TxDOT Laredo Planning IAC (Contract No 22-4XXIA003)

WORKSHOP ON REGIONAL MOBILITY AUTHORITY AND TRANSPORTATION REINVESTMENT ZONES: CONCEPTS AND APPLICATIONS

PARTICIPANTS' BINDER

Prepared for
Laredo District
Texas Department of Transportation

Assignment 1.1 Develop and Deliver a Workshop on Regional Mobility Authority and Transportation Reinvestment Zone

Prepared by
Texas A&M Transportation Institute
The Texas A&M University System
College Station, Texas 77843-3135

2:00-5:00 PM, Monday, April 14, 2014
TxDOT Laredo District Office, 1817 Bob Bullock Loop, Laredo, TX 78043

TABLE OF CONTENTS

Page

Workshop Agenda **1**

Workshop Presentation **3**

RMA Flowchart **23**

RMA Enabling Legislation and Rules **25**

Chapter 370, Transportation Code: Regional Mobility Authorities 25
Tex. S.B. 1730, 83rd Leg., 1st C.S. (2013) 81
Tex. S.B. 1747, 83rd Leg., 1st C.S. (2013) 87
Tex. H.B. 1198, 83rd Leg., 1st C.S. (2013) 93
Tex. S.B. 1489, 83rd Leg., R.S. (2013) 95
Chapter 26, Texas Administrative Code: Regional Mobility Authorities 99

RMA Sample Document Listing **121**

Alamo Regional Mobility Authority Documents 121
Cameron County Regional Mobility Authority Documents 122
Camino Real Regional Mobility Authority Documents 122
Central Texas Regional Mobility Authority Documents 123
Grayson County Regional Mobility Authority Documents 124
Hidalgo County Regional Mobility Authority Documents 124
North East Texas Regional Mobility Authority Documents 125
Sulphur River Regional Mobility Authority Documents 126

RMA Sample Documents **127**

Bylaws of the North East Texas Regional Mobility Authority 127
Policies and Procedures Governing Procurements of Goods and Services by the North East Texas Regional Mobility Authority 141
Policies and Procedures for Environmental Review of the North East Texas Regional Mobility Authority Projects 181
Mobility Authority Policy Code of Central Texas Regional Mobility Authority 195
Central Texas Regional Mobility Authority Conflict of Interest Policy for Financial Team Members 349
Conflict of Interest Policy for Financial Team Members – Identification of Key Financial Personnel 351
Local Government Officer Conflicts Disclosure Form 353
Sample Disclosure Statement Form 365
Camino Real Regional Mobility Authority Ethics and Compliance Policy 367
Camino Real Regional Mobility Authority 2010 Strategic Plan 411

TRZ Case Examples **419**

TxDOT RMA Guidbook ..... **Binder Pocket**

Workshop Participant CD-ROM ..... **Binder Pocket**

Regional Mobility Authority (RMA) and Transportation Reinvestment Zone (TRZ) Basic Concepts and Applications

2:00-5:00 PM, Monday, April 14, 2014.
TxDOT Laredo District Office, 1817 Bob Bullock Loop, Laredo, Texas

Introduction

On February 27, 2014, The Texas Transportation Commission approved a Regional Mobility Authority (RMA) for Webb County and the City of Laredo. Once operational, it will act as a local independent transportation entity with responsibilities to finance, acquire, design, construct, operate, maintain, expand or extend eligible transportation projects in the area. TxDOT is also analyzing the feasibility of using transportation reinvestment zones (TRZs) as a mechanism to provide needed funds for transportation projects. This three-hour workshop will provide an opportunity to learn about basic concepts about RMAs and TRZs and how to use these tools effectively to address transportation challenges in Webb County-Laredo mobility region.

Learning Objectives

- Basic RMA concepts
- Basic TRZ concepts
- Implementing TRZs in the context of a RMA

Agenda

2:00 – 2:10	Welcome, introductions, and workshop objectives
2:10 – 3:00	RMA: Next steps
3:00 – 3:50	TRZs: Steps to implementation
3:50 – 4:00	Break
4:00 – 4:45	Implementing TRZs in the context of an RMA
4:45 – 5:00	Discussion and wrap up

Speakers

Rafael Aldrete, Ph.D., Senior Research Scientist, Texas A & M Transportation Institute
(915) 532-3759 Ext. 14101, r-aldrete@tamu.edu

Tina Geiselbrecht, Associate Research Scientist, Texas A & M Transportation Institute
(512) 407-1116 Ext. 12116, t-geiselbrecht@tamu.edu

Regional Mobility Authority and Transportation Reinvestment Zones: Concepts and Applications

2:00-5:00 PM, April 14, 2014

TxDOT Laredo District Office

Introduction

- Background
  - Webb County-Laredo RMA approved on 02/27/2014
  - Feasibility of TRZs being analyzed
- Workshop objectives
  - Focus on what to do next
  - Basic RMA and TRZ concepts and applications
  - Implementing TRZs in the context of an RMA

Agenda

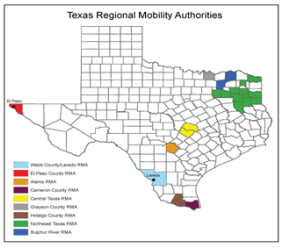
- 2:10 – 3:00 RMA: Next steps
- 3:00 – 3:50 TRZs: Steps for implementation
- 3:50 – 4:00 Break
- 4:00 – 4:45 Implementing TRZs in the context of a RMA
- 4:45 – 5:00 Final discussion and wrap up

What's in the Notebook

- TxDOT RMA Guidebook
- RMA "Getting Started" Flowchart
- RMA Enabling Legislation and Related Statutes
- RMA Sample Document Location Listing
- RMA Sample Documents
- TRZ Case Examples
- Workshop Participant CD-ROM

RMA CONCEPTS AND APPLICATIONS

RMAs in Texas



The Basics – Powers of an RMA

- Develop transportation projects
- Issue revenue bonds
- Establish tolls
- Acquire property for transportation projects
- Use surplus revenue to finance other local projects
- Enter into Comprehensive Development Agreements

The Basics – Powers of an RMA

- Apply for federal highway and rail funds
- Enter into contracts with other governmental entities and Mexico
- Apply for state infrastructure bank loans
- Maintain a feasibility fund
- Set speed and weight limits
- Enter into agreements with other governmental entities on behalf of that entity

Where Does the Money Come From?

- To support operations, revenue can be generated from:
  - Tolls, fares or other charges from transportation projects
  - Proceeds from the sale or lease of a transportation project
  - Proceeds from the sale or lease of property adjoining a transportation project

Responsibilities of the Texas Transportation Commission

- Authorize creation of the RMA
- Approve projects connecting to the state highway system or TxDOT rail facility
- Establish design and construction standards
- Establish minimum auditing and reporting requirements and ethical standards
- Authorize agreements with Mexico
- Approve applications for federal highway and rail funds

What Can an RMA Do?

- Tolled and non-tolled roadways
- Passenger and freight rail
- Ferries
- Airports
- Transit systems
- Bridges

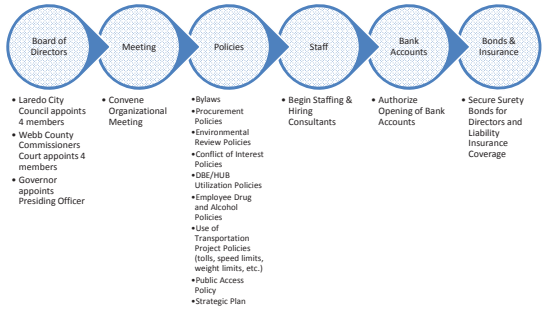
What Can an RMA Do?

- Pedestrian or bicycle facilities
- Intermodal hubs
- Border crossing inspection stations
- Conveyor belt for freight
- Air quality improvement initiatives
- Public utility facilities
- Parking structures or areas

So You've Got an RMA – Now What?

- Appoint a board of directors
  - Four members appointed by Laredo City Council
  - Four members appointed by Webb County Commissioners Court
  - Presiding officer appointed by the governor
  - Members serve two year terms and may be re-appointed at the discretion of the appointing entity

Next Steps



Staffing

- Executive director
- General engineering consultant
- Legal counsel
- Financial advisors
- Accountants
- Investment bankers/underwriters
- CPAs/auditors

Successful Strategies

- Partnerships
  - Local, regional and national partnerships, both public and private, help to strengthen regional cohesiveness and support regional needs.
- Non-traditional funding & financial stewardship
  - Understanding and considering non-traditional funding options for transportation is crucial since traditional state transportation funding is proving unreliable.

Successful Strategies

- Transparency
  - It is especially important to the credibility of powerful, but not elected, governing entities, to operate with as much transparency as possible by creating, making available, and reporting on clear, thorough policies.
- Project diversity
  - Supporting different types of infrastructure projects can not only provide needed capacity but also help increase multimodal connectivity and safety in a region.

Agenda

- 2:10 – 3:00 RMA: Next steps
- **3:00 – 3:50 TRZs: Steps for implementation**
- 3:50 – 4:00 Break
- 4:00 – 4:45 Implementing TRZs in the context of a RMA
- 4:45 – 5:00 Final discussion and wrap up

TRZ CONCEPTS AND APPLICATIONS

Outline

- TRZ Concepts:
  - Value Capture for transportation funding
  - Texas Transportation Reinvestment Zones (TRZ)
  - TRZ Implementation Steps
  - TRZ Analysis
- TRZ Case Examples

Agenda

- TRZ Concepts
  - Value Capture for Transportation Funding
  - Texas Transportation Reinvestment Zones (TRZ)
  - TRZ Implementation Steps
  - TRZ Analysis
- TRZ Case Examples

Value Capture leverages real estate potential of infrastructure

- Value Capture (VC) is an innovative financing method that leverages the real estate potential brought by infrastructure improvements
- Through VC the public sector can recover a portion of increments in real property value attributed to public improvements rather than landowner actions

Experience using VC for roadway financing in the US is sparse

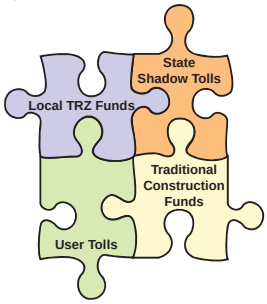
- VC is widely used to finance transit investments in the United States
- However, application to roadways is sparse:
  - Developer impact fees
  - Special Assessment Districts

Experience with VC

- Texas : Tax increment reinvestment zones (TIRZ): various cities
- Developer impact and expansion fees, Colorado (E470); Transportation Corridor Agency, California
- Interchange: Florida 2007, Special Assessment District (SAD)
- Minnesota and Arizona (SAD for roadways)

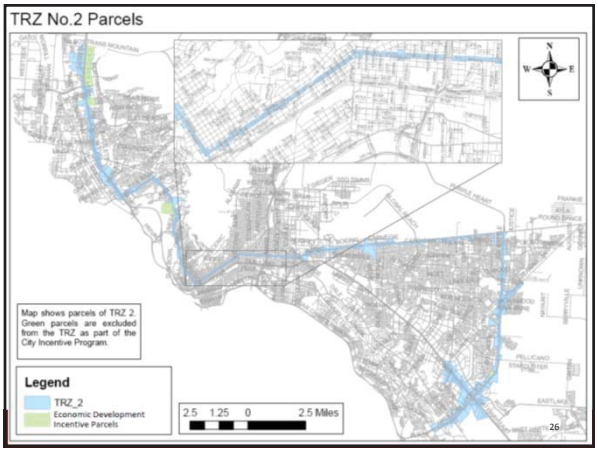
The Texas TRZ, one of the first U.S. roadway-specific applications of VC

- Legislation passed in 2007 (amended in 2011 and 2013) allows local governments to set up Transportation Reinvestment Zones (TRZ)
- TRZs are a VC mechanism designed specifically to fund transportation infrastructure
  - Allow local governments to leverage multiple funding sources
  - Local entities sell bonds secured by incremental tax revenues

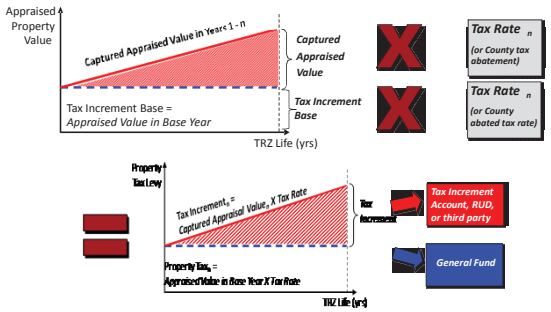


TRZ Legal Framework—the Basics

- A Texas TRZ definition:
  - A designated contiguous zone around a planned transportation improvement
  - Necessary institutional/legal arrangement to facilitate VC via the property tax mechanism
  - Two types of TRZs allowed under the law: Municipal and County
- Legislation first approved in 2007 -amended in 2011 & 2013
  - Senate Bill (SB) 1266 (2007)– authorizes the creation of County and Municipal TRZs
  - House Bill (HB) 563 (2011) and SB 1110 (2013)– introduced significant changes that increased implementation flexibility
  - SB 971 (2013) – authorizes Port Authority TRZs, and SB 1746 (2013) authorizes County Energy TRZs



Value Capture Mechanism in a TRZ: How it works



Legislative Changes Introduced in 2011 Facilitated Implementation

	Original Legislation Provisions SB 1266 (passed in 2007)	New Legislation Provisions HB 563 (passed in 2011)
Applicable to any TRZ type	• Only real property tax increments • Required a pass-through agreement with TxDOT • Only roadways projects eligible • TRZ boundaries could not be modified after designation	• Real property tax increments and optionally, sales tax increments • Pass-through agreement is only required in cases involving sales tax increments • Any transportation project eligible, including aesthetic & transit. • TRZ boundaries can be expanded but not reduced, after designation
Municipal TRZs	• Required 100% of annual tax increment to be set aside	• % of annual tax increment to be set aside is flexible (e.g. 20%, 50%)
County TRZs	• Tax increment to be set aside only through a tax abatement and the creation of a Road Utility District (RUD)	• Tax increment can be set aside through a tax abatement or other form of tax relief • County can pledge all or part of the increment to a public or private entity to pay for project, or create a RUD

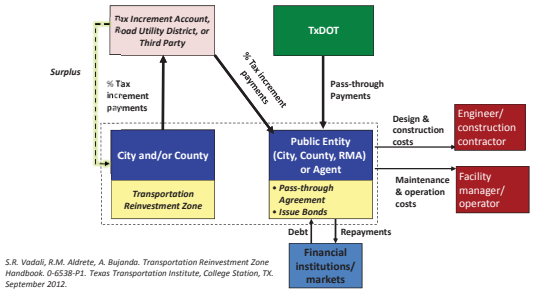
Legislative Changes Introduced in 2013 Expand TRZ Options

- SB 1110 – Municipal/County TRZs
  - Allows creating a TRZ in an adjacent jurisdiction to support a project located outside of TRZ boundaries
  - De-couple sales tax TRZs from pass-through program
  - Clarify that a TRZ may be formed for "one or more" projects" within a zone
- SB 971 – Port Authority TRZs
  - Authorizes port authorities and navigation districts to create TRZs
  - TRZ area must be unproductive/underdeveloped
  - TRZ should "improve the security, movement, and intermodal transportation of cargo or passengers in commerce and trade"

Legislative Changes Introduced in 2013 Expand TRZ Options

- SB 1747 and HB 2300– County Energy TRZs
  - Creates Transportation Infrastructure Fund (TIF) administered by TxDOT ($225 million)
    - Grants for projects in areas affected by oil and gas production;
  - Eligibility to receive TIF grant contingent on:
    - Establishing a County Energy TRZ (CETRZ)
    - Creating a CETRZ advisory board
    - County providing matching fund
  - Allocation is formula-based
    - Well completions, weight tolerance limits, oil and gas production taxes, oil and gas waste
  - 100% of tax increment must be pledged and cannot be bonded against – must be transferred to Road Utility Dist.

Flow of Funds in a TRZ

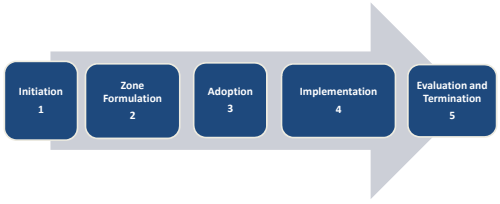


S.R. Vadali, R.M. Aldrete, A. Bujanda. Transportation Reinvestment Zone Handbook. 0-6538-P1. Texas Transportation Institute, College Station, TX. September 2012.

TRZs vs. Tax Increment Financing

- TRZs are similar to Tax-Increment-Finance (TIF)
- What Makes TRZ's Different from TIF?
  - TRZs cannot be established by petition, while TIF can be established by landowners
  - Revenues not portable across TRZs, but often portable across TIFs in same jurisdiction

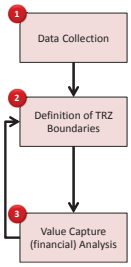
Sequential Implementation Process for City/County TRZ's



1 - Initiation Stage

- Project identification and need
  - Specific benefit from project(s)-economic
  - Area eligibility
  - Preliminary feasibility analysis
- Developing stakeholder relations and champions

3-Step Analysis Framework



- Central Appraisal District – Appraisal and Geographic Data (cadastral base)
- State Comptroller – # of parcels and taxable values
- Texas A&M Real Estate Center

- Dataset analysis on GIS
- Hypothetical TRZ scenarios based on parcel distance from centerline of roadway: 1-mile, ½ mile, and ¼ mile
- Each property is indivisible, so properties with a centroid inside the buffers are included in TRZ

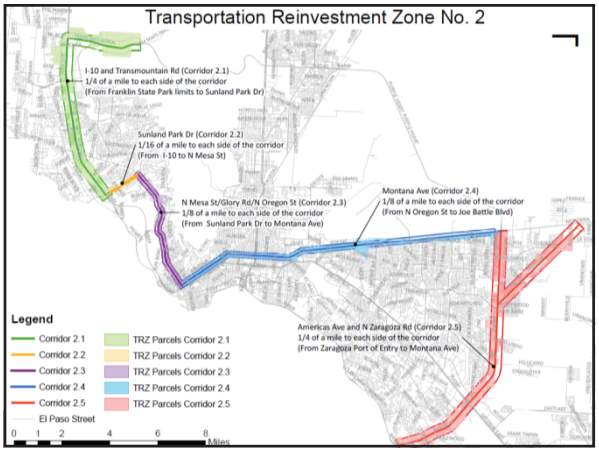
- Develop scenarios
- Forecast value and development trends for five categories of real property: 1.Commercial, 2.Industrial, 3.Residential, 4.Agricultural and 5.Totally Exempt
- Estimate value capture cash flows

2. Formulation Stage

- Define boundaries, zones, parcels
- Establish benchmark year for tax increment collection
- 60 day notice
- Refine feasibility analysis

TRZ Boundaries

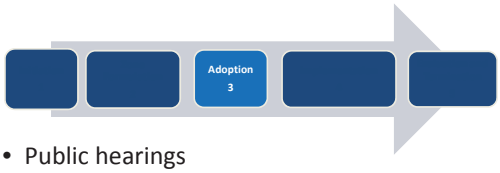
- Must be contiguous
- Unproductive/underdeveloped region
- Practical considerations drive boundaries but not beyond 1 mile radii.
  - Political will and revenue
- Boundaries may be established prior to knowing exact project limits.



Steps to Operationalize Increment Capture

1. Establish Base Year and Base Year Appraised Value.
   a. Year the TRZ is established.
   b. Total appraised value of all real property taxable in the TRZ is defined as the base year appraised value (tax increment base).
   c. Total amount subject to sales tax revenues (AST) in the TRZ- if applicable
2. Determine Final Captured Appraised Value and/or Sales Tax Increments.
   a. Captured Appraised real property value.
   b. Captured Sales Tax Increment.
3. Determine Total Tax Increment.
   a. Amount of ad valorem and sales taxes levied and collected by the municipality or County for the year.
   b. Use the appropriate tax rates.
4. Determine Tax-Increment Set Aside
   a. Use % of Tax Increment to determine revenue share (0-100%).
5. Recognize Pre-Existing Value Capture Arrangements.
   a. Reduce revenue that may be payable to pre-existing active value capture agreements in the boundary (through TIF/TIRZ or other value capture arrangements).

3. Adoption Stage

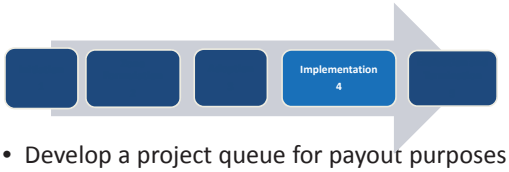


- Public hearings
- Ordinance (Municipal TRZ) Or
- Decree of the County Commissioner's Court (County TRZ)

Final Steps for Implementation

- After
  - (i) analyzing new project costs,
  - (ii) consider joint funding agreements among jurisdictions
  - (iii) decide % of annual revenue dedicated to TRZ account
- Conduct a final revision and assess the impact, if any, on expected revenues
- Finally, extract and document parcels to be included in the approval of the final TRZs—list of parcels for:
  - City Ordinances
  - County Commissioners' Court Orders

4. Implementation



- Develop a project queue for payout purposes if multiple projects
- Financing aspects
- Inter-local agreement (RMA, inter-jurisdictional)

5. Monitor/Evaluation

- Project monitoring and evaluation
- Dissolution of TRZ :
  - December 31 of the year of compliance with contractual requirement OR
  - December 31 of the 10th year after establishment if not used for the purpose

What Makes TRZ's Different from TIF/TIRZ?

- TRZ's cannot be established by petition
- Revenues are not portable across TRZ's

Outline

- TRZ Concepts:
  - Value Capture for transportation funding
  - Texas Transportation Reinvestment Zones (TRZ)
  - TRZ Implementation Steps
  - TRZ Analysis
- TRZ Case Examples

Recent TRZ Case Examples

Location	Project Type	RMA Participation
City of El Paso	•Road projects •Single jurisdiction	Yes
Hidalgo County	•Road project (Hidalgo Loop) •Single jurisdiction	Yes
City of Forney	•Road project •Single jurisdiction	No
El Paso County, Cities of Socorro and Horizon	•Road project •Multiple jurisdictions	Yes
Port of Corpus / Counties of Nueces & San Patricio	•Bridge project •Multiple jurisdictions	No

Case Example Lessons Learned

- Local governments in Texas have successfully used TRZs to fund transportation projects
- Diverse case examples provide a cross-section of TRZ applications
  - Roadway and bridge projects
  - Geographic location
  - Project purpose
- Location, location, location … and project purpose are key considerations
  - Locality-specific factors - land use, development, property values and local tax rates
  - How does the project promote development?

Agenda

- 2:10 – 3:00 RMA: Next steps
- 3:00 – 3:50 TRZs: Steps for implementation
- **3:50 – 4:00 Break**
- 4:00 – 4:45 Implementing TRZs in the context of a RMA
- 4:45 – 5:00 Final discussion and wrap up

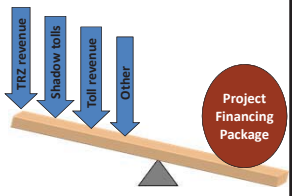
Agenda

- 2:10 – 3:00 RMA: Next steps
- 3:00 – 3:50 TRZs: Steps for implementation
- 3:50 – 4:00 Break
- **4:00 – 4:45 Implementing TRZs in the context of a RMA**
- 4:45 – 5:00 Final discussion and wrap up

IMPLEMENTING TRZS IN THE CONTEXT OF AN RMA

TRZs encourage inter-agency coordination

- Institutional Coordination:
  - Multiple public partners
  - Private sector
  - Project scope
- Financing Coordination:
  - Local entities sell bonds secured by incremental tax revenues
  - Local/state agencies and private sector coordinate financing package



RMAs facilitate coordination and TRZ project implementation

- RMAs provide local agencies with valuable flexibility for project implementation
  - Financial – can issue/acquire own debt (e.g. SIB loans, bonds, etc.), and use multiple sources of funds (e.g. TRZ revenue, tolls, traditional funds))
  - Jurisdictional– can implement projects across jurisdictions and outside their jurisdiction
  - Contractual – can use complex contractual agreements with private contractors/developers (Traditional, Design-Build, P3s, etc.)

RMA Participation Examples

- City of El Paso TRZ – Camino Real RMA
  - Acquired SIB loan secured by City of El Paso TRZ Revenue
  - Multiple sources of funding (TRZ funds, pass-through funds, etc.)
- Hidalgo County TRZ – Hidalgo County RMA
  - Issue/acquire debt secured by County TRZ revenue
- El Paso County, Horizon City and Town of Socorro Multi-jurisdiction TRZs – Camino Real RMA
  - Coordinate project implementation across multiple jurisdictions and outside its own jurisdiction
  - Issue/acquire debt secured by TRZ revenue from all three partner local governments

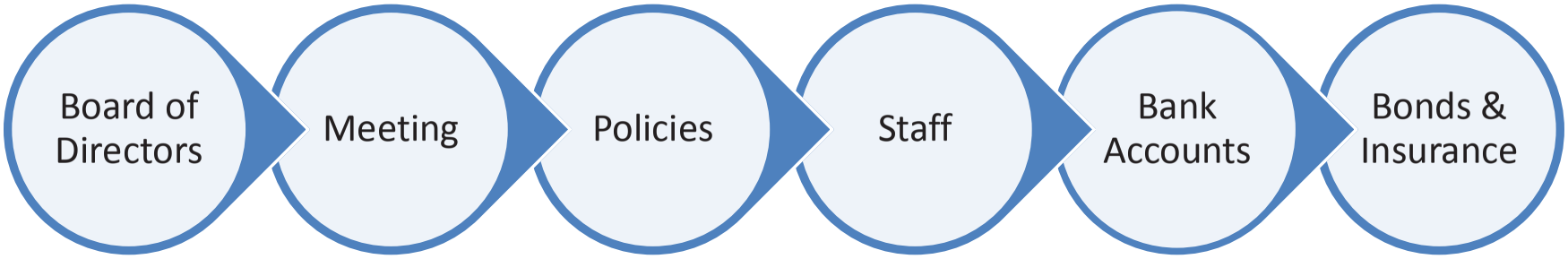
Agenda

- 2:10 – 3:00 RMA: Next steps
- 3:00 – 3:50 TRZs: Steps for implementation
- 3:50 – 4:00 Break
- 4:00 – 4:45 Implementing TRZs in the context of a RMA
- **4:45 – 5:00 Final discussion and wrap up**

Speakers

- Tina Geiselbrecht
  - Associate Research Scientist
  - (512) 407-1116 Ext. 12116, t-geiselbrecht@tamu.edu
- Rafael Aldrete
  - Senior Research Scientist
  - (915) 532-3759 Ext. 14101, r-aldrete@tamu.edu

Organizing Your RMA



- Laredo City Council appoints 4 members
- Webb County Commissioners Court appoints 4 members
- Governor appoints Presiding Officer

- Convene Organizational Meeting

- Bylaws
- Procurement Policies
- Environmental Review Policies
- Conflict of Interest Policies
- DBE/HUB Utilization Policies
- Employee Drug and Alcohol Policies
- Use of Transportation Project Policies (tolls, speed limits, weight limits, etc)
- Public Access Policy
- Strategic Plan

- Begin Staffing & Hiring Consultants

- Authorize Opening of Bank Accounts

- Secure Surety Bonds for Directors and Liability Insurance Coverage

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE G. TURNPIKES AND TOLL PROJECTS

CHAPTER 370. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Regional Mobility Authority Act.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.003. DEFINITIONS. In this chapter:

(1) "Authority" means a regional mobility authority organized under this chapter or under Section 361.003, as that section existed before June 22, 2003.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a bond, certificate, note, or other obligation of an authority authorized by this chapter, another statute, or the Texas Constitution.

