TxDOT's UTP;
- The extent the project will relieve congestion;

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Pass-Through Tolls Applicant Handbook

- Potential air quality benefits from the project;
- Project's compatibility with existing/planned facilities;
- **Entity's experience in developing highway projects; and,
- **Qualifications of the proposer to accomplish the work.

**** If proposal is from a private entity**

If the developer is a public entity, TxDOT will attempt to negotiate a satisfactory agreement with the entity to provide the best value to the state. If an agreement cannot be negotiated with the public developer, TxDOT will formally end negotiations.

If the Commission approves by minute order the further evaluation of a proposal of a private entity, TxDOT will publish notice of that decision and provide an opportunity for the submission of competing proposals. TxDOT will publish a notice in the Texas Register and in one or more newspapers of general circulation. TxDOT will accept for simultaneous consideration any competing proposal within 45 days of the initial publication of notice in the Texas Register, or such additional time as authorized by a minute order of the Commission. The original proposer may submit a revised proposal in response to the notice. Upon expiration of the 45-day period, or such additional time as authorized by the Commission, TxDOT will evaluate the proposal of the original proposer and any properly submitted competing proposals, utilizing the evaluation criteria set forth in the request for proposals. If an agreement cannot be negotiated with a selected proposer, TxDOT will formally end negotiations with that proposer. TxDOT may reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party.

4. Final Pass-Through Toll Approval Process

Once a tentative agreement has been reached through negotiations, the Finance Division Director will submit to the Commission a summary of the final terms of the pass-through toll agreement. The Commission may authorize by minute order the Finance Division Director to execute the agreement if it finds that the agreement is in the best interest of the state and the project:

- is compatible with existing and planned transportation facilities; and,
- furthers state, regional, and local transportation plans, programs, policies, and goals.

5. Repayment Process of Pass-Through Tolls

The amount to be reimbursed to the developer from TxDOT will be through the periodic payment of pass-through tolls, for an overall amount equal to the TxDOT estimate of the costs of the project. However, the Commission may direct TxDOT to provide for reimbursement in an overall amount less than the TxDOT estimate if:

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Pass-Through Tolls
Applicant Handbook

- it determines that the project's estimated benefit to mobility do not warrant full reimbursement;
- it determines that the construction of the project will result in a significant economic gain to the developer; or
- the developer proposes to share in the cost of the project.

The Commission may direct TxDOT to provide for reimbursement in an overall amount more than the TxDOT estimate if the Commission determines that there will be a financial benefit to the state, through the avoidance of inflation, as a result of building the project sooner. The additional amount authorized by the Commission may not be more than the amount of the financial benefit.

Appendices: Transportation Code 222.104(b)
Texas Administrative Code 5.51-5.59
Pass-Through Toll Proposal Form

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| Rev. 4/18/2005



MEMORANDUM

TO: John Munoz
FIN

October 22, 2004

FROM: Bobby G. Littlefield, Jr., P.E. *BGL*
PAR

SUBJECT: Pass Through Toll Application from Grayson County RMA for SH 289

Enclosed is one (1) original of the Grayson County Regional Mobility Authority (GCRMA) Pass Through Toll Application for their SH 289 extension project.

My staff has reviewed this application. The preliminary engineering, right-of-way acquisition, design and construction costs are all in-line with other past projects of this scope, magnitude and nature in this district. Therefore, we believe the GCRMA figures to be an accurate representation of what to expect during this project.

It is our intent to place this facility, once it is constructed, on the State Highway System. Therefore, future maintenance of the facility will be a TxDOT responsibility only.

State Representative Larry Phillips contacted Chairman Ric Williamson regarding this application, some time during the Transportation Short Course last week. Chairman Williamson's instructions (as I understand them) to Representative Phillips were to prepare this application as quickly as is possible, submit it to TxDOT, and request an appearance before the Transportation Commission at its scheduled November 2004 regular meeting.

Thank you.

cc: Amadeo Saenz, Jr., P.E.

**Pass – Through Toll Application
State Highway 289 Extension**



**Submitted:
October 20, 2004**



Grayson County Regional Mobility Authority

Chairman: Jerdy Gary
Vice Chairman: Ellis Olmstead
Secretary/Treasurer: Kent Black

October 19, 2004

Mr. Ric Williamson, Chairman Texas Transportation Commission
Texas Dept. of Transportation
125 E. 11th St.
Austin, Texas 78701

Re: Grayson County Regional Mobility Authority

Chairman Williamson:

On behalf of the GCRMA, I am pleased to submit this pass-through toll application as specified under Subchapter E of the Transportation Code, 222.104(b). The GCRMA is very excited about the opportunities available to local governments under HB 3588 to work in partnership with the Texas Department of Transportation to develop a sustainable and self-funding transportation program. These transportation tools provide a unique opportunity for the GCRMA to address the current and future transportation needs of Grayson County.

Our mandatory proposal, as detailed in the enclosed application, involves a 14 to 20 year program that defines a predictable way to fund our transportation needs. The GCRMA proposes to construct and operate system roadway projects through an innovative financial program funded by a revolving program of pass-through tolls, and toll revenue bonds.

Under our proposal, the GCRMA would use previously voter-approved bond proceeds from Grayson County to fund this initial project which is ready, but adequate TxDOT funding will not be available until 2014, based upon the Commission-adopted recommendations of Urban Area Prioritization Work Group. We are requesting that this initial investment would be repaid through pass-through tolls.

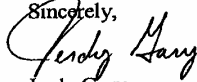
100 W. Houston • Sherman, Texas 75090-5958

Phone (903) 465-8230 • Fax (903) 465-1305 • jerdy@sbcglobal.net

We are anxious to proceed with this program and begin utilizing the new financing tools available in HB 3588. This proposal allows both the GCRMA and TxDOT to leverage their initial investment. We can finish our non-toll project significantly faster and we can ultimately create a county toll road system as a revenue-generating asset that will make the GCRMA self-supporting in the future.

We are looking forward to working with you and your staff to implement this bold and creative proposal. On behalf of our board, I wish to extend our thanks to Bobby Littlefield, and Steve Ekstrom who provided insight and support as we developed this application.

Sincerely,



Jerdy Gary
Chairman

Cc: Kent Black
Ellis Olmstead
Judge Tim McGraw
Commissioner Gene Short
Bobby Littlefield

**Grayson County Regional Mobility Authority
Pass Through Toll Application
SH289 Extension**

Project Description

The initial project that will be pursued by the Grayson County RMA is an approximate 12 mile extension of State Highway 289 beginning at State Highway 56 west of Sherman and ending at FM120 in Pottsboro. New development locations are between US 82 and Plainview Rd and FM996 and FM120 otherwise the remainder of the project generally follows existing county roads. Right-of-Way will be purchased for an ultimate four lane facility, however, only two lanes with shoulders are proposed initially.

The Grayson County RMA plans to partner with private sector, Grayson County, and TXDOT to design, build and finance this proposed project. The estimated cost of this project from schematic through construction is estimated to be \$34,000,000. The RMA anticipates an unsolicited proposal from the private sector to design, build and finance this project, based on significant contacts from firms.

Benefits

State Highway 289 extension will provide traffic congestion relief for U.S. Highway 75, reduce travel time between DFW and Grayson County, improve access to Lake Texoma, and will be the final component for making Grayson County Airport intermodal with road, air, and rail access.

The twelve counties in and about the Dallas-Fort Worth Metroplex contain roughly a quarter of the population of the state of Texas. Recent growth in areas such as the cities of Plano and Frisco indicate that the population is growing northward from the Metroplex, particularly along the U.S. Highway 75 corridor into Grayson County. With population growth has come increased traffic and congestion on U.S. Highway 75 and adjacent roadways. U.S Highway 75 now carries more vehicles per day between Texas and Oklahoma than Interstate 35. One of the primary functions of the Grayson County RMA will be to manage the growth of congestion and provide relief to U.S. Highway 75 by developing future transportation projects.

Grayson County currently has a population of about 117,000 people. Existing regional and community growth trends in the vicinity of the project area are continuing. Both residential and commercial growth will accelerate due to the proposed improvements. Property values along and near the proposed project are expected to increase along with an increase in the tax base due to secondary development. During the project construction phase, there would be a short-term economic gain to the area due to new job opportunities and a temporary boost of the local economy. Long-term economic benefits, by the community from the project would be improved access and ease of mobility, as well as improved public safety and faster emergency vehicle response time.

The proposed project will be adjacent to Grayson County Airport along its west side. The Airport has two 9000' runway's (with instrument landing) capable of supporting a loaded Boeing 747 up to 600,000 lbs. This project will open up hundreds of acres of land for commercial development that in turn will create jobs, increase the tax base, and provide the Dallas-Ft Worth area a more direct access to our airport. With the completion of this project our airport will become an intermodal airport with access by road, air, and rail.

The traveling public will benefit by realizing an improved transportation system sooner than would otherwise be possible under traditional methods of transportation funding. By relieving congested areas in Grayson County, safety will be enhanced, travel time will be decreased, and the quality of life for the citizens of the region will generally be improved.

Local Support

Resolutions of local support for this project have been passed by Grayson County, every city in the county, Sherman-Denison Metropolitan Planning Organization, all Chambers of Commerce and many other entities. The RMA is not aware of any significant opposition to, or controversies regarding this project. The SH289 project is the top mobility project for the Sherman-Denison MPO.

Project Development and Schedule

The Design Schematic and Environmental Assessment are complete and have been approved by TXDOT. Currently, the FHWA is reviewing the Environmental Assessment and their approval is expected very soon. Other resource agencies have given their approval. A finding of no significant impact (FONSI) is expected.

On October 8, 2004, Grayson County contracted with a land surveying company to prepare right-of-way (ROW) map and survey parcels to be purchased for ROW. This process is expected to be complete in about 26 weeks.

Grayson County is now in the process of preparing a Request for Proposal (RFP) for appraisal and acquisition services for ROW. All ROW should be purchased and utilities adjusted by the end of 2005. A Design Build contract between the RMA and a private organization could be developed during year 2005 with construction to begin at year 2006. The RMA requests that pass-through toll funding would begin in TXDOT'S 2006 fiscal year for this project, as detailed in enclosed timeline schedule.

Developers Qualifications and Experience

The Grayson County RMA will partner and contract with an entities from the private sector that has proven experience with developing state highway projects. The RMA will work hand in hand with Grayson County and TXDOT throughout this process.

Pass-Through Toll Payment Schedule

A payment schedule has not been developed, because we have just received a copy of the toll viability analysis conducted by the Texas Turnpike Authority Division of TXDOT. Based on this conceptual study it is the intention of the Grayson County RMA not to conventionally toll this project but to request pass-through tolling from TXDOT.

**Grayson County RMA
SH 289 Extension**

Project: SH 289 Extension

Limits: .6 mile S. of SH 56 to FM 120

Length: 11.8 miles

Proposed Improvement: New location -- Construct 2 lanes of ultimate 4 lane divided

Status: **Environmental:** Complete and TXDOT approved pending approval by FHWA

Schematic: Complete and TXDOT approved

ROW: Contract let for ROW survey

Appraisal and Acquisition: Working on RFP

Utility adjustment: No

Cost:

Preliminary Engineering: \$800,000

1. Schematic
2. Environmental assessment
3. Archeological survey

ROW Cost: \$4,800,000 (400 acres @ \$12,000/acre)

1. ROW Maps
2. Parcel Survey
3. Appraisal and acquisition
4. Title Insurance
5. Closing and recording

Utility Adjustments: \$500,000

E & C for Design Work: \$1,270,000

E & C for Construction: \$760,000

Construction Cost: \$25,300,000 (This will increase if built in segments)

Total Cost: \$33,430,000

Sources: Project: \$33,430,000 TXDOT: 0

Grayson County: \$6,100,000

TXDOT: 0

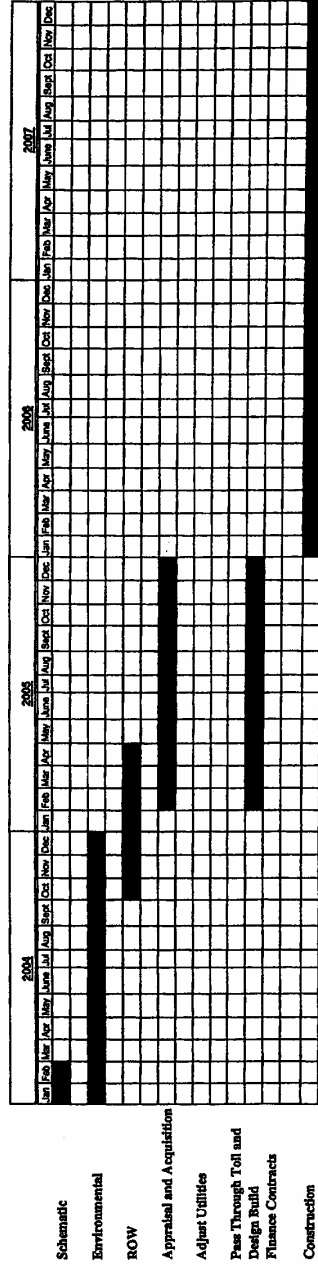
Pass-Through Toll: \$33,430,00

APPENDIX

- 1. Proposed State Highway 289 Extension Location Map**
- 2. State Highway 289 Project Development Schedule**

PROJECT DEVELOPMENT SCHEDULE

GRAYSON COUNTY RMA
SH 289 Extension



COMPREHENSIVE TRANSPORTATION IMPROVEMENT PROGRAM, PHASE I

Phase 1 – Project Description

FM 1485

FM 1485 is a two lane rural road connecting US 59 to SH 105. This project will improve the 2.9 mile section 0.7 miles north of US 59 to 2.2 miles north of US 59 (2.9 miles) from the existing 2 lane to 4 lane divided and improve the 1.25 mile section from Loop 494 to Kidd Cemetery Road from the existing 2 lane to 5 lane concrete curb and gutter. Annual average daily traffic count for this section of FM 1485 is 18,800.

