

These are the minutes of the regular meeting of the Texas Transportation Commission held on November 16, 2022, in Austin, Texas. The meeting was called to order at 10:00 a.m. by Chairman Bugg with the following commissioners present:

Texas Transportation Commission:

J. Bruce Bugg, Jr.	Chairman
Laura Ryan	Commissioner
Alvin New	Commissioner
Robert C. Vaughn	Commissioner

Administrative Staff:

Marc Williams, Executive Director
 Jeff Graham, General Counsel
 Nicole Lawson, Commission Chief Clerk

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 2:32 p.m. on November 8, 2022, as required by Government Code, Chapter 551, referred to as "The Open Meetings Act."

ITEM 1. Safety Briefing

Executive Director Marc Williams directed that the Greer building safety video be shown on the screens in the Ric Williamson hearing room.

ITEM 2. Opening Comments from Commissioners and Executive Director

The commissioners made opening remarks.

ITEM 3. Consider the approval of the Minutes of the October 27, 2022, regular meeting of the Texas Transportation Commission

Commissioner Vaughn made a motion, which was seconded by Commissioner New, and the commission approved the minutes of the October 27, 2022, regular meeting by a vote of 4 - 0.

ITEM 4. Contracts

Consider the award or rejection of contracts for highway construction and maintenance, and construction and rehabilitation of buildings (Presentation)

a. Highway Improvement and Other Transportation Facilities (MO)

This item was presented by Construction Division Director Duane Milligan. Commissioner New made a motion, which was seconded by Commissioner Ryan, and the commission approved the following minute order by a vote of 4 - 0.

116374
 CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on November 2 and 3, 2022 as well as FORT WORTH DISTRICT, TARRANT COUNTY, Job Number 3221, Project Number STP 2022(871)HES, which was publicly read on October 7, 2022, as shown on Exhibit A.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the commission respectively consider the award to the lowest bidder, reject or defer, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A, be and are hereby respectively awarded to the lowest bidder or rejected or deferred as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A is on file with the commission chief clerk.

b. Highway Improvement Contract Bid Protest (MO)
Project F 2023(085), Denton County, FM 3524

This item was presented by Construction Division Director Duane Milligan. The commission heard comment from John Dulske, attorney on behalf of Brannan Paving Company, Ltd. Mr. Dulske also provided a presentation to the commission on behalf of Brannan Paving Company Ltd. General Counsel Jeff Graham, and Deputy General Counsel Becky Blewett were asked by Chairman Bugg to offer comment on the matter. Commissioner New made a motion, which was seconded by Commissioner Vaughn, and the commission approved the following minute order by a vote of 3 – 1 with Commissioner Ryan voting opposed.

116375
CST

The Texas Department of Transportation (department) highway improvement bidding process is governed by Transportation Code, Chapter 223, Subchapter A; Title 43, Texas Administrative Code (TAC), Chapter 9, Subchapter B; and the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges. These documents provide the requirements for the department's letting and contracting process.

Under 43 TAC §9.14(d), the department requires each bidder on a construction or maintenance contract to submit a bid guaranty. This is further detailed in the Standard Specification Sections 2.8.2, which states that the bidder provide a proposal guaranty in the amount indicated on the proposal form. In addition, Section 2.7 states that the department will not accept a nonresponsive bid. A nonresponsive bid includes that the proposal guaranty did not comply with the requirements contained in Item 2.

Brannan Paving Co., LTD submitted a bid for DALLAS DISTRICT, DENTON COUNTY, Job Number 3202, Project Number F 2023(085). The bid did not include a valid bid guaranty. On October 7, 2022 the department opened the bids for this project and the bid guaranty stated that the status of the bond was closed. No other bids were offered on this project. The department found the bid to be nonresponsive and did not award this project. Brannan Paving filed a protest to the finding that their October 7, 2022, bid for Project Number F 2023(085) was nonresponsive. The protest was accepted as valid and was not referred for alternative dispute resolution under 43 TAC §§1.101–108.

The Executive Director has reviewed the facts of this case and has found that Brannan Paving Co., LTD did not submit a bid guaranty as required by 43 TAC §9.14(d) and the Standard Specifications Section 2.8.2. The Executive Director further finds Brannan's arguments regarding bid error, no requirement of bid guaranty prior to award of contract, and waiver of the requirement through the validation system used by the department are not persuasive. Therefore, the Executive Director recommends the Transportation Commission (commission) uphold the department's decision to find Brannan Paving Co., LTD nonresponsive on DALLAS DISTRICT, DENTON COUNTY, Job Number 3202, Project Number F 2023(085), October 7, 2022.

IT IS THEREFORE ORDERED by the commission that Brannan Paving Co., LTD be deemed nonresponsive and not eligible for award of the contract DALLAS DISTRICT, DENTON COUNTY, Job Number 3202, Project Number F 2023(085), October 7, 2022.

c. Routine Maintenance (MO)

This item was presented by Construction Division Director Duane Milligan. Commissioner Ryan made a motion, which was seconded by Commissioner Vaughn, and the commission approved the following minute order by a vote of 4 - 0.

116376
MNT

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on November 2 and 3, 2022, as shown on Exhibit A.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the Texas Transportation Commission (commission) respectively consider the award to the lowest bidder, reject or defer, as indicated, those highway maintenance and department building construction contracts, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected or deferred as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the

credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A is on file with the commission chief clerk.

d. Construction and Rehabilitation of Buildings (MO)

This item was presented by Facilities Planning and Management Section Director Warren Rose. Commissioner Ryan made a motion, which was seconded by Commissioner New, and the commission approved the following minute order by a vote of 4 - 0.

116377
SSD

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on November 2, 2022, as shown on Exhibit A.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted, rejected, or deferred, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder, reject or defer, as indicated, those highway improvement and department building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A, be awarded to the lowest bidder, or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to re-advertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided, and the department will return the bid guaranty.

Note: Exhibit A is on file with the commission chief clerk.