(4) "Bond proceeding" includes a bond resolution and a bond indenture authorized by the bond resolution, a credit agreement, loan agreement, or other agreement entered into in connection with the bond or the payments to be made under the agreement, and any other agreement between an authority and another person providing security for the payment of a bond.

(5) "Bond resolution" means an order or resolution of a board authorizing the issuance of a bond.

(6) "Bondholder" means the owner of a bond and includes a trustee acting on behalf of an owner of a bond under the terms of a bond indenture.

(7) "Comprehensive development agreement" means an agreement under Section 370.305.

(8) "Governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, the department, a rail district, a transit authority, a nonprofit corporation, including a transportation corporation, that is created under Chapter 431, or any other public entity or instrumentality.

(9) "Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of this state.

(9-a) "Intermodal hub" means a central location where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.

(10) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

(11) "Revenue" means fares, fees, rents, tolls, and other money received by an authority from the ownership or operation of a transportation project.

(12) "Surplus revenue" means revenue that exceeds:

(A) an authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;

(A-1) an authority's payment obligations under a contract or agreement authorized by this chapter;

(B) coverage requirements of a bond indenture for a transportation project;

(C) costs of operation and maintenance for a transportation project;

(D) cost of repair, expansion, or improvement of a transportation project;

(E) funds allocated for feasibility studies; and

(F) necessary reserves as determined by the authority.

(13) "System" means a transportation project or a combination of transportation projects designated as a system by the board under Section 370.034.

(14) "Transportation project" means:

(A) a turnpike project;

(B) a system;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated with a rail operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(D-1) a bridge;

(E) a ferry;

(F) an airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) a pedestrian or bicycle facility;

(H) an intermodal hub;

(I) an automated conveyor belt for the movement of freight;

(J) a border crossing inspection station, including:

(i) a border crossing inspection station located at or near an international border crossing; and

(ii) a border crossing inspection station located at or near a border crossing from another state of the United States and not more than 50 miles from an international border;

(K) an air quality improvement initiative;

(L) a public utility facility;

(M) a transit system;

(M-1) a parking area, structure, or facility, or a collection device for parking fees;

(N) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact;

(O) improvements in a transportation reinvestment zone designated under Subchapter E, Chapter 222; and

(P) port security, transportation, or facility projects eligible for funding under Section 55.002.

(14-a) "Transportation project" does not include a border inspection facility that serves a bridge system that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002.

(15) "Turnpike project" means a highway of any number of lanes, with or without grade separations, owned or operated by an authority under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion or promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, service road, ramp, entrance plaza, approach, or tollhouse;

(C) an administration, storage, or other building the authority considers necessary for the operation of a turnpike project;

(D) a parking area or structure, rest stop, park, and other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and

(E) a property right, easement, or interest the authority acquires to construct or operate the turnpike project.

(16) "Mass transit" means the transportation of passengers and hand-carried packages or baggage of a passenger by any means of surface, overhead, or underground transportation, other than an aircraft or taxicab.

(17) "Service area" means the county or counties in which an authority or transit provider has established a transit system.

(18) "Transit provider" means an entity that provides mass transit for the public and that was created under Chapter 451, 452, 453, 454, 457, 458, or 460.

(19) "Transit system" means:

(A) property owned or held by an authority for mass transit purposes; and

(B) facilities necessary, convenient, or useful for:

(i) the use of or access to mass transit by persons or vehicles; or

(ii) the protection or environmental enhancement of mass transit.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 5.07, eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.62, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 1, eff. May 18, 2013.

Sec. 370.004. CONSTRUCTION COSTS DEFINED. (a) The cost of acquisition, construction, improvement, extension, or expansion of a transportation project under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the transportation project;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and for not more than three years after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the acquisition, construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings, including any costs associated with necessary environmental mitigation measures;

(8) financing;

(9) the assumption of debts, obligations, and liabilities of an entity relating to a transportation project transferred to an authority by that entity;

(10) expenses related to the initial operation of the transportation project; and

(11) payment obligations of an authority under a contract or agreement authorized by this chapter in connection with the acquisition, construction, improvement, extension, expansion, or financing of the transportation project.

(b) Costs attributable to a transportation project and incurred before the issuance of bonds to finance the transportation project may be reimbursed from the proceeds of sale of the bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.63, eff. June 14, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 2, eff. June 17, 2011.

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

Sec. 370.031. CREATION OF A REGIONAL MOBILITY AUTHORITY. (a) At the request of one or more counties, the commission by order may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation projects in a region of this state. An authority is governed in accordance with Subchapter F.

(b) An authority may not be created without the approval of the commission under Subsection (a) and the approval of the commissioners court of each county that will be a part of the authority.

(c) A municipality that borders the United Mexican States and has a population of 105,000 or more has the same authority as a county, within its municipal boundaries, to create and participate in an authority. A municipality creating or participating in an authority has the same powers and duties as a county participating in an authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in an authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in an authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.64, eff. June 14, 2005.

Sec. 370.0311. CERTAIN MUNICIPALITIES. (a) This section applies to a municipality:

(1) with a population of 5,000 or less; and

(2) in which a ferry system that is a part of the state highway system is located.

(b) A municipality has the same authority as a county under this chapter to create and participate in an authority.

(c) A municipality that creates or participates in an authority has the same powers and duties as a county that creates or participates in an authority under this chapter.

(d) The governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioners court of a county that creates or participates in an authority under this chapter.

(e) An elected member of the governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioner of a county that creates or participates in an authority under this chapter.

Added by Acts 2005, 79th Leg., Ch. 877 (S.B. 1131), Sec. 5, eff. June 17, 2005.

Sec. 370.0315. ADDITION AND WITHDRAWAL OF COUNTIES. (a) One or more counties may petition the commission for approval to become part of an existing authority. The commission may approve the petition only if:

(1) the board has agreed to the addition; and

(2) the commission finds that the affected political subdivisions in the county or counties will be adequately represented on the board.

(b) One or more counties may petition the commission for approval to withdraw from an authority. The commission may approve the petition only if:

(1) the authority has no bonded indebtedness; or

(2) the authority has debt other than bonded indebtedness, but the board has agreed to the withdrawal.

(c) A county may not become part of an authority or withdraw from an authority without the approval of the commission.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.032. NATURE OF REGIONAL MOBILITY AUTHORITY. (a) An authority is a body politic and corporate and a political subdivision of this state.

(b) An authority is a governmental unit as that term is defined in Section 101.001, Civil Practice and Remedies Code.

(c) The exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a transportation project or system is:

(1) in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health, living conditions, and public safety; and

(2) an essential governmental function of the state.

(d) The operations of an authority are governmental, not proprietary, functions.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.033. GENERAL POWERS. (a) An authority, through its board, may:

(1) adopt rules for the regulation of its affairs and the conduct of its business;

(2) adopt an official seal;

(3) study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects, individually or as one or more systems, provided that a transportation project that is subject to Subpart C, 23 C.F.R. Part 450, is:

(A) included in the plan approved by the applicable metropolitan planning organization; and

(B) consistent with the statewide transportation plan and the statewide transportation improvement program;

(4) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(5) enter into contracts or operating agreements with a similar authority, another governmental entity, or an agency of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

(6) enter into contracts or agreements necessary or incidental to its powers and duties under this chapter;

(7) cooperate and work directly with property owners and governmental entities and officials to support an activity required to promote or develop a transportation project;

(8) employ and set the compensation and benefits of administrators, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, full-time and part-time employees, agents, consultants, and other persons as the authority considers necessary or useful;

(8-a) participate in the state travel management program administered by the comptroller for the purpose of obtaining reduced airline fares and reduced travel agent fees, provided that the comptroller may charge the authority a fee not to exceed the costs incurred by the comptroller in providing services to the authority;

(9) notwithstanding Sections 221.003 and 222.031 and subject to Subsections (j) and (m), apply for, directly or indirectly receive and spend loans, gifts, grants, and other contributions for any purpose of this chapter, including the construction of a transportation project, and receive and spend contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, a subdivision of this state, or a governmental entity or private entity, to be used for the purposes for which the grants, loans, or contributions are made, and enter into any agreement necessary for the grants, loans, or contributions;

(10) install, construct, or contract for the construction of public utility facilities, direct the time and manner of construction of a public utility facility in, on, along, over, or under a transportation project, or request the removal or relocation of a public utility facility in, on, along, over, or under a transportation project;

(11) organize a corporation under Chapter 431 for the promotion and development of transportation projects;

(12) adopt and enforce rules not inconsistent with this chapter for the use of any transportation project, including tolls, fares, or other user fees, speed and weight limits, and traffic and other public safety rules, provided that an authority must consider the same factors that the Texas Turnpike Authority division of the department must consider in altering a prima facie speed limit under Section 545.354;

(13) enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with a public or private party governing the party's use of all or any portion of a transportation project and the rights and obligations of the authority with respect to a transportation project;

(14) borrow money from or enter into a loan agreement or other arrangement with the state infrastructure bank, the department, the commission, or any other public or private entity; and

(15) do all things necessary or appropriate to carry out the powers and duties expressly granted or imposed by this chapter.

(b) Except as provided by this subsection, property that is a part of a transportation project of an authority is not subject to condemnation or the exercise of the power of eminent

domain by any person, including a governmental entity. The department may condemn property that is a part of a transportation project of an authority if the property is needed for the construction, reconstruction, or expansion of a state highway or rail facility.

(c) An authority may perform any function not specified by this chapter to promote or develop a transportation project that the authority is authorized to develop or operate under this chapter.

(d) An authority may sue and be sued and plead and be impleaded in its own name.

(e) An authority may rent, lease, franchise, license, or make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a transportation project. If the transportation project is a project other than a public utility facility an authority may rent, lease, franchise or make property available only to the extent that the renting, lease or franchise benefits the users of the project.

(f) An authority may enter into a contract, agreement, interlocal agreement, or other similar arrangement under which the authority may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity if:

(1) the transportation project is located in the authority's area of jurisdiction or in a county adjacent to the authority's area of jurisdiction;

(2) the transportation project is being acquired, planned, constructed, designed, operated, repaired, or maintained on behalf of the department or another toll project entity, as defined by Section 372.001; or

(3) for a transportation project that is not described by Subdivision (1) or (2), the department approves the acquisition, planning, construction, design, operation, repair, or maintenance of the project by the authority.

(f-1) A contract or agreement under Subsection (f) may contain terms and conditions as may be approved by an authority, including payment obligations of the governmental entity and the authority.

(g) Payments to be made to an authority under a contract or agreement described by Subsection (f) constitute operating expenses of the transportation project or system that is to be operated under the contract or agreement. The contract or agreement may extend for the number of years as agreed to by the parties.

(h) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by officers and employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of a controlled substance or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. The policy shall provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

(i) An authority shall adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

(j) An authority may not apply for federal highway or rail funds without the approval of the department.

(k) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(l) If an authority establishes an airport in Central Texas, the authority may not establish the airport at a location prohibited to the department by Section 21.069(c).

(m) If an authority receives money from the general revenue fund, the Texas Mobility Fund, or the state highway fund it may use the money only to acquire, design, finance,

construct, operate, or maintain a turnpike project under Section 370.003(14)(A) or (D) or a transit system under Section 370.351.

(n) Nothing in this chapter or any contractual right obtained under a contract with an authority under this chapter supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the utilities code regarding licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas or the Railroad Commission of Texas.

(o) Except as provided in Subchapter J, an authority may not provide mass transit services in the service area of another transit provider that has taxing authority and has implemented it anywhere in the service area unless the service is provided under a written agreement with the transit provider or under Section 370.186.

(p) Before providing public transportation or mass transit services in the service area of any other existing transit provider, including a transit provider operating under Chapter 458, an authority must first consult with that transit provider. An authority shall ensure there is coordination of services provided by the authority and an existing transit provider, including a transit provider operating under Chapter 458. An authority is ineligible to participate in the formula or discretionary program under Chapter 456 unless there is no other transit provider, including a transit provider operating under Chapter 458, providing public transportation or mass transit services in the service area of the authority.

(q) An authority, acting through its board, may agree with another entity to acquire a transportation project or system from that entity and to assume any debts, obligations, and liabilities of the entity relating to a transportation project or system transferred to the authority.

(r) This chapter may not be construed to restrict the ability of an authority to enter into an agreement under Chapter 791, Government Code, with another governmental entity located anywhere in this state.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.65, eff. June 14, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 3, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 2, eff. May 18, 2013.

Sec. 370.034. ESTABLISHMENT OF TRANSPORTATION SYSTEMS. (a) If an authority determines that the traffic needs of the counties in which it operates and the traffic needs of the surrounding region could be most efficiently and economically met by jointly operating two or more transportation projects as one operational and financial enterprise, it may create a system made up of those transportation projects. An authority may create more than one system and may combine two or more systems into one system. An authority may finance, acquire, construct, and operate additional transportation projects as additions to or expansions of a system if the authority determines that the transportation project could most efficiently and economically be acquired or constructed if it were a part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a transportation project that is not a part of the system or with the revenue of another system.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.036. TRANSFER OF BONDED TURNPIKE PROJECT TO DEPARTMENT. (a) An authority may transfer to the department a turnpike project of the authority that has outstanding bonded indebtedness if the commission:

(1) agrees to the transfer; and

(2) agrees to assume the outstanding bonded indebtedness.

(b) The commission may assume the outstanding bonded indebtedness only if the assumption:

(1) is not prohibited under the terms of an existing trust agreement or indenture securing bonds or other obligations issued by the commission for another project;

(2) does not prevent the commission from complying with covenants of the commission under an existing trust agreement or indenture; and

(3) does not cause a rating agency maintaining a rating on outstanding obligations of the commission to lower the existing rating.

(c) If the commission agrees to the transfer under Subsection (a), the authority shall convey the turnpike project and any real property acquired to construct or operate the turnpike project to the department.

(d) At the time of a conveyance under this section, the commission shall designate the turnpike project as part of the state highway system. After the designation, the authority has no liability, responsibility, or duty to maintain or operate the transferred turnpike project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.037. TRANSFER OF FERRY CONNECTING STATE HIGHWAYS. (a) The commission by order may transfer a ferry operated under Section 342.001 to an authority if:

(1) the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region; and

(2) the authority:

(A) agrees to the transfer; and

(B) agrees to assume all liability and responsibility for the maintenance and operation of the ferry on its transfer.

(b) An authority shall reimburse the commission for the cost of a transferred ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public that equals or exceeds that cost.

(c) In computing the cost of the ferry, the commission shall:

(1) include the total amount spent by the department for the original construction of the ferry, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, or operating the ferry to be incurred by the authority and not by the department if the ferry is transferred.

(d) The commission shall, at the time the ferry is transferred, remove the ferry from the state highway system. After a transfer, the commission has no liability, responsibility, or duty for the maintenance or operation of the ferry.

(e) Before transferring a ferry that is a part of the state highway system under this section, the commission shall conduct a public hearing at which interested persons shall be allowed to speak on the proposed transfer. Notice of the hearing must be published in the Texas Register, one or more newspapers of general circulation in the counties in which the

ferry is located, and a newspaper, if any, published in the counties of the applicable authority.

(f) The commission shall adopt rules to implement this section. The rules must include criteria and guidelines for the approval of a transfer of a ferry.

(g) An authority shall adopt rules establishing criteria and guidelines for approval of the transfer of a ferry under this section.

(h) An authority may permanently charge a toll for use of a ferry transferred under this section. An authority may permanently charge a fee or toll for priority use of ferry facilities under Section 370.193.

(i) The commission may not transfer a ferry under this section if the ferry is located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 877 (S.B. 1131), Sec. 6, eff. June 17, 2005.

Sec. 370.038. COMMISSION RULES. (a) The commission shall adopt rules that:

(1) govern the creation of an authority;

(2) govern the commission's approval of a project under Section 370.187 and other commission approvals required by this chapter;

(3) establish design and construction standards for a transportation project that will connect with a highway in the state highway system or a department rail facility;

(4) establish minimum audit and reporting requirements and standards;

(5) establish minimum ethical standards for authority directors and employees; and

(6) govern the authority of an authority to contract with the United Mexican States or a state of the United Mexican States.

(b) The commission shall appoint a rules advisory committee to advise the department and the commission on the development of the commission's initial rules required by this section. The committee must include one or more members representing an existing authority, if applicable. Chapter 2110, Government Code, does not apply to the committee. This subsection expires on the date the commission adopts initial rules under this section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.039. TRANSFER OF TRANSPORTATION PROJECT OR SYSTEM. (a) An authority may transfer any of its transportation projects or systems to one or more governmental entities if:

(1) the authority has commitments from the governing bodies of the governmental entities to assume jurisdiction over the transferred projects or systems;

(2) property and contract rights in the transferred projects or systems and bonds issued for the projects or systems are not affected unfavorably;

(3) the transfer is not prohibited under the bond proceedings applicable to the transferred projects or systems;

(4) adequate provision has been made for the assumption of all debts, obligations, and liabilities of the authority relating to the transferred projects or systems by the governmental entities assuming jurisdiction over the transferred projects or systems;

(5) the governmental entities are authorized to assume jurisdiction over the transferred projects or systems and to assume the debts, obligations, and liabilities of the authority relating to the transferred projects or systems; and

(6) the transfer has been approved by the commissioners court of each county that is part of the authority.

(b) An authority may transfer to one or more governmental entities any traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, and other work product developed by the authority in determining the feasibility of the construction, improvement, extension, or expansion of a transportation project or system, and the authority's rights and obligations under any related agreements, if the requirements of Subsections (a)(1) and (6) are met.

(c) A governmental entity shall, using any lawfully available funds, reimburse any expenditures made by an authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the governmental entity under Subsection (b) and any other amounts expended under related agreements transferred to the governmental entity. The reimbursement may be made over time, as determined by the governmental entity and the authority.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.66, eff. June 14, 2005.

SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

Sec. 370.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a) An authority may pay the expenses of studying the cost and feasibility of a transportation project, the design and engineering of a transportation project, and any other expenses relating to the preparation and issuance of bonds for a proposed transportation project by:

(1) using legally available revenue derived from an existing transportation project;

(2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing transportation project;

(3) pledging to the payment of the bonds or a loan agreement legally available revenue anticipated to be derived from the operation of transportation projects or revenue legally available to the authority from another source; or

(4) pledging to the payment of the bonds or a loan agreement the proceeds from the sale of other bonds.

(b) Money spent under this section for a proposed transportation project must be reimbursed to the transportation project from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed transportation project, unless the transportation projects are or become part of a system under Section 370.034.

(c) The use of any money of a transportation project to study the feasibility of another transportation project or used to repay any money used for that purpose does not constitute an operating expense of the transportation project producing the revenue and may be paid only from the surplus money of the transportation project as determined by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 4, eff. June 17, 2011.

Sec. 370.072. FEASIBILITY STUDY FUND. (a) An authority may maintain a feasibility study fund. The fund is a revolving fund held in trust by a banking institution chosen by the authority and shall be kept separate from the money for a transportation project.

(b) An authority may transfer an amount from a surplus fund established for a transportation project to the authority's feasibility study fund if the remainder of the

surplus fund after the transfer is not less than any minimum amount required by the bond proceedings to be retained for that transportation project.

(c) Money in the feasibility study fund may be used only to pay the expenses of studying the cost and feasibility of a transportation project, the design and engineering of a transportation project, and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed transportation project;

(2) the financing of the improvement, extension, or expansion of an existing transportation project; and

(3) private participation, as authorized by law, in the financing of a proposed transportation project, the refinancing of an existing transportation project or system, or the improvement, extension, or expansion of a transportation project.

(d) Money spent under Subsection (c) for a proposed transportation project must be reimbursed from the proceeds of revenue bonds issued for, or other proceeds that may be used for, the acquisition, construction, improvement, extension, expansion, or operation of the transportation project.

(e) For a purpose described by Subsection (c), an authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of its feasibility study fund, pledging money in the fund or to be placed in the fund.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 5, eff. June 17, 2011.

Sec. 370.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more municipalities, counties, or other governmental entities, a combination of municipalities, counties, and other governmental entities, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility of a transportation project, the design and engineering of a transportation project, and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition or construction of a proposed transportation project by an authority;

(2) the improvement, extension, or expansion of an existing transportation project of the authority; or

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a transportation project by an authority.

(b) Money spent under Subsection (a) for a proposed transportation project is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, maintenance, repair, or operation of the transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 6, eff. June 17, 2011.

SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

Sec. 370.111. TRANSPORTATION REVENUE BONDS. (a) An authority, by bond resolution, may authorize the issuance of bonds to pay all or part of the cost of a transportation project, to

refund any bonds previously issued for the transportation project, or to pay for all or part of the cost of a transportation project that will become a part of another system.

(b) As determined in the bond resolution, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates provided by the bond resolution and beginning on the dates provided by the bond resolution and as authorized by law, or bear no interest;

(3) mature at the time or times provided by the bond resolution, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(c) An authority may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the authority.

(d) The proceeds of each bond issue shall be disbursed in the manner and under any restrictions provided in the bond resolution.

(e) Additional bonds may be issued in the same manner to pay the costs of a transportation project. Unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the transportation project. In addition, an authority may issue bonds for a transportation project secured by a lien on the revenue of the transportation project subordinate to the lien on the revenue securing other bonds issued for the transportation project.

(f) If the proceeds of a bond issue exceed the cost of the transportation project for which the bonds were issued, the surplus shall be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

(g) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(h) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(i) Bonds issued under this chapter shall be considered authorized investments under Chapter 2256, Government Code, for this state, any governmental entity, and any other public entity proposing to invest in the bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.112. INTERIM BONDS. (a) An authority may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to a requirement, restriction, or procedural provision in any other law.

(c) A bond resolution authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.113. PAYMENT OF BONDS; STATE AND COUNTY CREDIT. (a) The principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

(1) the revenue of the transportation project for which the bonds are issued;

(2) payments made under an agreement with the commission, the department, or other governmental entity as authorized by this chapter;

(3) money derived from any other source available to the authority, other than money derived from a transportation project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a transportation project or system has been pledged for that purpose;

(4) amounts received under a credit agreement relating to the transportation project for which the bonds are issued; and

(5) the proceeds of the sale of other bonds.

(b) Bonds issued under this chapter do not constitute a debt of this state or of a governmental entity, or a pledge of the faith and credit of this state or of a governmental entity. Each bond must contain on its face a statement to the effect that the state, the authority, or any governmental entity is not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the faith and credit and taxing power of this state or of any governmental entity are pledged to the payment of the principal of or interest on the bond. This subsection does not apply to a governmental entity that has entered into an agreement under Section 370.303.

(c) An authority may not incur a financial obligation that cannot be paid from revenue derived from owning or operating the authority's transportation projects or from other revenue provided by law.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 7, eff. June 17, 2011.

Sec. 370.114. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a transportation project under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter or a contract or agreement entered into under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond or on the effective date of the contract or agreement;

(2) applies to each item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having a claim, in tort, contract, or other remedy, against the applicable authority without regard to whether the person has notice of the lien or pledge.

(b) A copy of any bond resolution shall be maintained in the regular records of the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 8, eff. June 17, 2011.

Sec. 370.115. BOND INDENTURE. (a) Bonds issued by an authority under this chapter may be secured by a bond indenture between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A bond indenture may pledge or assign the revenues to be received but may not convey or mortgage any part of a transportation project.

(c) A bond indenture may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or indentures of trust securing corporate bonds and debentures; and

(3) contain provisions the authority determines reasonable and proper for the security of the bondholders, including covenants:

(A) establishing the authority's duties relating to:

(i) the acquisition of property;

(ii) the construction, maintenance, operation, and repair of and insurance for a transportation project; and

(iii) custody, safeguarding, and application of money;

(B) prescribing events that constitute default;

(C) prescribing terms on which any or all of the bonds become or may be declared due before maturity; and

(D) relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the authority.

(d) An expense incurred in carrying out a trust agreement may be treated as part of the cost of operating the transportation project.

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and is entitled to:

(1) require the authority or the board to impose and collect tolls, fares, fees, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings; and

(2) apply for and obtain the appointment of a receiver for the transportation project or system.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) An authority shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that an authority requires.

(b) Bonds of an authority may secure the deposit of public money of this state or a political subdivision of this state to the extent of the lesser of the face value of the bonds or their market value.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by local governmental entities, including Chapters 1201, 1202, 1204, and 1371, Government Code, apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. An authority may study, evaluate, design, finance, acquire, construct, operate, maintain, repair, expand, or extend a transportation project in:

(1) a county that is a part of the authority;

(2) a county in this state that is not a part of the authority if the county and authority enter into an agreement under Section 370.033(f); or

(3) a county in another state or the United Mexican States if:

(A) each governing body of a political subdivision in which the project will be located agrees to the proposed study, evaluation, design, financing, acquisition, construction, operation, maintenance, repair, expansion, or extension;

(B) the project will bring significant benefits to the counties in this state that are part of the authority;

(C) the county in the other state is adjacent to a county that:

(i) is part of the authority studying, evaluating, designing, financing, acquiring, constructing, operating, maintaining, repairing, expanding, or extending the transportation project; and

(ii) has a municipality with a population of 500,000 or more; and

(D) the governor approves the proposed study, evaluation, design, financing, acquisition, construction, operation, maintenance, repair, expansion, or extension.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.102, eff. June 14, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 3, eff. May 18, 2013.

Sec. 370.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a transportation project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other governmental entity.

(b) Except as provided by this chapter, an authority has the same powers and may use the same procedures as the commission in acquiring property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.163. ACQUISITION OF PROPERTY. (a) Except as otherwise provided by this subchapter, the governing body of an authority has the same powers and duties relating to the condemnation and acquisition of real property for a transportation project that the commission

and the department have under Subchapter D, Chapter 203, relating to the condemnation or purchase of real property for a toll project.

(b) Repealed by Acts 2005, 79th Leg., Ch. 281, Sec. 2.101(17), eff. June 14, 2005.

(c) The authority granted under this section does not include the authority to condemn a bridge connecting this state to the United Mexican States that is owned by a county or municipality.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.68, eff. June 14, 2005.
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.101(17), eff. June 14, 2005.