The Environmental Assessment will be submitted to TxDOT August, 2004. The Schematic will be submitted to TxDOT for approval August, 2004. Minimum right-of-way will be required (1 or 2 corner clips). PS&E has not been started.

The Cost of this project is \$7,000,000, which includes an estimated \$500,000 of right-of-way costs. There are no TxDOT funds available for this project. Montgomery County intends to fund the project cost eligible for pass-through tolling, \$6,500,000, with County bonds. [See Exhibit 5]

FM 1488 (1A)

FM 1488 is a two lane rural road extending from IH-45 in central Montgomery County to the Waller County line. This project will improve Section 1A, the 6.641 mile section between FM 2978 and IH-45. Annual average daily traffic count for FM 1488 (1A) is 13,700. This project will widen the roadway from 2 lanes to 4 lanes divided rural.

The Environmental Assessment has been submitted and is pending approval by FHWA. Initial FHWA comments were responded to by consultant in July, 2004. The Schematic is complete and was submitted to TxDOT Project Manager, Mr. Sam Ainabe, in April of 2004 for approval. Right-of-way acquisition is currently underway. PS&E has not been started.

The Cost of this project is \$31,000,000, which includes an estimated \$9,000,000 of right-of-way costs. TxDOT TIP funds available for this project total \$20,000,000. Montgomery County intends to fund the project cost eligible for pass-through tolling, \$2,000,000, with County bonds. [See Exhibit 5]

FM 1488 (1B)

FM 1488 is a two lane rural road extending from IH-45 in central Montgomery County to the Waller County line. This project will improve Section 1B, the 7.75 mile section between FM 149 and FM 2978. Annual average daily traffic count for FM 1488 (1B) is 13,700. This project will widen the roadway from 2 lanes to 4 lanes divided rural.

The Environmental Assessment has been submitted TxDOT Project Manager, Mr. Sam Ainabe, and is pending approval. The Schematic is complete and was submitted to TxDOT in April, 2004 for approval. Right-of-way acquisition is schedule to begin in September, 2004. PS&E has not been started.

The Cost of this project is \$32,000,000, which includes an estimated \$9,000,000 of right-of-way costs. There are no TxDOT TIP funds available for this project. Montgomery County intends to fund the project cost eligible for pass-through tolling, \$23,000,000, with County bonds. [See Exhibit 5]

FM 1314 (2B)

FM 1314 is a two lane rural road connecting US 59 with SH 105. This project will improve Section 2B, the 7.937 mile section from 1.0 mile S of SH 242 to 2.6 miles NW of Loop 494. Annual average daily traffic county for FM 1314 (2B) is 7,500. This project will widen the roadway from 2 lanes to 4 lanes divided with provisions for future expansion.

The Environmental Assessment is in final stages of preparation and is schedule to be submitted to TxDOT August, 2004. The Schematic is complete and was submitted to TxDOT Project Manager, Ruperto Arismendez, and is pending approval. Right-of-way acquisition is schedule to begin Fall, 2004. PS&E has not been started.

The Cost of this project is \$27,400,000, which includes an estimated \$3,000,000 of right-of-way costs. There are no TxDOT TIP funds available for this project. Montgomery County intends to fund the project cost eligible for pass-through tolling, \$24,400,000, with County bonds. [See Exhibit 5]

FM 1484

FM 1484 is a two lane rural road connecting Loop 336 to FM 2432. This project will realign a 3.620 section to allow for expansion of the Conroe Airport. Annual average daily traffic county for FM 1484 is 7,700. This project will widen the roadway from 2 lanes to 4 lanes divided rural.

The Environmental Assessment and the Schematic will be submitted to TxDOT in August, 2004. Right-of-way will be donated for this project. PS&E has not been started.

The Cost of this project is \$13,000,000. There are no TxDOT TIP funds available for this project. Montgomery County intends to fund the project cost eligible for pass-through tolling, \$13,000,000, with County bonds. [See Exhibit 5]

SH 242 Direct Connectors to IH-45

SH 242 intersects IH-45 north of the Woodlands. This section of SH 242 has an annual average daily traffic count of 33,000. The project will build electronically tolled direct connectors from westbound SH 242 to southbound IH-45 and northbound IH45 to westbound SH 242.

As this is an improvement to an existing project, environmental assessment may not be necessary. The schematic is not complete. No right-of-way is required. PS&E has not been started.

The Cost of this project is \$15,000,000. There are no TxDOT TIP funds available for this project. Montgomery County intends to fund the project cost, \$15,000,000, with County Bonds and petition for a 66% contribution of pass-through tolls. [See Exhibit 5]

Phase 1 - Project Benefits

Montgomery County is the 5th fastest growing county in the state of Texas. The 2025 Regional Forecast, prepared by the Houston-Galveston Area Council (H-GAC), projects the population of Montgomery County to more than double in the next twenty years, second only to Fort Bend County for counties in the 8-county Houston Consolidated Metropolitan Statistical Area.

Every area of Montgomery County is experiencing growth. The 2025 Regional Forecast projects the following growth for the areas served by Phase 1 projects.

FM 1485 – 168% increase in population, 116% increase in jobs
FM 1488 (1A) – 57% increase in population, 102% increase in jobs
FM 1488 (1B) – 172% increase in population, 293% increase in jobs
FM 1314 (2B) – 164% increase population, 116% increase in jobs
SH 242 – 128% increase in population, 130% increase in jobs

The rural road network of Montgomery County is straining to keep pace. The additional capacity provided by Phase 1 projects will immediately improve the mobility of the County.

Growth is impacting more than mobility. In 2003, the Texas Department of Public Safety ranked Montgomery County number one per capita among all Texas Counties in the number of individuals killed in motor vehicle crashes. DPS states, "road additions and road improvements will have a direct impact on reducing the number of crashes and injuries and deaths relating to those crashes."

Local Support for the Program

In 2001, when Montgomery County took a road bond before the voters, it received overwhelming support. Sixty-eight percent of the voters said yes to the issuance of \$60 million of road bonds. That support is still strong throughout the County. The Greater Conroe/Lake Conroe Area Chamber of Commerce, the South Montgomery County/Woodlands Chamber of Commerce, the Magnolia Area Chamber of Commerce and the Community Chamber of Commerce support improvement and expansion of the County's transportation infrastructure.

Program Development and Implementation Schedule

Exhibit 6 details the Program's development and implementation schedule by project.

Program Manager

Montgomery County delegates responsibility for the development and implementation of the Comprehensive Transportation Improvement Program to a Program Manager. [See Munoz letter in Appendix] Montgomery County has contracted with Pate Engineers, Inc. (PATE) to act in that capacity. As Program Manager, PATE will be supported by Prime Strategies, Inc. Carter & Burgess will lend engineering support. [See Exhibit 7] Resumes for key personnel involved in this program are located in the Appendix section of this application.

All aspects of the Comprehensive Transportation Improvement Program will be managed under the guidance of the Program Manager.

The Program Manager will coordinate with the appropriate agencies, TxDOT and H-GAC/MPO, to integrate the County's planned improvements with regional transportation planning and air quality conformity analyses.

The Program Manager will manage the development of schematic engineering designs and estimates to prioritize project phasing, identify strategic right-of-way acquisitions for future phases of the program, manage the environmental assessment, clearance and regulatory process, provide quality assurance/quality control for all phases of the program and provide project control over budget, scheduling and reporting. The Program Manager will also manage final engineering design provided by firms chosen by the County.

During construction of Phase 1 projects, the Program Manager will provide Construction Phase, Construction Management and Construction quality assurance/quality control services, including inspections. In addition, the Program Manager may also contract with TxDOT to provide Construction Management for Phase 1 System Projects.

Although the Program Manager will support Montgomery County in the acquisition and procurement of right-of-way services, surveying services, environmental assessments, design and construction services, Montgomery County Purchasing will be responsible for the procurement of all services. Montgomery County Purchasing complies with all aspects and requirements as defined in Vernon's Texas Codes Annotated, Local Government, Section 262: Purchasing and Contracting Authority of Counties.

Company Overview

PATE has extensive experience in roadway conceptual planning, preliminary engineering, design and construction support services on both highway and local roadway systems. PATE also has significant background and experience in construction phase services and construction management for large, complex public works projects, including transportation management. Key members of the PATE team, David Peebles and Jay Nelson, former District Engineers for the Texas Department of Transportation, have many years experience in the design and construction management of transportation projects. While at TxDOT, Mr. Peebles served as project manager during the construction of many key projects. As District Engineer, he was responsible for annual construction contract administration of projects totaling as much as \$250 million. During Mr. Nelson's tenure with TxDOT, he led programs which provided for annual project construction letting approaching \$500 million; planning and development projects exceeding \$7 billion; annual construction contract administration of an average of 130 projects totaling over \$1 billion.

Prime Strategies, Inc. (PSI) has expertise in all areas of transportation planning including long-range intermodal/multimodal planning and implementation; innovative financing and implementation strategies to accelerate the development of infrastructure projects; program management; agency coordination; area roadway and route and alignment studies; and, environmental assessment studies and public involvement. Michael J. Weaver, principal of the firm, currently serves as the Road Bond Manager for a \$350 million road program in Williamson County and as Project Manager for the City of Fort Worth's SH-121T toll road project in Tarrant County, directing the City's public outreach program and protective early right-of-way acquisition program. Recently, Mr. Weaver served as interim Executive Director of the Central Texas Regional Mobility Authority (CTRMA), the first RMA to be authorized in the State of Texas with the authority to implement critically needed toll revenue-funded mobility solutions in the Central Texas area.

Carter & Burgess has worked with cities, counties, toll authorities and TxDOT to help deliver transportation facilities throughout the state. Carter & Burgess experience includes system design, highway/toll facility design, construction, operation and maintenance of toll roads. Members of their staff have worked in various capacities with TxDOT at the area office, district and headquarter levels. Before joining Carter & Burgess, John Holzwarth served six and a half years as the director of transportation, planning, and development for TxDOT in the Houston District, which has jurisdiction for Montgomery County. Mr. Holzwarth is very familiar with the

transportation needs of Montgomery County having worked on numerous county transportation projects both during his tenure at TxDOT and at Carter & Burgess.

**Phase 1, System and Toll Projects
Limits, Improvements, Project Status, Sources/Uses**

Project: FM 1485
Limits: Loop 494 to Kidd Cemetery Road
Length: 1.25 miles
Proposed Improvement: 2 lane to 5 lane concrete curb & gutter
2002 Traffic Count: 18,800
Status
 Environmental: In final stages of completion. Will be submitted to TxDOT 8/04
 Schematic: In final stages of completion. Will be submitted to TxDOT 8/04
 ROW: No
 PSE: No
Cost: Total: \$7,000,000 ROW: \$500,000 E&C Cost: \$6,500,000
Sources/Uses:
 Project: \$6,500,000
 TxDOT: \$0
 County: \$6,500,000 – Eligible for pass-thru toll
 County: Fund with County Bonds

Project: FM 1488 (1A)
Limits: FM 2978 to I-45
Length: 6.641 miles
Proposed Improvement: 2 lanes to 4 lanes divided rural
2002 Traffic Count: 13,700
Status
 Environmental: FHWA is reviewing. July, 2004 - Consultant answered comments made by FHWA.
 Waiting further comments from FHWA or approval
 Schematic: Submitted to TxDOT April, 2004 (Mr. Sam Ainabe, TxDOT Project Manager)
 ROW: No
 PSE: No
Cost: Total: \$31,000,000 ROW: \$9,000,000 E&C Cost: \$22,000,000
Sources/Uses:
 Project: \$22,000,000
 TxDOT: \$14,000,000 TIP
 County: \$8,000,000 – Eligible for pass-thru toll
 County: Fund with County Bonds

Project: FM 1488 (1B)
Limits: FM 149 to FM 2978
Length: 7.5 miles
Proposed Improvement: 2 lanes to 4 lanes divided rural
2002 Traffic Count: 13,700
Status
 Environmental: Submitted to TxDOT (Mr. Sam Ainabe, TxDOT Project Manager)
 Schematic: Submitted to TxDOT April, 2004 (Mr. Sam Ainabe, TxDOT Project Manager)
 ROW: No
 PSE: No
Cost: \$32,000,000 **ROW:** \$9,000,000 **E&C Cost:** \$23,000,000
Sources/Uses:
 Project: \$23,000,000
 TxDOT: \$14,000,000 TIP
 County: \$9,000,000 – Eligible for pass-thru toll
 County: Fund with County Bonds

Project: FM 1314 (2B)
Limits: 1.0 mile S of SH 242 to 2.6 miles NW of Loop 494
Length: 7.937 miles
Proposed Improvement: 2 lanes to 4 lanes divided rural with provision for future
2002 Traffic Count: 7,500
Status
 Environmental: To be submitted to TxDOT August, 2004
 Schematic: Submitted to TxDOT (Ruperto Arismendez, TxDOT Project Manager) TxDOT-Austin reviewing
 ROW: No
 PSE: No
Cost: \$27,400,000 **ROW:** \$3,000,000 **E&C Cost:** \$24,400,000
Sources/Uses:
 Project: \$24,400,000
 TxDOT: \$14,000,000 TIP
 County: \$10,400,000 – Eligible for pass-thru tolls
 County: Fund with County Bonds

Project: FM 1484
Limits: Loop 336 to FM 2432
Length: 3.620 miles
Proposed Improvement: realignment of existing 2 lanes to 4 lane divided rural
2002 Traffic Count: 7,700
Status
 Environmental: In final stages of completion. Will be submitted to TxDOT 8/04
 Schematic: In final stages of completion. Will be submitted to TxDOT 8/04
 ROW: ROW map in progress
 PSE: No
Cost: \$13,000,000 **ROW:** \$0 **E&C Cost:** \$13,000,000
Sources/Uses:
 Project: \$13,000,000
 TxDOT: \$0
 County: \$13,000,000 – Eligible for pass-thru tolls
 County: Fund with County Bonds