ITEM 5. Discussion Item
Planning and Modal Update

This discussion was led by Planning and Modal Programs Director Caroline Mays. The commission asked questions and discussed the topic. The commission took recess at 11:24 a.m. and reconvened at 11:35 a.m.

ITEM 6. State Infrastructure Bank

Zapata County - Falcon Rural Water Supply Corporation - Consider final approval of a request from the Falcon Rural Water Supply Corporation for a State Infrastructure Bank loan in the amount of up to \$2,902,000 to pay for the costs of utility relocation necessary for a non-tolled state highway improvement project to widen US 83 in Zapata County, Texas (Presentation) (MO)

This item was presented by Project Finance, Debt & Strategic Contracts Division Enterprise Operations Manager Patrick Marotta. Commissioner Ryan made a motion, which was seconded by Commissioner New, and the commission approved the following minute order by a vote of 4 - 0.

116378
PFD

Falcon Rural Water Supply Corporation (WSC) has submitted an application for financial assistance in the form of a loan of up to \$2,902,000 from the State Infrastructure Bank (SIB) under Transportation Code, Chapter 222, Subchapter D, and Title 43 Texas Administrative Code (TAC), Chapter 6 (SIB Rules). The application satisfies all requirements of the rules, including passage by the City of a resolution authorizing submission of the application to the Texas Department of Transportation (department).

The intended use of the financial assistance conforms to the purposes of the SIB. The WSC intends to use the financial assistance to pay the costs of utility relocation to widen US 83 in Zapata County.

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

The WSC has proposed a pledge of contract revenues and water revenues as security for repayment of the loan.

In accordance with the SIB Rules, the executive director has negotiated all the terms of an agreement as necessary to protect the public's safety and to prudently provide for the protection of public funds while furthering the purposes of the SIB, contained in the Term Sheet attached hereto as Exhibit A.

The SIB Rules allow for final approval by the Texas Transportation Commission (commission) of any SIB loan in the principal amount of \$10 million or less without first going through the preliminary approval process described in the SIB Rules if the financial assistance is to be used for a project for which the department has primary responsibility.

The executive director or his designee implemented actions authorized and required by the SIB Rules for final approval. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed and approved by the department. The executive director recommends that the commission grant final approval of WSC's application for financial assistance from the SIB.

In accordance with the SIB Rules, the commission finds that:

1. the project is consistent with the Statewide Long-Range Transportation Plan and the metropolitan transportation plan developed by the applicable metropolitan planning organization;
2. the project is not in a Clean Air Act non-attainment area;
3. the project will improve the efficiency of the state's transportation systems;

4. the project will expand the availability of funding for transportation projects or reduce direct state costs;
5. the application shows that the WSC is likely to have sufficient revenues to assure repayment of the financial assistance;
6. providing financial assistance will protect the public's safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and
7. the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE DETERMINED AND ORDERED by the commission that the application submitted by the WSC for financial assistance in the form of a loan from the SIB meets the applicable requirements of the SIB Rules and, in accordance with those provisions, the commission grants final approval of the WSC's application for a SIB loan under the terms in the Term Sheet attached hereto as Exhibit A in an amount not to exceed \$2,902,000 to pay the costs of utility relocation for the non-tolled project.

IT IS FURTHER ORDERED by the commission that the executive director or his designee is directed and authorized to enter into a financial assistance agreement with the WSC which complies with the SIB Rules and which contains the terms in the Term Sheet attached hereto as Exhibit A.

Note: Exhibit A is on file with the commission chief clerk.

Item 7. Contested Case

Austin County - Texas Department of Transportation v. John Gannon, Inc. - Consider action on proposal for decision by administrative law judge concerning the Department's revocation of permit, final order (MO)

This item was presented by General Counsel Division Senior General Counsel James Kirk II. Commissioner New made a motion, which was seconded by Commissioner Ryan, and the commission approved the following minute order by a vote of 4 - 0.

116379
GCD

On November 16, 2022, the Texas Transportation Commission (commission) considered the Texas Department of Transportation's (department) proposed cancellation of Outdoor Advertising Permit PMT-HBA-13227 held by John Gannon, Inc. (JGI) and assessment of administrative penalties against the same. The permit concerned a commercial advertising sign in Austin County. JGI requested a contested case hearing and the matter was referred to the State Office of Administrative Hearings. The Administrative Law Judge (ALJ) concluded in the proposal for decision that the department failed to adequately prove the sign had been substantially changed and that Outdoor Advertising Permit PMT-HBA-13227 should not be canceled and no administrative penalties assessed against JGI. The department does not challenge the ALJ's conclusions. Under the Administrative Procedure Act and the commission's rules, the matter is now appropriate for entry of a final order by the commission.

IT IS THEREFORE ORDERED by the commission that the commission issue the attached order in the case of Texas Department of Transportation v. John Gannon, Inc., Docket No. 601-22-1507 to be signed by the chairman of the commission on behalf of the commission, and directs the executive director to dismiss the enforcement action against JGI.

Note: Exhibit A is on file with the commission chief clerk.

ITEM 8. Annual Toll Rates

a. Travis and Williamson Counties - Consider the approval of a modified toll rate escalation percentage for 2023 for the Central Texas Turnpike System, consisting of SH 130 (Segments 1-4), SH 45N, Loop 1 (from FM 734 to SH 45N), and SH 45SE project elements (MO)

This item was presented by Project Finance, Debt & Strategic Contracts Division Director Ben Asher. Commissioner New made a motion, which was seconded by Commissioner Ryan, and the commission approved the following minute order by a vote of 4 - 0.