Sec. 370.164. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

(1) in which the authority files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) An authority may file the declaration of taking concurrently with or subsequent to the filing of the condemnation petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) An authority may not file a declaration of taking before the completion of all:

(1) environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) public hearings and meetings, including those held in connection with the environmental rules adopted by the authority under Section 370.188, that are required by federal or state law; and

(3) notifications required by the rules adopted by the authority under Section 370.188.

(d) The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the authority can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a transportation project.

(e) A deposit to the registry of the court of an amount equal to the appraised value as determined by the authority of the property to be condemned must accompany the declaration of taking.

(f) The date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(g) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain under Chapter 21, Property Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.165. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, the authority shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the authority may not take possession before the 91st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.166. PARTICIPATION PAYMENT FOR REAL PROPERTY. (a) As an alternative to paying for an interest in real property or a real property right with a single fixed payment, the authority may, with the owner's consent, pay the owner by means of a participation payment.

(b) A right to receive a participation payment under this section is subordinate to any right to receive a fee as payment on the principal of or interest on a bond that is issued for the construction of the applicable segment.

(c) In this section, "participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to a segment constructed by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.167. SEVERANCE OF REAL PROPERTY. (a) If a transportation project of an authority severs a property owner's real property, the authority shall pay:

(1) the value of the property acquired; and

(2) the damages, if any, to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) At its option, an authority may negotiate for and purchase the severed real property or any part of the severed real property if the authority and the property owner agree on terms for the purchase. An authority may sell and dispose of severed real property that it determines is not necessary or useful to the authority. Severed property must be appraised before being offered for sale by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.168. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by this state or a local government that the authority considers necessary for the construction or operation of a transportation project.

(b) This state or a local government having charge of public real property may consent to the use of the property for a transportation project.

(c) Except as provided by Section 228.201, this state or a local government may convey, grant, or lease to an authority real property, including highways and other real property devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish a purpose of the authority, including the construction or operation of a transportation project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of this state or local government necessary for a conveyance, grant, or lease.

(d) This section does not deprive the School Land Board of the power to execute a lease for the development of oil, gas, and other minerals on state-owned real property adjoining a transportation project or in tidewater limits. A lease may provide for directional drilling from the adjoining property or tidewater area.

(e) This section does not affect the obligation of the authority under another law to compensate this state for acquiring or using property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.69, eff. June 14, 2005.

Sec. 370.169. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Except as provided by Section 370.035, an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, other than:

(1) a park, playground, or designated environmental preserve;

(2) property owned by or on behalf of this state that under law requires compensation to this state for the use or acquisition of the property; or

(3) as provided by this chapter.

(b) Public property damaged in the exercise of a power granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable.

(c) An authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local government that are necessary or convenient to construct, acquire, or efficiently operate a transportation project or system under this chapter. This subsection does not affect the obligation of the authority under other law, including Section 373.102, to compensate or reimburse this state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 8, eff. June 17, 2011.

Sec. 370.170. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the authority's approval of the installation, construction, relocation, and removal of a public utility facility in, on, along, over, or under a transportation project.

(b) If the authority determines that a public utility facility located in, on, along, over, or under a transportation project must be relocated, the utility and the authority shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(c) The authority shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of a public utility facility. If the authority and the affected utility enter into an agreement after negotiations under Subsection (b), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(d) If the authority and an affected utility do not enter into an agreement under Subsection (b), the authority shall provide to the affected utility:

(1) written notice of the authority's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(e) Not later than the 90th day after the date a utility receives the notice from the authority, including the plan and agreement terms and conditions under Subsection (d), the utility shall enter into an agreement with the authority that provides for the relocation.

(f) If the utility fails to enter into an agreement within the 90-day period under Subsection (e), the authority may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the authority under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(g) The 90-day period under Subsection (e) may be extended:

(1) by mutual agreement between the authority and the utility; or

(2) for any period of time during which the utility is negotiating in good faith with the authority to relocate its facility.

(h) Subject to Subsections (a)-(g), the authority, as a part of the cost of the transportation project or the cost of operating the transportation project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsection (a).

(i) The authority may reduce the total costs to be paid by the authority under Subsection (h) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation or removal exceeds the reasonable limit specified by agreement between the authority and the owner or operator of the public utility facility, unless the failure of the owner or operator of the facility to timely relocate or remove the facility results directly from:

(1) a material action or inaction of the authority;

(2) an inability of the public utility facility owner or operator to obtain necessary line clearances to perform the removal or relocation; or

(3) conditions beyond the reasonable control of the owner or operator of the facility, including:

(A) an act of God; or

(B) a labor shortage or strike.

(j) The owner or operator of a public utility facility relocated or removed under Subsection (f) shall reimburse the authority for the expenses the authority reasonably incurred for the relocation or removal of the facility, less any costs that would have been payable to the owner or operator under Subsection (h) had the owner or operator relocated or removed the facility, except that the owner or operator is not required to reimburse the authority if the failure of the owner or operator to timely relocate or remove the facility was the result of circumstances beyond the control of the owner or operator.

(k) Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of a line or pole owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a transportation project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(l) Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of facilities used for conducting gas by a gas utility, as that term is defined by Section 181.021, Utilities Code, through, under, along, across, and over a transportation project or system constructed by an authority except as otherwise provided by this section. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(m) The laws of this state applicable to the use of public roads, streets, and waters by a telephone or telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone or telegraph corporation over, under, across, on, and along a transportation project constructed by an authority under this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.171. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION PROJECT. An authority may lease, sell, or convey in any other manner a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.172. REVENUE. (a) An authority may:

(1) impose tolls, fees, fares, or other charges for the use of each of its transportation projects and the different parts or sections of each of its transportation projects; and

(2) subject to Subsection (j), contract with a person for the use of part of a transportation project, or lease or sell part of a transportation project, including the right-of-way adjoining the portion used to transport people and property, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, parking facility, railroad track, billboard, livestock pasturage, telephone line or facility, telecommunication line or facility, data transmission line or facility, or electric line or facility, under terms set by the authority.

(b) Tolls, fees, fares, or other charges must be set at rates or amounts so that the aggregate of tolls, fees, fares, or other charges from an authority's transportation project, together with other revenue of the transportation project:

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the transportation project;

(B) the principal of and interest on any bonds issued for the transportation project as those bonds become due and payable; and

(C) any other payment obligations of an authority under a contract or agreement authorized under this chapter; and

(2) creates reserves for a purpose listed under Subdivision (1).

(c) Any toll, fee, fare, or other charge imposed on an owner of a public utility facility under this section must be imposed in a manner that is competitively neutral and nondiscriminatory among similarly situated users of the transportation project.

(d) Tolls, fees, fares, or other usage charges are not subject to supervision or regulation by any agency of this state or another governmental entity.

(e) Revenue derived from tolls, fees, and fares, and other revenue derived from a transportation project for which bonds are issued, other than any part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as provided

in the bond proceedings, shall be set aside at regular intervals as provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with the payment of:

(1) interest on the bonds as it becomes due;

(2) principal of the bonds as it becomes due;

(3) necessary charges of paying agents for paying principal and interest;

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided in the bond proceedings; and

(5) any amounts due under credit agreements.

(f) Use and disposition of money deposited to the credit of the sinking fund is subject to the bond proceedings.

(g) To the extent permitted under the applicable bond proceedings, revenue from one transportation project of an authority may be used to pay the cost of another transportation project of the authority.

(h) An authority may not use revenue from a transportation project in a manner not authorized by this chapter. Except as provided by this chapter, revenue derived from a transportation project may not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a transportation project.

(i) An authority may not require the owner of a public utility facility to pay a fee as a condition of placing a facility across the rights-of-way.

(j) If the transportation project is a project other than a public utility facility, an authority may contract for the use of part of a transportation project or lease or sell part of a transportation project under Subsection (a)(2) only to the extent that the contract, lease, or sale benefits the users of the transportation project.

(k) Notwithstanding any other provision of this chapter, an authority may pledge all or any part of its revenues and any other funds available to the authority to the payment of any obligations of the authority under a contract or agreement authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 9, eff. June 17, 2011.

Sec. 370.173. AUTHORITY REVOLVING FUND. (a) An authority may maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) An authority may transfer into its revolving fund money from any permissible source, including:

(1) money from a transportation project if the transfer does not diminish the money available for the project to less than any amount required to be retained by the bond proceedings pertaining to the project;

(2) money received by the authority from any source and not otherwise committed, including money from the transfer of a transportation project or system or sale of authority assets;

(3) money received from the state highway fund; and

(4) contributions, loans, grants, or assistance from the United States, another state, another political subdivision of this state, a foreign governmental entity, including the United Mexican States or a state of the United Mexican States, a local government, any private enterprise, or any person.

(c) The authority may use money in the revolving fund to:

(1) finance the acquisition, construction, maintenance, or operation of a transportation project, including the extension, expansion, or improvement of a transportation project;

(2) provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

(3) provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a transportation project;

(4) provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a transportation project or system;

(5) borrow money and issue bonds, promissory notes, or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and

(6) provide for any other reasonable purpose that assists in the financing of an authority as authorized by this chapter.

(d) Money spent or advanced from the revolving fund for a transportation project must be reimbursed from the money of that transportation project. There must be a reasonable expectation of repayment at the time the expenditure or advancement is authorized.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 10, eff. June 17, 2011.

Sec. 370.174. USE OF SURPLUS REVENUE. (a) Each year, if an authority determines that it has surplus revenue from transportation projects, it shall reduce tolls, spend the surplus revenue on other transportation projects in the counties of the authority in accordance with Subsection (b), or deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Consistent with other law and commission rule, an authority may spend surplus revenue on other transportation projects by:

(1) constructing a transportation project located within the counties of the authority;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) with the approval of the commission, constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to another governmental entity if:

(A) the other governmental entity authorizes the authority to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(B) the project is constructed in compliance with all laws applicable to the governmental entity.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.175. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) An authority is exempt from taxation of or assessments on:

(1) a transportation project or system;

(2) property the authority acquires or uses under this chapter for a transportation project or system; or

(3) income from property described by Subdivision (1) or (2).

(b) An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by any governmental entity or any property owners' or homeowners' association. This subsection does not apply to fees or assessments charged under approved rate schedules or line extension policies of a municipally owned electric or gas utility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.176. ACTIONS AFFECTING EXISTING ROADS. (a) An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) An authority may construct a grade separation at an intersection of a transportation project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action may not affect a segment of the state highway system without the department's consent. The authority shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the transportation project.

(c) If feasible, an authority shall provide access to properties previously abutting a county road or other public road that is taken for a transportation project and shall pay abutting property owners the expenses or any resulting damages for a denial of access to the road.

(d) If an authority changes the location of a segment of a county road as part of its development of a transportation project, the authority shall, on the request of the county, reconstruct that segment of the road at a location that the authority determines, in its discretion, restores the utility of the road. The reconstruction and its associated costs are in furtherance of a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.177. FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT TOLL; OFFENSE; ADMINISTRATIVE PENALTY. (a) Except as provided by Subsection (a-1), the operator of a vehicle, other than an authorized emergency vehicle as defined by Section 541.201, that is driven or towed through a toll collection facility of a turnpike project shall pay the proper toll. The operator of a vehicle who drives or tows a vehicle through a toll collection facility and does not pay the proper toll commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $250. The exemption from payment of a toll for an authorized emergency vehicle applies regardless of whether the vehicle is:

(1) responding to an emergency;

(2) displaying a flashing light; or

(3) marked as an emergency vehicle.

(a-1) Notwithstanding Subsection (a), the board may waive the requirement of the payment of a toll or may authorize the payment of a reduced toll for any vehicle or class of vehicles.

(b) In the event of nonpayment of the proper toll as required by Subsection (a), on issuance of a written notice of nonpayment, the registered owner of the nonpaying vehicle is liable for the payment of both the proper toll and an administrative fee.

(c) The authority may impose and collect the administrative fee to recover the cost of collecting the unpaid toll, not to exceed $100. The authority shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th

day after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a).

(d) The registered owner of a vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under Subsection (c) and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the authority:

(1) a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Subsection (a), with the name and address of the lessee clearly legible; or

(2) electronic data, other than a photocopy or scan of a rental or lease contract, that contains the information required under Sections 521.460(c)(1), (2), and (3) covering the vehicle on the date of the nonpayment under Subsection (a).

(e-1) If the lessor provides the required information within the period prescribed under Subsection (e), the authority may send a notice of nonpayment to the lessee at the address provided under Subsection (e) by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(f) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Subsection (a) occurred, submitted written notice of the transfer to the department in accordance with Section 501.147, and before the 30th day after the date the notice of nonpayment is mailed, provides to the authority the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the authority may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided by the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a). Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) An offense under Subsection (d), (e-1), or (f) is a misdemeanor punishable by a fine not to exceed $250.

(h) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the authority.

(i) In the prosecution of an offense under this section, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence, including:

(1) evidence obtained by automated enforcement technology that the authority determines is necessary, including automated enforcement technology described by Sections 228.058(a) and (b); or

(2) a copy of the rental, lease, or other contract document or the electronic data provided to the authority under Subsection (e) that shows the defendant was the lessee of the vehicle when the underlying event of nonpayment occurred.

(j) It is a defense to prosecution under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

(k) In this section, "registered owner" means the owner of a vehicle as shown on the vehicle registration records of the department or the analogous department or agency of another state or country.

(l) In addition to the other powers and duties provided by this chapter, with regard to its toll collection and enforcement powers for its turnpike projects or other toll projects developed, financed, constructed, and operated under an agreement with the authority or another entity, an authority has the same powers and duties as the department under Chapter 228, a county under Chapter 284, and a regional tollway authority under Chapter 366.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 23 (S.B. 129), Sec. 2, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.70, eff. June 14, 2005.
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 4.04, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 918 (H.B. 2983), Sec. 6, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 11, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 20.004, eff. September 1, 2013.

Sec. 370.178. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, "transponder" means a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 370.181(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

(1) the authority;

(2) an entity to which a project authorized by this chapter is transferred; or

(3) a third-party service provider under contract with an entity described by Subdivision (1) or (2).

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.71, eff. June 14, 2005.

Sec. 370.179. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a) An authority by order may designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) An authority by order may:

(1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, another classification or type of vehicle, or a pedestrian;

(2) deny access to or from:

(A) a turnpike project;

(B) real property adjacent to a turnpike project; or

(C) a street, road, alley, highway, or other public or private way intersecting a turnpike project;

(3) designate locations on a turnpike project at which access to or from the toll road is permitted;

(4) control, restrict, and determine the type and extent of access permitted at a designated location of access to a turnpike project; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of a turnpike project.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.180. PROMOTION OF TRANSPORTATION PROJECT. An authority may promote the use of a transportation project, including a project that it operates on behalf of another entity, by appropriate means, including advertising or marketing as the authority determines appropriate.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.181. OPERATION OF TRANSPORTATION PROJECT. (a) An authority shall operate a transportation project with employees of the authority or by using services contracted under Subsection (b) or (c).

(b) An authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend a transportation project owned or operated by the authority.

(c) An authority may contract with any state or local government for the services of peace officers of that agency.

(d) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(e) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 4, eff. May 18, 2013.

Sec. 370.182. AUDIT. (a) An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a transportation project.

(b) The commission may initiate an independent audit of the authority or any of its activities at any time the commission considers appropriate. An audit under this subsection shall be conducted at the expense of the department.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.183. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

(1) set goals for the award of contracts to disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

(b) This section does not exempt an authority from competitive bidding requirements provided by other law.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.184. PROCUREMENT. An authority shall adopt rules governing the award of contracts for goods and services. Notwithstanding any other provision of state law, an authority may procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by this chapter. Procurement of professional services is governed by Chapter 2254, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.185. COMPETITIVE BIDDING. A contract made by an authority may be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.186. CONTRACTS WITH GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (c), an authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 or 366 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken. An authority may not construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Chapter 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(b) An authority may not receive or be paid revenue derived by another governmental entity operating under Chapter 284, 366, 451, 452, or 460 unless the governmental entity and

the authority enter into a written agreement specifying the terms and conditions under which the revenue shall be received by or paid to the authority.

(c) Subsection (a) does not apply to a turnpike or toll project located in a county in which a regional tollway authority has transferred under Section 366.036 or 366.172:

(1) all turnpike projects of the regional tollway authority that are located in the county; and

(2) all work product developed by the regional tollway authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project to be located in the county.

(d) An authority may not construct, maintain, or operate a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under former Article 6550c-1, Vernon's Texas Civil Statutes, as those boundaries existed on September 1, 2005, unless the district and the authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.72, eff. June 14, 2005.
Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 4.09, eff. April 1, 2011.

Sec. 370.187. PROJECT APPROVAL. (a) An authority may not begin construction of a transportation project that will connect to the state highway system or to a department rail facility without the approval of the commission.

(b) The commission by rule shall establish procedures and criteria for an approval under this section. The rules must require the commission to consider a request for project approval not later than the 60th day after the date the department receives all information reasonably necessary to review the request.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.188. ENVIRONMENTAL REVIEW OF AUTHORITY PROJECTS. (a) An authority shall adopt rules for environmental review of a transportation project that is not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), as amended. The rules must:

(1) specify the types of projects for which a public hearing is required;

(2) establish procedures for public comment on the environmental review, including a procedure for requesting a public hearing on an environmental review for which a public hearing is not required; and

(3) require:

(A) an evaluation of any direct or indirect environmental effect of the project;

(B) an analysis of project alternatives; and

(C) a written report that briefly explains the authority's review of the project and that specifies any mitigation measures on environmental harm on which the project is conditioned.

(b) An environmental review of a project must be conducted before the authority may approve the location or alignment of the project.

(c) The authority shall consider the results of the environmental review in executing its duties.

(d) The authority shall coordinate with the Texas Commission on Environmental Quality and the Parks and Wildlife Department in the preparation of an environmental review.

(e) This section does not prohibit an owner of a public utility facility or a proposed public utility facility from conducting any necessary environmental evaluation for the public utility facility. The authority is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility that is part of a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.189. DEPARTMENT MAINTENANCE AND OPERATION. (a) If requested by an authority, the department may agree to assume all or part of the duty to maintain or operate a turnpike project or ferry of the authority.

(b) The authority shall reimburse the department for necessary costs of maintaining or operating the turnpike project or ferry as agreed by the department and the authority.

(c) Money received by the department under Subsection (b) shall be deposited to the credit of the state highway fund and is exempt from the application of Sections 403.095 and 404.071, Government Code.

(d) If the department assumes all of the duty to maintain or operate a turnpike project or ferry under Subsection (a), the authority is not liable for damages resulting from the maintenance or operation of the turnpike project or ferry.

(e) An agreement under this section is not a joint enterprise for purposes of liability.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.190. PROPERTY OF CERTAIN TRANSPORTATION AUTHORITIES. An authority may not condemn or purchase real property of a transportation authority operating under Chapter 451, 452, or 460 unless the authority has entered into a written agreement with the transportation authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.191. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS. (a) In this section, "port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

(b) This section applies only to a port of entry for land traffic from the United Mexican States and does not apply to a port of entry for marine traffic.

(c) To the extent an authority considers appropriate to expedite commerce and based on the Texas ITS/CVO Business Plan prepared by the department, the Department of Public Safety, and the comptroller, the authority shall provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in any new commercial motor vehicle inspection facility constructed by the authority and in any existing facility located at a port of entry to which this section applies. The authority shall coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(d) If an authority constructs a facility at which commercial vehicle safety inspections are conducted, the facility may not be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety and the facility must include implementation of ITS/CVO technology by the appropriate agencies to support all commercial motor vehicle regulation and enforcement functions.

(e) As part of its implementation of technology under this section, an authority shall to the greatest extent possible as a requirement of the construction of the facility:

(1) enhance efficiency and reduce complexity for motor carriers by providing a single point of contact between carriers and regulating state and federal government officials and providing a single point of information, available to wireless access, about federal and state regulatory and enforcement requirements;

(2) prevent duplication of state and federal procedures and locations for regulatory and enforcement activities, including consolidation of collection of applicable fees;

(3) link information systems of the authority, the department, the Department of Public Safety, the comptroller, and, to the extent possible, the United States Department of Transportation and other appropriate regulatory and enforcement entities; and

(4) take other necessary action to:

(A) facilitate the flow of commerce;

(B) assist federal interdiction efforts;

(C) protect the environment by reducing idling time of commercial motor vehicles at the facilities;

(D) prevent highway damage caused by overweight commercial motor vehicles; and

(E) seek federal funds to assist in the implementation of this section.

(f) Construction of a facility to which this section applies is subject to the availability of federal funding for that purpose.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.1911. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS AT INSPECTION FACILITIES AT INTERSTATE BORDERS. (a) Notwithstanding Section 370.191, an authority may construct a border inspection facility to be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety, provided that the facility is located:

(1) at or near a border crossing from another state of the United States; and

(2) not more than 50 miles from an international border.

(b) To the extent an authority constructing a border inspection facility under this section considers appropriate to expedite commerce, the facility may include implementation of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) technology.

Added by Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 5, eff. May 18, 2013.

Sec. 370.192. PROPERTY OF RAPID TRANSIT AUTHORITIES. An authority may not condemn or purchase real property of a rapid transit authority operating pursuant to Chapter 451 that was confirmed before July 1, 1985, and in which the principal municipality has a population of less than 850,000, unless the authority has entered into a written agreement with the rapid transit authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 128, eff. September 1, 2011.

Sec. 370.193. PRIORITY BOARDING OF FERRY. An authority may establish a system under which an owner of a motor vehicle may pay an additional fee or toll that entitles the vehicle to have priority in boarding a ferry operated by the authority.

Added by Acts 2005, 79th Leg., Ch. 877 (S.B. 1131), Sec. 7, eff. June 17, 2005.

SUBCHAPTER F. GOVERNANCE

Sec. 370.251. BOARD OF DIRECTORS. (a) Except as provided by Subsection (a-1), the governing body of an authority is a board of directors consisting of representatives of each county in which a transportation project of the authority is located or is proposed to be located. The commissioners court of each county that initially forms the authority shall appoint at least two directors to the board. Additional directors may be appointed to the board at the time of initial formation by agreement of the counties creating the authority to ensure fair representation of political subdivisions in the counties of the authority that will be affected by a transportation project of the authority, provided that the number of directors must be an odd number. The commissioners court of a county that is subsequently added to the authority shall appoint at least one director to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board and shall appoint an additional director to the board if an appointment is necessary to maintain an odd number of directors on the board.

(a-1) To be eligible to serve as director of an authority created by a municipality an individual:

(1) may be a representative of an entity that also has representation on a metropolitan planning organization in the region where the municipality is located; and

(2) is required to be a resident of Texas regardless of whether the metropolitan planning organization's geographic area includes territory in another state.

(b) The appointment of additional directors from a county subsequently added to an authority or from a county of an authority that contains an operating transportation project of the authority shall be by a process unanimously agreed to by the commissioners courts of all the counties of the authority.

(c) Directors serve two-year terms, with as near as possible to one-half of the directors' terms expiring on February 1 of each year.

(d) If six-year terms are permitted under the constitution of this state, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of two years and one director designated to serve a term of four years. If six-year terms are not permitted under the constitution, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of one year and one director designated to serve a term of two years. If one or more directors are subsequently appointed to the board, the directors other than the subsequent appointees shall determine the length of the appointees' terms, to comply with Subsection (c).

(e) If a vacancy occurs on the board, the appointing authority shall promptly appoint a successor to serve for the unexpired portion of the term.

(f) All appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin.

(g) The following individuals are ineligible to serve as a director:

(1) an elected official;

(2) a person who is not a resident of a county within the geographic area of the authority;

(3) a department employee;

(4) an employee of a governmental entity any part of which is located within the geographic boundaries of the authority; and

(5) a person owning an interest in real property that will be acquired for an authority project, if it is known at the time of the person's proposed appointment that the property will be acquired for the authority project.

(h) Each director has equal status and may vote.

(i) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

(j) The commission may refuse to authorize the creation of an authority if the commission determines that the proposed board will not fairly represent political subdivisions in the counties of the authority that will be affected by the creation of the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.73, eff. June 14, 2005.
Acts 2007, 80th Leg., R.S., Ch. 180 (H.B. 3718), Sec. 1, eff. May 23, 2007.
Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 10.01, eff. June 11, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 12, eff. June 17, 2011.

Sec. 370.2511. BOARD OF DIRECTORS: CERTAIN AUTHORITIES. (a) This section applies only to an authority created by a municipality.

(b) The governing body of a municipality may, by a resolution approved by at least two-thirds of the members of the governing body, establish the governing body as the board of directors of an authority.

(c) If the board of directors of an authority created by a municipality consists of the members of the governing body of the municipality, the governor shall appoint an additional director who is not a member of the governing body of the municipality and who serves as the presiding officer of the board.

(d) Each director of a board under this section has equal status and may vote.

(e) The vote of a majority attending a board meeting is necessary for any action taken by a board under this section. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

(f) The governing body of a municipality that becomes the board of an existing authority under this section shall by resolution provide for the transfer process that establishes the governing body as the board of the authority.

(g) If the board of directors of an authority created by a municipality consists of the members of the governing body of the municipality, Sections 370.251, 370.2515, 370.252, 370.2521, 370.2522, 370.2523, 370.253, 370.254, and 370.255 do not apply to the board, except that, to the extent applicable, those provisions apply to the governor's appointee under Subsection (c).

(h) This section has no effect if the attorney general issues an opinion stating that, notwithstanding the statutory authority under this section, the Texas Constitution, the common law doctrine of incompatibility, or any other legal principle would prohibit a member of the governing body of a municipality from serving as a director of an authority.

(i) A board under this section is not required to have an odd number of directors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 13, eff. June 17, 2011.

Sec. 370.2515. BOARD COMPOSITION PROPOSAL BY TURNPIKE AUTHORITY. If a county in which a turnpike authority under Chapter 366 operates or a county owning or operating a toll project

under Chapter 284 is part of an authority, the turnpike authority or the county may submit to the commission a proposed structure for the board and a method of appointment to the board:

(1) at the creation of the authority if the county is a county that initially forms an authority;

(2) when a new county is added to the authority; and

(3) when the county is initially added to the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.252. PROHIBITED CONDUCT FOR DIRECTORS AND EMPLOYEES. (a) A director or employee of an authority may not:

(1) accept or solicit any gift, favor, or service that:

(A) might reasonably influence the director or employee in the discharge of an official duty; or

(B) the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interest of the authority;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the authority.

(b) A person is not eligible to serve as a director or chief administrative officer of an authority 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 governmental entity, that is regulated by or receives funds from the authority or the department;

(2) directly or indirectly owns or controls more than a 10 percent interest in a business or other organization that is regulated by or receives funds from the authority or the department;

(3) uses or receives a substantial amount of tangible goods, services, or funds from the authority or the department; or

(4) 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 the authority or the department.

(c) A person is not eligible to serve as a director or chief administrative officer of an authority if the person 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 if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation.

(d) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed

to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(e) A person is not ineligible to serve as a director or chief administrative officer of an authority if the person has received funds from the department for acquisition of highway right-of-way unless the acquisition was for a project of the authority.