Project: SH 242 Direct Connectors
Limits: FM 242 at IH-45
Length: 0 miles
Proposed Improvement: new direct connectors
2002 Traffic Count: 33,000
Environmental: Improvement to existing project
Schematic: No
ROW: None Required
PSE: No
Cost: \$15,000,000 **ROW:** \$0 **E&C Cost:** \$15,000,000
Sources/Uses:
Project: \$15,000,000
TxDOT: \$0
County: \$10,000,000 – Eligible for pass-thru tolls (Fund with County Bonds)
County: \$5,000,000 – Fund with County Bonds

Montgomery County Comprehensive Transportation Improvement Program

Phase 1 System and Toll Projects

	Total Project Cost	ROW Cost	Est. ESC Cost	TIP Contribution	Eligible for Phase-Through	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Phase 1 System Projects															
FM 1485	\$ 7,000	\$ 500	\$ 6,500	\$ -	\$ 6,500						1,300	1,300	1,300	1,300	
FM 1486 (1A)	\$ 97,000	\$ 8,000	\$ 22,000	\$ 20,000	\$ 2,000						400	400	400	400	
FM 1488 (1B)*	\$ 25,000	\$ 8,000	\$ 23,000	\$ -	\$ 23,000						4,600	4,600	4,600	4,600	
FM 1314 (2B)*	\$ 27,400	\$ 3,000	\$ 24,400	\$ -	\$ 24,400						4,800	4,800	4,800	4,800	
FM 1484	\$ 13,000	\$ -	\$ 13,000	\$ -	\$ 13,000						2,600	2,600	2,600	2,600	
Phase 1 Toll Projects															
SH 242 DC	\$ 15,000	\$ -	\$ 15,000	\$ -	\$ 10,000						2,000	2,000	2,000	2,000	
Total	\$ 125,400	\$ 21,500	\$ 103,900	\$ 20,000	\$ 78,900										
Phase-Through Funds Paid by TxDOT for Reinvestment into System and Toll Projects															
Annual															
Cumulative															
* The TIP funding for this project has been reauthorized by TxDOT. Montgomery County proposes to work with the Houston District to either restore TIP funding or to identify other available sources of funds, such as Prop. 14 bonds. This would reduce the amount of Phase-Through tolls required for this program.															
Use:															
Total Projects					\$ 125,400										
Source:															
Montgomery Co. - ROW (Bonds)					\$ 21,500										\$ 21,500
Montgomery Co. - Construction of Phase-Through Projects (Bonds)					\$ 78,900										\$ 78,900
Montgomery Co. - Construction of Toll Projects (Bonds)					\$ 8,000										\$ 8,000
TxDOT TIP					\$ 25,000	\$ 125,400									\$ 125,400
<div> <div></div> <div>Phase-Through Phase</div> <div>Construction Phase</div> <div>Earliest Construction Start</div> </div>															
Reviewed 7/8/04															
<div> <div>PATE ENGINEERS</div> <div>Carter-Burgess</div> </div>														EXHIBIT 2	

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STATE OF TEXAS §

COUNTY OF TRAVIS §

PASS-THROUGH TOLL AGREEMENT

THIS AGREEMENT is entered between the State of Texas and the Developer under Transportation Code, §222.104.

Contracting Parties:

The Department: The Texas Department of Transportation
The Developer: _____

BACKGROUND

Texas Transportation Code, §201.103, authorizes the Department to plan and to make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §222.104, authorizes the Department to enter into pass-through toll agreements for the purpose of improving the state highway system. The Texas Transportation Commission has implemented this provision by enacting rules to be found at 43 TAC Chapter 5, Subchapter E. On _____, the Texas Transportation Commission passed Minute Order _____, authorizing _____ (the Project), the location of which is shown on **Attachment A**, which is attached to and incorporated by reference in this agreement. On _____, the Texas Transportation Commission passed Minute Order _____, authorizing the Department to enter a pass-through toll agreement with the Developer in furtherance of the Project. **[If the Developer is a local government:** The governing body of the Developer has authorized entering into this agreement by resolution or ordinance dated _____, which is attached to and incorporated by reference in this agreement as **Attachment E**.] **[If the Developer is a private entity:** The Department has solicited competitive bids and has chosen the Developer's proposal as the one that offers the best value to the Department.] In consideration of the mutual promises contained in this agreement, the Department and the Developer now agree as follows.

AGREEMENT

1. Effective Date

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

2. Amendments

Amendments to this agreement must be in writing and executed by both parties.

3. Scope of Work

[Insert brief scope of work description.] The scope of work is described in more detail in **Attachment B**, which is attached to and incorporated by reference in this agreement.

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4. Sources and Uses of Funds

- a. The total estimated cost of the Project is shown in **Attachment C**, which is attached to and incorporated by reference in this agreement. **Attachment C** includes expected cash contributions from each source of funding. The Department will pay for only those Project costs that have been approved by the Texas Transportation Commission.
- b. The Department will be responsible only for securing the funding specifically identified as the responsibility of the Department on **Attachment C**. The Department will reimburse the Developer for costs incurred in the proportions identified on **Attachment C** for that activity. Under no circumstances will the Department be responsible for funding in excess of the maximum identified on **Attachment C**.
- c. The Developer shall be responsible for all costs associated with the Project that are not shown as the responsibility of the Department. The Developer shall be responsible for all overruns in excess of the estimated cost shown in **Attachment C**.
- d. The Department may audit the project at any time. Upon completion of the Project, the Department or an independent auditor approved by the Department, at the Department's option, may perform an audit of the Project costs. Any funds due to the Developer, the Department, or others shall be paid by the owing party within thirty (30) days after notification that funds are due.
- e. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

[If the Developer is a private entity: f. Prior to execution of this agreement, the Developer has provided a performance bond to TxDOT securing the Developer's obligations under this agreement. The amount of the performance bond is equal to 100% of the total estimated cost shown on **Attachment C**. The Developer shall maintain that bond in full force and effect.]

5. Environmental Assessment and Mitigation

Development of the Project shall comply with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, 43 TAC §2.50, and Natural Resources Code, Chapter 191.

- a. The Developer is responsible for the identification and assessment of any environmental problems associated with the development of the Project.
- b. The Developer is responsible for the cost of all environmental permitting, mitigation, remediation, and compliance.
- c. The Developer is responsible for providing any public meetings or public hearings required for development of the environmental decision. Public hearings may not be held prior to the approval of the schematic for the Project.
- d. The Developer is responsible for the preparation of all documents required for the environmental clearance of the Project.
- e. The Developer shall submit all requests for permits, all reports, and all findings relating to the Natural Resources Code, Chapter 191, through the Department.

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- f. The Developer shall provide the Department with written certification that all required permits and commitments are complete. Separate written certification shall be provided from each regulatory agency with jurisdiction.
- g. The Developer shall provide the Department with physical and electronic copies of all environmental documentation.
- h. All environmental reports and findings shall comply with the latest version of the Department's manuals and must be approved by the Department.

6. Right of Way and Real Property

- a. The Developer shall prepare right of way maps, field notes, parcel plats, and other data as needed to describe the right of way and access rights necessary for the Project. The field notes and parcel plats shall be signed and sealed by a Registered Professional Land Surveyor currently licensed by the "Texas Board of Professional Land Surveying." The right of way map, parcel plats, and property descriptions shall be submitted to the Department for review and approval. Tracings and electronic files of the right of way maps shall be furnished to the Department for its permanent records. This final map will show the final location of all utility lines that were adjusted or remained in place and joint use numbers assigned to those utilities.
- b. ***[If the Developer is a governmental entity:*** The Developer is responsible for the provision and acquisition of any needed right of way or real property. The Developer shall not proceed with the acquisition of the required right of way and the relocation or adjustment of existing utilities until the public involvement and environmental clearance procedures have been completed and the Department has approved the right of way maps and field notes. The Developer shall acquire in its name fee simple title and any required channel easements free and clear of all liens and encumbrances for all land (New Right of Way) ultimately to be conveyed to the Department to be used as right of way for the state highway system. The conveyance instrument will be in a form acceptable to the Department. The Developer must comply with all applicable state and federal laws, regulations, policies, and procedures including the requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42, Section 4601, et seq., U.S.C.A., and documentation to support compliance must be maintained. Title to the New Right of Way shall exclude oil, gas, and sulfur that can be removed from beneath the surface of the land without any right in the owners to ingress or egress to or from the surface of the land for the purpose of exploring, developing, drilling, or mining. The Developer shall also secure and provide the Department easements over any other land in addition to normal highway right of way as may be indicated on the approved right of way map. The Department will not approve the Developer's advertising for construction bids until after the title to the New Right of Way has been determined to be acceptable to the Department. The Developer will warrant and defend title to the donated right of way and provide title insurance to the Department. All right of way acquired by the Developer for purposes of constructing the Project shall be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Developer. When required by the Department, the Developer shall provide written documentation from appropriate regulatory agencies that all known hazardous materials and contaminants

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have been removed from the New Right of Way. The Department will not approve the Developer's advertising for construction bids until all known hazardous materials and contaminants are remediated on the New Right of Way.] ***[If the Developer is a private entity:*** The Department will acquire any needed right of way or real property, and the Developer shall bear the full cost of acquisition. Prior to the acquisition of any needed right of way or real property, the Developer must remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in **Attachment C**. If the Department determines that additional funding is required at any time during the acquisition process, the Department will notify the Developer in writing. The Developer shall make payment to the Department within thirty (30) days from receipt of the Department's written notification.]

- c. The Developer will be responsible for any required relocation assistance along the route of the New Right of Way as may be determined to be eligible under the relocation assistance program. All costs associated with the relocation assistance including payments to displacees will be assumed by the Developer.

7. Utilities

If the required right of way encroaches on existing utilities and the Project requires their adjustment, removal, or relocation, the Developer shall be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments. The Developer shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including 43 TAC §15.55 (Construction Cost Participation); 43 TAC §21.21 (State Participation in Relocation, Adjustment, and/or Removal of Utilities); and 43 TAC §21.31 et seq. (Utility Accommodation). The Developer shall be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities. Before a construction contract for the Project is let, a utility certification must be made available to the Department stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

8. Architectural and Engineering Services

- a. The Developer has responsibility for the performance of architectural and engineering services, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed in design of the Project and carried out during construction of the Project. The engineering plans shall be developed in accordance with the latest version of the Department's manuals. The Department's executive director may exercise discretion in authorizing alternative criteria or granting exceptions to this requirement on a case-by-case basis if a particular criterion could not reasonably be met because of physical, environmental, or other relevant factors and if the proposed design is a prudent engineering solution. ***[If the Project includes federal funds:*** The procurement of professional services shall comply with all federal requirements including those cited in 23 CFR Part 172 and those relating to participation by disadvantaged business enterprises (DBEs), the Americans with Disabilities Act, and environmental matters.] ***[If the Developer is a governmental entity:*** Professional services shall be procured in compliance with

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Government Code Chapter 2254, Subchapter A.] Access to the facility shall be in compliance with the Department's access management policy.

- b. All plans, specifications, and estimates developed by or on behalf of the developer shall conform to the latest version of the Department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions. The Department's executive director may exercise discretion in authorizing an alternative specification if it is sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public. The construction plans furnished to the Department shall be reproducible tracings on mylar or equivalent.
- c. Should the Department determine that the complete plans, specifications, and estimates are unacceptable, the Developer shall correct the design documents to the Department's satisfaction. Should additional specifications or data be required by the Department, the Developer shall redesign the plans and specifications to the Department's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Developer.
- d. Should the Department determine at any stage that the pavement design is unacceptable, the Developer shall correct the pavement design to the Department's satisfaction. The costs for additional work on the pavement design shall be borne by the Developer. The as-constructed pavement shall meet minimum performance criteria established by the Department. The Developer shall provide all manpower, equipment, and incidentals necessary to test the condition of the as-constructed pavement to ensure that minimum performance criteria have been met.
- e. When the design is approximately 30 percent complete, the Developer shall submit to the Department the items set forth in **Attachment D** using the procedures and timeline identified in **Attachment D**. When the design is complete, the Developer shall submit to the Department the items set forth in **Attachment D** using the procedures and timeline identified in **Attachment D**. **Attachment D** is attached to and incorporated by reference in this agreement.

9. Construction Responsibilities

- a. The Developer shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary after the award of the construction contract. The bidding process must be competitive and must comply with all applicable federal and state laws. The Project must be authorized by the Department before it is advertised for letting. **[If the Project includes federal funds: The Project must also be authorized by the Federal Highway Administration before it is advertised for letting.]**
- b. The Developer has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed, of assessing potential environmental effects of contract revisions, and of obtaining environmental permits, issues, coordination, mitigation, and commitments that may be required by contract revisions. Contract revisions shall comply with the latest version of all national

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and state administrative criteria and manuals. No contract revision may be made without the prior written approval of the Department's executive director if it would affect prior environmental approvals, significantly revise the scope of the Project or the geometric design, or change the cost to the Department. Procedures governing approval are contained in **Attachment D**.

- c. When the Project is complete, the Developer shall issue and sign a "Notification of Completion" acknowledging the Project's construction completion. Within six months after the Project is complete, the Developer shall file with the Department a set of as-built plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications.

[If the Project includes federal funds: d. The parties to this agreement shall comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form FHWA-1273 in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.]

10. Maintenance

The Department shall be responsible for maintenance of the Project after completion of the work. **[Or** The Developer shall be responsible for all maintenance and repair of the Project after completion of the work. Maintenance and repair work shall be performed in a manner that meets or exceeds the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways in its implementation of Government Accounting Standards Boards Statement No. 34. All maintenance shall comply with applicable federal and state environmental laws and regulations, and the Developer shall obtain all required environmental clearances on maintenance activities. If the Project will be tolled, the Developer shall meet or exceed the minimum rating requirements for interstate highways. The Department's executive director may exercise discretion in authorizing alternative maintenance standards if the executive director determines that the alternative standards are sufficient to protect the safety of the traveling public and to protect the integrity of the transportation system.]