116380
PFD

Title 43, Texas Administrative Code §27.82(d) provides that the Texas Transportation Commission (commission) will establish toll rates for the use of a toll project on the state highway system. In setting toll rates, the commission is required to consider: (1) the results of traffic and revenue studies and any schedule of toll rates established in traffic and revenue reports; (2) the requirements of project bond covenants, if applicable; and (3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

The Central Texas Turnpike System (CTTS) consists of the following elements: SH 130, which runs from I-35 North of Georgetown to the intersection of US 183 and SH 130 at SH 45 Southeast; SH 45 North, which runs from west of US 183 to SH 130 / SH 45 North interchange; Loop 1, which runs from existing Loop 1 and Farm to Market 734 (Parmer Lane) to the Loop 1 / SH 45 North interchange; and SH 45 Southeast, which runs from I-35 at FM 1327 south of Austin to the SH 130 / US 183 interchange.

In Minute Order 113244, dated August 30, 2012, the commission authorized the executive director to annually escalate toll rates on the CTTS in accordance with established indices and the toll rate escalation policy set forth in the minute order (Toll Rate Escalation Policy). The Toll Rate Escalation Policy dictates that the Texas Department of Transportation (department) shall report to the commission, at its October meeting, the toll rate escalation percentage calculated in accordance with the established indices, which shall be applied to the current base toll rates for each CTTS element and paypoint, generating a schedule of escalated toll rates which will become effective automatically on January 1 of the next calendar year and implemented by the executive director, unless the commission affirmatively votes prior to January 1 to modify the toll rate escalation percentage.

In Minute Order 116329, dated September 22, 2022, the commission acknowledged that the department has reported to the commission that the toll rate escalation percentage, calculated in accordance with the established indices in effect as of October 1, 2022, as required by the Toll Rate Escalation Policy, is 8.30%. Also in Minute Order 116329, the commission modified the reported toll rate escalation percentage for calendar year 2023 to be 0.00% and ordered that the resulting Toll Rate Schedule for the CTTS shall be implemented by the executive director on January 1, 2023. The commission has determined that it should further modify the toll rate escalation percentage to be 2.40%, which will result in toll rates, set forth in the Toll Rate Schedule attached hereto as Exhibit A, that will not adversely affect the ability of the commission to comply with its rate covenant in Section 501 of the Indenture of Trust Dated as of July 15, 2002, Between Texas Transportation Commission and The Bank of New York Mellon Trust Company, National Association, as Trustee (successor in interest to JP Morgan Trust Company as successor to Bank One, National Association) (CTTS Indenture of Trust).

Pursuant to Section 501 of the CTTS Indenture of Trust, prior to adopting any change in the toll rate schedule, the commission shall obtain and file with the trustee a certificate by the traffic and revenue consultant that, in the consultant's opinion, either: (A) that if such proposed Toll Rate Schedule had been in effect during the preceding annual period, and taking into effect the Revenues anticipated to have been received in such annual period, it would not have caused a decrease in the Revenues for said preceding annual period; or (B) the adoption of such proposed toll rate schedule will not adversely affect the ability of the commission to comply with its rate covenant in Section 501 of the CTTS Indenture of Trust. The commission has received such certification from the traffic and revenue consultant and filed it with the trustee.

IT IS THEREFORE ORDERED by the commission that the modified toll rate escalation percentage of 0.00%, approved by the commission in Minute Order 116329 for the CTTS, in calendar year 2023, is further modified to be 2.40%, and the resulting Toll Rate Schedule for each CTTS element, attached as Exhibit A, shall be implemented by the executive director on January 1, 2023.

Note: Exhibit A is on file with the commission chief clerk.

b. Grimes and Montgomery Counties - Consider the approval of a modified toll rate escalation percentage for 2023 for the SH 249 System, comprised of Segment 1 of the SH 249 Project extending SH 249 from FM 1774 in Pinehurst to FM 1774 in Todd Mission (MO)

This item was presented by Project Finance, Debt & Strategic Contracts Division Director Ben Asher. Commissioner Ryan made a motion, which was seconded by Commissioner New, and the commission approved the following minute order by a vote of 4 - 0.

116381
PFD

Title 43, Texas Administrative Code, §27.82(d) provides that the Texas Transportation Commission (commission) will establish toll rates for the use of a toll project on the state highway system. In setting toll rates, the commission is required to consider: (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report; (2) the requirements of project bond covenants, if applicable; and (3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

In Minute Order 114959, dated June 29, 2017, the commission designated Segment 1 of the SH 249 Extension Project, from FM 1774 in Pinehurst in Montgomery County to FM 1774 in Todd Mission in Grimes County, as a toll project on the state highway system (SH 249 System). The SH 249 System is an all-electronic, open road toll facility with a closed ramp system of toll collection.

In Minute Order 115393, dated December 13, 2018, the commission authorized the executive director to annually escalate toll rates on the SH 249 System in accordance with established indices and the toll escalation policy set forth in the minute order (Toll Rate Escalation Policy). The Toll Rate Escalation Policy dictates that the Texas Department of Transportation (department) shall report to the commission, at or before its October meeting, the toll rate escalation percentage calculated in accordance with the established indices in effect as of October 1, which shall be applied to the current base toll rates for each paypoint of the SH 249 System, generating a schedule of escalated toll rates which will become effective automatically on January 1 of the next calendar year and implemented by the executive director, unless the commission affirmatively votes prior to January 1 to modify the toll rate escalation percentage.

In Minute Order 116330, dated September 22, 2022, the commission acknowledged that the department has reported to the commission that the toll rate escalation percentage, calculated in accordance with the established indices in effect as of October 1, 2022, as required by the Toll Rate Escalation Policy, is 9.76%. Also in Minute Order 116330, the commission modified the reported toll rate escalation percentage for calendar year 2023 to be 0.00% and ordered that the resulting Toll Rate Schedule for the SH 249 System shall be implemented by the executive director on January 1, 2023. The commission has determined that it should further modify the toll rate escalation percentage to be 2.20%, which will result in toll rates, set forth in the Toll Rate Schedule attached hereto as Exhibit A, that will not adversely affect the ability of the commission to comply with its rate covenant in Section 501 of the Master Trust Agreement By and Between Texas Transportation Commission and U.S. Bank National Association, as Trustee, Securing SH 249 System Toll Revenue Obligations, Dated as of February 1, 2019 (SH 249 System Trust Agreement).