(f) In addition to the prohibitions and restrictions of this section, directors are subject to Chapter 171, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.74, eff. June 14, 2005.

Sec. 370.2521. FILING OF FINANCIAL STATEMENT BY DIRECTOR. (a) Except as provided by Subsection (c), (d), or (e) a director shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a director as if the director were a state officer; and

(2) governs the contents, timeliness of filing, and public inspection of a statement filed under Subsection (a).

(c) Subsection (a) does not apply to a director who is a state officer subject to Subchapter B, Chapter 572, Government Code.

(d) A director who is a municipal officer subject to Chapter 145, Local Government Code, or a county officer subject to Subchapter A, Chapter 159, Local Government Code, shall file with the Texas Ethics Commission a copy of the financial statement filed under Chapter 145, Local Government Code, or Subchapter A, Chapter 159, Local Government Code, as applicable. Subchapter B, Chapter 572, Government Code, governs the timeliness of filing and public inspection of a copy of a statement filed under this subsection.

(e) Subsection (a) does not apply to an authority if each county that is a part of the authority has a population of less than 200,000. The commissioners courts of the counties that are a part of an authority to which this subsection applies may jointly adopt a process that requires the directors of the authority to disclose personal financial activity as specified by the commissioners courts.

(f) A person subject to Subsection (a) or (d) commits an offense if the person fails to file the statement required by Subsection (a) or the copy required by Subsection (d), as applicable. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 1, eff. September 1, 2005.

Sec. 370.2522. APPLICABILITY OF CONFLICTS OF INTEREST LAW TO DIRECTORS. (a) A director is considered to be a local public official for purposes of Chapter 171, Local Government Code.

(b) For purposes of Chapter 171, Local Government Code, a director, in connection with a vote or decision by the board, is considered to have a substantial interest in a business entity if a person related to the director in the second degree by consanguinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity.

Added by Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 1, eff. September 1, 2005.

Sec. 370.2523. APPLICABILITY OF NEPOTISM LAWS. A director is a public official for purposes of Chapter 573, Government Code.

Added by Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 1, eff. September 1, 2005.

Sec. 370.253. SURETY BONDS. (a) Before beginning a term, each director shall execute a surety bond in the amount of $25,000, and the secretary and treasurer shall execute a surety bond in the amount of $50,000.

(b) Each surety bond must be:

(1) conditioned on the faithful performance of the duties of office;

(2) executed by a surety company authorized to transact business in this state; and

(3) filed with the secretary of state's office.

(c) The authority shall pay the expense of the bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.254. REMOVAL OF DIRECTOR. (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 370.251;

(2) at the time of appointment or at any time during the director's term, is ineligible under Section 370.251 or 370.252 to serve as a director;

(3) cannot discharge the director's duties for a substantial part of the term for which the director is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a director exists.

(c) If the chief administrative officer of the authority has knowledge that a potential ground for removal exists, that person shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the person that appointed the director that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.255. COMPENSATION OF DIRECTOR. Each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. A director is not entitled to any additional compensation for the director's services.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.257. PUBLIC ACCESS. An authority shall:

(1) make and implement policies that provide the public with a reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the authority; and

(2) prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the authority's programs.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.258. INDEMNIFICATION. (a) An authority may indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred by the directors or officers in connection with any claim asserted against the directors or officers in their respective capacities as directors or officers.

(b) If an authority does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the authority, its receiver, or trustee only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

(d) This section applies to a current or former director or officer of the authority.

(e) If an officer or director who has been indemnified by an authority under Subsection (a) is subsequently convicted of an offense involving the conduct for which the officer or director was indemnified, the officer or director is liable to the authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 2, eff. September 1, 2005.

Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) An authority shall insure its officers and employees from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's transportation projects.

(b) Insurance coverage under this section must be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. The form of the policy must be approved by the commissioner of insurance.

(c) This section is not a waiver of immunity of the authority or the counties in an authority from liability for the torts or negligence of an officer or employee of an authority.

(d) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, locomotive, rail car, and other power equipment.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a) A director, agent, or employee of an authority may not:

(1) contract with the authority; or

(2) be directly or indirectly interested in:

(A) a contract with the authority; or

(B) the sale of property to the authority.

(b) A person who violates Subsection (a) is liable for a civil penalty to the authority in an amount not to exceed $1,000.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An authority shall make a strategic plan for its operations. A majority of the commissioners courts of the counties of the authority shall by concurrent resolution determine the types of information required to be included in the strategic plan. Each even-numbered year, an authority shall issue a plan covering the succeeding five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Not later than March 31 of each year, an authority shall file with the commissioners court of each county of the authority a written report on the authority's activities describing all transportation revenue bond issuances anticipated for 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. At the invitation of a commissioners court of a county of the authority, representatives of the board and the administrative head of an authority shall appear before the commissioners court to present the report and receive questions and comments.

(c) The authority shall give notice to the commissioners court of each county of the authority not later than the 90th day before the date of issuance of revenue bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call. The board may hold an open or closed meeting by telephone conference call subject to the requirements of Sections 551.125(c)-(f), Government Code, but is not subject to the requirements of Subsection (b) of that section.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Notice of a telephone conference call meeting that by law must be open to the public must specify the location of the meeting. The location must be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(d) 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 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.75, eff. June 14, 2005.

SUBCHAPTER G. PARTICIPATION IN FINANCING, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) The department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

(b) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under Subsection (a).

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department may require money contributed by the commission or department under this section to be repaid from tolls or other revenue of the turnpike project on which the money was spent. Money repaid as required by the commission or department shall be deposited to the credit of the fund from which the contribution was made. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

(d) The commission or department may use federal money for any purpose described by this chapter. An action of an authority taken under this chapter must comply with the requirements of applicable federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

(e) A turnpike project developed by an authority may not be part of the state highway system unless otherwise agreed to by the authority and the department.

(f) The commission may grant or loan department money to an authority for the acquisition of land for or the construction, maintenance, or operation of a turnpike project. The commission may require the authority to repay money provided under this section from toll revenue or other sources on terms established by the commission.

(g) Money repaid as required by the commission shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 10.02, eff. June 11, 2007.

Sec. 370.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TRANSPORTATION PROJECTS. (a) An authority may enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, another governmental entity, or a political subdivision, to permit the entity, independently or jointly with the authority, to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project. An authority and a private entity jointly may enter into an agreement with another governmental entity to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project.

(b) An authority has broad discretion to negotiate provisions in a development agreement with a private entity. The provisions may include provisions relating to:

(1) the design, financing, construction, maintenance, and operation of a transportation project in accordance with standards adopted by the authority; and

(2) professional and consulting services to be rendered under standards adopted by the authority in connection with a transportation project.

(c) An authority may not incur a financial obligation on behalf of, or guarantee the obligations of, a private entity that constructs, maintains, or operates a transportation project.

(d) An authority or a county in an authority is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of a transportation project.

(e) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

(f) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(g) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

(h) If an authority enters into an agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project, the private entity shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the entity will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.77, eff. June 14, 2005.
Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 1.04, eff. June 11, 2007.

Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) A governmental entity may, consistent with the Texas Constitution, issue bonds, notes, or other obligations or enter into and make payments under agreements with an authority in connection with the financing, acquisition, construction, or operation of a transportation project by an authority, whether inside or outside the geographic boundaries of the governmental entity, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by the authority and make payments under any related credit agreements.

The entity may impose and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(b) In addition to the powers provided by Subsection (a), a governmental entity may, to the extent constitutionally permitted, agree with an authority to:

(1) issue bonds, notes, or other obligations;

(2) create:

(A) a taxing district;

(B) a transportation reinvestment zone under Subchapter E, Chapter 222; or

(C) an entity to promote economic development;

(3) collect and remit to an authority taxes, fees, or assessments collected for purposes of developing transportation projects;

(4) fund public improvements to promote economic development; or

(5) enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a transportation project of the authority.

(b-1) An agreement under Subsection (b) may include a means for a local governmental entity to pledge or otherwise provide funds for a transportation project that benefits the governmental entity to be developed by the authority.

(c) To make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the agreement, a governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) impose and collect taxes; or

(3) pledge revenue and impose and collect taxes.

(d) The term of an agreement under this section may not exceed 40 years.

(e) An election required to authorize action under this subchapter must be held in conformity with Chapter 1251, Government Code, or other law applicable to the governmental entity.

(f) The governing body of any governmental entity issuing bonds, notes, or other obligations or entering into agreements under this section may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, except that the prohibition in that chapter on the repayment of an obligation with ad valorem taxes does not apply to an issuer exercising the authority granted by this section.

(g) An agreement under this section may contain repayment or reimbursement obligations of an authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 14, eff. June 17, 2011.

Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An authority may enter into any contract, loan agreement, or other agreement necessary or convenient to achieve the purposes of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 15, eff. June 17, 2011.

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design

and construction of a transportation project, that may provide for the financing, acquisition, maintenance, or operation of a transportation project, and that entitles the private entity to:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(b) An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(c) Except as provided by this chapter, an authority's authority to enter into a comprehensive development agreement expires on August 31, 2011.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 4.02, eff. June 11, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 37, eff. September 1, 2011.

Sec. 370.306. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. The authority may accept unsolicited proposals for a proposed transportation project or solicit proposals in accordance with this section.

(b) An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs; and

(B) proposed sources of funds.

(c) An authority shall publish a request for competing proposals and qualifications in the Texas Register that includes the criteria used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the authority decides to issue a request for qualifications for a proposed project; or

(2) the authority authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The authority shall evaluate each proposal based on the criteria described in the notice. The authority must qualify at least two private entities to submit detailed proposals for a project under Subsection (f) unless the authority does not receive more than one proposal or one response to a request under Subsection (c).

(f) An authority shall issue a request for detailed proposals from all private entities qualified under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) costing methodology; or

(6) any other information the authority considers relevant or necessary.

(g) In issuing a request for proposals under Subsection (f), an authority may solicit input from entities qualified under Subsection (e) or any other person. An authority may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) An authority shall rank each proposal based on the criteria described in the request for proposals and select the private entity whose proposal offers the best value to the authority.

(i) An authority may enter into discussions with the private entity whose proposal offers the apparent best value. The discussions shall be limited to:

(1) incorporation of aspects of other proposals for the purpose of achieving the overall best value for the authority;

(2) clarifications and minor adjustments in scheduling, cash flow, and similar items; and

(3) matters that have arisen since the submission of the proposal.

(j) If at any point in discussions under Subsection (i), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may enter into discussions with the private entity submitting the next-highest ranking proposal.

(k) An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications.

(l) An authority may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) An authority may pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

(n) An authority shall prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall negotiate the specific terms of a comprehensive development agreement.

(o) Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Section 370.305.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 2.02, eff. June 11, 2007.

Sec. 370.307. CONFIDENTIALITY OF NEGOTIATIONS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private entities to submit proposals under Section 370.306, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal submitted by a private entity for a comprehensive development agreement, except information provided under Sections 370.306(b)(1) and (2);

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 370.306 (h), the final rankings of each proposal under each of the published criteria are not confidential.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under Section 370.305 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the authority; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If an authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

(g) An authority by rule shall prescribe requirements for alternative forms of security provided under this section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.309. OWNERSHIP OF TRANSPORTATION PROJECTS. (a) A transportation project other than a public utility facility that is the subject of a development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the authority.

(b) Notwithstanding Subsection (a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of the agreement, the transportation project, including the facilities, must be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.310. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that constructs, maintains, or operates a transportation project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of the project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.311. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a transportation project, including:

(1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the authority;

(2) reasonable methods to determine and classify toll rates or user fees;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under Section 370.305 must include a provision authorizing the authority to purchase, under terms agreed to by the parties, the interest of a private equity investor in a transportation project.

(c) An authority may only enter into a comprehensive development agreement under Section 370.305 with a private equity investor if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.312. RULES, PROCEDURES, AND GUIDELINES GOVERNING NEGOTIATING PROCESS. (a) An authority shall adopt rules, procedures, and other guidelines governing selection and negotiations to promote fairness, obtain private participants in transportation projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) An authority shall have up-to-date procedures for participation in negotiations on transportation projects.

(c) An authority has exclusive judgment to determine the terms of an agreement.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.313. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. (a) An authority may participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this state and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States.

(b) A fee or expense associated with authority participation under this section may be reimbursed from money in the authority's feasibility study fund.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.315. PERFORMANCE AND PAYMENT BONDS AND SECURITY. Notwithstanding Chapter 2253, Government Code, an authority shall require any party to an agreement to operate or maintain a transportation project to provide performance and payment bonds or other forms of security, including corporate guarantee, in amounts considered by the authority to be adequate to protect the authority and to assure performance of all obligations to the authority and to subcontractors providing materials or labor for a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.317. AGREEMENTS WITH LOCAL GOVERNMENTS. (a) In this section, "local government" means a:

(1) county, municipality, special district, or other political subdivision of this state;

(2) local government corporation created under Subchapter D, Chapter 431; or

(3) combination of two or more entities described by Subdivision (1) or (2).

(b) A local government may enter into an agreement with an authority or a private entity under which the local government assists in the financing of the construction, maintenance, and operation of a turnpike project located in the government's jurisdiction in return for a percentage of the revenue from the project.

(c) A local government may use any revenue available for road purposes, including bond and tax proceeds, to provide financing under Subsection (b).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1279, Sec. 17, eff. June 17, 2011.

(e) Revenue received by a local government under an agreement under this section must be used for transportation purposes.

Added by Acts 2005, 79th Leg., Ch. 1297 (H.B. 2650), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 17, eff. June 17, 2011.

SUBCHAPTER H. DISSOLUTION OF AUTHORITY

Sec. 370.331. VOLUNTARY DISSOLUTION. (a) An authority may not be dissolved unless the dissolution is approved by the commission.

(b) A board may submit a request to the commission for approval to dissolve.

(c) The commission may approve a request to dissolve only if:

(1) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(3) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.332. INVOLUNTARY DISSOLUTION. (a) 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.

(b) The commission may not require dissolution unless:

(1) the conditions described in Sections 370.331(c)(1) and (2) have been met; and

(2) the holders of any indebtedness have evidenced their agreement to the dissolution.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.333. VOLUNTARY DISSOLUTION OF AUTHORITY GOVERNED BY GOVERNING BODY OF MUNICIPALITY. In addition to the requirements of Section 370.331, an authority governed under Section 370.2511 may not be dissolved unless:

(1) the dissolution is approved by a vote of at least two-thirds of the members of the governing body;

(2) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(3) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(4) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 16, eff. June 17, 2011.

SUBCHAPTER I. TRANSIT SYSTEMS

Sec. 370.351. TRANSIT SYSTEMS. (a) An authority may construct, own, operate, and maintain a transit system.

(b) An authority shall determine each transit route, including transit route changes.

(c) This chapter does not prohibit an authority, municipality, or transit provider from providing any service that complements a transit system, including providing parking garages, special transportation for persons who are disabled or elderly, or medical transportation services.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES. (a) In this section:

(1) "Service change" means any addition or deletion resulting in the physical realignment of a transit route or a change in the type or frequency of service provided in a specific, regularly scheduled transit route.

(2) "Transit revenue vehicle mile" means one mile traveled by a transit vehicle while the vehicle is available to public passengers.

(3) "Transit route" means a route over which a transit vehicle travels that is specifically labeled or numbered for the purpose of picking up or discharging passengers at regularly scheduled stops and intervals.

(4) "Transit route mile" means one mile along a transit route regularly traveled by transit vehicles while available to public passengers.

(b) Except as provided by Section 370.353, an authority shall hold a public hearing on:

(1) a fare change;

(2) a service change involving:

(A) 25 percent or more of the number of transit route miles of a transit route; or

(B) 25 percent or more of the number of transit revenue vehicle miles of a transit route, computed daily, for the day of the week for which the change is made; or

(3) the establishment of a new transit route.

(c) An authority shall hold the public hearing required by Subsection (b) before the cumulative amount of service changes in a fiscal year equals a percentage amount described in Subsection (b)(2)(A) or (B).

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.353. PUBLIC HEARING ON FARE AND SERVICE CHANGES: EXCEPTIONS. (a) In this section, "experimental service change" means an addition of service to an existing transit route or the establishment of a new transit route.

(b) A public hearing under Section 370.352 is not required for:

(1) a reduced or free promotional fare that is instituted daily or periodically over a period of not more than 180 days;

(2) a headway adjustment of not more than five minutes during peak-hour service and not more than 15 minutes during nonpeak-hour service;

(3) a standard seasonal variation unless the number, timing, or type of the standard seasonal variation changes; or

(4) an emergency or experimental service change in effect for 180 days or less.

(c) A hearing on an experimental service change in effect for more than 180 days may be held before or while the experimental service change is in effect and satisfies the requirement for a public hearing if the hearing notice required by Section 370.354 states that the change may become permanent at the end of the effective period. If a hearing is not held before or while the experimental service change is in effect, the service that existed before the change must be reinstituted at the end of the 180th day after the change became effective and a public hearing must be held in accordance with Section 370.352 before the experimental service change may be continued.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE. (a) After calling a public hearing required by Section 370.352, the authority shall:

(1) at least 30 days before the date of the hearing, publish notice of the hearing at least once in a newspaper of general circulation in the territory of the authority; and

(2) post notice in each transit vehicle in service on any transit route affected by the proposed change for at least two weeks within 30 days before the date of the hearing.

(b) The notice must contain:

(1) a description of each proposed fare or service change, as appropriate;

(2) the time and place of the hearing; and

(3) if the hearing is required under Section 370.352(c), a description of the latest proposed change and the previous changes.

(c) The requirement for a public hearing under Section 370.352 is satisfied at a public hearing required by federal law if:

(1) the notice requirements of this section are met; and

(2) the proposed fare or service change is addressed at the meeting.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.355. CRIMINAL PENALTIES. (a) An authority by resolution may prohibit the use of the transit system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods, including using peace officers under Section 370.181(c), to ensure that persons using the transit system pay the appropriate fare for that use.

(b) An authority by resolution may provide that a fare for or charge for the use of the transit system that is not paid incurs a penalty, not to exceed $100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transit system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the transit system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the transit system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the transit system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

(g) An offense under Subsection (d) is not a crime of moral turpitude.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) In this section, "unit of election" means a political subdivision that previously voted to join the service area of a transit provider.

(b) An authority may request in writing a transit provider to transfer the provider's transit system and taxing authority to the authority if the board determines that the traffic needs of the counties in which the authority operates could be most efficiently and economically met by the transfer.

(c) On receipt of a written request under Subsection (b), the governing body of the transit provider may authorize the authority to solicit public comment and conduct at least one public hearing on the proposed transfer in each unit of election in the transit provider's service area. Notice of a hearing must be published in the Texas Register, one or more newspapers of general circulation in the transit provider's service area, and a newspaper, if any, published in the counties of the requesting authority. The notice shall also solicit

written comments on the proposed transfer. The transit provider may participate fully with the authority in conducting a public hearing.

(d) A board may approve the acquisition of the transit provider if the governing body of the transit provider approves transfer of its operations to the authority and dissolution of the transit provider is approved in an election ordered under Subsection (e). Before approving the acquisition, the board shall consider public comments received under Subsection (c).

(e) After considering public comments received under Subsection (c), the governing body of the transit provider may order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the authority. The governing body of the transit provider shall submit to the qualified voters in the units of election in the transit provider's service area a proposition that reads substantially as follows: "Shall (name of transit provider) be dissolved and its services, property, funds, assets, employees, debts, and obligations be transferred to (name of regional mobility authority)?"

(f) An election under Subsection (e) shall be conducted so that votes are separately tabulated and canvassed in each participating unit of election in the transit provider's service area.

(g) The governing body of the transit provider shall canvass the returns and declare the results of the election separately with respect to each unit of election. If a majority of the votes received in a unit of election are in favor of the proposition, the proposition is approved in that unit of election. The transit provider is dissolved and its services, property, funds, assets, employees, debts, and obligations are transferred to the authority only if the proposition is approved in every unit of election. If the proposition is not approved in every unit of election, the proposition does not pass and the transit provider is not dissolved.

(h) A certified copy of the order or resolution recording the results of the election shall be filed with the department, the comptroller, and the governing body of each unit of election in the transit provider's service area.

(i) The authority shall assume all debts or other obligations of the transferred transit provider in connection with the acquisition of property under Subsection (g). The authority may not use revenue from sales and use tax collected under this subchapter or other revenue of the transit system in a manner inconsistent with any pledge of that revenue for the payment of any outstanding bonds, unless provisions have been made for a full discharge of the bonds.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.362. SALES AND USE TAX. (a) If an authority acquires a transit provider that has taxing authority, the authority may impose a sales and use tax at a permissible rate that does not exceed the rate approved by the voters residing in the service area of the transit provider's transit system at an election under this subchapter.

(b) The authority by resolution may:

(1) decrease the rate of the sales and use tax to a permissible rate; or

(2) call an election for the increase or decrease of the sales and use tax to a permissible rate.

(c) If an authority orders an election, the authority shall publish notice of the election in a newspaper of general circulation in the territory of the authority at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(d) A resolution ordering an election and the election notice required by Subsection (c) must show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts.

(e) A copy of the election notice required by Subsection (c) shall be furnished to the commission and the comptroller.

(f) The permissible rates for a sales and use tax imposed under this subchapter are:

(1) one-quarter of one percent;

(2) one-half of one percent;

(3) three-quarters of one percent; or

(4) one percent.

(g) Chapter 322, Tax Code, applies to a sales and use tax imposed under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.363. MAXIMUM TAX RATE. (a) An authority may not adopt a sales and use tax rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by all political subdivisions of this state having territory in the service area of the transferred transit system exceeds two percent in any location in the service area.

(b) An election to approve a sales and use tax or increase the rate of an authority's sales and use tax has no effect if:

(1) the voters in the service area approve the authority's sales and use tax rate or rate increase at an election held on the same day on which a municipality or county having territory in the jurisdiction of the service area adopts a sales and use tax or an additional sales and use tax; and

(2) the combined rates of all sales and use taxes imposed by the authority and all political subdivisions of this state would exceed two percent in any part of the territory in the service area.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) At an election ordered under Section 370.362(b)(2), the ballots shall be printed to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate for mass transit to (percentage)."

(b) The increase or decrease in the tax rate becomes effective only if it is approved by a majority of the votes cast.

(c) A notice of the election and a certified copy of the order canvassing the election results shall be:

(1) sent to the commission and the comptroller; and

(2) filed in the deed records of the county.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.365. SALES TAX: EFFECTIVE DATES. (a) A sales and use tax implemented under this subchapter takes effect on the first day of the second calendar quarter that begins after the date the comptroller receives a copy of the order required to be sent under Section 370.364(c).

(b) An increase or decrease in the rate of a sales and use tax implemented under this subchapter takes effect on:

(1) the first day of the first calendar quarter that begins after the date the comptroller receives the notice provided under Section 370.364(c); or

(2) the first day of the second calendar quarter that begins after the date the comptroller receives the notice, if within 10 days after the date of receipt of the notice the comptroller gives written notice to the board that the comptroller requires more time to implement tax collection and reporting procedures.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

SUBCHAPTER K. DESIGN-BUILD CONTRACTS

Sec. 370.401. SCOPE OF AND LIMITATIONS ON CONTRACTS. (a) Notwithstanding the requirements of Chapter 2254, Government Code, an authority may use the design-build method for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project.

(b) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) An authority may enter into not more than two design-build contracts for transportation projects in any fiscal year.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.402. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.403. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as an authority's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a transportation project, an authority shall select or designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, that is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by an authority and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.404. OTHER PROFESSIONAL SERVICES. (a) An authority shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) An authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude the design-build contractor from providing construction quality assurance and quality control under a design-build contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.405. REQUEST FOR QUALIFICATIONS. (a) For any transportation project to be delivered through the design-build method, an authority must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

(b) An authority shall publish notice advertising the issuance of a request for qualifications in the Texas Register and on an Internet website maintained by the authority.

(c) An authority shall evaluate each qualifications statement received in response to a request for qualifications based on the criteria identified in the request. An authority may interview responding proposers. Based on the authority's evaluation of qualifications statements and interviews, if any, an authority shall qualify or short-list proposers to submit detailed proposals.

(d) An authority shall qualify or short-list at least two, but no more than five, firms to submit detailed proposals under Section 370.406. If an authority receives only one responsive proposal to a request for qualifications, the authority shall terminate the procurement.

(e) An authority may withdraw a request for qualifications or request for detailed proposals at any time.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.406. REQUEST FOR DETAILED PROPOSALS. (a) An authority shall issue a request for detailed proposals to proposers qualified or short-listed under Section 370.405. A request for detailed proposals must include:

(1) information on the overall project goals;

(2) the authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that an authority is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the authority pursuant to Section 370.183 relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (c), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (c) and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal; and

(14) the criteria and weighting for each element of the technical proposal.

(b) A request for detailed proposals shall also include a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution.

(c) Each response to a request for detailed proposals must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 370.405(a)(3);

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(e) An authority may provide for the submission of alternative technical concepts by a proposer. If an authority provides for the submission of alternative technical concepts, the authority must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(f) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

(g) A response to a request for detailed proposals shall be due not later than the 180th day after the final request for detailed proposals is issued by the authority. This subsection does not preclude the release by the authority of a draft request for detailed proposals for purposes of receiving input from short-listed proposers.

(h) An authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for detailed proposals and assign points on the basis of the weighting specified in the request for detailed proposals. The authority may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the authority as provided in the request for detailed proposals. The authority shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.407. NEGOTIATION. (a) After ranking the proposers under Section 370.406(h), an authority shall first attempt to negotiate a contract with the highest-ranked proposer. If an authority has committed to paying a stipend to unsuccessful proposers in accordance with Section 370.409, an authority may include in the negotiations alternative technical concepts proposed by other proposers.

(b) If an authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.408. ASSUMPTION OF RISKS. (a) Unless otherwise provided in the final request for detailed proposals, including all addenda and supplements to that request, the authority shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the authority;

(B) unknown or differing site conditions;

(C) environmental clearance and other regulatory permitting for the project; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

(b) Nothing herein shall prevent the parties from agreeing that the design-build contractor should assume some or all of the risks or costs set forth in Subsection (a) provided that such agreement is reflected in the final request for detailed proposals, including all addenda and supplements to the agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.409. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS. (a) Pursuant to the provisions of the request for detailed proposals, an authority shall pay an unsuccessful proposer that submits a responsive proposal to the request for detailed proposals a stipend for work product contained in the proposal. The stipend must be specified in the initial request for detailed proposals in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in determining value. After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this subsection.

(b) An authority may provide in a request for detailed proposals for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.410. PERFORMANCE AND PAYMENT BOND. (a) An authority shall require a design-build contractor to provide:

(1) a performance and payment bond;

(2) an alternative form of security; or

(3) a combination of the forms of security described by Subdivisions (1) and (2).

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(e) An authority may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or

(4) any other form of security determined suitable by the authority.