11. Repayment

The Department will reimburse the Developer by paying an annual amount equal to \$_____ for each vehicle that travels **[or** for each vehicle-mile traveled] on the Project during the previous year. Under no circumstances will the annual payment be less than \$_____ or more than \$_____, and under no circumstances will the total payment under this article during the course of this agreement exceed \$_____. The number of vehicles traveling **[or** vehicle-miles traveled] on the Project during a year will be based on the Department's traffic estimates, which shall be performed in good faith and shall be conclusive and not subject to challenge in any forum **[or** will be based on actual audited toll transactions, which shall be provided to the Department by the Developer on request]. The annual payment shall be made within 60 days after the first anniversary of the Project's completion and within 60 days after each succeeding anniversary of the Project's completion.

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12. Termination

This agreement terminates on _____ unless:

- a. the agreement is terminated in writing with the mutual consent of the parties; or
- b. the agreement is terminated by either party because of a material breach by the other party.

13. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

14. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Developer:	Department:
_____	_____
_____	_____
_____	_____
_____	_____

All notices shall be deemed given on the date delivered in person or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

15. Assignment and Subcontracts

An assignment or subcontract may not be executed by the Developer without prior written authorization by the Department. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. No subcontract will relieve the Developer of its responsibility under this contract. Neither party shall assign any interest in this agreement.

16. Ownership of Property

After completion or termination of this agreement, all documents prepared by the Department shall remain the property of the Department. All data prepared under this agreement shall be made available to the Department without restriction or limitation on further use. All documents produced or approved or otherwise created by the Developer shall be transmitted to the Department in the form of photocopy reproduction on a monthly basis as required by the Department. The originals shall remain the property of the Developer. The Developer shall grant the Department an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this contract.

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17. Developer Resources

All employees of the Developer shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Developer certifies that it currently has adequate qualified personnel in its employment to perform the work required under this contract or will be able to obtain adequate qualified personnel from sources other than the Department. On receipt of written notice from the Department detailing supporting factors and evidence, the Developer shall remove from the Project any employee of the Developer who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Developer shall furnish all equipment, materials, supplies, and other resources required to perform the work.

18. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Developer shall furnish the Department with satisfactory proof of this compliance. The Developer shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

20. Legal Construction

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

21. Insurance

To the extent that this agreement authorizes the Developer or its contractor to perform any work on Department right of way, before beginning work the entity performing the work shall provide the Department with a fully executed copy of the Department's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on Department right of way. This coverage shall be maintained until all work on the Department right of way is complete. If coverage is not maintained, all work on Department right of way shall cease immediately, and the Department may recover damages and all costs of completing the work.

22. Hold Harmless

The Developer shall save harmless the Department and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this contract and that are caused by or result from error, omission, or negligent act of the Developer or of any person employed by the Developer. The Developer shall also save harmless the Department from any and all expense, including

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but not limited to attorney fees that may be incurred by the Department in litigation or otherwise resisting the claim or liabilities that may be imposed on the Department as a result of such activities by the Developer, its agents, or employees.

23. Sole Agreement

This agreement constitutes the only agreement between the parties and supersedes any prior understandings or written or oral agreements concerning the agreement's subject matter.

24. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

25. Gratuities

Any person who is doing business with or who reasonably speaking may do business with the Department under this contract may not make any offer of benefits, gifts, or favors to employees of the Department. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's executive director.

26. Conflict of Interest

The Developer shall not assign an employee to the Project if the employee:

- a. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the Department relating to the Project;
- b. has a direct or indirect financial interest in the outcome of the Project;
- c. has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with the Department; or
- d. is a current part-time or full-time employee of the Department.

27. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

[If the Project includes federal funds:

28. Cost Principles

[If the Developer is a governmental entity: The parties shall comply with the cost principles established in OMB Circular A-87.] ***[If the Developer is a private entity:*** The parties shall comply with the cost principles established in 48 CFR Chapter 31.]

29. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

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30. Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this agreement and shall make those materials available to the Department, the Developer, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending claims are resolved. Additionally, the Department, the Developer, and the FHWA shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

31. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

32. Civil Rights Compliance

The Developer shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

33. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26. The Developer's program is subject to approval by the Department.

34. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the Department, to furnish a copy of the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

35. Lobbying Certification

In executing this agreement, each signatory certifies that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Contract No. _____
CSJ No. _____

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.]

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this contract.

_____ Texas Department Of Transportation	_____ Developer's Name
_____ Authorized Signature	_____ Authorized Signature
James M. Bass Finance Division Texas Department of Transportation	_____ Typed Or Printed Name And Title
_____ Date:	_____ Date:

Contract No. _____
CSJ No. _____

ATTACHMENT A

Location Map of Project

Contract No. _____
CSJ No. _____

ATTACHMENT B

Scope of Work

Contract No. _____
CSJ No. _____

ATTACHMENT C

Budget

Contract No. _____
CSJ No. _____

ATTACHMENT D

Procedures and Timelines for Submissions

Contract No. _____
CSJ No. _____

ATTACHMENT E

Resolution or Ordinance

*An
Elected
Official's
Guide to*
PROCUREMENT

by Patricia C. Watt

*Government Finance
Officers Association*

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with others in the "Elected Official's" series, will provide needed information to public officials in search of improved government operations.

Jeffrey L. Esser
Executive Director
June 1995

PREFACE

The integrity and efficiency of a government's procurement system is a crucial component of its credibility. More governments—and public officials—have foundered on the rock of real or perceived conflicts of interest in the spending of public funds than on any other financial activity. Yet, despite procurement's obvious budgetary and public relations importance, the function is sometimes a step-child in financial management and often poorly understood by key decision makers.

As with many governmental systems, procurement stands to benefit significantly from improvements through automation. Such benefits can bring more economy to the buying practices of the public sector. Just as the federal government has taken action to make its procurement function more efficient, so must state and local governments. But those actions should be based on sound policy decisions made only with a full understanding of how, and why, government procurement systems operate as they do.

Government procurement laws and regulations typically focus prescriptively on *how* those activities are conducted. As we move into the age of technology—and rightsizing, re-inventing, and re-engineering—the focus is shifting to *what* the objectives of procurement are: integrity, efficiency, and lowest overall cost.

I wish to acknowledge the invaluable assistance of a number of individuals who reviewed the manuscript for this booklet, offered suggestions, and helped me hone the language. They are: Barry Atwood, Director of Finance, South Florida Water Management District; Jim

Why is procurement important?

State and local government expenditures for the procurement of goods and services are generally exceeded only by expenditures on personnel—and in some special-purpose governments, procurement expenditures may even exceed personnel costs. According to the National Association of State Purchasing Officials, in 1994 15 percent of the U.S. gross national product is estimated to derive from state and local government procurement expenditures. Government purchases are often viewed as a *controllable* expenditure when budget pressures arise.

The efficiency and effectiveness of the procurement function has a large program impact. If goods and/or services are of poor quality, overpriced, or not available when needed, service delivery inevitably suffers.

The public must have confidence that public funds are spent prudently, on its behalf, and not for the personal benefit of government employees, officials, or their friends. The destructive elements of actual or perceived conflict of interest, fraud, and abuse have most often reared their ugly heads during a procurement process. Unfortunately, the *perception* of fraud or abuse can be just as destructive to the public trust—and individual careers—as the real thing.

What are procurement objectives?

The fundamental objective of the procurement function is to provide operating departments with the goods and services they need in the right quality and quantity, on a timely basis, as efficiently as possible, and at the lowest overall cost.

To achieve this objective, the procurement function seeks to foster as much competition as possible. In doing so, it adopts the goal of fairness by ensuring that all who wish to compete for the opportunity to sell to the government can do so. In some cases, governments may attempt to create competition by encouraging and assisting the development of new businesses.

Finally, the goal of integrity is woven throughout the procurement cycle, so as to maintain the public's trust and reduce the government's exposure to criticism and suit. This goal is achieved through the requirement for complying with all applicable legal provisions.

What are general procurement provisions?

The essential elements of procurement requirements found in state and local laws are defined by the National Association of State Purchasing Officials and National Institute of Governmental Purchasing as follows:

- purchasing structure, policy, and authority;
- competitive processes;
- planning and scheduling;
- specifications;
- provisions for and restrictions on processes that limit competition;
- bid evaluation and award;
- quality assurance;
- safeguards;
- materials management;
- cooperative purchasing;
- professional development;
- clear written procedures available to the public; and
- environmental concerns.

Flowing through these elements are the common threads of:

- *Authority*: persons taking procurement actions must have formal authorization to do so;

-
- *Competition*: methods of selecting a provider of goods or services should be as competitive as possible, and a competitive sealed bid or proposal should be used unless there are justifiable reasons for using another method;
 - *Documentation*: all steps in the procurement cycle should be recorded in writing; and
 - *Compliance*: both the government and the contractor are legally required to adhere to the written commitments they make.

practice. Such items range from real estate (which may have its own law) to utilities to postage stamps and other items where (1) there is no price variation or (2) government regulations effectively restrict the sale to a single source.

Drafters and reviewers of procurement laws should consider the efficiency of subjecting every purchase to procurement requirements. They should provide specific exceptions as appropriate because procurement laws are usually subjected to strict interpretation by the courts. That is, if the law does not specifically state something is permitted (or excepted), then it is *not* permitted (or excepted).

It is important to understand the distinction between a grant (financial assistance or pass through of federal grant funds) and a contract (acquisition). Grants and cooperative agreements are used when the principal purpose is to provide support or stimulate activities which have a public purpose. Contracts are used when the principal purpose is the acquisition of property or services for the direct use of the government. Grants and cooperative agreements made by states or large governments should have their own procedures and be exempt from specifics of procurement requirements.

ETHICAL CONSIDERATIONS

Why are ethical considerations so important?

Of all finance-related functions, the procurement function is the one that provides the greatest opportunity for government employees to use government resources to advance their personal interests. Therefore, a high standard of professional ethics is essential among all personnel who participate in, or who can influence those involved in, making procurement decisions.

A perception that public officials are using the procurement system to reward themselves, their friends, or supporters, poisons the public's confidence in government and shakes its faith in the democratic process.

-
- giving unfavored vendors inaccurate or misleading information.

Examples of abusive practices by the private sector are:

- collusion or price-fixing;
- providing kickbacks or offering bribes;
- low-balling to win a contract followed by requests for change orders;
- substitution of lower quality goods than those specified; or
- falsifying certifications.

What can be done to safeguard the procurement function?

The best safeguard is to employ qualified and trained personnel and to establish procedures which effectively insulate procurement activity from political influence. Additionally, effective contract administration is a strong antidote to corrupt or abusive practices on the part of a vendor.

a purchasing schedule can be created that takes into account and consolidates departmental needs.

Source selection (purchasing): Program and procurement staff work closely to define what is to be bought. Neither can do it alone. They develop specifications and scopes of work reflecting the program's knowledge of its needs in delivering services and procurement's knowledge of the market. After program and procurement staff decide on the appropriate purchase method and type of contract, procurement staff issue the solicitation and receive bids/offers. Procurement executes the contract and the goods/services are delivered in accordance with receiving procedures. This *separation of duties* is a fundamental aspect of government procurement.

Contract administration: Lead responsibility for contract administration falls on program personnel with the advice and support of procurement staff. Bills are approved and submitted for payment, and the quality of commodities and services is monitored and evaluated. If the program wishes to change the specifications or scope of services, it consults with procurement staff who have the authority to issue and negotiate a change order. If the program is dissatisfied with its purchase, then procurement staff force corrective action by the vendor. When the contract is completed, the program staff "closes out" the work by, for example, recovering equipment from the vendor, completing an evaluation of the purchase, making sure all bills are paid and the purchase file is complete, and forwarding suggestions for improvements to procurement staff.

An effective procurement program is a team effort with a "customer service" orientation in which the using program is viewed as the customer.

What are the requirements for procurement personnel?

Because of the complexity of procurement requirements, persons engaged in those activities must be well qualified and trained. Lack of qualifications and training inevitably result in mistakes and confusion that disrupt service delivery, cost money, create delays, and expose the government to public criticism and/or litigation. Procurement personnel, whether in operating agencies or in the central procurement agency, should all be subject to the same standards. A jurisdiction's official in charge of procurement operations should be a trained, certified, professional purchasing manager.

Training programs are available through universities and colleges, and through the Universal Public Purchasing Certification Council (UPPCC), which is composed of representatives from the National Institute of Governmental Purchasing (NIGP) and the National Association of State Purchasing Officials. NIGP administers two certification programs for the UPPCC: Certified Public Purchasing Officer (CPPO), and Certified Public Purchasing Buyer (CPPB). Participation in continuing education programs is essential if procurement staff are to keep current with changes in laws and regulations, as well as new methods and techniques.

Officials to whom procurement authority has been delegated are held accountable for signing contracts on behalf of the government—a heavy responsibility. It is unfair to place an individual in that position who does not have adequate training. Without adequate preparation, procurement staff will not have a full understanding of the requirements placed upon them, or of their individual exposure.

Should procurement be centralized or decentralized?

An effective procurement function is *both* centralized and decentralized. The responsibility for policy, oversight, and training is almost universally located in a central agency. To the extent that a central procurement office cannot fulfill operating department purchasing needs efficiently, then decentralization occurs through formal delegation of authority. Centralized procurement offices' primary responsibility is *management* rather than ordering.

Responsibility for large-value complex purchases is generally centralized along with that for bulk purchases. Responsibility for high volume, low dollar threshold purchases is usually delegated to program departments. In large jurisdictions, responsibility for certain types of complex procurements—such as construction contracts, information technology, real property, and so forth—is sometimes entirely delegated to other departments.

The degree of decentralization varies according to local statute, availability of trained staff, adequacy of procurement information systems, and attitude of central officials.

There is no "right" balance between centralization and decentralization. The balance should be what works best in each government, bearing in mind the objective of the procurement function is to ensure that operating departments receive the goods and services they need in the right quality and quantity, on a timely basis, as efficiently as possible, and at the lowest overall cost while ensuring a fair and open process. This balance requires periodic review and adjustment as circumstances change.

How is procurement authority delegated?

Procurement authority should be delegated to the extent practicable in order to make purchases as quickly and cost-effectively as possible, considering the costs of administering procurement activities as well as the purchase price.