Pursuant to Section 501 of the SH 249 System Trust Agreement, prior to adopting any change in the toll rate schedule, the commission shall obtain and file with the trustee a certificate by the traffic and revenue consultant that, in the consultant's opinion, either: (A) that if such proposed Toll Rate Schedule had been in effect during the preceding annual period, and taking into effect the Revenues anticipated to have been received in such annual period, it would not have caused a decrease in the Revenues for said preceding annual period; or (B) the adoption of such proposed toll rate schedule will not adversely affect the ability of the commission to comply with its rate covenant in Section 501 of the SH 249 System Trust Agreement. The commission has received such certification from the traffic and revenue consultant and filed it with the trustee.

IT IS THEREFORE ORDERED by the commission that the modified toll rate escalation percentage of 0.00%, approved by the commission in Minute Order 116330 for the SH 249 System, in calendar year 2023, is further modified to be 2.20%, and the resulting Toll Rate Schedule for the SH 249 System, attached as Exhibit A, shall be implemented by the executive director on January 1, 2023.

Note: Exhibit A is on file with the commission chief clerk.

c. Various Counties - Consider the approval of a modified toll rate escalation percentage for 2023 and Toll Rate Escalation Policy amendment for the portions of SH 99 (Grand Parkway) that comprise the Grand Parkway System, consisting of the tolled portion of Segment D in Harris County, and Segments E, F-1, F-2, G, H, I-1, and I-2 of the Grand Parkway Project (MO)

This item was presented by Project Finance, Debt & Strategic Contracts Division Director Ben Asher. Commissioner Ryan made a motion, which was seconded by Commissioner Vaughn, and the commission approved the following minute order by a vote of 4 - 0.

116382
PFD

Planning and development of State Highway 99 (Grand Parkway), an outer circumferential highway traversing seven counties and serving the Houston area, have been underway since the 1980s. The Texas Department of Transportation (department) and the seven counties in the Houston area in which SH 99 (Grand Parkway) is located have been proceeding with the development of the Grand Parkway from SH 146 in Galveston County to SH 146 in Chambers County.

In accordance with the requirements of former Section 228.0111 of the Transportation Code and the policies included in Minute Order 111410 dated June 26, 2008, the department and the seven counties in which the Grand Parkway is located entered into a Market Valuation Waiver Agreement, effective March 25, 2009 (MVWA), in which the parties agreed on the terms and conditions for the development, construction, and operation of the Grand Parkway as a toll facility (Grand Parkway Project), agreed to waive the development of a market valuation of the Grand Parkway Project, and agreed to certain other provisions applicable to the development, construction, and operation of the Grand Parkway Project. Each of Harris, Montgomery, Liberty, and Chambers counties subsequently elected not to exercise its option to develop, finance, construct, and operate the portion of the Grand Parkway Project located within the territory of the county. In a series of minute orders, the Texas Transportation Commission (commission) approved the department's determination to exercise its option to develop, finance, construct, and operate the portions of the Grand Parkway Project in Harris, Montgomery, Liberty, and Chambers counties.

The commission adopted 43 TAC §15.95 to establish procedures applicable to toll project corporations created under Transportation Code, Chapter 431 (chapter 431), in entering into contracts with or on behalf of the commission in connection with the funding and development of toll projects. In Minute Order 113046, dated March 29, 2012, the commission adopted a resolution creating the Grand Parkway Transportation Corporation (GPTC) pursuant to Title 43, Texas Administrative Code, § 15.95, approving its certificate of formation and bylaws and appointing the initial directors.

By Minute Order 113202, dated July 26, 2012, and Minute Order 114290, dated June 25, 2015, the commission requested GPTC to perform the functions authorized by chapter 431 and any other functions not specified by chapter 431 as necessary in the promotion and development of public transportation facilities and systems of the department by developing, financing, designing, constructing, expanding, operating, or maintaining some or all of the segments of the Grand Parkway Project that are to be developed by the department, including a portion of Segment D located in Harris County and Segments E, F-1, F-2, and G located in Harris and Montgomery counties (Initial System), and Segments H, I-1, and I-2 located in Harris, Montgomery, Liberty and Chambers counties (together with the Initial System, the "Grand Parkway System").

Minute Order 111167, dated December 13, 2007, designated the portion of Grand Parkway Segment I-2, from I-10 to Fisher Road, as a toll project on the state highway system (included within Segment I-2A). Minute Order 114881, dated March 28, 2017, designated the portion of Grand Parkway Segment I-2A from Fisher Road to FM 1405 as a toll project on the state highway system. Minute Order 112756, dated July 28, 2011, authorized the department to charge tolls in Chambers County on the portion of Segment I-2A from I-10 to Fisher Road at the existing tolling points on that segment.

The commission established a toll rate escalation policy in Minute Order 113399, dated December 13, 2012 (Toll Rate Escalation Policy), consistent with the terms and conditions of the MVWA, for the tolled portion of the Initial System which is operated on behalf of the commission by the GPTC pursuant to a project agreement between the department and GPTC and in accordance with a Master Trust Agreement dated as of August 1, 2013, as amended and supplemented (Master Trust Agreement), between GPTC and the trustee for the benefit of the holders of GPTC's toll revenue bonds issued to pay the costs of constructing the Initial System. Minute Order 113399 also authorized GPTC to charge tolls for the tolled portion of the Initial System. Minute Order 113399 also authorized the department to revise the toll rates on the portion of Grand Parkway Segment I-2A from I-10 to Fisher Road to be consistent with the rates and Toll Rate Escalation Policy in effect for the segments comprising the system. Pursuant to Minute

Order 114290, dated June 25, 2015, the GPTC was assigned the toll revenues from Segment I-2A upon the opening of Segments H, I-1 and I-2, and the GPTC became responsible for the operation and maintenance of Segment I-2A as part of the Grand Parkway System upon substantial completion of Segments H, I-1 and I-2.