(f) Chapter 2253, Government Code, does not apply to a bond or alternative form of security required under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

S.B. No. 1730

AN ACT

relating to comprehensive development agreements of the Texas Department of Transportation or a regional mobility authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a), (b), (f), (g), (i), (j), (k), and (l), Section 223.201, Transportation Code, are amended to read as follows:

(a) Subject to Section 223.202, the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1) toll project;

(2) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;

(3) state highway improvement project in which the private entity has an interest in the project; [~~or~~]

(4) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; or

(5) nontolled state highway improvement project authorized by the legislature.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the design and construction, reconstruction, rehabilitation, expansion, or improvement of a project described in Subsection (a) and may also provide for the financing, acquisition, maintenance, or operation of a project described in Subsection (a).

(f) The department may enter into a comprehensive development agreement only for all or part of:

(1) the State Highway 99 (Grand Parkway) project;

(2) the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;

(3) the Interstate Highway 35W project in Tarrant County from Interstate Highway 30 to State Highway 114 [~~North~~ Tarrant Express project in Tarrant and Dallas Counties, including:

[~~(A) - - on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);~~

[~~(B) - - on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and~~

[~~(C) - - on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4)~~];

(4) the State Highway 183 managed lanes project in Tarrant and Dallas Counties [~~County~~] from State Highway 121 [~~161~~] to Interstate Highway 35E;

(5) the Interstate Highway 35E/U.S. Highway 67 Southern Gateway project in Dallas County, including:

(A) Interstate Highway 35E from 8th Street to Interstate Highway 20; and

(B) U.S. Highway 67 from Interstate Highway 35E to Farm-to-Market Road 1382 (Belt Line Road) [~~State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774~~];

(6) the State Highway 288 project from U.S. Highway 59 to south of State Highway 6 in Brazoria County and Harris County; [~~and~~]

————————] managed lanes project in Harris County from Interstate Highway 610 to State Highway 99;

(8) the Interstate Highway 820 project from State Highway 183 to Randol Mill Road;

(9) the State Highway 114 project in Dallas County from State Highway 121 to State Highway 183;

(10) the Loop 12 project in Dallas County from State Highway 183 to Interstate Highway 35E;

(11) the Loop 9 project in Dallas and Ellis Counties from Interstate Highway 20 to U.S. Highway 67; and

(12) the U.S. Highway 181 Harbor Bridge project in Nueces County between U.S. Highway 181 at Beach Avenue and Interstate Highway 37.

(g) The department may combine in a comprehensive development agreement under this subchapter:

(1) a toll project and a rail facility as defined by Section 91.001; or

(2) two or more projects described by Subsection (f).

(i) The authority to enter into a comprehensive development agreement expires:

(1) August 31, 2017, for a project described by Subsection (f), other than the State Highway 99 (Grand Parkway) project and the State Highway 183 managed lanes project; and

(2) [~~expires~~] August 31, 2015, for the State Highway 183 managed lanes project.

(j) Before the department may enter into a comprehensive development agreement under Subsection (f), the department must:

(1) for a project other than the State Highway 99 (Grand Parkway) project, obtain, not later than August 31, 2017 [~~2013~~], the appropriate environmental clearance:

(A) for the project; or

(B) for the initial or base scope of the project if the project agreement provides for the phased construction of the [~~for any project other than the State Highway 99 (Grand Parkway)~~] project; and

(2) present to the commission a full financial plan for the project, including costing methodology and cost proposals.

(k) Not later than December 1, 2014 [~~2012~~], the department shall provide [~~present~~] a report to the commission on the status of a project described by Subsection (f). The report must include:

(1) the status of the project's environmental clearance;

(2) an explanation of any project delays; and

(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(l) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project or, as applicable, for the initial or base scope of the project; or

(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project or, as applicable, for the initial or base scope of the project.

SECTION 2. Subsections (a), (c), (e), and (f), Section 223.2011, Transportation Code, are amended to read as follows:

(a) Notwithstanding Sections 223.201(f) and 370.305(c), the department or an authority under Section 370.003 may enter into a comprehensive development agreement relating to improvements to, or construction of, all or part of:

(1) the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;

(2) the U.S. 183 (Bergstrom Expressway) project from

Springdale Road to Patton Avenue; [~~or~~]

(3) a project consisting of the construction of:

(A) the Outer Parkway Project in Cameron County from U.S. Highway 77 [~~77/83~~] to Farm-to-Market Road 1847; and

(B) the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100;

(4) the Loop 49 project from Interstate 20 to U.S. Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S. Highway 259 (Segments 6 and 7);

(5) the Loop 375 Border Highway West project in El Paso County from Race Track Drive to U.S. Highway 54;

(6) the Northeast Parkway project in El Paso County from Loop 375 east of the Railroad Drive overpass to the Texas-New Mexico border;

(7) the Loop 1604 project in Bexar County;

(8) the Hidalgo County Loop project; and

(9) the International Bridge Trade Corridor project.

(c) Not later than December 1, 2014 [~~2012~~], the department or the authority, as applicable, shall provide [~~present~~] a report to the commission on the status of a project described by Subsection (a). The report must include:

(1) the status of the project's environmental clearance;

(2) an explanation of any project delays; and

(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(e) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project or, as applicable, for the initial or base scope of the project; or

(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project or, as applicable, for the initial or base scope of the project.

(f) The authority to enter into a comprehensive development agreement under this section expires August 31, 2017 [~~2015~~].

SECTION 3. Section 371.101, Transportation Code, is amended to read as follows:

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project must contain a provision authorizing the toll project entity to terminate the agreement for convenience and to purchase, under terms agreed to by the parties:

(1) the interest of the private participant in the comprehensive development agreement; and

(2) related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(b) A comprehensive development agreement described by Subsection (a) must include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens, of not less than two years and not more than five years, over the term of the agreement.

(c) The provision must authorize the toll project entity to terminate the comprehensive development agreement and to purchase the private participant's interest at any time during a specified interval at the lesser of:

(1) the price stated for that interval; or

(2) the greater of:

(A) the then fair market value of the private participant's interest, plus or minus any other amounts specified

in the comprehensive development agreement; or

(B) an amount equal to the amount of outstanding debt specified in the comprehensive development agreement, plus or minus any other amounts specified in the comprehensive development agreement.

(d) A toll project entity shall include in a request for proposals for an agreement described by Subsection (a) a request for the proposed price breakdown described by Subsection (b) and shall assign points to and score each proposer's price breakdown in the evaluation of proposals.

(e) A private participant shall, not later than 12 months before the date that a new price interval takes effect, notify the toll project entity of the beginning of the price interval. The toll project entity must notify the private participant as to whether it will exercise the option to purchase under this section not later than six months after the date it receives notice under this subsection.

(f) A toll project entity must notify the private participant of the toll project entity's intention to purchase the private participant's interest under this section not less than six months before the date of the purchase.

(g) Subsections (b), (c), (d), (e), and (f) do not apply to a project for which a request for proposals was issued before January 1, 2013.

(h) If a project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule, the price for terminating the comprehensive development agreement may be adjusted to reflect the changes in the agreement. [~~A toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall develop a formula for - making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience.~~

[~~(b) - - The formula shall be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount.~~

[~~(c) - - A formula under Subsection (b) may not include any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b). Compensation to the private participant upon termination for convenience may not exceed the amount determined using the formula under Subsection (b).~~]

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

_____ _____

President of the Senate Speaker of the House

I hereby certify that S.B. No. 1730 passed the Senate on April 16, 2013, by the following vote: Yeas 28, Nays 1;

May 8, 2013, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 10, 2013, House granted request of the Senate; May 23, 2013, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1.

_____
Secretary of the Senate

I hereby certify that S.B. No. 1730 passed the House, with amendments, on April 30, 2013, by the following vote: Yeas 113, Nays 29, two present not voting; May 10, 2013, House granted request of the Senate for appointment of Conference Committee; May 21, 2013, House adopted Conference Committee Report by the following vote: Yeas 93, Nays 51, two present not voting.

_____
Chief Clerk of the House

Approved:

_____
Date

_____
Governor

S.B. No. 1747

AN ACT

relating to funding and donations for transportation projects, including projects of county energy transportation reinvestment zones.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 256, Transportation Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TRANSPORTATION INFRASTRUCTURE FUND

Sec. 256.101. DEFINITIONS. In this subchapter:

(1) "Fund" means the transportation infrastructure fund established under this subchapter.

(2) "Transportation infrastructure project" means the planning for, construction of, reconstruction of, or maintenance of transportation infrastructure, including roads, bridges, and culverts, intended to alleviate degradation caused by the exploration, development, or production of oil or gas. The term includes the lease or rental of equipment used for road maintenance.

(3) "Weight tolerance permit" means a permit issued under Chapter 623 authorizing a vehicle to exceed maximum legal weight limitations.

(4) "Well completion" means the completion, reentry, or recompletion of an oil or gas well.

Sec. 256.102. TRANSPORTATION INFRASTRUCTURE FUND. (a) The transportation infrastructure fund is a dedicated fund in the state treasury outside the general revenue fund. The fund consists of:

(1) any federal funds received by the state deposited to the credit of the fund;

(2) matching state funds in an amount required by federal law;

(3) funds appropriated by the legislature to the credit of the fund;

(4) a gift or grant;

(5) any fees paid into the fund; and

(6) investment earnings on the money on deposit in the fund.

(b) Money in the fund may be appropriated only to the department for the purposes of this subchapter.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the fund.

Sec. 256.103. GRANT PROGRAM. (a) The department shall develop policies and procedures to administer a grant program under this subchapter to make grants to counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production. The department may adopt rules to implement this subchapter.

(b) Grants distributed during a fiscal year must be allocated among counties as follows:

(1) 20 percent according to weight tolerance permits, determined by the ratio of weight tolerance permits issued in the preceding fiscal year for the county that designated a county energy transportation reinvestment zone to the total number of weight tolerance permits issued in the state in that fiscal year, as determined by the Texas Department of Motor Vehicles;

(2) 20 percent according to oil and gas production taxes, determined by the ratio of oil and gas production taxes

collected by the comptroller in the preceding fiscal year in the county that designated a county energy transportation reinvestment zone to the total amount of oil and gas production taxes collected in the state in that fiscal year, as determined by the comptroller;

(3) 50 percent according to well completions, determined by the ratio of well completions in the preceding fiscal year in the county that designated a county energy transportation reinvestment zone to the total number of well completions in the state in that fiscal year, as determined by the Railroad Commission of Texas; and

(4) 10 percent according to the volume of oil and gas waste injected, determined by the ratio of the volume of oil and gas waste injected in the preceding fiscal year in the county that designated a county energy transportation reinvestment zone to the total volume of oil and gas waste injected in the state in that fiscal year, as determined by the Railroad Commission of Texas.

Sec. 256.104. GRANT APPLICATION PROCESS. (a) In applying for a grant under this subchapter, the county shall:

(1) provide the road condition report described by Section 251.018 made by the county for the previous year; and

(2) submit to the department:

(A) a copy of the order or resolution establishing a county energy transportation reinvestment zone in the county, except that the department may waive the submission until the time the grant is awarded; and

(B) a plan that:

(i) provides a list of transportation infrastructure projects to be funded by the grant;

(ii) describes the scope of the transportation infrastructure project or projects to be funded by the grant using best practices for prioritizing the projects;

(iii) provides for matching funds as required by Section 256.105; and

(iv) meets any other requirements imposed by the department.

(b) In reviewing grant applications under this subchapter, the department shall:

(1) seek other potential sources of funding to maximize resources available for the transportation infrastructure projects to be funded by grants under this subchapter; and

(2) consult related transportation planning documents to improve project efficiency and work effectively in partnership with counties.

(c) Except as otherwise provided by this subsection, the department shall review a grant application before the 31st day after the date the department receives the application. The department may act on an application not later than the 60th day after the date the department receives the application if the department provides notice of the extension to the county that submitted the application.

Sec. 256.105. MATCHING FUNDS. (a) Except as provided by Subsection (b), to be eligible to receive a grant under the program, matching funds must be provided, from any source, in an amount equal to at least 20 percent of the amount of the grant.

(b) A county that the department determines to be economically disadvantaged must provide matching funds in an amount equal to at least 10 percent of the amount of the grant.

Sec. 256.106. PROGRAM ADMINISTRATION. (a) A county that makes a second or subsequent application for a grant from the department under this subchapter must:

(1) provide the department with a copy of a report filed under Section 251.018;

(2) certify that all previous grants are being spent

in accordance with the plan submitted under Section 256.104; and

(3) provide an accounting of how previous grants were spent, including any amounts spent on administrative costs.

(b) The department may use one-half of one percent of the amount deposited into the fund in the preceding fiscal year, not to exceed $500,000 in a state fiscal biennium, to administer this subchapter.

SECTION 2. Subchapter E, Chapter 222, Transportation Code, is amended by adding Sections 222.1071 and 222.1072 to read as follows:

Sec. 222.1071. COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONES. (a) A county shall determine the amount of the tax increment for a county energy transportation reinvestment zone in the same manner the county would determine the tax increment as provided in Section 222.107(a) for a county transportation reinvestment zone.

(b) A county, after determining that an area is affected because of oil and gas exploration and production activities and would benefit from funding under Chapter 256, by order or resolution of the commissioners court:

(1) may designate a contiguous geographic area in the jurisdiction of the county to be a county energy transportation reinvestment zone to promote one or more transportation infrastructure projects, as that term is defined by Section 256.101, located in the zone; and

may jointly administer a county energy transportation reinvestment zone with a contiguous county energy transportation reinvestment zone formed by another county.

(c) A commissioners court must:

(1) dedicate or pledge all of the captured appraised value of real property located in the county energy transportation reinvestment zone to transportation infrastructure projects; and

(2) comply with all applicable laws in the application of this chapter.

(d) Not later than the 30th day before the date a commissioners court proposes to designate an area as a county energy transportation reinvestment zone under this section, the commissioners court must hold a public hearing on the creation of the zone and its benefits to the county and to property in the proposed zone. At the hearing an interested person may speak for or against the designation of the zone, its boundaries, the joint administration of a zone in another county, or the use of tax increment paid into the tax increment account.

(e) Not later than the seventh day before the date of the hearing, notice of the hearing and the intent to create a zone must be published in a newspaper having general circulation in the county.

(f) The order or resolution designating an area as a county energy transportation reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect immediately on adoption of the order or resolution designating an area and that the base year shall be the year of passage of the order or resolution designating an area or some year in the future;

(3) establish an ad valorem tax increment account for the zone or provide for the establishment of a joint ad valorem tax increment account, if applicable; and

(4) if two or more counties are designating a zone for the same transportation infrastructure project or projects, include a finding that:

(A) the project or projects will benefit the

(B) the creation of the zone will serve a public purpose of the county; and

(C) details the transportation infrastructure projects for which each county is responsible.

(g) Compliance with the requirements of this section constitutes designation of an area as a county energy transportation reinvestment zone without further hearings or other procedural requirements.

(h) The county may, from taxes collected on property in a zone, pay into a tax increment account for the zone or zones an amount equal to the tax increment produced by the county less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code.

(i) The county may:

(1) use money in the tax increment account to provide:

(A) matching funds under Section 256.105; and

(B) funding for one or more transportation infrastructure projects located in the zone;

(2) apply for grants under Subchapter C, Chapter 256, subject to Section 222.1072;

(3) use five percent of any grant distributed to the county under Subchapter C, Chapter 256, for the administration of a county energy transportation reinvestment zone, not to exceed $250,000;

(4) enter into an agreement to provide for the joint administration of county energy transportation reinvestment zones if the commissioners court of the county has designated a county energy transportation reinvestment zone under this section for the same transportation infrastructure project or projects as another county commissioners court; and

(5) pledge money in the tax increment account to a road utility district formed as provided by Subsection (n).

(j) Tax increment paid into a tax increment account may not be pledged as security for bonded indebtedness.

(k) A county energy transportation reinvestment zone terminates on December 31 of the 10th year after the year the zone was designated unless extended by an act of the county commissioners court that designated the zone. The extension may not exceed five years. On termination of the zone, any money remaining in the tax increment account must be transferred to the road and bridge fund described by Chapter 256 for the county that deposited the money into the tax increment account.

(l) The captured appraised value of real property located in a county energy transportation reinvestment zone shall be treated as provided by Section 26.03, Tax Code.

(m) The commissioners court of a county may enter into an agreement with the department to designate a county energy transportation reinvestment zone under this section for a specified transportation infrastructure project involving a state highway located in the proposed zone.

(n) In the alternative, to assist the county in developing a transportation infrastructure project, if authorized by the commission under Chapter 441, a road utility district may be formed under that chapter that has the same boundaries as a county energy transportation reinvestment zone created under this section. The road utility district may issue bonds to pay all or part of the cost of a transportation infrastructure project and may pledge and assign all or a specified amount of money in the tax increment account to secure those bonds if the county:

(1) collects a tax increment; and

(2) pledges all or a specified amount of the tax

increment to the road utility district.

(o) A road utility district formed as provided by Subsection (n) may enter into an agreement to fund development of a transportation infrastructure project or to repay funds owed to the department. Any amount paid for this purpose is considered to be an operating expense of the district. Any taxes collected by the district that are not paid for this purpose may be used for any district purpose.

Sec. 222.1072. ADVISORY BOARD OF COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONE. (a) A county is eligible to apply for a grant under Subchapter C, Chapter 256, if the county creates an advisory board to advise the county on the establishment, administration, and expenditures of a county energy transportation reinvestment zone. The county commissioners court shall determine the terms and duties of the advisory board members.

(b) Except as provided by Subsection (c), the advisory board of a county energy transportation reinvestment zone consists of the following members appointed by the county judge and approved by the county commissioners court:

(1) up to three oil and gas company representatives who perform company activities in the county and are local taxpayers; and

(2) two public members.

(c) County energy transportation reinvestment zones that are jointly administered are advised by a single joint advisory board for the zones. A joint advisory board under this subsection consists of members appointed under Subsection (b) for each zone to be jointly administered.

(d) An advisory board member may not receive compensation for service on the board or reimbursement for expenses incurred in performing services as a member.

SECTION 3. Section 222.110, Transportation Code, is amended by amending Subsections (a) and (h) and adding Subsection (i) to read as follows:

(a) In this section:

(1) "Sales[~~, "sales~~] tax base" for a transportation reinvestment zone means the amount of sales and use taxes imposed by a municipality under Section 321.101(a), Tax Code, or by a county under Chapter 323, Tax Code, as applicable, attributable to the zone for the year in which the zone was designated under this chapter.

(2) "Transportation reinvestment zone" includes a county energy transportation reinvestment zone.

(h) The hearing required under Subsection (g) may be held in conjunction with a hearing held under Section 222.106(e), [~~or~~] 222.107(e), or 222.1071(d) if the ordinance or order designating an area as a transportation reinvestment zone under Section 222.106, [~~or~~] 222.107, or 222.1071 also designates a sales tax increment under Subsection (b).

(i) Notwithstanding Subsection (e), the sales and use taxes to be deposited into the tax increment account established by a county energy transportation reinvestment zone or zones under this section may be disbursed from the account only to provide:

(1) matching funds under Section 256.105; and

(2) funding for one or more transportation infrastructure projects located in a zone.

SECTION 4. Subchapter A, Chapter 251, Transportation Code, is amended by adding Sections 251.018 and 251.019 to read as follows:

Sec. 251.018. ROAD REPORTS. A road condition report made by a county that is operating under a system of administering county roads under Chapter 252 or a special law, including a report made under Section 251.005, must include the primary cause of any road,

culvert, or bridge degradation if reasonably ascertained.

Sec. 251.019. DONATIONS. (a) A commissioners court may accept donations of labor, money, or other property to aid in the building or maintaining of roads, culverts, or bridges in the county.

(b) A county operating under the county road department system on September 1, 2013, may use the authority granted under this section without holding a new election under Section 252.301.

(c) A county that accepts donations under this section must execute a release of liability in favor of the entity donating the labor, money, or other property.

SECTION 5. Subsection (a), Section 256.009, Transportation Code, is amended to read as follows:

(a) Not later than January 30 of each year, the county auditor or, if the county does not have a county auditor, the official having the duties of the county auditor shall file a report with the comptroller that includes:

(1) an account of how:

(A) the money allocated to a county under Section 256.002 during the preceding year was spent; and

(B) if the county designated a county energy transportation reinvestment zone, money paid into a tax increment account for the zone or from an award under Subchapter C was spent;

(2) a description, including location, of any new roads constructed in whole or in part with the money:

(A) allocated to a county under Section 256.002 during the preceding year; and

(B) paid into a tax increment account for the zone or from an award under Subchapter C if the county designated a county energy transportation reinvestment zone;

(3) any other information related to the administration of Sections 256.002 and 256.003 that the comptroller requires; and

(4) the total amount of expenditures for county road and bridge construction, maintenance, rehabilitation, right-of-way acquisition, and utility construction and other appropriate road expenditures of county funds in the preceding county fiscal year that are required by the constitution or other law to be spent on public roads or highways.

SECTION 6. The Texas Department of Transportation shall adopt rules implementing Subchapter C, Chapter 256, Transportation Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 7. The amendment adding Sections 222.1071 and 222.1072 to Subchapter E, Chapter 222, Transportation Code, made by this Act prevails over the amendment adding those sections to Subchapter E, Chapter 222, Transportation Code, made by Section 1, House Bill No. 2300, 83rd Legislature, Regular Session, 2013, and the amendment made by Section 1, House Bill No. 2300, 83rd Legislature, Regular Session, 2013, has no effect.

SECTION 8. This Act takes effect September 1, 2013.

H.B. No. 1198

AN ACT

relating to authorizing an optional county fee on vehicles registered in certain counties to fund transportation projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 502.402(a) and (e), Transportation Code, are amended to read as follows:

(a) This section applies only to a county that:

(1) [~~that~~] borders the United Mexican States; and

(2) [~~that~~] has a population of more than 250,000 [~~300,000; and~~

[~~(3) in which the largest municipality has a population of less than 300,000~~].

(e) The additional fee shall be collected for a vehicle when other fees imposed under this chapter are collected. The fee revenue collected shall be sent to a [~~the~~] regional mobility authority located in [~~of~~] the county to fund long-term transportation projects in the county.

SECTION 2. Section 502.402, Transportation Code, as amended by this Act, applies only to the fee for a registration period beginning on or after the effective date of this Act. A fee for a registration period beginning before the effective date of this Act is governed by the law in effect when the registration period began, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

_____ _____

President of the Senate Speaker of the House

I certify that H.B. No. 1198 was passed by the House on May 2, 2013, by the following vote: Yeas 144, Nays 3, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1198 on May 23, 2013, by the following vote: Yeas 134, Nays 7, 2 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 1198 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 20, Nays 11.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

S.B. No. 1489

AN ACT

relating to the powers and jurisdiction of a regional mobility authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (14), Section 370.003, Transportation Code, is amended to read as follows:

(14) "Transportation project" means:

(A) a turnpike project;

(B) a system;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated with a rail operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(D-1) a bridge;

(E) a ferry;

(F) an airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) a pedestrian or bicycle facility;

(H) an intermodal hub;

(I) an automated conveyor belt for the movement of freight;

(J) a border crossing inspection station, including:

(i) a border crossing inspection station located at or near an international border crossing; and

(ii) a border crossing inspection station located at or near a border crossing from another state of the United States and not more than 50 miles from an international border;

(K) an air quality improvement initiative;

(L) a public utility facility;

(M) a transit system;

(M-1) a parking area, structure, or facility, or a collection device for parking fees;

(N) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact; [~~and~~]

(O) improvements in a transportation reinvestment zone designated under Subchapter E, Chapter 222; and

(P) port security, transportation, or facility

.

SECTION 2. Section 370.033, Transportation Code, is amended by amending Subsections (c) and (f) and adding Subsections (f-1) and (r) to read as follows:

(c) An authority may[~~, if requested by the commission,~~] perform any function not specified by this chapter to promote or develop a transportation project that the authority is authorized to develop or operate under this chapter [~~in the authority's area of jurisdiction~~].

(f) An authority [~~and a governmental entity~~] may enter into a contract, agreement, interlocal agreement, or other similar arrangement under which the authority may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another [~~the~~] governmental entity if:

(1) the transportation project is located in the authority's area of jurisdiction or in a county adjacent to the authority's area of jurisdiction;

(2) the transportation project is being acquired, planned, constructed, designed, operated, repaired, or maintained on behalf of the department or another toll project entity, as defined by Section 372.001; or

(3) for a transportation project that is not described by Subdivision (1) or (2), the department approves the acquisition, planning, construction, design, operation, repair, or maintenance of the project by the authority.

(f-1) [~~An authority may enter into a contract or agreement with the department under which the authority will plan, develop, operate, or maintain a transportation project on behalf of the department, subject to the transportation project being in the authority's area of jurisdiction.~~] A contract or agreement under Subsection (f) [~~this subsection~~] may contain terms and conditions as may be approved by an authority, including payment obligations of the governmental entity and the authority.

(r) This chapter may not be construed to restrict the ability of an authority to enter into an agreement under Chapter 791, Government Code, with another governmental entity located anywhere in this state.

SECTION 3. Section 370.161, Transportation Code, is amended to read as follows:

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. [~~(a)~~] An authority may study, evaluate, design, finance, acquire, construct, operate, maintain, repair, expand, or extend a transportation project [~~only~~] in:

(1) a county that is a part of the authority;

(2) a county in this state that is not a part of the authority if the county and authority enter into an agreement under Section 370.033(f)[~~:~~

[~~(A) the transportation project in that county is a continuation of a transportation project of the authority extending from a county adjacent to that county;~~

[~~(B) the county is given an opportunity to become part of the authority on terms and conditions acceptable to the authority and that county; and~~

[~~(C) the commissioners court of the county agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension of the transportation project in that county~~]; or

(3) a county in another state or the United Mexican States if:

(A) each governing body of a political subdivision in which the project will be located agrees to the proposed study, evaluation, design, financing, acquisition, construction, operation, maintenance, repair, expansion, or extension;

(B) the project will bring significant benefits to the counties in this state that are part of the authority;

(C) the county in the other state is adjacent to a

county that [~~is~~]:

(i) is part of the authority studying, evaluating, designing, financing, acquiring, constructing, operating, maintaining, repairing, expanding, or extending the transportation project; and

(ii) has a municipality with a population of 500,000 or more; and

(D) the governor approves the proposed study, evaluation, design, financing, acquisition, construction, operation, maintenance, repair, expansion, or extension.

SECTION 4. Subsection (b), Section 370.181, Transportation Code, is amended to read as follows:

(b) An authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend a [~~the~~] transportation project owned or operated by [~~of~~] the authority.

SECTION 5. Subchapter E, Chapter 370, Transportation Code, is amended by adding Section 370.1911 to read as follows:

Sec. 370.1911. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS AT INSPECTION FACILITIES AT INTERSTATE BORDERS. (a) Notwithstanding Section 370.191, an authority may construct a border inspection facility to be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety, provided that the facility is located:

(1) at or near a border crossing from another state of the United States; and

(2) not more than 50 miles from an international border.