Delegation should *always* be in writing. Delegation documents should specify (1) to whom (by name), and (2) by whom (by name) authority has been delegated, (3) the source of authority for the delegation, (4) the specific authority delegated (including any restrictions), and (5) the time period for which the delegation is effective.

There may be several levels of delegation. Small purchase authority is more freely delegated than full purchasing authority. Intermediate levels of authority are often appropriate. Individuals to whom authority is delegated should be properly trained and fully cognizant of both local procurement rules and the responsibilities that come with delegation.

COMPETITION IN PROCUREMENT

What is competitive procurement?

Competition means that the government takes active steps to ensure that it receives as many bids/proposals as possible for each solicitation. Generally, the more bids there are, then the lower the purchase cost is likely to be. Likewise, the more proposals there are, then the higher the quality and the lower the price of the purchase.

In every solicitation, competition is sought unless there are compelling arguments precluding it. A negotiated process does *not* mean there is a lack of competition. Rather, it means that price is not the only deciding factor in the selection, or that it is not possible to describe what is to be bought with sufficient precision so that vendors can determine, without discussion, how much to charge.

What are requirements for competition?

Requirements for competition are specified in the procurement law or ordinance, regulation, and policy. Competitive sealed bidding through invitations to/for bid (ITBs or IFBs) is the preferred method of announcing a government's desire to purchase. Where it is not practicable to buy based on price alone, then competitive sealed proposals are sought through a request for proposals (RFP) process.

Only a fully competitive process can meet the procurement objectives of openness, integrity, and equity. All methods that reduce competition, such as emergency procedures (abbreviated competition), or sole source award (no competition), require written justification by authorized officials.

Procurement laws and policies typically include a public notice requirement (advertising) in order to ensure fair and open access for all vendors who might wish to compete for government business. "Solicitation" is the term used for the process of announcing and describing the government's desire to receive bids or offers from organizations willing to sell an item or service to it.

the purposes intended and encourage competition in meeting the department's needs. Developing "good" specifications is among the most difficult of procurement tasks. A pre-bid or pre-proposal conference is a useful technique to uncover confusion in the way specifications are written.

Procurement officials must sometimes deal with situations in which a department wishes to purchase a particular brand of a commodity, and wants to tailor the specification to exclude other brands. This practice is discouraged because it is inherently anti-competitive. In such cases, the specification can be defined as "brand name or approved equal" in recognition of the common situation in which several manufacturers offer essentially similar products.

Should specifications be standardized?

Standardization of specifications reduces the variety of items purchased. This can simplify inventory management, encourage consolidation of purchases from different departments, and reduce the time spent writing specifications—which may be significant.

Specifications are best when prepared in a simple, standard format. They should be intelligible and concise, and, to the extent possible, reflect what is commercially available in the marketplace.

Scopes of work should reflect service objectives, rather than how those services are to be provided. When scopes of work define *how* the work is to be done, they tend to reflect government employees' notions of operations and may limit vendors' ability to apply insight and imagination to best meet the government's need.

Specifications and scopes of work for items that are continually purchased can be made available in a specifications "library." Such a library can provide a useful tool from which to develop new specifications if they are needed.

Limiting standards may, however, limit competition. Thus, it is important to review specification standards periodically to make sure they reflect current technology and market capacity.

How can non-competitive selections be minimized?

A high incidence of non-competitive procedures is usually indicative of (1) poor procurement planning; (2) an unresponsive procurement function that fails to meet operating department needs; or (3) intentional diversion of purchases to preferred sources.

Non-competitive methods are minimized when the procurement program is run by trained staff who work effectively with, and plan and schedule purchasing activity in conjunction with, operating departments to meet their service delivery needs.

However, in situations where competition is genuinely not warranted, then competition should not be sought. To do so is inefficient and unfair to vendors who are asked to participate in a meaningless "competitive" process.

SOURCE SELECTION

What are the methods of source selection?

"Source selection" is the process through which government suppliers are chosen.

There are three primary methods of competitive source selection:

- *Competitive sealed bids* is the preferred method for purchases larger than the small purchase threshold. In this method, the government issues an invitation to/for bids (ITB, IFB). These documents include a standard form on which vendors respond by filling out their bid—which is their offer to provide the requested goods or services for a flat price or fixed unit cost. Bids are submitted sealed, and opened in public at a predetermined time. The award is made to the vendor submitting the lowest bid—assuming the bid is responsive to the solicitation and is made by a responsible vendor. Bids are "take it or leave it" propositions.
- *Competitive sealed proposals (CSP)* is the method used for goods and services above the small purchase threshold where the specifications cannot be developed so that they are sufficiently precise to make a selection solely based on price. In the CSP process, the government issues a request for proposals (RFP) describing, as best it can, the item to be purchased and invites interested vendors to make proposals. A "proposal" is an offer by a vendor to provide the requested goods or services as he/she understands and recommends it at a suggested price or unit cost. Both the specifications of the proposed goods or services, and the price are subject to negotiation. Proposals are evaluated, usually

*How should bids and offers
be evaluated?*

The focus of procurement is on achieving the best overall value for the government's dollar. Therefore, for some purchases it is essential to consider the *full* costs of acquiring and owning commodities, facilities, equipment, and privately provided services, as opposed to just the cost of buying them. Multi-year maintenance, fuel, storage, and retraining costs, etc., must be considered and offset by the "value added," such as customer satisfaction, increased efficiency, and so forth.

Bids are evaluated strictly on price. Award is made to the *responsive and responsible* bidder whose price is the lowest.

Proposals are evaluated partly on price and partly on other factors. These factors can include the extent to which the proposal demonstrates that the offeror understands the government's need, the experience of the offeror and its personnel in providing similar items or services, and the quality of the approach the offeror presents for delivering the needed services. Award is made to the *responsive and responsible* offeror whose proposal is most advantageous to the government. In the interests of fairness, evaluation criteria are disclosed in the RFP.

*What is meant by
a responsive bidder / offeror?*

A *responsive* bidder or offeror is one who responds to all of the significant requirements outlined in the solicitation. Bids or offers that are not responsive to the solicitation are usually considered ineligible for award and are screened out prior to the evaluation process. Non-responsive bids and offers are retained in the purchase file in case there should be a challenge to the determination of non-responsiveness.

GOODS vs SERVICES

What is the difference between goods and services?

Purchases fall into two major categories:

- *Goods*, which are tangible items, are comprised of two subcategories:

Commodities, which are defined as "articles of trade"; and

Non-commodities, which are complex, novel, or customized goods.

- *Services*, which are intangible, fall into five subcategories:

Personal services, i.e., the labor and skill of an individual;

Professional services, i.e., consulting and expert services from an organization or individual;

Client services, i.e., services provided directly to individuals on behalf of the government;

Construction services, i.e., construction of roads, buildings, and other facilities; and

Technology services, i.e., the design, development, installation, and/or operation or maintenance of automated computer systems, including hardware and software.

Real estate acquisition and disposal is, strictly speaking, neither a good nor a service. Procurement requirements are often ill-suited to the acquisition of real property. Such activities are covered under procurement requirements only if there is not a separate section of the law to address them.

How do you determine which method to use when buying goods or services?

When the specifications *can* be written precisely enough for price to be the only evaluation criteria, then competitive sealed bidding is used.

When specifications *cannot* be written precisely enough for price to be the only evaluation criteria, then competitive sealed proposals (CSP) are sought.

When there is insufficient time to use the full competitive sealed bidding (CSB) or proposal method, then the emergency method is used.

When there is only one source for the item sought, then sole source procedures are used.

Thus, CSB is the usual method for the purchase of non-complex services and commodities in amounts that are too large to be acquired through small purchase procedures. The CSP method is generally used for the purchase of complex non-commodities and services that are too large to be acquired through small purchase procedures.

SERVICE CONTRACTING AND PRIVATIZATION

Are different types of services procured differently?

Sometimes procurement laws or regulations have separate provisions for the acquisition of different kinds of services. For instance, variations in the standard CSB or CSP methods may be provided for non-professional services as compared to professional services; for medical services; for construction; for legal services; or for data-processing services. These variations are intended to tailor details of competitive methods specifically to the needs and nuances of the particular purchase category.

What is service contracting?

Service contracting is the phrase used to describe arrangements in which a government contracts with a private entity to provide or manage services for which the government is legally responsible.

The services to be provided may be specifically identified in law (such as garbage pick up) or they may be administrative activities that are necessary to provide services efficiently (such as an automated scheduling system). In service contracting, the government retains ultimate control and accountability for the services.

Why is privatization so controversial?

The decision to privatize a service is likely to be controversial if more than a handful of government employees will be affected. The privatization process may involve the loss of jobs for government workers, or at a minimum their transfer to, and retraining for, other positions. If the employees belong to collective bargaining units it is likely that the unions will oppose privatization using all avenues available to them.

The privatization of services that closely affect people (such as child care, nursing homes, transportation, etc.) is more sensitive and subject to much greater public scrutiny than privatization of purely administrative activities (data processing, accounts receivable, etc.).

If the privatization decision is well thought through, it is preferable to involve employee or union leaders so that they fully understand the rationale and the alternatives. Governments in some cases have encouraged their employees to compete with private firms for the opportunity to provide the services. In such circumstances, employee groups that win the contract are sometimes able to improve their own efficiency substantially.

To justify a decision to privatize, a careful cost savings or cost-benefit analysis is normally prepared. This may be difficult if a government does not have an effective cost accounting system.

What steps should be followed in contracting out a government service?

Contracting out a government service is a complex and potentially controversial undertaking. It must be done as a team effort with the involvement of all affected parties. These may include:

- the procurement authority,
- the program department,
- legal counsel,
- the personnel authority,
- the labor relations office,
- the budget office, and
- the department (if any) responsible for regulation of the services.

If the affected employees are in collective bargaining units, then union representatives should be kept informed of the process. They may be encouraged to develop proposals (bids) to compete with vendors for the continued delivery of services.

It may be advisable for the executive branch to involve the legislative body by, at a minimum, providing prior notification of intent, and possibly seeking input—either formally or informally. Employees who are adversely affected are likely to approach elected members of the governing body in attempts to block the contract.

Advocacy groups of citizens who have a stake in the service being contracted out may also need

under conditions specified within it. Contracts can be terminated for non-performance (default) if, after being notified, the vendor fails to meet the specifications. Contracts also may be terminated for convenience of the government, to cover unforeseen circumstances where goods or services are no longer needed or as a result of budgetary constraints.

*Who should be responsible
for contract administration?*

The program department responsible for using the goods or services is responsible for contract administration with the advice and assistance of the procurement authority. The program department requests that the procurement authority execute any further procurement actions that may be required, such as amendments or extension to the contract, or in extreme cases for terminating the contract.

For service or large-dollar commodity contracts in large governments, responsibility for contract administration is sometimes divided between a "program monitor" who monitors the quality of goods or services, and a "contract monitor," who ensures that all the contract provisions are monitored.

- Requirements (or "term") contracts in which the supplier will fill all the government's needs for an item during a specified period (term) at a specified price;
- Indefinite quantity contracts (also called price agreements or blanket purchase orders) in which the government may purchase an item at an agreed upon price from the supplier if it so chooses.

3. Period

Contracts can also be categorized by the period covered:

- *Completion.* Performance ends upon completion of a set of tasks; and
- *Term.* The government specifies the dates between which goods/services are to be provided.

4. Form

Contracts are also categorized as to form:

- *Purchase orders* are "short form" contracts used for small or uncomplicated purchases, or for large orders made against a term or requirements contract;
- *Letter contracts* are issued in order to give a vendor a binding commitment and allow work to begin immediately;
- *Definitive contracts* include all documents and certifications required by the solicitation.

What are standard terms and conditions?

A contract is the legal document that spells out the responsibilities of the supplier and the government. Clarity is essential so that disputes can be avoided. Terms and conditions are listed that identify the requirements placed by the government on its contractors.

Typical contract components include:

- Period covered,
- Deliverables,
- Schedule for delivery,
- Delivery instructions,
- Price agreements,
- Payment process,
- Process for amending the contract,
- Signatures by authorized parties, and
- Order of precedence and severability clauses.

Because governmental jurisdictions are considered to have "deep pockets," many other clauses are included for added protection. A government usually will include in its contracts a set of "standard" terms and conditions that apply to every contract, and "special" terms and conditions whose use varies depending on the item being purchased and the acquisition process. Purchase orders typically include standard terms and conditions preprinted on the face or reverse.

Typical standard terms and conditions for government contracts include clauses which cover:

- Indemnification.
- Requirements for compliance with federal laws and regulations,
- Requirements for compliance with state and local laws,
- Termination procedures,
- Disclosure requirements,
- Ethical standards,
- Responsibility criteria, and
- Dispute resolution and due process.

Generally, contract documents are executed "bilaterally." This means they are signed by both parties. Sometimes documents are executed "unilaterally"—such as when purchase orders are signed only by the government.

What if a vendor wants to change contract terms and conditions?

Occasionally a vendor will balk at some of the government's terms and conditions and request that they be changed or deleted. A change to the standard terms and conditions in an invitation to bid is considered an alteration to the request and may render the bid or quote non-responsive.

While language in the major components of the contract may be negotiable in a request for proposal process, the language in the standard terms and conditions section is considered mandatory. Any changes to standard or special terms and conditions should be approved by legal counsel.

*What problems can occur
with cooperative purchasing?*

Because a participating government may not have direct control over cooperative purchasing activities, it may be harder for it to effect changes or improvements to them unless it is playing the lead role.

Ideally, the lead purchasing authority will conduct surveys of, or hold meetings with, participants in cooperative purchasing activities to identify problems and develop improved methods. It is important that effective procedures be clearly explained to all participants so they can provide feedback on vendor performance to the lead authority.

Additionally, planning is extremely important for cooperative purchasing arrangements to work well. If a participant does not convey to the lead purchasing authority what its needs will be, and when those needs will occur, it is hard for the lead authority to achieve all potential savings.