The Toll Rate Escalation Policy provides for the department to calculate the annual toll rate escalation percentage (toll rate escalation percentage) in accordance with the methodology in the Toll Rate Escalation Policy and report the toll rate escalation percentage to the GPTC and the commission each year at or before the commission's October meeting. The percentage increase in the toll rates will be effective automatically on January 1 of the next calendar year and implemented by the executive director and by the GPTC, as applicable, unless the commission affirmatively elects prior to January 1 to modify the toll rate escalation percentage for purposes of meeting the rate covenants in the Master Trust Agreement.

The commission and GPTC executed a Toll Rate Agreement effective August 1, 2013, pursuant to Minute Order 113399, dated December 13, 2012 (Toll Rate Agreement), and amended the Toll Rate Agreement effective June 26, 2015, pursuant to Minute Order 114290, dated June 25, 2015. In the Toll Rate Agreement, the commission covenants that it will adopt and maintain in effect a Toll Rate Schedule for the System in substantial conformity with the recommendation of the Traffic Consultant (as defined in the Master Trust Agreement) and in conformity with the toll rate escalation policy of the commission. Minute Order 114881, dated March 28, 2017, authorized GPTC, upon substantial completion of the construction of Segments H, I-1 and I-2B, to charge tolls, and also authorized the executive director of the department to annually escalate the toll rates in accordance with established indices and the Toll Rate Escalation Policy previously adopted in Minute Order 113399, dated December 13, 2012, for the tolled portions of Segments H, I-1, and I-2B of the Grand Parkway in Montgomery, Harris, Liberty and Chambers Counties, and for the portion of Segment I-2A from Fisher Road to FM 1405 in Chambers County.

In Minute Order 116331, dated September 22, 2022, the commission acknowledged that the department has reported to the commission that the toll rate escalation percentage, calculated in accordance with the established indices in effect as of October 1, 2022, as required by the Toll Rate Escalation Policy, is 9.76%. Also in Minute Order 116331, the commission modified the reported toll rate escalation percentage to be 0.00% and ordered that the resulting Toll Rate Schedule for the Grand Parkway System shall be implemented by the executive director on January 1, 2023, contingent upon, and effective upon, the receipt of, and provision of, all necessary notices, consents, certifications, amendments or waivers relating to, and including, but not limited to, (1) any necessary amendment or waiver of terms and conditions in the MVWA; (2) any necessary notices or consents in connection with the TIFIA Loan Agreement; and (3) any necessary amendment of the Toll Rate Escalation Policy to allow the commission to modify the toll rate escalation percentage to 0.00% without violating the Toll Rate Agreement provision that requires the commission to comply with its Toll Rate Escalation Policy. Should any of the above conditions fail to be satisfied prior to January 1, 2023, the commission's approvals, in Minute Order 116331, of the modified toll rate escalation percentage of 0.00% and the resulting Toll Rate Schedule as shown in Exhibit A of Minute Order 116331 shall not become effective, and the toll rate escalation percentage of 9.76% shall be applied to the existing toll rates in accordance with the Commission's Toll Rate Escalation Policy, and the resulting Toll Rate Schedule attached to Minute Order 116331 as Exhibit B shall become effective on January 1, 2023.

The commission has determined that it should further modify the toll rate escalation percentage for calendar year 2023 to be 2.20%, which will result in toll rates,

set forth in the Toll Rate Schedule attached hereto as Exhibit A, that will permit the commission to comply with its rate covenant in the Toll Rate Agreement, contingent upon and effective upon the receipt of, and provision of, all necessary notices, consents, certifications, amendments or waivers relating to, and including, but not limited to, (1) any necessary amendment or waiver of terms and conditions in the MVWA; and (2) any necessary notices or consents in connection with the TIFIA Loan Agreement.

The MVWA contains terms and conditions which state that the methodology to determine the annual adjustment of the toll rates for the Grand Parkway Project shall provide for an annual adjustment no less than the annual adjustment provided in Section II(A) of the Harris County Tolling Policy attached to the MVWA, which provides for an annual adjustment of the greater of (a) 2%, or (b) the consumer price index (CPI) that correlates to the Harris County economy. The commission finds it necessary to condition the effectiveness of its modification of the toll rate escalation percentage and resulting toll rate schedule on any necessary amendment or waiver of terms and conditions in the MVWA.

Pursuant to the Master Trust Agreement, the GPTC has issued toll revenue obligations, including the execution of a United States Department of Transportation TIFIA Loan Agreement for the Grand Parkway Project (TIFIA – 20211015A), dated as of August 19, 2021 (TIFIA Loan Agreement). The TIFIA Loan Agreement requires the GPTC to obtain TIFIA's consent to execute or amend certain agreements, including the MVWA. The commission finds it necessary to condition the effectiveness of its modification of the toll rate escalation percentage on the receipt of, and provision of, any necessary notices or consents in connection with the TIFIA Loan Agreement.

In order to allow the commission to further modify the reported toll rate escalation percentage for 2023 downward from 9.76% to 2.20%, the commission finds that an amendment of its Toll Rate Escalation Policy is needed, to delete the phrase "...for purposes of meeting necessary covenants referred to below" in the following sentence: "The percentage increase in the toll rates shall be effective automatically on January 1 of the next calendar year and effective for travel on (a) toll segments then forming elements of the Grand Parkway System (the "System"), initially the tolled portion of Segment D in Harris County, and Segments E, F-1, F-2 and G of the Grand Parkway, and (b) Segment I-2, unless the Commission affirmatively elects prior to January 1 to modify the Toll Rate Escalation Percentage for purposes of meeting necessary covenants referred to below."