(b) To the extent an authority constructing a border inspection facility under this section considers appropriate to expedite commerce, the facility may include implementation of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) technology.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

_____ _____

President of the Senate Speaker of the House

I hereby certify that S.B. No. 1489 passed the Senate on April 25, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 8, 2013, by the following vote: Yeas 30, Nays 0.

_____

Secretary of the Senate

I hereby certify that S.B. No. 1489 passed the House, with amendment, on May 2, 2013, by the following vote: Yeas 141, Nays 6, two present not voting.

_____

Chief Clerk of the House

Approved:

_____
Date

_____
Governor

Texas Administrative Code

TITLE 43 TRANSPORTATION

PART 1 TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 26 REGIONAL MOBILITY AUTHORITIES

Subchapters

SUBCHAPTER A GENERAL PROVISIONS
SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY
SUBCHAPTER C REVISIONS TO REGIONAL MOBILITY AUTHORITY--ADDITIONS, WITHDRAWALS, AND DISSOLUTION
SUBCHAPTER D APPROVAL OF A TRANSPORTATION PROJECT
SUBCHAPTER E TRANSFER OF TXDOT FERRY
SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS
SUBCHAPTER G REPORTS AND AUDITS

SUBCHAPTER A GENERAL PROVISIONS
RULE §26.1 Purpose

Transportation Code, Chapter 370, provides that the Texas Transportation Commission may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation projects in a region of the state. Chapter 370 further provides for commission approval or regulation of certain actions and operations of a regional mobility authority. This chapter prescribes the policies and procedures governing commission regulation of regional mobility authorities as provided by Chapter 370.

Source Note: The provisions of this §26.1 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER A GENERAL PROVISIONS
RULE §26.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AASHTO--The American Association of State Highway and Transportation Officials.
(2) Board--The board of directors of a regional mobility authority.
(3) Commission--The Texas Transportation Commission.
(4) County--Includes the cities of El Paso, Laredo, Brownsville, McAllen, and Port Aransas.
(5) Director--A director of a board.
(6) Department--The Texas Department of Transportation.
(7) Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a transportation project, including, but not limited to, sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.
(8) Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.
(9) Fiscal year--An accounting period of 12 months that is consistent, to the extent feasible, with the fiscal year of an RMA's member counties.
(10) Governmental entity--A municipality, county, the department, or other public entity authorized to construct, maintain, and operate a transportation project within the region of a regional mobility authority.
(11) Metropolitan planning organization--An organization designated to carry out the transportation planning process in prescribed urbanized areas as required by 23 U.S.C. §134.
(12) Nonattainment area--An area designated by the U.S. Environmental Protection Agency as not meeting the air quality standards outlined in the Clean Air Act.
(13) Petitioner--The county or counties petitioning for the creation of a regional mobility authority.
(14) Public utility facility--Means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;
(B) an electric transmission or distribution line or associated equipment; or
(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.
(15) RMA--A regional mobility authority.
(16) Revenue--Fares, fees, rents, tolls, and other money received by an authority from the ownership or operation of a transportation project.
(17) State Implementation Plan--The plan prepared by the Texas Commission on Environmental Quality as required by 42 USC §7410 to attain and maintain air quality standards.
(18) Surplus revenue--Revenue that exceeds:
(A) the regional mobility authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;
(B) coverage requirements of a bond indenture for a transportation project;
(C) costs of operation and maintenance for a transportation project;
(D) cost of repair, expansion, or improvement of a transportation project;
(E) funds allocated for feasibility studies; and
(F) necessary reserves as determined by the regional mobility authority.
(19) Transportation project--Means:
(A) a turnpike project;
(B) a system designated under Transportation Code, §370.034;
(C) a passenger or freight rail facility, including:
(i) tracks;
(ii) a rail line;
(iii) switching, signaling, or other operating equipment;
(iv) a depot;
(v) a locomotive;
(vi) rolling stock;
(vii) a maintenance facility; and
(viii) other real and personal property associated with a rail operation;
(D) a roadway with a functional classification greater than a local road or rural minor collector;
(E) a ferry;
(F) an airport, other than an airport that on September 1, 2005 was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. §1.1 on that date;
(G) a pedestrian or bicycle facility;
(H) an intermodal hub;
(I) an automated conveyor belt for the movement of freight;
(J) a border crossing inspection station;
(K) an air quality improvement initiative;
(L) a public utility facility;
(M) a transit system; and
(N) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the RMA, including an early action compact.
(20) Turnpike project--A highway of any number of lanes, with or without grade separations,

owned or operated by an RMA under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, or ramp;

(C) an administration, storage, or other building the RMA considers necessary for the operation of a turnpike project;

(D) a property right, easement, or interest the RMA acquires to construct or operate the turnpike project; and

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the RMA considers necessary, useful, or beneficial for the operation of a turnpike project.

Source Note: The provisions of this §26.2 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8998

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY

RULE §26.11 Petition

(a) One or more counties may petition the commission for approval to create an RMA. The petition shall include:

(1) an adopted resolution from the commissioners court of each county indicating its approval of the creation by the county of an RMA;

(2) a description of how the RMA would improve mobility in the region;

(3) a description of a potential candidate transportation project or system of projects the RMA may undertake depending on study outcomes, including:

(A) an explanation of how the project or system of projects will be consistent with the appropriate policies, strategies, and actions of the Texas Transportation Plan, and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization;

(B) a brief description of any known environmental, social, economic, or cultural resource issues, such as impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites;

(C) the name and address of any individuals or organizations known to be opposed to any element of the project or system of projects, and a description of any known controversies concerning the project or system of projects; and

(D) a preliminary financing plan for the project or system of projects, which shall include an estimate of the following information, if available to the petitioner:

(i) total estimated cost, including planning, design, right of way acquisition, environmental mitigation, and construction; and

(ii) proposed financing, specifying the source and use of the funds, including debt financing and department contributions, identified as a loan or a grant;

(4) a commitment by the RMA to be fully responsible for identifying all EPIC, obtaining all required environmental permits, and other required environmental approvals;

(5) a brief description of any other transportation projects the petitioner is currently considering to be developed by the RMA; and

(6) the representation criteria and the appointment process for board members.

(b) The cities of El Paso, Laredo, Brownsville, McAllen, or Port Aransas may petition the

commission for approval to create an RMA in the same manner as a county under subsection (a) of this section. Instead of the requirements of subsection (a)(1) of this section, the city must submit a resolution from its city council indicating its approval of the creation by the city of an RMA.
(c) For purposes of this subchapter, a system means a combination or network of transportation projects that the RMA may undertake.

Source Note: The provisions of this §26.11 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8998

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY
RULE §26.12 Public Hearing

(a) If the department finds that the petition meets the requirements of §26.11 of this subchapter, it will notify the petitioner of its findings and will conduct one or more public hearings to receive public comment on the proposed RMA.
(b) The department will hold at least one hearing within at least one of the counties of the petitioner.
(c) The department will file a notice of each hearing with the Secretary of the State for publication in the *Texas Register*.
(d) The petitioner shall advertise each hearing in accordance with an outreach plan developed in consultation with the department.

Source Note: The provisions of this §26.12 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY
RULE §26.13 Approval

(a) The commission may authorize the petitioner to create an RMA if it finds that:
(1) the creation of an RMA:
(A) has sufficient public support based upon:
(i) public comments received at public hearings;
(ii) any resolutions of support from affected political subdivisions; and
(iii) the expressed opinion, if any, of the affected metropolitan planning organizations;
(B) will result in direct benefits to the state, local governments, and the traveling public; and
(C) will improve the efficiency of the state's transportation systems; and
(2) each potential candidate project or system of projects:
(A) if it is a highway project, the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, the metropolitan mobility plan, and the Statewide Transportation Improvement Program; and
(B) subject to the completion of required studies and subject to commission approval under §26.31 of this chapter (relating to Request), will benefit the traveling public.
(b) The commission may refuse to authorize the creation of an RMA if the commission determines that the proposed board will not fairly represent political subdivisions in the counties

of the RMA that will be affected by the creation of the RMA.

Source Note: The provisions of this §26.13 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY

RULE §26.14 Commission Action

(a) Order. If approved under §26.13 of this subchapter, the commission will adopt a minute order authorizing the creation of the RMA. The minute order will:
(1) describe the potential candidate project or system of projects to be developed, maintained, and operated by the RMA; and
(2) establish, consistent with Transportation Code, §370.251, the initial size of the board, which shall be composed of an odd number of directors.
(b) Approval of project. Approval of the creation of an RMA shall not constitute final commission approval of any transportation project subject to approval under §26.31 of this chapter (relating to Request).

Source Note: The provisions of this §26.14 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY

RULE §26.15 Creation

(a) The petitioner shall create an RMA authorized under §26.14 of this subchapter by resolution of each county. Each resolution shall appoint directors consistent with the provisions of §26.14(a)(2) of this subchapter.
(b) Additional directors. The petitioner shall provide for the appointment of any additional members described in §26.11(6) of this subchapter.

Source Note: The provisions of this §26.15 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY

RULE §26.16 Alternative Board Composition and Method of Appointment

(a) If a petition under §26.11 of this subchapter includes a county in which a regional tollway authority under Transportation Code, Chapter 366 operates or a county owning or operating a toll project under Transportation Code, Chapter 284, the petitioner may submit to the commission an alternative board structure and method of appointment.
(b) The commission may approve a proposal submitted under subsection (a) of this section if:
(1) the proposal includes an adopted resolution from the commissioners court of each county in the RMA indicating its approval of the alternative board structure and method of appointment; and

(2) the commission determines that the alternative will provide for adequate representation of affected political subdivisions.

Source Note: The provisions of this §26.16 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER B CREATION OF A REGIONAL MOBILITY AUTHORITY

RULE §26.17 Board Membership after Commission Approval

(a) After the commission approves the composition and appointment method of the board of an RMA under §26.13 or §26.16 of this subchapter (relating to Approval and Alternate Board Composition and Method of Appointment, respectively) and the RMA has been created and the initial board members have been appointed, the representation criteria and appointment process for the RMA's board members may be revised by the governing body of each county that is a member of the RMA or the city that created the RMA.
(b) A revision under subsection (a) of this section is not subject to review or approval of the commission.
(c) After the appointment of the initial board members, an appointment to an RMA's board is not subject to review or approval of the commission.

Source Note: The provisions of this §26.17 adopted to be effective December 8, 2011, 36 TexReg 8256

SUBCHAPTER C REVISIONS TO REGIONAL MOBILITY AUTHORITY--ADDITIONS, WITHDRAWALS, AND DISSOLUTION

RULE §26.21 Addition of Counties

(a) One or more counties may request the commission for approval to become part of an existing RMA. The commission may approve the request only if:
(1) the county has submitted a resolution from its commissioners court indicating support for the request;
(2) the board of the RMA has agreed in writing to the addition;
(3) each county that is a member of the RMA has submitted an adopted resolution from its commissioners court indicating support for the request;
(4) the commission finds that the addition will benefit the mobility of the region; and
(5) the commission finds that affected political subdivisions in the new county or counties will be adequately represented on the board.
(b) If one of the counties requesting approval under subsection (a) of this section is part of a regional tollway authority under Transportation Code, Chapter 366 or owns or operates a toll project under Transportation Code, Chapter 284, the county may submit to the commission an alternative board structure and method of appointment. The commission may approve the alternative board structure and method of appointment if:
(1) the proposal includes an adopted resolution from the commissioners court of each county in the RMA indicating its approval of the alternative board structure and method of appointment;
(2) the commission determines that the alternative will provide for adequate representation of

affected political subdivisions; and
(3) the commission approves the request submitted under subsection (a) of this section.

Source Note: The provisions of this §26.21 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER C REVISIONS TO REGIONAL MOBILITY AUTHORITY--ADDITIONS, WITHDRAWALS, AND DISSOLUTION

RULE §26.22 Withdrawal of Counties

(a) One or more counties may petition the commission for approval to withdraw from an RMA. The commission may approve the petition only if the RMA has no bonded indebtedness.
(b) If the RMA has any debt other than bonded indebtedness, the petitioning county must obtain the approval of the board of the RMA.

Source Note: The provisions of this §26.22 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER C REVISIONS TO REGIONAL MOBILITY AUTHORITY--ADDITIONS, WITHDRAWALS, AND DISSOLUTION

RULE §26.23 Dissolution of an RMA

(a) Voluntary dissolution. The board of an RMA may request the commission for approval to dissolve. The commission may approve the request if:
(1) all debts, obligations, and liabilities of the RMA have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;
(2) there are no suits pending against the RMA, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and
(3) the RMA has commitments from other governmental entities to assume jurisdiction of all RMA transportation projects.
(b) Involuntary dissolution.
(1) The commission may by order require the RMA to dissolve if it determines that the RMA has not, as determined by the commission, substantially complied with the requirements of a commission rule or an agreement between the department and the RMA.
(2) The commission may not require dissolution unless:
(A) the conditions described in subsection (a)(1) and (2) of this section have been met; and
(B) the holders of any indebtedness have evidenced their agreement to the dissolution.
(3) At least 30 days prior to adopting an order under this section, the department will provide written notice to the RMA's board offering an opportunity for the RMA to speak before the commission.

Source Note: The provisions of this §26.23 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER D APPROVAL OF A TRANSPORTATION PROJECT

RULE §26.31 Request

(a) In accordance with Transportation Code, §370.187, the RMA must request commission approval of a transportation project that will connect to the state highway system or to a department rail facility. The RMA must obtain approval after completing the environmental review required by Transportation Code, §370.188 and federal law and before construction of the project begins.
(b) To secure approval under this section, the RMA shall submit:
(1) a report identifying relocations or reconstruction to state highway system facilities or department rail facilities anticipated in connection with the proposed project;
(2) a copy of any report, study, or analysis prepared pursuant to the federal National Environmental Policy Act or Transportation Code, §370.188; and
(3) a commitment that the RMA will comply with §26.33 of this subchapter.

Source Note: The provisions of this §26.31 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER D APPROVAL OF A TRANSPORTATION PROJECT

RULE §26.32 Approval

In deciding whether to grant approval under this subchapter, the commission will consider whether the project may be effectively integrated into the state's transportation system.

Source Note: The provisions of this §26.32 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER D APPROVAL OF A TRANSPORTATION PROJECT

RULE §26.33 Design and Construction

(a) Applicability. This section applies to an RMA transportation project that will connect to the state highway system or a department rail facility.
(b) State or federal funds. RMA turnpike projects that use federal or state funds provided by the department must also comply with Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities). If a requirement of Chapter 27, Subchapter E conflicts with any provision of this section, the most stringent requirement, as determined by the executive director, will apply.
(c) Responsibility. The RMA is fully responsible for the design and construction of each project it undertakes, including ensuring that all EPIC are addressed in project design and construction.
(d) Design criteria for highway facilities.
(1) State criteria. All designs developed by or on behalf of the RMA shall comply with the latest version of the department's manuals, including, but not limited to, the Roadway Design Manual, Pavement Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, Bridge Design Manual, and the Texas Accessibility Standards.
(2) Alternative criteria. An RMA may request approval to use different accepted criteria for a

particular item of work. Alternative criteria may include, but are not limited to, the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(3) Exceptions to design criteria. An RMA may deviate from the state or alternative criteria for a particular design element on a case by case basis after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution. Documentation of the exceptions shall be retained by the RMA and furnished to the department in accordance with subsection (h) of this section.

(e) Design and construction criteria for rail facilities. Rail facilities developed by or on behalf of the RMA shall comply with the current version of the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

(f) Access. For proposed projects that will change the access control line to an interstate highway, the RMA shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(g) Construction specifications for highway projects.

(1) All plans, specifications, and estimates developed by or on behalf of the RMA 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.

(2) The executive director may approve the use of an alternative specification if the proposed specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(h) Design and construction review and approval.

(1) Applicability. This subsection applies to the segment of an RMA transportation project that connects to the state highway system or a department rail facility, including an overpass, underpass, intersection, or interchange.

(2) Exceptions to design criteria. An RMA may request approval to deviate from the state or alternative criteria for a particular design element on a case by case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Preliminary plan review. When design of the connection is approximately 30% complete, the RMA shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in §26.34 of this subchapter:

(A) a design schematic depicting plan, profile, and superelevation information for each roadway and rail line;

(B) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, right of

way lines, if applicable, rail cross ties, type and size of rail and ballast type;

(C) bridge, retaining wall, and sound wall layouts, including, where applicable, an indication of structural capacity in terms of design loading;

(D) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage; and

(E) the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(4) Final plan review. When final plans are complete, the RMA shall send the following information to the executive director for review and approval in accordance with the procedures and timelines established in the project development agreement described in §26.34 of this subchapter:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer; and

(B) revisions to the preliminary design submission previously approved by the department summarized or highlighted for the department.

(5) Contract bidding and award. The RMA shall not advertise the project for receipt of bids until it has received approval of the PS&E from the department. This paragraph does not apply to a project developed under a comprehensive development agreement.

(6) Contract revisions.

(A) All contract revisions related to the connections to the department facility shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Major contract revisions must be submitted to the executive director for approval prior to beginning the revised construction work. Procedures governing the executive director's approval, including time limits for department review, shall be included in the project agreement described in §26.34 of this subchapter.

(B) For purposes of this subsection, "major contract revision" means a revision to a construction contract that:

(i) reduces geometric design or structural capacity below project design criteria;

(ii) changes the location or configuration of the physical connection to the department facility;

(iii) changes the placement of columns and other structural elements within the department's right of way;

(iv) changes the traffic control plan in a manner that reduces the capacity on the department facility as shown on the approved PS&E

(v) changes the access on a controlled access facility; or

(vi) for federally funded projects, eliminates or revises EPICs.

(i) As-built plans. Within six months after final acceptance of the construction project, the RMA shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a Texas licensed professional engineer certifying that the project was constructed in accordance with the plans and specifications.

(j) Document and information exchange. If available, the RMA agrees to deliver to the department all materials used in the development of the project including, but not limited to, aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(k) State and federal law. The RMA shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable

permits, plans, and other documentation required by a federal or state entity.
(l) Work on state right of way. All work required within the limits of state owned right of way shall be accomplished only pursuant to express written agreement with the department.

Source Note: The provisions of this §26.33 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8998

SUBCHAPTER D APPROVAL OF A TRANSPORTATION PROJECT

RULE §26.34 Project Development Agreement

The RMA and the department shall enter into an agreement governing the development of a project under this subchapter. The agreement shall, at a minimum, include:

(1) the responsibilities of each party concerning the design and construction of the project and EPIC;
(2) procedures governing the submittal of information required by this subchapter;
(3) timelines governing approvals of the executive director under this subchapter; and
(4) other terms or conditions mutually agreed upon by the parties.

Source Note: The provisions of this §26.34 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER D APPROVAL OF A TRANSPORTATION PROJECT

RULE §26.35 RMA Project on State Highway System

(a) An RMA may request the commission to designate a highway project as a part of the state highway system. The commission may approve the request if:
(1) the commission determines that the project can be efficiently integrated into the state highway system;
(2) the RMA agrees to design, construct, maintain, and operate the project in accordance with standards established by the department, and to be subject to department reviews and approvals as deemed necessary by the department; and
(3) the RMA agrees to be responsible for all EPIC.
(b) The RMA and the department may agree to allocate maintenance or operation responsibilities to the department.

Source Note: The provisions of this §26.35 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER E TRANSFER OF TXDOT FERRY

RULE §26.41 Request

(a) An RMA may request the commission to transfer a department owned and operated ferry to an RMA.
(b) A request submitted under subsection (a) of this section must be in writing and must include:

(1) an explanation of how the proposed transfer is an integral part of the region's overall plan to improve mobility in the region;
(2) an explanation of how the request complies with §26.43(a)(3) and (4) of this subchapter;
(3) copies of any completed studies concerning the transfer;
(4) a brief description of any known environmental, social, economic, or cultural resource issues, such as impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites concerning the transfer; and
(5) the name and address of any individuals or organizations known to be opposed to the transfer, and a description of any known controversies concerning the transfer.

Source Note: The provisions of this §26.41 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8999

SUBCHAPTER E TRANSFER OF TXDOT FERRY

RULE §26.42 Public Involvement

(a) If the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region, the department will:
(1) hold one or more public hearings in each county in which the project is located for the purpose of seeking oral comments;
(2) hold one or more informal public meetings, which will be held, if practicable, in the project area; and
(3) solicit written comments.
(b) Notice of a solicitation of written comments, a public meeting, and a public hearing held under subsection (a) of this section will be:
(1) published in the *Texas Register;*
(2) published in one or more newspapers of general circulation in each of the counties in which the ferry is located;
(3) published in a newspaper, if any, published in each of the counties of the applicable authority;
(4) posted on the department's website, with a link to the RMA's website, if available; and
(5) posted on the RMA's website, if available, with a link to the department's website.
(c) The department will publish and post notices under subsection (b) of this section at least 10 days prior to the date of a hearing or meeting.
(d) A notice published or posted under subsection (b) of this section will inform the public that the RMA's request and any studies submitted by the RMA in support of the request are available for review at one or more designated offices of the department and can be found on the websites of the department and, if available, the RMA. The notice will provide the links to the request and studies. The department will not make studies available on the websites if it determines such action to be impractical due to size of the files.

Source Note: The provisions of this §26.42 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8999

SUBCHAPTER E TRANSFER OF TXDOT FERRY
RULE §26.43 Approval

(a) The commission may, after considering public input concerning the proposed transfer, approve a proposed transfer under this subchapter if:
(1) the RMA agrees to assume all liability and responsibility for the safe and effective maintenance and operation of the ferry upon its transfer;
(2) the RMA agrees to assume all liability and responsibility for compliance with all federal laws, regulations, and policies applicable to the ferry;
(3) the commission determines that the transfer is in the public interest;
(4) the RMA agrees to assume all liability and responsibility for EPIC; and
(5) the RMA has adopted rules providing criteria and guidelines for approval of the transfer of a ferry.
(b) Commission approval under this section is conditioned on the approval of the governor.

Source Note: The provisions of this §26.43 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8999

SUBCHAPTER E TRANSFER OF TXDOT FERRY
RULE §26.44 Preliminary Approval

(a) The commission may grant preliminary approval of the transfer, with final approval conditioned on the completion of preliminary studies necessary for the commission to make findings required by §26.43 of this subchapter. The preliminary studies may include, but are not limited to, social, economic, and environmental studies and the preparation of traffic and revenue forecasts.
(b) The commission may require the RMA to pay for or complete all or a portion of the preliminary studies.
(c) Upon completion of the preliminary studies, the department will hold one or more additional public hearings. The department will publish and post notice of a hearing held under this subsection in accordance with §26.42(b)-(d).
(d) The commission may grant final approval of the transfer consistent with the requirements of §26.43 of this subchapter.

Source Note: The provisions of this §26.44 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER E TRANSFER OF TXDOT FERRY
RULE §26.45 Reimbursement

(a) An authority shall reimburse the commission for the cost of a transferred ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public that equals or exceeds the cost.
(b) In computing the cost of the ferry, the commission will:
(1) include the total amount spent by the department for the original construction of the ferry,

including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, operating, or extending the ferry to be incurred by the RMA and not by the department if the ferry is transferred.

Source Note: The provisions of this §26.45 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8999

SUBCHAPTER E TRANSFER OF TXDOT FERRY

RULE §26.46 Use of Surplus Revenue

Notwithstanding the provisions of §26.53 of this chapter (relating to Surplus Revenue) to the contrary, the commission may, as a condition to the transfer, require that expenditures of surplus revenue, if any, derived from a transferred ferry be made to implement projects included in the metropolitan transportation plan or the department's unified transportation program. Within the project operating agreement described under §26.54 of this chapter (relating to Project Operating Agreement), the commission and the RMA shall, prior to transfer, mutually agree to the amount of expenditures subject to this section and projects to be funded under this section. These provisions may be revised at any time upon agreement of both parties.

Source Note: The provisions of this §26.46 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8999

SUBCHAPTER E TRANSFER OF TXDOT FERRY

RULE §26.47 Applicability

This subchapter does not apply to a ferry located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

Source Note: The provisions of this §26.47 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS

RULE §26.51 Conflict of Interest

(a) Prohibited conduct for directors and employees. A director or employee of an RMA may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the director or employee in the discharge of official duties or that the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments, including investments of a spouse, that could reasonably be expected to create a conflict between the director's or employee's private interest and the interest of the RMA or that could impair the ability of the individual to make independent decisions;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the RMA.

(b) Eligibility of directors and chief administrative officer.

(1) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization, other than a political subdivision, that is regulated by or receives funds from the department, the RMA, or a member county;

(B) directly or indirectly owns or controls more than a 10% interest in a business or other organization that is regulated by or receives funds from the department, the RMA, or a member county;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the department, the RMA, or a member county; or

(D) is required to register as a lobbyist under Government Code, Chapter 305, because of the person's activities for compensation on behalf of a profession related to the operation of the department, the RMA, or a member county.

(2) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation.

(3) Except as provided in Transportation Code, §370.251(g), a person is not ineligible to serve as a director or chief administrative officer of an RMA if the person has received funds from the department, the RMA, or a member county for acquisition of highway right of way.

(4) The commission may approve an exception to the requirements of subsection (b)(1)(A) of this section if:

(A) the RMA or the applicable county has properly disclosed to the public the details of the potential conflict;

(B) the potential conflict concerns employment with an entity that receives funds from a member county; and

(C) the commission determines that the employment will not result in the director or chief administrative officer incurring any obligation of any nature that is in substantial conflict with the director or officer's proper discharge of his or her duties on behalf of the RMA.

(c) In addition to the prohibitions and restrictions of this section, a director is subject to Local Government Code, Chapter 171.

Source Note: The provisions of this §26.51 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2006, 30 TexReg 8998

SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS

RULE §26.52 Donations

An RMA may only accept donations of cash, goods, services, and property that will further the performance of its functions. All donations shall be used by the RMA for their intended purpose in accordance with applicable law. All RMAs, in receiving donations, shall accept and use the donations only for specific purposes legally supported and authorized by the donors and shall be strictly accountable to the donors.

Source Note: The provisions of this §26.52 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS

RULE §26.53 Surplus Revenue

(a) General. Each fiscal year, if an RMA determines that it has surplus revenue from transportation projects, the RMA shall:

(1) reduce tolls;

(2) spend the surplus revenue on other transportation projects in the counties of the RMA, in accordance with the provisions of this subchapter and, if applicable, as authorized by federal law; or

(3) deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Expenditures on transportation projects. Subject to any applicable restrictions under federal law, an RMA may spend surplus revenue in the region on other transportation projects by:

(1) constructing a transportation project located within the counties of the RMA;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to a governmental entity if:

(A) approved by the commission under subsection (c) of this section;

(B) the governmental entity authorizes the RMA to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(C) the project is constructed in compliance with all laws applicable to the governmental entity.