Billing or payment problems with an individual participant may arise for the vendor under cooperative purchasing arrangements, and the lead authority may have little ability to resolve them.

**ADMINISTRATIVE
PROCESS**

*What is the administrative
process relating to
procurement activities?*

To ensure due process and avoid litigation and costly court battles, procurement laws provide for administrative procedures to settle disputes between a vendor and the government.

A vendor who feels a contract has been unfairly awarded to another firm, or that it has been otherwise unfairly treated during a solicitation, may "protest" the award of the contract by filing a complaint with the chief procurement official, and then, if still unresolved, with an appeals panel appointed by the chief executive. Similarly, disputes arising in the course of a contract may be taken to the chief procurement official, then the appeals panel.

Appeals may take on more or less of the character of litigation depending on the rules of procedure as provided for in the procurement law or regulations. The more formal the procedures, however, the more protracted and costly—and disruptive to service delivery—the dispute resolution process is likely to be. Mediation, arbitration, or partnering are alternative methods of dispute resolution that can be used successfully to settle disputes and avoid litigation.

What is meant by "electronic purchasing"?

Some governments (including the federal government) "post" their solicitations electronically on bulletin boards or electronic libraries that vendors can access by computer to review and respond electronically. This eliminates the need to maintain bidders lists, as well as to prepare and mail multiple copies of solicitation documents.

Purchases can be made electronically using a "purchase card" or "procurement card." Cards are issued to authorized personnel, with a limit on the amount which can be charged—and which may be pre-encumbered in the accounting system prior to release of the card. The cards can be used directly by authorized employees, like credit cards, for small purchases to approved vendors.

Since a purchase is a two-way activity, much of the paper flowing through government systems is duplicated in matching paper flowing through vendor systems. Automation provides a way to reduce this duplication through a technique known as electronic data interchange (EDI).

EDI is the government-to-business exchange of data in standard electronic formats. For example, a purchase order can be electronically transmitted to, and read by, a vendor's computer system, vastly reducing the processing time and chance for errors. Additionally, payments may be made through an electronic funds transfer (EFT) to the vendor's bank account. Electronic purchasing can optimize stock levels, ensure efficient reordering practices, reduce paperwork, and speed up payments to vendors.

Some procurement officials, however, point out that electronic purchasing may result in a reduction in purchasing controls. Auditors should be involved in the development of EDI systems to ensure they include adequate internal controls.

Other titles in GFOA's series of booklets for elected officials include:

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HOUSE OF REPRESENTATIVES

NOTICE OF PUBLIC HEARING

COMMITTEE: Transportation

TIME & DATE: 8:00AM, Tuesday, March 22, 2005

PLACE: E2.012

CHAIR: Rep. Mike Krusee

The Committee will meet to consider the following:

HB 98 Van Arsdale
Relating to certain appointments to the boards of metropolitan rapid transit authorities.

HB 183 Brown, Fred / et al.
Relating to the prosecution of offenses involving the use of safety belts and child passenger safety seat systems.

HB 922 Edwards
Relating to bridge improvement and safety.

HB 1107 Chavez
Relating to procedures for obtaining relief from local matching funds requirements for highway projects.

HB 1136 Smith, Wayne
Relating to the designation of the portion of Spur 330 inside Harris County as the Veterans Memorial Highway.

HB 1255 Coleman
Relating to an increased penalty for certain privileged parking offenses.

HB 1481 Gattis
Relating to the offense of disobeying certain motor vehicle traffic warning devices.

HB 1546 McClendon
Relating to the administration and use of the Texas rail relocation and improvement fund and the issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of rail facilities.

HB 1645 Hughes
Relating to the designation of United States Highway 80 in this state as the World War II Veterans Memorial Highway.

HB 1735 Krusee
Relating to souvenir license plates.

HB 1815 Krusee / et al.
Relating to term limitations for members of boards of certain metropolitan rapid transit authorities.

HB 1882 Hamric / et al.
Relating to permits issued for moving certain heavy equipment over a state highway.

HB 2660 Krusee
Relating to the administration and use of the Texas rail relocation and improvement fund and the issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of rail facilities.

HJR 54 McClendon
Proposing a constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of rail facilities.

HJR 81 Krusee
Proposing a constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of rail facilities.

HOUSE OF REPRESENTATIVES

NOTICE OF PUBLIC HEARING

COMMITTEE: Transportation

TIME & DATE: 8:00AM, Tuesday, March 29, 2005

PLACE: E2.012

CHAIR: Rep. Mike Krusee

The Committee will meet to consider the following:

HB 754 Gattis / et al.
Relating to transportation of loose materials.

HB 1538 Hamric
Relating to the authority of a county assessor-collector or the Texas Department of Transportation to refuse to register certain vehicles.

HB 1672 Howard
Relating to disposition of costs imposed in connection with the collection and enforcement of certain tolls.

HB 1814 Casteel
Relating to employment positions with the Texas Department of Transportation.

HB 2021 Casteel
Relating to the identification and administration of land located in a future transportation corridor of a county.

HB 2051 Krusee
Relating to the adoption of a state scenic byways program.

HB 2134 Phillips
Relating to the administration of the state infrastructure bank.

HB 2137 Phillips
Relating to the construction or improvement of buildings by the Texas Department of Transportation.

HB 2138 Phillips
Relating to the acquisition, construction, maintenance, operation, and provision of toll facilities and a transit system by a regional mobility authority, and the transfer to a regional mobility authority of the toll facilities, transit system, and related assets of a regional tollway authority or transit provider or of certain counties; providing criminal penalties; authorizing a tax.

HB 2139 Phillips
Relating to certain agreements by the Texas Department of
Transportation involving pass-through tolls.

HB 2166 Goolsby
Relating to the transfer of vehicle registration and license plates
between vehicles with the same owner.

HB 2453 Casteel
Relating to the eligibility for a commercial establishment to have
its name displayed on a specific information logo sign.

HB 2623 Phillips
Relating to the distribution by the Texas Department of
Transportation of certain assistance for the repair and maintenance
of county roads.

HB 2653 Krusee
Relating to the use of tax increment financing to pay certain costs
associated with certain transportation or transit projects.

HB 2658 Krusee
Relating to erecting an off-premise sign adjacent to and visible
from certain roads.

HB 2659 Krusee
Relating to bond requirements for privatized maintenance contracts.

HB 2666 Krusee
Relating to the criminal and civil enforcement of the required
payment of a toll for the use of certain turnpike projects.

HB 3308 Phillips
Relating to the revenue sources for and administration of the Texas
Mobility Fund.

DRAFT

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF TEXAS
ACTING THROUGH
THE TEXAS DEPARTMENT OF TRANSPORTATION
AND
THE UNION PACIFIC RAILROAD
FOR A COOPERATIVE PARTNERSHIP TO ADDRESS FREIGHT RAILROAD
RELOCATION ISSUES IN THE STATE OF TEXAS**

WHEREAS, the Governor of Texas, on behalf of the citizens of the State of Texas, acting through the Texas Department of Transportation (TxDOT), plays a key role in transportation planning and the impact such planning has on communities and citizens all across the state of Texas; and

WHEREAS, TxDOT is authorized to participate in the planning, design, and development of multiple modes of transportation within the state; and

WHEREAS, investments in the state's rail freight system can be leveraged to provide major public benefits and can play a significant role in addressing growing transportation demands and related public issues such as automobile congestion, pollution, safety, and energy; and

WHEREAS, in many communities across the State of Texas development has occurred that has placed businesses and homeowners directly adjacent to pre-existing Railroad corridors that have often been in existence for well over 100 years; and

WHEREAS, in certain cases existing Freight Rail Corridors could be available for alternate uses, including service to local Freight Customers, if and when the existing Through Freight Rail operations could be relocated to new corridors where rail infrastructure has been put in place to accommodate Through Freight Operations, and

WHEREAS, Union Pacific Railroad (UP) owns and operates rail freight transportation services within the state of Texas; and

WHEREAS, UP believes that certain rail relocation projects may be achieved through public-private partnerships and offer important opportunities to improve the state and national freight rail system; and

WHEREAS, UP and the State of Texas believe that there are locations and communities in Texas where the relocation of existing Through Freight rail corridors could indeed create significant Public Benefits for Citizens in the State of Texas.

DRAFT

WHEREAS, UP and the State of Texas agree that feasible proposals to relocate existing rail operations planned or developed as a result of this Memorandum of Understanding (MOU) will adhere to five basic principles identified as:

1. Public-private rail relocation projects undertaken within the scope of this MOU must be voluntary for both parties and will be contingent upon the parties entering into definitive agreements; furthermore, it is understood that TxDOT is responsible for protecting the public interest and investments, while UP is responsible for protecting the interests of its customers, shareholders and employees; and
2. Investment by Texas to fund any rail relocation project considered under this MOU must be commensurate with the benefit the public derives from the project. The source of such public funds should be from existing funds or some other general revenue source, and will not be funded by a user charge, additional taxes, or new fees levied on the rail industry in the State; and
3. Any UP contribution toward any rail relocation project considered under this MOU must be commensurate with the private benefit, if any, it derives from the project; and
4. Planning for rail relocation projects considered under this MOU must be coordinated among stakeholders to insure appropriate investments result from the public-private partnership process. UP will continue to work with TxDOT on such efforts and will supply reasonable input to the process. Planning and project implementation must take place in a manner that preserves the existing rail industry regulatory regime as well as ownership rights; and
5. The State will not expend public funds for any rail relocation project that would alter the existing competitive relationships between and among the railroads.

NOW THEREFORE, we declare to work together in a cooperative manner and in accordance with the five principles enunciated herein, and direct our respective planning and development personnel to work in a cooperative partnership to identify potential rail relocation projects which will improve safety and facilitate mobility within the state of Texas, and which will benefit the transportation system of Texas and the people of the state.

By: _____

Rick Perry

Richard Davidson

DRAFT

Governor of Texas

Chairman, and Chief
Executive Officer
Union Pacific Railroad

DATE: _____

DATE: _____





HoustonChronicle.com -- <http://www.HoustonChronicle.com> | Section: Local & State

Feb. 24, 2005, 11:09PM

Montgomery County gets OK for road plans

I-45 truck limits, work on I-10 West also are approved

By **RENEE C. LEE**

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AUSTIN - Montgomery County is the first local government in Texas to use a new financing tool for road improvement projects under a program approved Thursday by the state's Transportation Commission.

The commission also approved a \$158 million contract to widen another segment of the Katy freeway in Houston and enacted a ban on trucks in the left lane of a North Freeway segment.

Under the new financing, Montgomery County can immediately begin work on five road projects that are listed in the state's 10-year highway improvement plan but have been delayed by limited funding.

As part of a contract with the state, the county will pay for the construction costs and the state will reimburse it in annual payments based on the number of vehicles that use the roads.

'Pass-through toll'

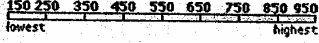
State officials call the funding tool a "pass-through toll" because the state pays the fee instead of the motorist.


County officials said the road projects — upgrades to FM 1488, FM 1485, FM 1484, FM 1314 and Texas 242 — will cost about \$219 million. The state will reimburse the county about \$174 million.

The Texas Department of Transportation has agreed to repay \$10.5 million to \$17.4 million each year over a 10- to 17-year period.


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The farm roads will be expanded from two to four lanes. County officials plan to add flyovers to Texas 242 to connect to I-45. Motorists would have the option of paying a toll to avoid surface-level traffic.

The next step for Montgomery County officials is to set an amount and date for a bond election. County officials will likely seek a \$150 million bond issue to pay for the road projects. They also will use about \$25 million remaining from a 2001 bond issue and \$32 million from TxDOT to get started.

County requested ban

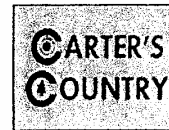
The request to ban trucks from the left lane of Interstate 45 from the northern Houston city limits to the Montgomery County line came from Harris County. The lane restriction is already in place from the North Loop to the city limits.

After the Legislature passed a law in 2003 allowing the Transportation Commission to prohibit trucks in the left lane of freeways, Harris County asked the Transportation Department to examine freeways in unincorporated areas.

Sally Wegmann, director of operations for TxDOT's Houston District, said the natural first step is extending Houston's bans on the North and East freeways. The Interstate 10 restriction will likely happen later this year when construction is finished, she said.

Chronicle reporter Lucas Wall contributed to this story from Houston.

renee.lee@chron.com



HoustonChronicle.com -- <http://www.HoustonChronicle.com> | Section: Local & State
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Tuesday 8 March, 2005

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TYLER GETS ITS DAY IN AUSTIN

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By: ROY MAYNARD, Staff Writer

February 28, 2005

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COMMUNITY

AUSTIN - Texas Transportation Commissioner Robert Nichols lauded Tyler and Smith County leaders for their work on a regional mobility authority, and outlined some future transportation projects that will soon drive the East Texas economy.

"The work you have done as a region has been absolutely amazing," Nichols told East Texans in Austin for the annual Tyler Days at the state Capitol. "When I go around the state, there are communities that just squabble and don't get things done. You are at the other end of the spectrum."

The Northeast Texas Regional Mobility Authority, as it nears final approval in Austin, is even now serving as a model example of how communities can get their projects built, he said.

"You are working incredibly well together to get your Loop 49, one way or another," Nichols said. "Forming your RMA, I think, was very visionary. I use what you have done as an example of how to do things right. When I'm asked around the state how people should do things, I point to you."

The region has earned more than the Texas Department of Transportation's praise, he added.

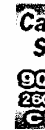
"We at TxDOT are going to help you, whether it be with seed money, study money or staff support," he said. "You won't always need us, but at first, we're going to give you any help we can."

Nichols outlined a number of safety projects that will affect East Texas.

"We know that certain things save lives, such as overpasses over railroads, two- and four-lane highway left turn lanes, and medians," he said. "The Texas Transportation Institute came up with a long list of which projects, statewide, would save the most number of lives."

"I don't know if it's good news or bad news, but the Tyler district scored very high. There are a lot of dangerous intersections; \$116 million will be spent in

<http://www.tylerpaper.com/site/news.cfm?newsid=14054655&BRD=1994&PAG=461&dep...> 3/8/2005



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the next 18 months on safety projects in the Tyler district. You'll be dodging a lot of orange cones," he said.