Under the Toll Rate Agreement, prior to adopting any change in the Toll Rate Schedule, the commission shall have obtained and filed with the GPTC and the trustee a certificate by the Traffic Consultant stating, in its opinion, either: (A) that if such proposed Toll Rate Schedule had been in effect during the preceding Fiscal Year, it would not have caused a decrease in the Senior Net Revenues for such preceding Fiscal Year; or (B) that the adoption of such proposed toll rate schedule will not materially adversely affect the ability of the commission to comply with its covenants in Section 1.1(b) of the Toll Rate Agreement. The commission has received such certification from the Traffic Consultant and filed it with the GPTC and the trustee, in compliance with the Toll Rate Agreement.

IT IS THEREFORE ORDERED by the commission that the modified toll rate escalation percentage of 0.00% for the Grand Parkway System, as modified by the commission in Minute Order 116331, is conditionally modified to be 2.20%, and the Toll Rate Schedule, attached hereto as Exhibit A, is conditionally adopted, contingent upon and effective upon the receipt of, and provision of, all necessary notices, consents, certifications, amendments or waivers relating to, and including, but not limited to the following:

1. any necessary amendment or waiver of terms and conditions in the MVWA; and
2. any necessary notices or consents in connection with the TIFIA Loan Agreement;

Should any of the above conditions fail to be satisfied by October 1, 2023, the commission's conditional approval of the modified toll rate escalation percentage of 2.20% and the commission's conditional adoption of the Toll Rate Schedule attached hereto as Exhibit A shall not become effective, and the Toll Rate Schedule as shown in Exhibit A shall not be implemented during calendar year 2023.

Should all of the above conditions be satisfied on or before October 1, 2023, the commission's approval of the modified toll rate escalation percentage of 2.20% and the commission's adoption of the Toll Rate Schedule attached hereto as Exhibit A shall become effective for the remainder of 2023 as of the date that all of the above conditions are satisfied. The executive director shall implement the Toll Rate Schedule for the Grand Parkway System, attached hereto as Exhibit A, as expeditiously as practicable upon determining that all of the above conditions have been satisfied.

IT IS FURTHER ORDERED by the commission that the amendment to the Toll Rate Escalation Policy described herein is approved, and the amendment is reflected in the Toll Escalation Policy attached hereto as Exhibit B.

Note: Exhibits A and B are on file with the commission chief clerk.

Item 9. Purchase of easements adjoining Safety Rest Areas

Various Counties - Consider authorizing the executive director to negotiate and acquire by purchase sanitary control easements for the possible use of, or in connection with, four existing safety rest area facilities, located in Live Oak, Sutton, and Culberson Counties, before environmental clearance by the appropriate federal or state authority has been received by the department for the acquisition. (MO)

This item was presented by Right of Way Division Director Kyle Madsen. Commissioner New made a motion, which was seconded by Commissioner Vaughn, and the commission approved the following minute order by a vote of 4 - 0.

116383
ROW

The Texas Department of Transportation (department) owns and maintains safety rest areas in Culberson County on US 62, referred to as Culberson County Safety Rest Area, in Live Oak County on I-37, referred to, respectively, as Live Oak County Northbound Safety Rest Area and Live Oak County Southbound Safety Rest Area, and in Sutton County on I-10, referred to as Sutton County Westbound Rest Area.

An investigation of these safety rest areas indicates a need to acquire sanitary control easements from the adjacent properties in order to comply with the Texas Commission on Environmental Quality's (TCEQ) regulations contained in 30 TAC 309.13(e)(3).

Transportation Code, §201.103 empowers the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §§203.051 and 203.052 authorize the commission to acquire an interest in real property that the commission determines is necessary or convenient to a state highway project, including property necessary or convenient to protect a state highway project, to maintain a roadside park, or to accomplish any other purpose related to the project location, construction, improvement, maintenance, beautification, preservation, or operation.

Transportation Code, §202.112 authorizes the commission to acquire real property or an interest in real property for possible use in, or in connection with, a transportation facility before a final decision has been made as to whether the transportation facility will be located on that property or environmental clearance has been issued for the transportation facility by the appropriate federal or state authority. That section prohibits the commission from using condemnation to make an advance acquisition.

The commission finds that the acquisition of sanitary control easements is necessary for use in connection with the safety rest areas described in this minute order.

IT IS THEREFORE ORDERED that the executive director is authorized to proceed with the negotiation and acquisition of sanitary control easements related to the safety rest areas described in this minute order in Culberson, Live Oak, and Sutton counties in advance of environmental clearance, including the authority to expend funds reasonably necessary to and for that activity, subject to the policies of the department and all applicable federal and state laws governing the acquisition of real property.

ITEM 10. Eminent Domain Proceedings

Various Counties - Consider the authorization of the filing of condemnation proceedings to acquire real property by eminent domain for non-controlled and controlled access highways (MO)

This item was presented by Right of Way Division Director Kyle Madsen. The commission heard public comment from Katy Murdza speaking on the expansion of I-10 and I-45 both in Houston; and Molly Cook who thanked the commission for not demolishing the final two buildings of the Lofts at the Ballpark in Houston. Commissioner Vaughn made a motion that the Texas Transportation Commission authorize the Texas Department of Transportation to use the power of eminent domain to acquire the properties described in the minute order set forth in the agenda for the current month for construction, reconstruction, maintenance, widening, straightening, or extending the highway facilities listed in the minute order as a part of the state highway system, and that the first record vote applies to all units of property to be condemned. The motion was seconded by Commissioner Ryan and the following minute order was approved by Chairman Bugg, Commissioner Ryan, Commissioner New, and Commissioner Vaughn (a vote of 4 - 0).

116384
ROW

To facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, the Texas Transportation Commission (commission) finds that public necessity requires the laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating of the highway facilities listed below as a part of the State Highway System (highway system).

As provided for by Transportation Code, Chapter 203, Subchapter D, including Sections 203.051, 203.052, and 203.054, the commission finds and determines that each of the parcels of land listed below, and more particularly described in the attached Exhibits (parcels), are necessary or convenient as a part of the highway system to be constructed, reconstructed, maintained, widened, straightened, or extended (constructed or improved) and it is necessary to acquire fee simple title in the parcels or such lesser property interests as set forth in the attached Exhibits.