(c) Commission approval. The commission will approve an RMA constructing a transportation project under subsection (b)(3) of this section if:

(1) the project comes from a conforming transportation plan and transportation improvement program, when required by federal law;

(2) the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, and the Statewide Transportation Improvement Program; and

(3) the commission determines that the project will have a significant positive impact on the mobility of the region of the RMA.

(d) Considerations. When approving or disapproving a project under subsection (c) of this section, the commission will consider:

(1) the anticipated reduction to traffic congestion;
(2) potential social, environmental, and economic impacts of the project, and the extent to which the RMA has complied with all EPIC;
(3) benefit to state and local government; and
(4) whether the construction will expand the availability of funding for transportation projects or reduce direct state costs.

Source Note: The provisions of this §26.53 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS
RULE §26.54 Project Operating Agreement

An RMA and the department may enter into a project operating agreement governing the maintenance and operation of a transportation project. The agreement may include provisions governing:

(1) bridge inspection; and
(2) department maintenance or operation of the turnpike project, provided the RMA reimburses the department for necessary costs of maintaining or operating the project unless the RMA is provided assistance under Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities).

Source Note: The provisions of this §26.54 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS
RULE §26.55 Contracts with Mexico

(a) Prior to entering into a contract with the United Mexican States or a state of the United Mexican States, the RMA must submit to the department:
(1) a summary of the purpose of the agreement;
(2) a list of the duties and responsibilities to be performed by each party to the contract;
(3) a description of any federal, state, or local funds to be spent in Mexico; and
(4) a description of any work to be done by RMA employees or contractors within Mexico.
(b) The commission will authorize the RMA to enter into a contract with the United Mexican States or a state of the United Mexican States if it determines that, based on the information provided by the RMA and any other factors the commission deems relevant, the contract will provide a significant benefit to the State of Texas.

Source Note: The provisions of this §26.55 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER F MISCELLANEOUS OPERATION PROVISIONS

RULE §26.56 Required Internal Ethics and Compliance Program

(a) An RMA shall adopt an internal compliance and ethics program that satisfies the requirements of §10.51 of this title (relating to Internal Ethics and Compliance Program).
(b) An RMA must finally adopt a program described by subsection (a) of this section before the later of:
(1) April 1, 2011; or
(2) the first anniversary of the date on which the RMA is created.
(c) An RMA shall enforce compliance with its internal compliance and ethics program.

Source Note: The provisions of this §26.56 adopted to be effective April 15, 2010, 35 TexReg 2858; amended to be effective January 6, 2011, 35 TexReg 11964

SUBCHAPTER G REPORTS AND AUDITS

RULE §26.61 Written Reports

(a) Financial and operating reports. An RMA shall submit the following financial and operating reports to each county or city that is a part of the RMA:
(1) the annual operating and capital budgets adopted by the RMA each fiscal year pursuant to the trust agreement or indenture securing bonds issued for a project, and any amended or supplemental operating or capital budget;
(2) annual financial information and notices of material events required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission (17 C.F.R. §240.15c2-12); and
(3) to the extent not otherwise disclosed in another report required under this subsection, a statement of any surplus revenue held by the RMA and a summary of how it intends to use the surplus revenue.
(b) Investment reports. An RMA shall submit to each county or city that is a part of the RMA an independent auditor's review, if required by law, of the reports of investment transactions prepared by an RMA's investment officers under Government Code, §2256.023.
(c) Certification. Reports submitted under this section must be approved by official action of the board and certified as correct by the chief administrative officer of the RMA.
(d) Submission dates. Reports required by subsection (a)(1) and (3) of this section must be submitted within 90 days after the beginning of the fiscal year or the adoption of any amended or supplemental budget. Reports required by subsection (a)(2) and subsection (b) of this section must be submitted within 30 days after disclosure under Rule 15c2-12 or approval of the independent auditor's report.

Source Note: The provisions of this §26.61 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2012, 36 TexReg 9350

SUBCHAPTER G REPORTS AND AUDITS
RULE §26.62 Annual Audits

(a) General. The RMA shall maintain its books and records in accordance with generally accepted accounting principles in the United States, as promulgated by the Government Accounting Standards Board, the Financial Accounting Standards Board, or pursuant to applicable federal or state laws or regulations, and shall have an annual financial and compliance audit of such books and records in accordance with this section.
(b) Submission date. The annual audit shall be submitted to each county or city that is a part of the RMA within 120 days after the end of the fiscal year.
(c) Certification. The financial and compliance audit must be conducted by an independent certified public accountant in accordance with generally accepted auditing standards, as modified by the governor's Uniform Grant Management Standards, or the standards of the Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations, as applicable.
(d) Paperwork retention period. All work papers and reports shall be retained for a minimum of four years from the date of the audit report, unless the counties or cities that are parts of the RMA require a longer retention period.

Source Note: The provisions of this §26.62 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2012, 36 TexReg 9350

SUBCHAPTER G REPORTS AND AUDITS
RULE §26.63 Other Reports to Counties and Cities

The RMA will provide other reports and information regarding its activities promptly when requested by the counties or cities that are parts of the RMA.

Source Note: The provisions of this §26.63 adopted to be effective March 18, 2004, 29 TexReg 2722; amended to be effective January 5, 2012, 36 TexReg 9350

SUBCHAPTER G REPORTS AND AUDITS
RULE §26.64 Operating Records

The department will have access to all operating and financial records of the RMA. The executive director will provide notification if access is desired by the department.

Source Note: The provisions of this §26.64 adopted to be effective March 18, 2004, 29 TexReg 2722

SUBCHAPTER G REPORTS AND AUDITS
RULE §26.65 Annual Reports to the Commission

(a) Compliance Report. Within 150 days after the end of the fiscal year of an RMA, the RMA

shall submit to the executive director a report that lists each duty that the RMA is required to perform under this subchapter and that indicates that the RMA has performed that requirement for that fiscal year. Each report submitted under this subsection must be in the form prescribed by the department, approved by official action of the board, and certified as correct by the chief administrative officer of the RMA.
(b) Project Report. Not later than December 31 of each year, an RMA shall submit to the commission a written report that describes the progress made during that year on each transportation project or system of projects of the RMA, including the initial project for which the RMA was created.

Source Note: The provisions of this §26.65 adopted to be effective January 5, 2012, 36 TexReg 9350

Laredo - Webb County RMA/TRZ Workshop
Sample RMA Organizational and Policy Documents
April 2014

Alamo Regional Mobility Authority (Bexar County)

Bylaws of the Alamo Regional Mobility Authority
(http://gov.bexar.org/AlamoRMA/docs/ARMA_Amended_Bylaws_2011.pdf)

Policies and Procedures for Environmental Review of Alamo Regional Mobility Authority Projects Not Subject to the National Environmental Policy Act (NEPA)
(http://gov.bexar.org/AlamoRMA/docs/ARMA_Environmental_Review.pdf)

Alamo Regional Mobility Authority Policies and Procedures for Request and Approval of Transfer of Transportation Facilities (http://gov.bexar.org/AlamoRMA/docs/ARMA_TransferPolicy.pdf)

Alamo Regional Mobility Authority Governance Guidelines
(http://gov.bexar.org/AlamoRMA/docs/ARMA_GovernanceGuidelines_091405.pdf)

Amended and Restated Policies and Procedures for Toll Collection Operations on the Alamo RMA Turnpike System (http://gov.bexar.org/AlamoRMA/docs/ARMA_TollPolicies_2012-04-12.pdf)

Conflict of Interest Policy for Consultants- Identification of Key Personnel
(http://gov.bexar.org/AlamoRMA/docs/ARMA_Conflict_KeyPersonnel.pdf)

Disclosure Statement Form (http://gov.bexar.org/AlamoRMA/docs/ARMA_Conflict_DisclosureForm.pdf)

Alamo Regional Mobility Authority Conflict of Interest Policy for Consultants
(http://gov.bexar.org/AlamoRMA/docs/ARMA_Conflict_Policy.pdf)

http://gov.bexar.org/AlamoRMA/docs/ARMA_Conflict_KeyFinancialPersonnel.pdf)

Disclosure Statement Form
(http://gov.bexar.org/AlamoRMA/docs/ARMA_Conflict_FinancialDisclosureForm.pdf)

Alamo Regional Mobility Authority Conflict of Interest Policy for Financial Team Members
(http://gov.bexar.org/AlamoRMA/docs/ARMA_Conflict_FinancialPolicy.pdf)

Local Government Officer Conflicts Disclosure Statement
(http://gov.bexar.org/AlamoRMA/docs/Local_Gov_Disclosure_Statement.pdf)

Affidavit of Conflict Disclosure
(http://gov.bexar.org/AlamoRMA/docs/Local_Gov_Disclosure_Affidavit.pdf)

Policies and Procedures Governing Procurements of Goods and Services by the Alamo Regional Mobility Authority (http://gov.bexar.org/AlamoRMA/docs/ARMA_Revised_Procurement_Policies_2011.pdf)

Cameron County Regional Mobility Authority (Cameron County)

Cameron County Regional Mobility Authority Conflict of Interest Policy for Consultants (http://www.cameroncountyrma.org/docs/CCRMA_Conflict_of_Interest_Policy_for_Consultants.pdf)

Cameron County Regional Mobility Authority Investment Policy (http://www.cameroncountyrma.org/docs/CCRMAInvestmentPolicyfinal.pdf)

Policies And Procedures For Toll Collection Operations On The CCRMA Turnpike System (http://www.cameroncountyrma.org/docs/CCRMA_Toll_Policies.pdf)

Bylaws of the Cameron County Regional Mobility Authority (http://www.cameroncountyrma.org/docs/CCRMABylaws%204-11-05.pdf)

Cameron County Regional Mobility Authority Disadvantaged Business Enterprise Policy Statement (http://www.cameroncountyrma.org/docs/CCRMADBEPOLICYSTATEMENT.pdf)

Drug and Chemical Dependency Policy (http://www.cameroncountyrma.org/docs/DrugandAlcoholPolicy%20may%202005.pdf)

Policies and Procedures Governing Procurements of Goods and Services by the Cameron County Regional Mobility Authority (http://www.cameroncountyrma.org/docs/ProcurementPolicies.pdf)

Camino Real Regional Mobility Authority (El Paso County)

Camino Real Regional Mobility Authority Policies and Procedures Governing the Procurement of Goods and Services (http://www.crrma.org/_documents/CRRMA%20Procurement%20of%20Goods%20&%20Services%20(07.30.13).pdf#view=fitH)

Camino Real Regional Mobility Authority Business travel and Expense Reimbursement Policy (http://www.crrma.org/_documents/CRRMA%20-%20Policy%20for%20Travel%20&%20Business%20Reimbursement%20Policy%20(07.16.07).pdf#view=fitH)

Camino Real Regional Mobility Authority Conflict of Interest Policy for Consultants (http://www.crrma.org/_documents/CRRMA%20-%20Conflict%20Policy%20-%20Consultants%20(dated%2003.19.09).pdf#view=fitH)

Camino Real Regional Mobility Authority Conflict of Interest Policy for Consultants Identification of Key Personnel (http://www.crrma.org/_documents/CRRMA%20-%20Key%20Personnel%20-%20Consultants%20(06.27.12).pdf#view=fitH)

Camino Real Regional Mobility Authority Conflict of Interest Policy for Financial Team Members (http://www.crrma.org/_documents/CRRMA%20-%20Conflict%20Policy%20%20Financial%20Team%20Members%20(dated%2003.19.09).pdf#view=fitH)

Camino Real Regional Mobility Authority Conflict of Interest Policy for Financial Team Members Identification of Key Financial Personnel (http://www.crrma.org/_documents/CRRMA%20-%20Key%20Financial%20Personnel%20(06.27.12).pdf#view=fitH)

FY 10 Investment Policy (http://www.crrma.org/_documents/CRRMA%20-%20FY10%20Investment%20Policy%20(12.16.09).pdf#view=fitH)

Camino Real Regional Mobility Authority DBE Policy Statement (http://www.crrma.org/_documents/DBE%20Policy%20Statement%20(Dated%2005.20.09).pdf#view=fitH)

DBE Program MOU with TxDOT (dated 4/28/09) (http://www.crrma.org/_documents/CRRMA%20DBE%20Program%20MOU%20with%20TxDOT%20(04.28.09).pdf#view=fitH)

Camino Real Regional Mobility Authority Business Opportunity Program and Policy (http://www.crrma.org/_documents/Business%20Opportunity%20Program%20and%20Policy%20(Dated%2005.20.09).pdf#view=fitH)

Camino Real Regional Mobility Authority Drug and Alcohol Policy (http://www.crrma.org/_documents/CRRMA%20-%20Drug%20_%20Alcohol%20Policy%20(12.16.09).pdf#view=fitH)

Camino Real Regional Mobility Authority Records Retention Policy (http://www.crrma.org/_documents/CRRMA%20-%20Records%20Retention%20Policy%20(12.16.09).pdf#view=fitH)

Camino Real Regional Mobility Authority Toll Policies and Road Use (http://www.crrma.org/_documents/CRRMA%20Toll%20Polices%20(Adopted%20-%2005.23.12).pdf#view=fitH)

Camino Real Regional Mobility Authority Ethics and Compliance Policy (http://www.crrma.org/_documents/CRRMA%20%20Ethics%20_%20Compliance%20Policy%20(12.16.09).pdf#view=fitH)

Camino Real Regional Mobility Authority 2010 Strategic Plan (http://www.crrma.org/_documents/2010%20CRRMA%20Strategic%20Plan.pdf#view=fitH)

Central Texas Regional Mobility Authority (Travis and Williamson counties)

Mobility Authority Policy Code, Central Texas Regional Mobility Authority (http://www.mobilityauthority.com/monkeewrench/files/resources/12_Policy_Code_Jan_29_2014.pdf)

Mobility Authority Policy Code (Toll Policy) (http://www.mobilityauthority.com/monkeewrench/files/resources/12_Policy_Code_Jan_29_2014.pdf)

Central Texas Regional Mobility Authority Conflict of Interest Policy for Financial Team Members (http://www.mobilityauthority.com/monkeewrench/files/resources/coi_financial_team.pdf)

http://www.mobilityauthority.com/monkeewrench/files/resources/coi_key_financial_personnel.pdf)

Local Government Officer Conflicts Disclosure Form
(http://www.mobilityauthority.com/monkeewrench/files/resources/board_disclosures_121312.pdf)

Disclosure Statement Form
(http://www.mobilityauthority.com/monkeewrench/files/resources/financial_disclosure_form.pdf)

Grayson County Regional Mobility Authority (Grayson County)

Bylaws of the Grayson County Regional Mobility Authority
(http://www.co.grayson.tx.us/users/RMA/RMABylaws.pdf)

Policies and Procedures Governing Procurements of Goods and Services by the Grayson County Regional Mobility Authority (http://www.co.grayson.tx.us/users/RMA/RMAProcurement.pdf)

Policies and Procedures for Environmental Review of GCRMA Projects
(http://www.co.grayson.tx.us/users/RMA/RMAEnvironmental.pdf)

Grayson County Regional Mobility Authority Business Opportunity Program and Policy
(http://www.co.grayson.tx.us/users/RMA/RMADBE.pdf)

Grayson County Regional Mobility Authority DBE Policy Statement
(http://www.co.grayson.tx.us/users/RMA/RMADBEStatement.pdf)

Grayson County Regional Mobility Authority Conflict of Interest Policy for Consultants
(http://www.co.grayson.tx.us/users/RMA/RMACOIConsult.pdf)

Grayson County Regional Mobility Authority Conflict of Interest Policy for Financial Team Members
(http://www.co.grayson.tx.us/users/RMA/RMACOIFinancial.pdf)

Hidalgo County Regional Mobility Authority (Hidalgo County)

Hidalgo County Regional Mobility Authority Conflict Of Interest Disclosure
(http://www.hcrma.net/forms/2012%20Conflict%20of%20Interest%20Disclosure%20_%20Key%20Personnel%20List.pdf)

Conflict Of Interest Questionnaire (http://www.hcrma.net/forms/Form_CIQ.pdf)

Hidalgo County Regional Mobility Authority Conflict Of Interest Policy For Consultants
(http://www.hcrma.net/forms/HCRMA_Conflict_Policy.pdf)

HCRMA Form Engineering Agreement
(http://www.hcrma.net/forms/2011_HCRMA_Form_Engineering_Contract.pdf)

North East Texas Regional Mobility Authority (Smith, Gregg, Cherokee, Rusk, Harrison, Upshur, Bowie, Cass, Panola, Titus, Wood and Van Zandt counties)

Bylaws of the North East Texas Regional Mobility Authority (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Bylaws.pdf)

Policies and Procedures Governing Procurements of Goods and Services by the North East Texas Regional Mobility Authority (http://www.netrma.org/sites/default/files/policies_pdf/NETRMA_%20Procurement%20Policies.pdf)

Policies and Procedures for Environmental Review of NET RMA Projects (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Environmental%20Policy.pdf)

NETRMA TxDOT Memorandum of Understanding for Disadvantaged Business Enterprise Program DBE(http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20TXDOT%20MOU%20for%20DBE.PDF)

North East Texas Regional Mobility Authority Conflict Of Interest Policy For Financial Team Members (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Conflict%20of%20Interest%20Policy%20-%20Financial.pdf)

Conflict Of Interest Policy For Consultants- Identification Of Key Personnel (http://www.netrma.org/sites/default/files/policies_pdf/Designation%20of%20Key%20Personnel-Consultants.pdf)

North East Texas Regional Mobility Authority Drug And Alcohol Policy (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Drug%20and%20Alcohol%20Policy.pdf)

North East Texas Regional Mobility Authority Ethics and Compliance Program (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Internal%20Ethics%20and%20Compliance%20Program.pdf)

NET RMA Internet Privacy Policy, Usage Policy and Site Disclaimer (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Internet%20Usage%20and%20Privacy%20Policy.pdf)

North East Texas Regional Mobility Authority Guidelines for Responding to Public Information Act Requests (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Public%20Information%20Act%20Policies.pdf)

North East Texas Regional Mobility Authority Policies And Procedures Governing Retention Of Records (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Records%20Retention%20Policy.pdf)

http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Reimbursement%20and%20Travel%20Policy.pdf)

North East Texas Regional Mobility Authority Toll Policies and Road Use (http://www.netrma.org/sites/default/files/policies_pdf/NET%20RMA%20Toll%20and%20Road%20Use%20Polices%207-9-13.pdf)

Local Government Officer Conflicts Disclosure Statement (http://www.netrma.org/sites/default/files/policies_pdf/Conflict%20disclosure%20form.pdf)

Sulphur River Regional Mobility Authority (Hunt, Delta, Hopkins and Lamar counties)

No information available on-line.

BYLAWS OF THE
NORTH EAST TEXAS 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 North East Texas Regional Mobility Authority (the "Authority"), a regional mobility authority authorized and existing pursuant to Chapter 370 of the Texas Transportation Code, as the same may be amended from time to time (the "RMA Act"), as well as rules adopted by the Texas Department of Transportation ("TxDOT") 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 one of the counties composing the Authority.

§ 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 Act, the RMA rules, and these bylaws.

§ 4. Board of Directors

(a) The Board of the Authority shall be composed of Directors appointed as follows:

(1) Each of Gregg and Smith Counties (the "Original Counties"), by action of their respective Commissioners Courts, shall appoint three (3) Directors.

(2) Each of Bowie and Harrison Counties, by action of their respective Commissioners Courts, shall appoint two (2) Directors, as a result of having satisfied criteria identified at the time of their admission to the Authority.

(3) Each of Cass, Cherokee, Panola, Rusk, Titus, Upshur, Van Zandt, and Wood Counties, by action of their respective Commissioners Courts, shall appoint one (1) Director.

(4) 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 one of the Original Counties.

(b) The appointment of additional directors from a County subsequently added to the Authority or from a County of the Authority that contains an operating

transportation project of the Authority shall be by a process unanimously agreed to by the commissioners courts of all the Counties of the Authority.

(c) In the event that the addition or withdrawal of a County from the Authority, or the subsequent appointment of a Director pursuant to subsection (b) above, results in an even number of Directors on the Board, the Governor shall appoint an additional Director.

(d) Directors of the Authority shall serve for two (2) year terms commencing on February 2 of the year of appointment and expiring on February 1 two years later. As near as possible to one-half of the Directors' terms shall expire on February 1 of each year. 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 or other provisions of law.

(e) 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.

§ 5. Qualifications of Directors

(a) All Directors will have and maintain the qualifications set forth in this § 5 and in the RMA Act or RMA Rules.

(b) All appointments to the Board shall be made without regard to disability, sex, religion, age, or national origin.

(c) 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.

(d) An elected official is not eligible to serve as a Director.

(e) 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, that is 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 or maintenance, public transportation, or aviation; 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.

(f) Each Director shall certify annually to the Secretary (as defined in § 25 of these bylaws) that said Director is not ineligible to serve on the Board as a result of any of the foregoing conditions.

§ 6. Vacancies

A vacancy on the Board shall be filled promptly by the entity that made the appointment that falls vacant. Each Director appointed to a vacant position shall be appointed for the unexpired term of the Director's predecessor in that position.

§ 7. Resignation and Removal

A Director may resign at any time upon giving written notice to the Authority and the entity that appointed that Director. 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 RMA 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 one-third 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 Director exists, the Executive Director shall notify the Chairman of the potential ground for removal. The Chairman then shall notify the entity that appointed such Director of the potential ground for removal. Additionally, the Commissioner's Court of the County appointing a Director may remove a Director appointed by that County for cause. A Director shall be considered removed from the Board only after the Authority receives notice of removal from the entity that appointed such Director.

§ 8. 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 functions as set forth herein.

§ 9. 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. Directors shall familiarize themselves and comply with all applicable laws regarding conflicts of interest, including Chapters 171 and 176 of the Texas Local Government Code and any conflict of interest policy adopted by the Board.

§ 10. Additional Obligations of Directors

Directors shall comply with the requirement to file an annual personal financial statement with the Texas Ethics Commission as provided by § 370.2521 of the RMA Act, and the requirement to complete training on the Authority's responsibilities under the Open Meetings Act and the Public Information Act as provided by §§ 551.005 and 552.012 of the Texas Government Code.

§ 11. Meetings

All regular meetings of the Board shall be held in a county of the Authority, 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

As authorized by § 370.262 of the RMA Act, the Board, committees of the Board, staff, or any combination thereof, may participate in and hold open or closed meetings by means of conference telephone or other electronic communications equipment by which all persons participating in the meeting can communicate with each other and at which public participation is permitted by a speaker telephone or other electronic communications equipment at a conference room of the Authority or other facility in a county of the Authority that is accessible to the public. Such meetings are subject to the notice requirements set forth in §§ 551.125 (c) – (f) of the Texas Open Meetings Act, however they are not subject to the additional requirements of § 551.125(b) of the Act. The notice must state where members of the public can attend to hear those portions of the meeting open to the public. Participation in a meeting pursuant to this § 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 § 19 of these bylaws. Each part of a meeting conducted by telephone conference call or other electronic means that by law must be open to the public shall be accessible to the public at the

location specified in the notice and shall be tape-recorded and documented by written minutes. On conclusion of the meeting, the tape recording and the written minutes of the meeting shall be made available to the public within a reasonable period of time.

§ 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 these bylaws conflict with Robert's Rules of Order, the statutes, the RMA Rules, or these bylaws shall govern.

§ 15. Executive Committee

The Authority shall establish an Executive Committee, consisting of the officers of the Authority as identified in § 20, the chair of the Long Range Planning Committee, and such other members as the Chairman may direct. Meetings of the Executive Committee shall be conducted on no less than three (3) days notice to the Executive Committee members. A majority of the members of the Executive Committee constitutes a quorum of the Committee, and the vote of a majority of the members present at a meeting at which a quorum is present will be necessary for any action taken by the Executive Committee. Minutes shall be kept of all meetings of the Executive Committee. Consistent with § 16, the Executive Committee shall have and may exercise all of the authority of the Board, subject to the limitations imposed by applicable law; provided, however, that the Executive Committee shall not enter into or approve any contract, nor authorize the expenditure of funds on behalf of the Authority, except to the extent explicitly authorized in a resolution of the Board. Actions requiring Board approval shall be submitted to the Board as recommendations of the Executive Committee.

§ 16. Additional Committees

The Chairman at any time may designate from among the Directors one or more ad hoc or standing committees, each of which shall be comprised of two or more 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. The Chairman serves as a non-voting, ex-officio member of each committee; provided, however, that the Chairman may serve as a regular voting member of a committee in the event that he or she so designates. 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; provided that no Committee shall be authorized to enter into or approve any contract, nor authorize the expenditure of funds on behalf of the Authority, except to the extent explicitly authorized in a resolution of the Board. Absent explicit delegation of such authority in a resolution of the Board, all contracts and expenditures of the Authority shall be made by the Board of Directors. 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 of 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 § 16 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 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.

§ 17. Notice of Meetings

Notice of each meeting of the Board shall be posted in accordance with the Texas Open Meetings Act, and sent by mail, electronic mail, or facsimile to all Directors entitled to vote at such meeting and to the County Judge of each County participating in the Authority at least seventy-two (72) hours prior to the start of such meeting. 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.

§ 18. 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 persons entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.

§ 19. 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.

§ 20. 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.

§ 21. 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 § 22 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 February 1 of each year or at such other meeting as the Board determines.

§ 22. 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 the Governor. Any officer except the Chairman may be removed from service as an officer at any time, with or without cause, by the affirmative vote of a 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 § 22 for the remainder of the unexpired term.

§ 23. 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 § 16 of these bylaws), call all regular meetings of the Board, and preside at and set the agendas for all meetings of the Board (except as provided in the concluding sentence of § 11 of these bylaws). The Chairman shall further review and approve all requests for reimbursement of expenses sought by the Executive Director.

§ 24. 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.

§ 25. 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 and its committees and such other notices as are required by the office of Secretary and as may be directed by the RMA 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 conveying property of the Authority, and other agreements binding on the Authority which by law or Board resolution require attestation; maintain custody of the corporate seal, minute books, accounts, 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.

§ 26. 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; coordinate with Authority staff and consultants to 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.

§ 27. 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 Director 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 Executive Committee.

§ 28. 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 § 37 of these bylaws;

(3) shall be responsible for preparing a draft of the Authority's written Annual Report, as described in § 37 of these bylaws;

(4) at the invitation of a Commissioners Court of a County in the Authority, 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 approved by the Board;

(6) may execute contracts, contract supplements, contract change orders, and purchase orders not exceeding amounts established in resolutions of the Board or in the rules of procedure prescribed by the Board to govern procurement of goods and services; 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.

§ 29. 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.

§ 30. 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 attorneys' 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 a 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. In the event of a conviction for an offense involving the conduct for which the Director, officer, or administrator was indemnified, the officer, Director, or administrator shall be liable to the Authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid, as provided by § 370.258 of the RMA Act. 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 attorneys' 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 § 30 shall be evidenced by a resolution of the Board.

§ 31. 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.

§ 32. 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.

§ 33. 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.