Nichols also laid out TxDOT's plans for moving people and products through East Texas.

"There are corridors being built around you," Nichols said. "Tyler happens to be a hub for the Texas Trunk System."

One example is the planned widening of U.S. 69. It will soon be a four-lane artery running from Beaumont to Greenville. Another example is Texas Highway 31.

"I expect many of you drove it to get here to Austin," Nichols said. "You probably hit those 13 or so red lights in Corsicana. You'll be glad to know we're going to build a bypass around Corsicana."

That got applause from the East Texas audience.

"You will truly be a regional hub," Nichols said. "Good news is that will be good for business; bad news is your traffic will go up."

Questions for Nichols included queries about Trans-Texas Corridor.

"I've talked to lots of people about the Trans-Texas Corridor, and some of them are scared to death," Nichols said. "But a lot of that is just fear of the unknown."

He said half of the state's population lives along Interstate 35.

"That's 10 million people, tied together with one single thread: Interstate 35," he said. "We know that in the next 10 years, population will increase by 5 million people. And 90 percent of those will live along that one thread. We've got to do something. The Trans-Texas Corridor makes sense."

SECTION LINKS

- National Do Not Call Registry
- Measuring Hospitals
- Texas Child Care
- Texas "No Call Lists"
- TX Homeland Security
- Thadeus & Weez
- 'Most Wanted' Terrorists
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Roy Maynard covers county government and politics. He can be reached at 903.596.6291. e-mail: news@tylerpaper.com

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FHWA 01-05
Wednesday, March 2, 2005
Contact: Brian Keeter
Tel.: 202-366-0660

U.S. Transportation Secretary Mineta Announces Innovative Loan To Help Launch Central Texas Turnpike
Bush Administration Promotes Financing Tool That Lowers Costs, Speeds Construction

U.S. Transportation Secretary Norman Y. Mineta today announced that the federal government is closing on a \$66 million loan to help launch the 183A Turnpike near Austin, TX, in order to relieve congestion in one of the fastest growing regions of the country.

The U.S. Department of Transportation loan to the Central Texas Regional Mobility Authority is expected to lower overall costs and accelerate completion time of the Turnpike project.

"This loan gives the project the extra push it needs to succeed," Secretary Mineta said. "It will help attract private dollars faster and speed congestion relief to Texas commuters sooner."

The U.S. DOT loan was made under an innovative financing program established by the Transportation Infrastructure Finance and Innovation Act (TIFIA). The credit assistance program helps state and local governments secure transportation funding from private sources. By blending public and private funding sources, it advances large, capital-intensive transportation improvements that otherwise might be delayed or not built at all.

The Bush Administration wants to expand the successful loan program so that more projects around the country are eligible for assistance similar to that provided to the 183A Turnpike. The Administration's surface transportation proposal, which Congress will soon consider, contains a number of measures that encourage these types of public-private partnerships.

Federal Highway Administrator Mary Peters said, "Public-private partnerships hold great potential to make our transportation dollars go further, speed highway and bridge improvements to the public, and foster innovation in design and construction."

The loan announced today will help finance design and construction of an 11.6-mile, four-lane tolled highway that will run roughly parallel to existing U.S. 183. The heavily traveled highway now carries approximately 44,000 vehicles per day, a figure expected to climb to 58,500 vehicles per day in 15 years.

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Briefing Room

<http://www.dot.gov/affairs/fhwa0105.htm>

3/16/2005



FHWA 02-05

Contact: Nancy Singer, Tel: 202-366-0660

Friday, March 11, 2005

**Nation's Top Highway Official Highlights Innovative
Public-Private Partnership on Texas Corridor Project**

During a visit to Austin, Texas, Federal Highway Administrator Mary E. Peters today focused national attention on an innovative transportation partnership that is attracting private capital to fund transportation improvements and reduce congestion in the region.

Peters joined Texas Governor Rick Perry and Ric Williamson, chairman of the Texas Transportation Commission, to announce an agreement between the state and a private consortium of engineering, construction and financial firms. The consortium, Cintra-Zachry, has proposed investing \$7.2 billion to develop the approximately 600-mile, Oklahoma to Mexico portion of the Trans-Texas Corridor.

"Texas is a national example for all states and a leader in unleashing the resources, innovation and efficiency of the private sector to bring transportation improvements to the public faster and at less cost to American taxpayers," said Peters. "Public-private partnerships in transportation hold great promise in cutting the congestion that's choking our economy and keeping families apart from one another."

This section of the proposed Trans-Texas Corridor will roughly parallel Interstate 35, running north-south through the state from Oklahoma to Mexico. As envisioned, the multi-use corridor would include lanes for passenger vehicles, trucks and rail and dedicated zones for water, electric, telecommunications and other utility lines.

The FHWA has worked with TxDOT on the flexibility the state needs to pursue its partnership with the private sector.

"The Bush Administration supports giving states and local governments a bigger menu of options that they can use to keep people and goods on the move," said Peters.

Congress is now considering six-year surface transportation legislation that would fund highway, bridge and transit programs. The Bush Administration has proposed a number of provisions that would give states more opportunities to partner with the private sector and attract private investment in transportation, according to Peters.

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Briefing Room

<http://www.dot.gov/affairs/fhwa0205.htm>

3/16/2005

Gas tax tied to inflation well-received in House

But increase, a half-cent a gallon initially, would make only a slight dent in Texas' road construction backlog.

By Ben Wear
AMERICAN-STATESMAN STAFF
Thursday, March 17, 2005

State Sen. Mike Krusee, making a pitch to the House Ways and Means Committee Wednesday for his bill tying the state's gasoline tax to inflation, reached for a handy example about the ever-shrinking buying power of the greenback.

"Let's say you were still earning the same salary you were getting in 1991," said Krusee, a Williamson County Republican. Then he stopped short. "Actually, I guess we all are."

MORE ON THIS STORY Legislators, you see, have been making \$7,200 a year since the mid-1970s.

- [Complete Legislature coverage](#) So Capitol long-timers probably have a good idea what has been happening to the state gas tax, frozen at 20 cents a gallon since legislators raised it 5 cents a gallon in 1991. Adjusted for inflation to 1991 dollars, using the federal Consumer Price Index, that tax is now worth about 14.5 cents a gallon.

"Time has simply wiped it out," Krusee said of the 1991 increase.

That ebbing of the tax's ability to buy crushed rock and blueprints, along with the increasing fuel efficiency of cars, has left the state with the ability to build something short of 40 percent of the needed highways and other transportation projects.

Krusee's bill, HB 5, is an attempt to inch that percentage up a point or two over time. An actual fix, one that would potentially wipe most toll roads off the public agenda, would take a gas tax percentage increase well into the double-digit range.

The legislation was left pending in Ways and Means on Wednesday. But given the bipartisan positive comments of the committee members, the long line of witnesses from a wide spectrum of interests speaking in favor of it and, especially, the public support of House Speaker Tom Craddick, the bill is likely to sail through the House.

Senate leaders and Gov. Rick Perry have at least left the door open for final passage as well.

Krusee's bill would allow the state tax to grow at the rate of the Consumer Price Index each year, or about 2.5 percent this year.

That would amount to about a half-cent-a-gallon increase, or a new state gas tax of 20.5 cents a gallon. That would be in addition to the federal gas levy of 18.4 cents a gallon, itself unchanged since 1993.

The first-year increase would cost a typical driver \$2.50 annually and would generate about \$50 million a year for the Texas Department of Transportation in fiscal 2006.

And this would come as legislators are considering taking at least \$100 million a year from the highway fund for school buses, more than wiping out the first-year increase.

"The impact over one year is not that dramatic," Texas Transportation Commissioner Robert Nichols told the committee. "But the impact over five, 10, 15 years is huge."

The Transportation Department estimates that the tax would bring in more than \$300 million annually by 2010 if allowed to grow with inflation.

Even that, however, amounts to just 6 percent of the department's budget for the current year and would do little to stem the move toward toll roads.

State Rep. Vilma Luna, D-Corpus Christi, noting the enormous cost of highway projects waiting in line for money, was skeptical about how much of a dent HB 5 will make in that backlog.

"How does this get us there?" Luna asked Krusee.

"It doesn't," Krusee said. "All it does is keep us running in place. But if we don't do this, the shortfall will increase every year."

**MCCLENDON FILES BILLS TO CURB DEATHS CAUSED BY DERAILED
FREIGHT CARS**

For Immediate Release
Thursday, March 17, 2005

Austin, TX -- State Representative Ruth Jones McClendon (District 120, San Antonio) has filed HB 1546 and HJR 54 to create a mechanism to fund the relocation of dangerous freight rail lines in densely populated areas of Texas communities. "Too many Texans have died just within the past year as a result of train derailments. It is time for Texas to take bold action to address this serious problem," said Rep. McClendon. HB1546 and HJR 54 will grant Texas Department of Transportation (TxDOT) the authority to negotiate with rail officials to move rail freight lines, especially those carrying hazardous materials. This will allow freight rail lines to be moved outside of the centers of densely populated areas of the state. It further enhances public safety by reducing the risk of toxic spills like the one that killed five (5) people and injured fifty (50) in San Antonio last year.

Public hearings will be held throughout the state to receive input from citizens for the purpose of implementing this proposed law. On Tuesday, March 22, 2005, the House Transportation Committee will hear Rep. McClendon's bill at 8:00 a.m. at the State Capitol. Bexar County Judge Nelson Wolff is expected to testify in support of this legislation.

Converting freight rail lines to commuter rail will relieve traffic congestion on public highways and other roads. "Nobody likes gridlock in rush-hour traffic, but you can only build highways so wide before they intrude on our neighborhoods," stated Rep. McClendon. "In addition, moving freight rail lines and ensuring that they are built to handle the ever-increasing freight rail traffic will reduce the highway congestion caused by freight being hauled by trucks on the interstate highways," stated Rep. McClendon.

Relocating and improving rails will also benefit the Texas economy. Rail carriers are not shipping as much freight as is needed for a vital economy because of clogged or inadequate rail lines. Mexico's acceptance of the General Agreement on Trade and Tariffs (GATT) in the late 1980's and signing of the North American Free Trade Act (NAFTA) in 1994 have also contributed to the enormous explosion of trade that has congested our rails and highways. Rails can provide a much more efficient movement of freight. Creating and funding the rail relocation and improvement fund is imperative. "An adequate rail infrastructure will allow the prosperity brought by increased trade to continue and will prevent the benefits of NAFTA and GATT from hitting the ceiling."

Relocating and improving rails will also improve air quality and reduce the number of non-attainment areas in the state. Railroads are more fuel-efficient and emit fewer pollutants per ton-mile than trucks.

BEN WEAR: GETTING THERE

Peering under the radar at transportation bills

Monday, March 28, 2005

Transportation hasn't been getting the headlines so far in this 79th convocation of Texas lawmakers, or at least not many of them. Hard to compete with property tax cuts, money for the kids and gyrating cheerleaders.

And the legislative process has an odd tendency to both magnify and diminish. If you're there, the placement of commas in bills can seem hugely important.

But if you're at least four blocks away from the Capitol, legislation mandating death by leeches for parking tickets may come across as just background blather.

The reality is, of course, lodged somewhere in between those two perspectives.

But with the 140-day session just more than half gone, and the (somewhat soft) deadline for filing legislation now past, a good number of important transportation bills have been filed, some have had a committee hearing, and a few have cleared their first committee.

So, to close that four-block gap, what follows is a look at some of what lawmakers may be sending your way — or putting in your way.

•**Spring cleanup.** Both state Rep. Mike Krusee, R-Williamson County, and state Sen. Todd Staples, R-Palestine, who chair the transportation committees in their respective chambers, have filed what are often called "cleanup" bills of 2003's HB 3588. That landmark, 300-page bill provided the legal fuel for the toll road explosion over the past two years.

Both bills focus mostly on the relationship between the state and its growing list of private-sector partners, including giving the state the right to strike deals with companies to build and operate state-owned railroad lines. But Staples' bill differs in telling ways, with passages that reflect a trust-but-verify attitude about toll roads.

For example, Staples' bill, SB 1706, in a section about condemnation of land for toll roads, allows such takings by the government for a facility that "directly benefits users of a state highway toll project." That same part of Krusee's HB 2702, on the other hand, allows condemnation for an "ancillary facility" that will generate revenue, including "a gas station, garage, store, hotel, restaurant, or other commercial facility."

•**A second look?** Giving further evidence of policy space between him and his House counterpart, Staples has also filed SB 1713, which would create a nine-member panel to study transportation financing, including the state gas tax, toll roads and diversions from the highway fund for other needs. Staples sees the study, due by December 2006 under the terms of the bill, as a way to put all the possibilities for paying for roads "in one basket" and perhaps get greater public support of toll roads that have to be built.

•**Tons of fund.** The Texas Mobility Fund currently has about \$220 million a year in fees dedicated to it, a figure that will quickly grow to more than \$300 million a year and thus enable the state Transportation Department to borrow more than \$4 billion. Agency leaders have made it clear that most, if not all, of that money will go to toll roads. Though no bills exist to do so, transportation leaders are worried about raids on those fees to help pay for other state needs.

Perhaps on the theory that the best defense is a good offense, state Rep. Larry Phillips, R-Sherman, vice chairman of the House Transportation Committee, is carrying HB 3308 to dedicate 14 more fees and up to \$400 million more a year to the fund, allowing its total borrowing to approach \$10 billion. Chairman Krusee will give his lieutenant's bill a hearing in that committee Tuesday.

•**Fit to be tied.** The Legislature, which since 1991 has been satisfied to watch the state's 20-cent-a-gallon gas tax lose a war of attrition to inflation, now appears ready to fight back. Krusee's HB 5 would tie the gas

tax to inflation, allowing it to grow each year by the same percentage as the national Consumer Price Index. This year, that would be about 2.5 percent. That would raise the tax to 20.5 cents a gallon, meaning that filling up your SUV would cost \$37.60 rather than \$37.50. Somehow the Republic will survive.