The commission finds and determines that the highway facilities to be constructed or improved on the parcels identified and listed below under "CONTROLLED ACCESS" are designated as a Controlled-Access Highway in accordance with Transportation Code, Section 203.031; and where there is adjoining real property remaining after acquisition of

a parcel, the roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits A-D. Where there is adjoining real property remaining after acquisition of a parcel with respect to the highway facilities to be constructed or improved on the parcels identified as listed below under "NON-CONTROLLED ACCESS," roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits 1-27 in accordance with Transportation Code, Sections 203.002 and 203.003.

The commission finds and determines that condemnation of the parcels is required.

IT IS THEREFORE ORDERED that the initiation of condemnation proceedings for the parcels is adopted and authorized by a single order for the parcels, and this first vote by the commission applies to all of the parcels.

IT IS FURTHER ORDERED that the executive director is hereby authorized to proceed to condemnation on the parcels and directed to transmit or cause to be transmitted this request of the commission to the Office of the Attorney General to file or cause to be filed against all owners, lienholders, and any owners of any other interests in the parcels, proceedings in condemnation to acquire in the name of and on behalf of the state, fee simple title to each parcel or such lesser estates or property interests as are more fully described in each of the attached Exhibits, save and excepting oil, gas, and sulfur, as provided by law, as follows:

CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Hunt	IH 30	C	0009-13-190	P00065649
Hunt	IH 30	D	0009-13-190	P00065650
Jefferson	IH 10	B	0028-13-138	3
Randall	IH 27	A	0168-09-188	23,23E

NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Bexar	FM 1560	19	2230-01-023	23
Bexar	FM 1560	11	2230-01-024	26
Bexar	FM 1560	22	2230-01-024	27
Bexar	FM 1560	6	2230-01-024	59
Bexar	FM 1560	23	2230-01-024	90
Bexar	FM 1560	7	2230-01-024	126
Cochran	SH 125	9	0461-04-028	1
Cochran	SH 125	8	0461-04-028	2
Denton	FM 1515	10	1951-01-012	P00055445
Fayette	US 77	18	0211-06-066	21
Fayette	US 77	16	0211-06-066	75
Fayette	US 77	17	0211-06-066	77
Fort Bend	FM 723	4	0188-09-052	105
Fort Bend	FM 723	12	0188-09-052	112
Fort Bend	FM 723	13	0188-09-052	118
Fort Bend	FM 723	14	0188-09-052	124
Fort Bend	FM 723	15	0188-09-052	126
Galveston	FM 646	25	3049-01-032	102
Galveston	FM 646	24	3049-01-032	103

NON-CONTROLLED ACCESS (continued)

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Galveston	FM 646	26	3049-01-032	118
Gregg	SH 42	27	0545-04-053	P00057843
Hidalgo	FM 1925	2	1803-01-102	P00060069
Hidalgo	FM 1925	1	1803-01-102	P00060072
Hidalgo	FM 1925	3	1803-01-102	P00060081
Jackson	FM 1593	5	1090-04-019	4
Starr	SL 195	20	3632-01-004	133
Starr	SL 195	21	3632-01-004	135

Note: Exhibits A - D and 1 - 27 are on file with the commission chief clerk.

ITEM 11. Routine Minute Orders and Reports

This item was presented by Executive Director Marc Williams. Commissioner Ryan made a motion, which was seconded by Commissioner Vaughn, and the commission approved the following minute orders by a vote of 4 - 0.

a. Donations to the Department

Various Districts - Consider the acknowledgment of donations with a value of \$500 or more, including donations of money, materials, services, or real property, that are made to the department for the purpose of assisting the department in carrying out its functions and duties or for improving access to or from a highway on the state highway system (see attached itemized list) (MO)

116385
CSD

Transportation Code, §201.206, authorizes the Texas Department of Transportation (department) to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 90th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 authorizes the executive director to approve acceptance of donations to the department and requires that donations valued at \$500 or more must be acknowledged by order of the commission not later than the 90th day after the date the donation is accepted by the department. It further prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the executive director may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if the executive director determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access

to or from the owner's land. Exhibit A lists donations resulting from a contract executed by the department under Transportation Code, §223.049 and other donations accepted under Transportation Code, §201.206.

The department also acquires by donation land used for highway improvement projects. Exhibit B lists property donated to the department for that purpose. The department has determined that acceptance of these donations is in the best interest and welfare of the traveling public and will provide a significant public benefit.

The executive director has determined that the donations identified in the attached exhibits comply with the applicable provisions of 43 TAC §§1.500-1.506, 43 TAC §12.353, Government Code, Chapter 575 and Transportation Code, §201.206, §223.049 and §224.001, and has approved acceptance of those donations. All required donation agreements have been executed under 43 TAC §1.504 and §1.506, as applicable.

IT IS THEREFORE ORDERED by the commission that it acknowledges the acceptance of the donations identified in the attached Exhibits A and B.

DONATIONS TO THE DEPARTMENT

<u>DONOR</u>	<u>DD</u>	<u>COUNTY</u>	<u>DONATION DESCRIPTION</u>
Areté Thomas Ranch Holdings, LLC	AUS	Travis	Design and funds sufficient to cover the state's cost for construction of pavement widening to accommodate right turn lanes at future entrances to Thomas Ranch subdivision on SH 71 in Travis County.
FR Beeson, LLC	HOU	Harris	Design and construction of two left turn lanes from westbound FM 529 into the Anniston development in Katy.
NT Real Estate, LLC	SAT	Medina	Design and construction of pavement widening and striping for the proposed right turn lane and double left turn lane on FM 471 and the proposed right turn lane on I-35 for the commercial truck stop development in Medina County.
Pan Hills Development LLC	AUS	Williamson	Funds towards the state's cost of construction a left turn lane and shoulder on RM 1431 at West Reed Park Road east connection in Jonestown.