•**A moving story.** Krusee and state Rep. Ruth McClendon, D-San Antonio, are co-sponsoring legislation to create a railroad version of the Texas Mobility Fund, a stash of cash to help defray the estimated \$10 billion cost of moving the bulk of freight rail service away from Texas' largest cities. Creating the fund, like its road predecessor, would require a constitutional amendment.

Krusee and others had hoped to have legislation creating an annual revenue stream of at least \$100 million for this fund but are having little success this session. The plan is to see if voters approve the amendment, then come back in 2007 to get the money.

•**Politics is local.** Krusee and state Sen. Gonzalo Barrientos, D-Austin, have bills pending to address local problems. A Krusee bill, matched by a Barrientos twin in the Senate, would eliminate term limits for Capital Metro board members to prevent a wholesale turnover of that seven-member panel as the agency begins to build passenger rail.

Krusee also had a constitutional amendment explicitly allowing regional mobility authority board members to serve longer than two years, solving a constitutional hiccup that is the basis of a pending lawsuit against the Central Texas Regional Mobility Authority. And Barrientos has legislation to give toll road agencies the right to exempt school buses and transit buses from tolls.

And that's just a partial list. We'll let you know if someone actually suggests capital punishment for overstaying your welcome at a parking meter.

Bill could pay for rail relocation projects

BY ELIZABETH PIERSON
THE BROWNSVILLE HERALD

AUSTIN — Rio Grande Valley leaders are hoping some proposed legislation could help reroute railroad lines around Valley cities to ease traffic congestion and improve the economy.

Bills discussed last week in the House Committee on Transportation would allow the Texas Department of Transportation to negotiate with private rail companies to move freight lines out of urban areas in Texas.

They would also allow Texas voters to approve a constitutional amendment to set up a funding mechanism to pay for the projects.

The idea has bipartisan support, fueled in part of a series of deadly train derailments in San Antonio.

"Too many Texans have died just within the past year as a result of train derailments, so it's time for Texas now to take bold action to address a serious problem," said Ruth Jones McLendon, D-San Antonio, sponsor of some of the bills.

State Rep. Mike Krusee, R-Round Rock, chairman of the House Committee on Transportation, said he filed similar or identical bills to those of McLendon. They would determine how to merge the bills in the future, he said.

Krusee likened the idea to the railroad equivalent of the Regional Mobility Authority, the voter-approved method of allowing local government to form transportation authorities that could issue bonds in an effort to build roads the state can't afford right now.

The RMAs were developed by the Legislature in 2001, and then funded in 2003, after voters approved them.

"We would like to, in the future, find a separate funding source to address this problem," he said.

Rail lines are older than roads

and just as crowded, he said.

"We don't see the problem with our rails because we're not riding on our rails everyday, but in fact it's just as congested — in fact even more congested — because it's not 50 years old, it's a hundred years old, and cities have grown up around."

Already the state has worked closely with two rail relocation projects in Cameron County: the West Rail project, which would divert railroad from downtown Brownsville, and the North



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LEGISLATURE

Rail project, which would move it away from Harlingen, said Cameron County Judge Gilberto Hinojosa.

But TxDOT doesn't have money to help with those projects.

Although moving the rail would save TxDOT about \$55 million in what would otherwise be necessary overpasses, those savings can't be transferred to pay for rail relocation, Hinojosa said.

Instead, the county must rely on money from the federal government, one piece at a time, he said.

"With this, it's a commitment by the Legislature to start looking at rail relocation projects as priority transportation projects, funded through mechanisms created by the state," Hinojosa said. "That's never happened before."

In Hidalgo County, a state rail relocation fund could help pay for a project designed to move more materials out of the Foreign Trade Zone by rail, thereby decreasing truck congestion, Mike Allen, president and CEO of the McAllen Economic Development Corp., told the House Committee on Tuesday.

McAllen is developing what Allen called a "Regional Multi Modal Center," which would help remove 150 trucks from the road every day. Allen said the McAllen EDC is working with Union Pacific and Triple Crown Services, a company that uses trailers designed to ride on both

trucks and railcars.

The project will make border manufacturers more competitive, reduce wear-and-tear on Texas highways and lower production and manufacturing costs, Allen said.

"We believe that (the bill) would be very, very helpful for our community," Allen said.

Eventually, the McAllen project could result in commuter rail along the Military Highway to transport people between Valley cities, said state Rep. Ismael "Kino" Flores, D-Mission, a member of the House Committee on Transportation.

Freight lines would run from north to south, bringing goods from the border, said Flores, who is in favor of the legislation. Commuter rail would run east and west, he said.

"You have to look at it as 2015 and 2020 and what the Rio Grande Valley is going to look at like at that time," he said.

On March 18, Gov. Rick Perry announced that Texas had become the first state to sign a cooperative agreement with private rail companies to consolidate, improve and relocate freight rail lines away from cities.

"Relocating rail lines from crowded city centers will mean fewer accidents at crossings, less hazardous cargo carried through populated areas, greater efficiency in the movement of products from the warehouse to the market and the potential benefit of acquiring prime real estate for the development of new roads without tearing down homes and businesses in the process," Perry said.

Krusee said the deal struck between the state and the railroads made clear that companies would not have to pay for projects for the public good. Similarly, taxpayers would not have to support projects designed only to improve a company's profits, he said.

lpiereson@link.freedom.com

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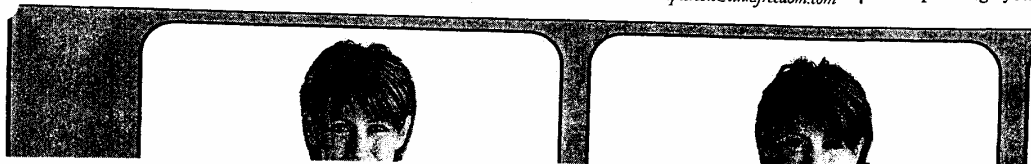
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The Monitor

<http://www.themonitor.com/>



County commissioners OK mobile authority

March 30, 2005
Victoria Hirschberg
The Monitor

EDINBURG — Hidalgo County is one step closer to funding new road projects and construction.

The four commissioners and the county judge had to compromise, but all five approved the board structure of the Regional Mobility Authority, an entity designed to provide funding for construction of traffic projects and toll roads.

The commissioners agreed at Tuesday's regular meeting that the six-person board would include one representative each from Edinburg, McAllen, Pharr-San Juan, Mission-La Joya, the Delta Area and the Mid-Valley. This gives Precinct 1 Commissioner Sylvia Handy two appointments, which she initially wanted; Precinct 2 Commissioner Hector "Tito" Palacios two appointments; and Precinct 4 Commissioner Oscar Garza and Precinct 3 Commissioner Joe Flores one each. The governor will appoint the RMA chair.

Handy and County Judge Ramon Garcia rejected the initial RMA structure in October and the Texas Department of Transportation then recommended the court agree on an equitable way to form the authority that should represent the entire county.

Initially, Palacios and Flores would have had two appointments each, but both commissioners supported the new structure. Handy, who geographically has the largest precinct and the most school districts, was pleased with the agreement.

"I'm very happy about it since I have the largest precinct in the area," Handy said after the vote. "I'm very happy with the commission."

Palacios said Tuesday that he always supported the RMA, which will include projects like the U.S. Highway 281 loop and the truck connector in Pharr.

County Judge Ramon Garcia, who has no appointments, said the new agreement is fair.

"We will have a fair composition countywide on that board," Garcia said. "Now it's up for TxDOT to accept it."

The next step is for the county to resubmit their RMA proposal to TxDOT, which will happen within seven to 10 days, said Hidalgo County special projects coordinator Godfrey Garza. He said he expects TxDOT to respond within 30 days or so.

"The key part of it was it was a 5-0 decision," Garza said. "Hopefully, within 30 days, we'll get a positive response."

Victoria Hirschberg covers Hidalgo County, business, economics and general assignments for The Monitor. You can reach her at (956) 683-4466.

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<http://www.themonitor.com/PrintIt.cfm?Template=/GlobalTemplates/Details.cfm&StoryI...> 3/30/2005

**Cameron County Regional Mobility Authority
1390 Scott Brown Blvd.
San Benito, Texas 78586**

March 16, 2005

Mr. Mario R. Jorge, P.E.
District Engineer
Texas Department of Transportation
P.O. Box 1717
Pharr, Texas 78577

Dear Mario:

On behalf of the Cameron County Regional Mobility Authority (CCRMA) I wanted to personally thank you for taking the time to make a presentation at our first board meeting and for having your staff available at our monthly meetings. I am confident that your presentation and your insight will enable the CCRMA to work towards formulating policies and initiatives that will benefit our community in South Texas.

I look forward to continuing to work with you and the Pharr district staff in this endeavor. If I can ever be of assistance please do not hesitate to contact me.

With kindest regards,

Sincerely,

A handwritten signature in black ink, appearing to read "David", with a stylized flourish extending from the end.

David E. Alex
Chairman
Cameron County Regional Mobility Authority

Cameron County Regional Mobility Authority
1390 Scott Brown Blvd.
San Benito, Texas 78586

March 16, 2005

Mr. Amadeo Saenz, Jr., P.E.
Assistant Executive Director-Engineering Operations
Texas Department of Transportation
125 E. 11th St.
Austin, Texas 78701

Dear Amadeo:

I wanted to personally thank you for taking the time to meet with me prior to our first official Cameron County Regional Mobility Authority (CCRMA) meeting. We have lots of work ahead of us and your able assistance and guidance is extremely important to getting us off in the right direction.

In addition, your staff in the Pharr and San Benito offices have been helpful and insightful at our recent meetings. We will continue to welcome their expertise as we move toward formulating policies and initiatives that will benefit our community in South Texas.

I look forward to continuing to work with you and TXDOT in this endeavor. If I can ever be of assistance please do not hesitate to contact me.

With kindest regards,

Sincerely,



David E. Allex
Chairman
Cameron County Regional Mobility Authority

**Cameron County Regional Mobility Authority
1390 Scott Brown Blvd.
San Benito, Texas 78586**

March 16, 2005

Mr. Arnold Cortez, P.E.
Area Engineer
Texas Department of Transportation
P.O. Box 1041
San Benito, Texas 78586

Dear Arnold:

On behalf of the Cameron County Regional Mobility Authority (CCRMA) I wanted to personally thank you for attending our most recent meeting. It is extremely valuable to have you at our meetings and provide us with your expertise on complex transportation issues. Your insight will enable the CCRMA to work towards formulating policies and initiatives that will benefit our community in South Texas.

I look forward to continuing to work with you and all of your staff in the San Benito office. If I can ever be of assistance please do not hesitate to contact me.

With kindest regards,

Sincerely,



David E. Alex
Chairman
Cameron County Regional Mobility Authority

**Cameron County Regional Mobility Authority
1390 Scott Brown Blvd.
San Benito, Texas 78586**

March 16, 2005

The Honorable John Cornyn
U.S. Senate
517 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cornyn,

I am writing to request your assistance in communicating the importance of our state's federal transportation priorities to Chairman James Inhofe as you continue to consider the current Transportation authorization bill proposal in the Senate. These revenue neutral revisions were not emphasized last week in HR3 and, therefore, I ask for support for their inclusion in the transportation reauthorization bill being considered by the Senate.

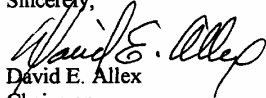
State Options for Interstate Tolling: This policy revision would give states flexibility to plan and build toll-viable interstate segments, and to use the resulting toll receipts for toll facility maintenance and financing of new construction projects.

Design-Build Contracting: Design-build authority would allow the state to receive unsolicited proposals (already allowed under state law); enable Texas to hire a single consultant to perform environmental work, design and construction, with state oversight; and, construction on already approved segments could proceed concurrently with environmental work and design on other segments of the same project.

Pilot Program for Transportation System Performance: The designation of Texas as one of the five pilot states would give TXDOT the authority to manage certain federal highway programs through a single block grant under a performance-based approach. Under the Administration's plan the state would assume USDOT's responsibility for the implementation of Interstate Maintenance, National Highway System, Surface Transportation, Highway Safety Improvement, Bridge, and Minimum Guarantee programs administered in the state.

I appreciate your continued support for the progress of our transportation system and the future economic growth of Texas.

Sincerely,



David E. Alex
Chairman

Cameron County Regional Mobility Authority

7. PUBLIC COMMENTS

None was presented.

3. ELECTION OF OFFICERS
A. VICE-CHAIRPERSON
B. TREASURER
C. SECRETARY

Mr. David E. Allex, Chairperson, recommended that Mrs. Betancourt be elected Secretary.

Mr. Ramon stated that officers do not necessarily have to be board members.

Mr. Doug Wright, Commissioners' Court Legal Counsel, clarified that the same individual may serve as Secretary and Treasurer and that manual work could be preformed by staff.

Mr. Garza suggested that the Chairperson have a form of back-up with reference to having check signing authority; however, he noted that the person authorized to sign off on checks must not have control of the books.

Mr. Alvarez stated that the books could be done by staff.

Mr. Garza added that the staff preparing the books would ultimately have to answer to the Chairperson, thus causing conflict.

Mr. Alvarez nominated Mr. Ramon as Vice-Chairperson.

Mr. Campbell moved that Mrs. Betancourt be appointed Secretary/Treasurer of the Cameron County Regional Mobility Authority.

The motion was seconded by Mr. Scaief and carried unanimously.

Mr. Alvarez moved that Mr. Ramon be appointed Vice-Chairperson of the Cameron County Regional Mobility Authority.

The motion was seconded by Mr. Scaief and carried unanimously.

Mr. Allex stated that the agenda for the meeting April 14, 2005, will include Executive Session.



There being no further business to come before the Board, the meeting was adjourned by Mr. Alex
ADJOURNED at 1:08 P.M.

APPROVED this 12th day of May 2005.

MR. DAVID E. ALEX, CHAIRPERSON

PREPARED BY:
MARICRUZ ROBLES