DONATIONS TO THE DEPARTMENT (continued)

<u>DONOR</u>	<u>DD</u>	<u>COUNTY</u>	<u>DONATION DESCRIPTION</u>
Post Oak Clean Green, Inc. by merger from WCN Acquisition Sub January 2017, Inc.	SAT	Guadalupe	Donation of 5.273 acres of land on FM 1150. The property being donated will be utilized to construct a right turn lane and a left turn lane on FM 1150, feeding into the main entrance of the Post Oak Clean Green, Inc. landfill.

Note: Exhibits A and B are on file with the commission chief clerk.

b. Reports**(1) Compliance Division report**

Note: Confidential report to commission.

(2) Quarterly Investment Report for all of the funds invested at the direction of the commission (Report)

Note: The Report will remain on file with the commission chief clerk for two years.

(3) Border West Expressway Toll Rate Escalation**El Paso County - Report of the toll rate escalation percentage and escalated toll rates for the Border West Expressway Project (formerly known as the Loop 375 Border Highway West Extension Project) (Report)**

Note: The Report will remain on file with the commission chief clerk for two years.

c. Transportation Planning**(1) Various Counties - Consider concurrence with the Regional Transportation Council of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority in accordance with the SH 121 Toll Project Agreement (MO)**

116386
TPP

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA) and the surplus revenue of a toll project or system.

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which the project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may assign the responsibility for allocating money in a subaccount to the metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to

develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (SH 121 payments).

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the Texas Transportation Commission (commission) determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the commission approved, and authorized the department's executive director to enter into, a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 121 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 121 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009, the commission clarified that commission concurrence in projects selected by the RTC to be financed with surplus toll revenue and CDA concession payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. The minute order requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the NCTCOG Metropolitan Planning Area (MPA) boundary funded with the SH 121 payments. In previous minute orders, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the NCTCOG MPA boundary to be funded with the SH 121 payments, as shown in Exhibit A. The RTC has also identified changes to the list of previously-approved projects, which are shown in Exhibit B. A summary of funds associated with the SH 121 work program is set forth in Exhibit C, which is included for informational purposes only.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects shown in Exhibit A that have been selected by the RTC to be funded with the SH 121 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air-quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 121 payments. The commission also concurs with the changes to the list of previously-approved projects as shown in Exhibit B.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right of way acquisition, preliminary engineering, and construction engineering. The costs of department staff incurred in the development, procurement, and construction of on-system projects to be funded from the SH 121 payments subaccounts will not themselves be funded from the SH 121 payments subaccounts. Funds from the SH 121 payments subaccounts that were used to reimburse the costs of department staff will be returned to the subaccounts without interest at least quarterly.

Note: Exhibits A, B and C are on file with the commission chief clerk.

(2) Various Counties - Consider concurrence with the Regional Transportation Council of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority in accordance with the SH 161 Toll Project Agreement (MO)

116387
TPP

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA) and the surplus revenue of a toll project or system.

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which the project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may assign the responsibility for allocating money in a subaccount to the metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County (SH 161 payments).

Pursuant to Transportation Code, §228.012, the SH 161 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 161 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the Texas Transportation Commission (commission) determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the commission approved, and authorized the department's executive director to enter into, a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 161 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 161 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of

surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009, the commission clarified that commission concurrence in projects selected by the RTC to be financed with surplus toll revenue and CDA concession payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. The minute order requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the NCTCOG Metropolitan Planning Area (MPA) boundary funded with the SH 161 payments. In previous minute orders, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the NCTCOG MPA boundary to be funded with the SH 161 payments, as shown in Exhibit A. The RTC has also identified changes to the list of previously-approved projects, which are shown in Exhibit B. A summary of funds associated with the SH 161 work program is set forth in Exhibit C, which is included for informational purposes only.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the project shown in Exhibit A that has been selected by the RTC to be funded with the SH 161 payments, and approves the placement of this project in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the project shown in Exhibit A is a transportation or highway project, or air-quality project that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 161 payments. The commission also concurs with the changes to the list of previously-approved projects shown in Exhibit B.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the project for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right-of-way acquisition, preliminary engineering, and construction engineering. The costs of department staff incurred in the development, procurement, and construction of on-system projects to be funded from the SH 161 payments subaccounts will not themselves be funded from the SH 161 payments subaccounts. Funds from the SH 161 payments subaccounts that were used to reimburse the costs of department staff will be returned to the subaccounts without interest at least quarterly.

Note: Exhibits A, B and C are on file with the commission chief clerk.

d. Speed Zones

Various Counties - Consider the establishment or alteration of regulatory and construction speed zones on various sections of highways in the state (MO)

116388
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that the speed limits on the segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by the city which has the authority to set the speed limits on these sections of the highway.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portions of minute orders establishing speed zones shown on the attached Exhibit C are canceled.

Note: Exhibits A, B and C are on file with the commission chief clerk.

ITEM 12. Executive Session Pursuant to Government Code, Chapter 551
Section 551.071 - Consultation with and advice from legal counsel regarding any item on this agenda, pending or contemplated litigation, or other legal matters.

The commission did not meet in executive session.

OPEN COMMENT PERIOD - At the conclusion of all other agenda items, the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the department. No action will be taken. Each speaker will be allowed a maximum of three minutes. Speakers must be signed up prior to the beginning of the open comment period.

The commission received no further comments.

Commissioner Ryan motioned adjournment and Commissioner New seconded the motion. The commission voted 4 - 0 to adjourn. The regular meeting of the Texas Transportation Commission was adjourned at 12:03 p.m.

APPROVED by the Texas Transportation Commission on December 13, 2022:



J. Bruce Bugg, Jr., Chairman
Texas Transportation Commission

I hereby certify that the above and foregoing pages constitute the full, true, and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on November 16, 2022, in Austin, Texas.



Nicole Lawson, Commission Chief Clerk
Texas Department of Transportation