§ 34. 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 and its agencies.

§ 35. Sovereign Immunity

Unless otherwise required by law, the Authority will not by agreement or otherwise waive or impinge upon its sovereign immunity.

§ 36. 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.

§ 37. Strategic Plan, Annual Report, and Presentation to Commissioners Courts

(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, or in the absence of an Executive Director, the Chairman, 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 turnpike revenue bond issuances anticipated for 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 not later than November 30th for review, approval, and, subject to revisions required by the Board, adoption. Not later than March 31st following the conclusion of the preceding fiscal year, the Authority shall file with the Commissioners Court of each County included in the Authority the Authority's Annual Report, as adopted by the Board.

(c) At the invitation of a Commissioners Court of a County in the Authority, 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.

§ 38. Rates and Regulations

The Board shall, in accordance with all applicable trust agreements, the RMA Act, the RMA Rules, or other law, establish toll rates and fees, designate speed limits, establish fines for toll violators, and adopt rules and regulations for the use and occupancy of turnpike projects.

§ 39. Seal

The official seal of the Authority shall consist of the embossed impression of a circular disk with the words "North East Texas Regional Mobility Authority, 2005" on the outer rim, with a star in the center of the disk.

§40. Fiscal Year

The fiscal year for the Authority shall be from October 1st to September 30th.

§41. Public Access Policy

The Authority shall maintain an access policy to be adopted by the Board that provides the public with a reasonable opportunity to appear before the Board to speak on any issue under the jurisdiction of the Authority.

§ 42. Appeals Procedure

The Authority shall maintain an appeals procedure to be adopted by the Board and amended from time to time that sets forth the process by which parties may bring to the attention of the Authority their questions, grievances, or concerns and may appeal any action taken by the Authority.

§ 43. Amendments to Bylaws

Except as may be otherwise provided by law, these bylaws may be amended, modified, altered, or repealed in whole or in part, at any regular meeting of the Board after ten (10) days advance notice has been given by the Chairman to each Director of the proposed change. These Bylaws may not be amended at any special or emergency meeting of the Board.

§ 44. Dissolution of the Authority

(a) Voluntary Dissolution: The Authority may not be dissolved unless the dissolution is approved by the Texas Transportation Commission (the "Commission"). The Board may submit a request to the Commission for approval to dissolve. The Commission may approve a request to dissolve only if:

(1) all debts, obligations, and liabilities of the Authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations and liabilities;
(2) there are no suits pending against the Authority, or adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit; and
(3) the Authority has commitments from other governmental entities to assume jurisdiction of all Authority transportation facilities.

(b) Involuntary Dissolution: The Commission by Order may require the 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 TxDOT and the Authority. The Commission may not require dissolution unless:

(1) The conditions described in Paragraphs (a)(1) and (2) above have been met; and
(2) The holders of any indebtedness have evidenced their agreement to the dissolution.

Adopted: 08/10/05
Amended: 02/07/06
Amended: 05/02/06
Amended: 08/15/07
Amended: 01/18/12

POLICIES AND PROCEDURES GOVERNING

PROCUREMENTS OF GOODS AND SERVICES

BY THE

NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY

TABLE OF CONTENTS

SECTION		PAGE
1.	STATEMENT OF GENERAL POLICY	1
2.	CONFLICT OF INTEREST	1
3.	DISADVANTAGED BUSINESS PARTICIPATION; COMPLIANCE WITH POLICY	2
4.	DEFINITIONS	2
5.	CONSTRUCTION AND BUILDING CONTRACTS	7
6.	PROFESSIONAL SERVICES	15
7.	GENERAL GOODS AND SERVICES	17
8.	CONSULTING SERVICES	20
9.	COMPREHENSIVE DEVELOPMENT AGREEMENTS	23
10.	DESIGN-BUILD AND DESIGN-BUILD-FINANCE AGREEMENTS	30
11.	PARTICIPATION IN STATE AND COOPERATIVE PURCHASING PROGRAMS; AND INTERGOVERN-MENTAL AGREEMENTS	36
12.	EMERGENCY PROCUREMENTS	37
13.	DISPOSITION OF SALVAGE OR SURPLUS PROPERTY	37
14.	SOLICITATION OF EMPLOYEE APPLICANTS	38
15.	DISPUTE RESOLUTION PROCEDURES	40

POLICIES AND PROCEDURES GOVERNING PROCUREMENTS OF GOODS AND SERVICES BY THE NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY

SECTION 1. STATEMENT OF GENERAL POLICY.

It is the policy of the North East Texas Regional Mobility Authority (the "Authority") that all Authority procurements shall be based solely on economic and business merit in order to best promote the interests of the citizens of the counties served by the Authority.

SECTION 2. CONFLICT OF INTEREST.

2.1. Independence and Influence. A member of the Board of Directors or an employee or agent of the Authority shall not:

(a) contract with the Authority or, without disclosure and recusal in accordance with sections 2.2 and 2.4, be directly or indirectly interested in a contract with the Authority or the sale of property to the Authority (aside from, in the case of an employee or agent, a contract establishing the employment or agency relationship);

(b) accept or solicit any gift, favor, or service that might reasonably tend to influence that Board member, employee or agent in the making of procurement decisions or that the Board member, employee or agent knows or should have known is being offered with the intent to influence the Board member's, employee's or agent's making of procurement decisions; or

(c) accept other compensation that could reasonably be expected to impair the Board member's, employee's or agent's independence of judgment in the making of procurement decisions.

2.2. Business and Real Estate Interests. If a member of the Board of Directors of the Authority owns either ten percent or more or $15,000 or more of the fair market value of a business entity that is seeking to contract with the Authority, or funds received from the business entity exceed ten percent of the Board member's gross income for the previous year, the Board member shall file an affidavit stating the nature and extent of his or her interest and shall abstain from further participation in any procurement decisions affecting the business entity. If a Board member has an equitable or legal ownership interest with a fair market value of $2,500 or more in real property that the Authority is considering purchasing or leasing, the Board member shall file an affidavit stating the nature and extent of his or her interest and shall abstain from participation in any decisions related to the purchase or lease of the real property by the Authority.

2.3 Familial Relationships. A Board member, employee, or agent of the Authority may not exercise control over any decisions that could result in the hiring of or a contract with an individual who is related to the Board member, employee, or agent within the second degree of consanguinity or affinity. Regardless of the whether the Board member participates in the decision, the Authority may not hire or contract with an individual who is related to a Board member within the second degree of consanguinity or affinity. Degree of consanguinity or affinity shall be determined according to the criteria set forth in Chapter 573, Government Code.

2.4 Conflicts Disclosure. A bidder and a member of the Authority's Board of Directors shall be required to file a conflicts disclosure statement with the RMA, in the form adopted by the Texas Ethics Commission, disclosing:

(a) any employment or other business relationship between the bidder and the Board member, or the spouse, parent, or child of the Board member, that resulted in the Board member or his or her spouse, parent, or child receiving taxable income (other than investment income) that exceeds $2,500 for the twelve-month period preceding the date on which the bidder sought to contract with the Authority; and

(b) any gifts with an aggregate value of $250 or more given to a board member or his or her spouse, parent, or child during the twelve-month period preceding the date on which the bidder sought to contract with the Authority.

SECTION 3. DISADVANTAGED BUSINESS PARTICIPATION; COMPLIANCE WITH POLICY.

Disadvantaged Business Enterprises will be encouraged to participate in the procurement process. If the Authority adopts a policy regarding Disadvantaged Business Enterprises, all procurements shall comply with such policy.

SECTION 4. DEFINITIONS.

As used in this policy, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Available bidding capacity: Bidding capacity less uncompleted work under a construction or building contract.

Authority: The North East Texas Regional Mobility Authority.

Bid or quote: The response to a request for the pricing of products, goods, or services (other than certain consulting services or professional services) that the Authority proposes to procure.

Bid documents: Forms promulgated by the Authority which the bidder completes and submits to the Authority to document the bidder's bid on a contract to be let by the Authority. Bid documents promulgated by the Authority for a procurement will include the following information: (i) the location and description of the proposed work; (ii) an estimate of the various quantities and kinds of work to be performed and/or materials to be furnished; (iii) a

schedule of items for which unit prices are requested; (iv) the time within which the work is to be completed; (v) any special provisions and special specifications; (vi) the amount of bid guaranty, if any, required; and (vii) and the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises, in accordance with the Authority's policies regarding such participation.

Bid guaranty: The security designated in the bid documents for a construction or building contract to be furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

Bidder: An individual, partnership, limited liability company, corporation or any combination submitting a bid or offer of goods or services.

Bidding capacity: The maximum dollar value a contractor may have under a construction or building contract at any given time, as determined by the Authority.

Board: The Board of Directors of the Authority.

Building contract: A contract for the construction or maintenance of an Authority building, toll plaza, or appurtenant facilities.

Comprehensive Development Agreement ("CDA"): An agreement with a private entity that at a minimum provides for the design and construction of a transportation project, that may also provide for the financing, acquisition, maintenance or operation of a transportation project, and that entitles the private entity to a leasehold interest in the transportation project or the right to operate or retain revenue from the operation of the transportation project.

Construction contract: A contract for the construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project.

Consulting service: The service of advising or preparing studies or analyses for the Authority under a contract that does not involve the traditional relationship of employer and employee. Except in connection with CDAs, consulting services may not be procured under a construction or building contract. Consulting services are not professional services or general goods and services as defined by this policy.

Counties of the Authority: Smith, Gregg, Cherokee, Rusk, Harrison, Upshur, Bowie, Panola, Wood, Cass, Van Zandt, and Titus Counties, as well as any counties which may subsequently join the Authority.

Design-build or design-build-finance agreement: An agreement with a private entity that provides for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project but does not grant the private entity a leasehold interest in the transportation project or the right to operate or retain revenue from the operation of the transportation project.

Design-build contractor: A partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in the State of Texas and that is selected by the Authority in accordance with section 10 of this Policy.

Emergency: Any situation or condition affecting a transportation project resulting from a natural or man-made cause, which poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the safe and efficient flow of traffic and commerce or which has caused unforeseen damage to machinery, equipment or other property which would substantially interfere with or prohibit the collection of tolls in accordance with the Authority's bonding obligations and requirements.

Executive Director: The Executive Director of the Authority or any individual designated by the Board to act as the chief administrative officer of the Authority or otherwise authorized by the Board to exercise authority granted to the Executive Director under these policies.

Federal-aid project: The construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project, funded in whole or in part with funds provided by the government of the United States or any department thereof.

General goods and services: Goods, services, equipment, personal property and any other item procured by the Authority in connection with the fulfillment of its statutory purposes that are not procured under a construction or building contract or that are not consulting services or professional services.

Highway

_____: A central location where cargo containers can be easily and quickly transferred between trucks, trains and airplanes.

Lowest best bidder: The lowest responsible bidder on a contract that complies with the Authority's criteria for such contract, as described in section 5 of this policy.

Materially unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Authority.

Mathematically unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Nonresident bidder: A person who is not a resident of Texas.

Official newspaper of the Authority: A general circulation newspaper published in the counties of the Authority. If there are multiple newspapers which are published in the counties of the Authority, the Board of Directors shall designate which one is the official newspaper of the Authority.

Professional services: Services which political subdivisions of the State must procure pursuant to the Professional Services Procurement Act, which are services defined by state law of accounting, architecture, landscape architecture, land surveying, medicine,

optometry, professional engineering, real estate appraising, or professional nursing, or services provided in connection with the employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse. Except in connection with a CDA, or as otherwise allowed by applicable law, professional services may not be procured under a construction or building contract.

Professional Services Procurement Act: Subchapter A of Chapter 2254 of the Texas Government Code, as amended from time to time.

Public utility facility: A:

(a) water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(b) an electric transmission or distribution line or associated equipment; or

(c) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit and wireless communications facilities.

Salvage property: Personal property (including, without limitation, supplies, equipment, and vehicles), other than items routinely discarded as waste, that through use, time, or accident is so damaged, used, consumed, or outmoded that it has little or no value to the Authority.

Surplus property: Personal property (including, without limitation, supplies, equipment, and vehicles) that is not currently needed by the Authority and is not required for the Authority's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

State: The State of Texas.

System: A transportation project or a combination of transportation projects designated as a system by the Board in accordance with Texas Transportation Code § 370.034.

Transportation project: Includes a(n):

(a) turnpike project;

(b) system as defined in Transportation Code §370.003(13);

(c) passenger or freight rail facility, including (i) tracks; (ii) a rail line; (iii) switching, signaling, or other operating equipment; (iv) a depot; (v) a locomotive; (vi) rolling stock; (vii) a maintenance facility; and (viii) other real and personal property associated with a rail operation.

(d) roadway with a functional classification greater than a local road or rural minor collector;

(e) ferry;

(f) airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(g) pedestrian or bicycle facility;

(h) intermodal hub;

(i) automated conveyor belt for the movement of freight;

(j) border crossing inspection station;

(k) air quality improvement initiative;

(l) public utility facility;

(m) a transit system;

(n) parking area, structure, or facility or a collection device for parking fees;

(o) projects and programs listed in the most recently approved state implementation plan for the area covered by the Authority, including an early action compact; and

(p) improvements in a transportation reinvestment zone designated under Subchapter E, Chapter 222 of the Transportation Code.

Turnpike project: A highway of any number of lanes, with or without grade separations, owned or operated by the Authority and any improvement, extension or expansion to the highway, including:

(a) an improvement to relieve traffic congestion or promote safety;

(b) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, or ramp;

(c) an administration, storage, or other building the Board considers necessary to operate the project;

(d) property rights, easements and interests the Board acquires to construct or operate the project;

(e) a parking area or structure, rest stop, park, and any other improvement or amenity the Board considers necessary, useful, or beneficial for the operation of a turnpike project; and

(f) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

TxDOT: The Texas Department of Transportation.

SECTION 5. CONSTRUCTION AND BUILDING CONTRACTS.

5.1. Competitive Bidding. A contract requiring the expenditure of public funds for the construction or maintenance of the Authority's transportation projects may be let by competitive

bidding in which the contract is awarded to the lowest responsible bidder that complies with the Authority's criteria for such contract, and such bidder shall constitute the lowest best bidder in accordance with this section 5. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this policy.

5.2. Qualification of Bidders. A potential bidder must be qualified to bid on construction contracts of the Authority. Unless the Authority elects, in its sole discretion, to separately qualify bidders on a construction project, only bidders qualified by TxDOT to bid on construction or maintenance contracts of TxDOT will be deemed qualified by the Authority to bid on the Authority's construction contracts. At its election, the Authority may waive this subsection 5.2 with respect to bidders on building contracts.

5.3. Qualifying with the Authority.

(a) If, in its sole discretion, the Authority elects to separately qualify bidders on a construction project, the Authority will require each potential bidder not already qualified by TxDOT to submit to the Authority an application for qualification containing:

(1) a confidential questionnaire in a form prescribed by the Authority, which may include certain information concerning the bidder's equipment, experience, references as well as financial condition;

(2) the bidder's current audited financial statement in form and substance acceptable to the Authority; and

(3) a reasonable fee to be specified by the Authority to cover the cost of evaluating the bidder's application.

(b) An audited financial statement as referenced in subsection (a)(2) requires examination of the accounting system, records, and financial statements of the bidder by an independent certified public accountant in accordance with generally accepted auditing standards. In order for the audited financial statement to be considered acceptable, the auditor must express an opinion concerning the fairness of the financial statement and conformity with generally accepted accounting principles.

(c) Upon the recommendation of the Executive Director and with the concurrence of the Board of Directors, the Authority may waive the requirement that a bidder's financial statement be audited if the estimated amount of the contract is one-million dollars ($1,000,000.00) or less. A bidder with no prior experience in construction or maintenance shall not receive a bidding capacity of more than one hundred thousand dollars ($100,000.00).

(d) The Authority will advise the bidder of its qualification and approved bidding capacity or of its failure to qualify. A bidder qualified by the Authority will

remain qualified at its approved bidding capacity for twelve (12) months from the date of notice of approval; provided, however, that the Authority may require updated audited information at any time if circumstances develop which might alter the bidder's financial condition, ownership structure, affiliation status, or ability to operate as an ongoing concern, and the Authority may revoke or modify the bidder's qualification and approved bidding capacity based on such updated information. All such decisions concerning bidder qualifications shall be at the Authority's sole discretion.

5.4. Notice of Contract Letting.

(a) Each notice of contract letting must provide:

(1) the date, time, and place where contracts will be let and bids opened;

(2) the address and telephone number from which prospective bidders may request bid documents; and

(3) a general description of the type of construction, services or goods being sought by the Authority.

(b) The Authority shall post notices of contract lettings on its website (www.netrma.org) for at least two (2) weeks before the date set for letting of a contract.

(c) Notice of contract letting shall also be published in the officially designated newspaper of the Authority at least once, with the first such notice published no less than two (2) weeks before the date set for letting of the contract.

(d) The Authority may also publish notice of contract lettings in the *Texas Register*, trade publications, or such other places that the Authority determines will enhance competition for the work.

(e) The date specified in the notice may be extended if the Executive Director, in his or her sole discretion, determines that the extension is in the best interest of the Authority. All bids, including those received before an extension is made, must be opened at the same time.

5.5. Bid Documents. The Authority will prepare a set of bid documents for each construction or building contract to be let through the procedures of this section 5.

5.6. Issuance of Bid Documents.

Except as otherwise provided in this policy, the Authority will issue bid documents for a construction contract or building contract upon request and only after proper notice has been given regarding the contract letting. A request for bid documents for a federal-aid project must be submitted in writing and must include a statement in a form prescribed by the Authority

certifying whether the bidder is currently disqualified by an agency of the federal government as a participant in programs and activities involving federal financial and non-financial assistance and benefits. A request for bid documents for any other construction or building contract may be made orally or in writing. Unless otherwise prohibited under this policy, the Authority will, upon receipt of a request, issue bid documents for a construction contract as follows:

(a) to a bidder qualified by TxDOT, if the estimated cost of the project is within that bidder's available bidding capacity as determined by TxDOT;

(b) to a bidder qualified by the Authority, if the estimated cost of the project is within that bidder's available bidding capacity as determined by the Authority; and

(c) to a bidder who has substantially complied with the Authority's requirements for qualification, as determined by the Authority.

5.7. Withholding Bid Documents. The Authority will not issue bid documents for a construction contract if:

(a) the bidder is suspended or debarred from contracting with TxDOT or the Authority;

(b) the bidder is prohibited from rebidding a specific project because of default of the first awarded bid;

(c) the bidder has not fulfilled the requirements for qualification under this policy, unless the bidder has substantially complied with the requirements for qualification, as determined by the Authority;

(d) the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or

(e) the bidder or its subsidiary or affiliate has received compensation from the Authority to participate in the preparation of the plans or specifications on which the bid or contract is based.

5.8. Completion and Submission of Bid Documents.

(a) At the option of the Authority, a pre-bid conference may be held before opening bids to allow potential bidders to seek clarification regarding the procurement and/or the bid documents. Alternatively, bidders may submit written requests for clarification.

(b) Bidders shall complete all information requested in bid documents by typing, printing by computer printer, or printing in ink. The bidder shall submit a unit price, expressed in numerals, for each item for which a bid is requested (including zero dollars and zero cents, if appropriate), except in the case of a regular item

that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates. Unit prices shown on acceptable computer printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded.

(c) Each set of bid documents shall be executed in ink in the complete and correct name of the bidder making the bid and shall be signed by the person or persons authorized to bind the bidder.

(d) If required by the bid documents, the bidder must submit a bid guaranty with the bid. The bid guaranty shall be in the amount specified in the bid documents, shall be payable to the Authority, and shall be in the form of a cashier's check, money order, or teller's check issued by a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank"). The Authority will not accept cash, credit cards, personal checks or certified checks, or other types of money orders. Bid bonds may be accepted at the sole discretion of the Authority. Failure to submit the required bid guaranty in the form set forth in this subsection shall disqualify a bidder from bidding on the project described in the bid documents.

(e) A bid on a federal-aid project shall include, in a form prescribed by the Authority, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds; such certification shall cover the three-year period immediately preceding the date of the bid. Information adverse to the bidder as contained in the certification will be reviewed by the Authority and by the Federal Highway Administration, and may result in rejection of the bid and disqualification of the bidder.

(f) The bidder shall place each completed set of bid documents in a sealed envelope which shall be clearly marked “Bid Documents for _____” (name of the project or service). When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received at the location designated in the notice on or before the hour, as established by the official clock of the Authority, and date set for the receipt. The official clock at the place designated for receipt of bids shall serve as the official determinant of the hour for which the bid shall be submitted and shall be considered late.

5.9. Revision of Bid by Bidder. A bidder may change a bid price before it is submitted to the Authority by changing the price and initialing the revision in ink. A bidder may change a bid price after it is submitted to the Authority by requesting return of the bid in writing prior to the

expiration of the time for receipt of bids. The request must be made by a person authorized to bind the bidder. The Authority will not accept a request by telephone, telegraph, or electronic mail, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

5.10. Withdrawal of Bid. A bidder may withdraw a bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The Authority will not accept telephone, telegraph, or electronic mail requests, but will accept a properly signed facsimile request.

5.11. Acceptance, Rejection, and Reading of Bids. Bids will be opened and read at a public meeting held at the time, date and place designated in the notice. Only the person so designated by the Authority shall open bids on the date specified in the notice, or as may have been extended by direction of the Executive Director. The Authority, acting through the Executive Director or the Executive Director's designee, will not accept and will not read a bid if:

(a) the bid is submitted by an unqualified bidder;

(b) the bid is in a form other than the official bid documents issued to the bidder;

(c) the form and content of the bid do not comply with the requirements of the bid documents and/or subsection 5.8;

(d) the bid, and if required, federal-aid project certification, are not signed;

(e) the bid was received after the time or at some location other than specified in the notice or as may have been extended;

(f) the bid guaranty, if required, does not comply with subsection 5.8;

(g) the bidder did not attend a specified mandatory pre-bid conference, if required under the bid documents;

(h) the proprietor, partner, majority shareholder, or substantial owner is thirty (30) or more days delinquent in providing child support under a court order or a written repayment agreement;

(i) the bidder was not authorized to be issued a bid under this policy;

(j) the bid did not otherwise conform with the requirements of this policy; or

(k) more than one bid involves a bidder under the same or different names.

5.12. Tabulation of Bids. Except for lump sum building contracts bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts. Bid entries such as "no dollars and no cents" or "zero dollars and zero cents" will be interpreted to be one-tenth of a cent ($.001)

and will be entered in the bid tabulation as $.001. Any entry less than $.001 will be interpreted and entered as $.001. If a bidder submits both a completed set of bid documents and a properly completed computer printout of unit bid prices, the Authority will use the computer printout to determine the total bid amount of the bid. If the computer printout is incomplete, the Authority will use the completed bid documents to determine the total bid amount of the bid. If a bidder submits two computer printouts reflecting different totals, both printouts will be tabulated, and the Authority will use the lowest tabulation. If a unit bid price is illegible, the Authority will make a documented determination of the unit bid price for tabulation purposes. If a unit bid price has been entered for both the regular bid and a corresponding alternate bid, the Authority will determine the option that results in the lowest total cost to the Authority and tabulate as such. If both the regular and alternate bids result in the same cost to the Authority, the Authority will select the regular bid item or items.

5.13. Award of Contract. Except as otherwise provided in this section 5, if the Authority does not reject all bids, it will award the contract to the lowest best bidder. In determining the lowest best bidder, in addition to price the Authority shall consider:

(a) the bidder's ability, capacity, and skill to perform the contract or provide the service required;

(b) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;

(c) the bidder's character, responsibility, integrity, reputation, and experience;

(d) the quality of performance by the bidder of previous contracts or services;

(e) the bidder's previous and existing compliance with laws relating to the contract or service; and

(f) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.

5.14. Rejection of Bids; Nonresident Bidders. The Authority, acting through the Executive Director or his or her designee, may reject any and all bids opened, read, and tabulated under this policy. It will reject all bids if:

(a) there is reason to believe collusion may have existed among the bidders;

(b) the low bid is determined to be both mathematically and materially unbalanced;

(c) the lowest best bid is higher than the Authority's estimate and the Authority determines that re-advertising the project for bids may result in a significantly lower low bid or that the work should be done by the Authority; or

(d) the Board of Directors, acting on the recommendation of the Executive Director, determines, for any reason, that it is in the best interest of the Authority to reject all bids.

In accordance with Texas Government Code, Chapter 2252, Subchapter A, the Authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

5.15. Bid Protests.

(a) All protests relating to advertising of bid notices, alleged improprieties or ambiguities in bid documents, deadlines, bid openings and all other bid-related procedures must be made in writing and submitted to the Executive Director within five (5) business days of the bid opening. Each protest must include the following:

(1) the name and address of the protester, and the vendor it represents, if different;

(2) the identification number, reference number, or other identifying criteria specified in the bid documents to identify the procurement in question;

(3) a statement of the grounds for protest; and

(4) all documentation supporting the protest.

(b) A decision and response to the protest will be prepared by the Executive Director within a reasonable time after receipt of a properly prepared written protest.

(c) Appeals of responses and decisions regarding protests must be made to the Board in writing, and must be filed with the Executive Director of the Authority, with a copy to the Chairman of the Board of Directors, within ten (10) business days after the response and decision regarding the original protest are issued. Written appeals shall include all information contained in the original written protest, as well as any newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed. Subject to all applicable laws governing the Authority, the decision of the Board regarding an appeal shall be final.

5.16. Contract Execution; Submission of Ancillary Items.

(a) Within the time limit specified by the Authority, the successful bidder must execute and deliver the contract to the Authority together with all information required by the Authority relating to the Disadvantaged Business Enterprises

participation to be used to achieve the contract's Disadvantaged Business Enterprises goal as specified in the bid documents and the contract.

(b) After the Authority sends written notification of its acceptance of the successful bidder's documentation to achieve the Disadvantaged Business Enterprises goal, if any, the successful bidder must furnish to the Authority within the time limit specified by the Authority:

(1) a performance bond and a payment bond, if required and as required by Texas Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law;

(2) a certificate of insurance on a form acceptable to the Authority showing coverages in accordance with contract requirements; provided, however, that a successful bidder on a routine construction contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the Authority's order to begin work.

5.17. Unbalanced Bids. The Authority will examine the unit bid prices of the apparent low bid for reasonable conformance with the Authority's estimated prices. The Authority will evaluate, and may reject, a bid with extreme variations from the Authority's estimate, or where obvious unbalancing of unit prices has occurred.

5.18. Bid Guaranty. Not later than seven (7) business days after bids are opened, the Authority will mail the bid guaranty of all bidders to the address specified on each bidder's bid documents, except that the Authority will retain the bid guaranty of the apparent lowest best bidder, second-lowest best bidder, and third-lowest best bidder, until after the contract has been awarded, executed, and bonded. If the successful bidder (including a second-lowest best bidder or third-lowest best bidder that ultimately becomes the successful bidder due to a superior bidder's failure to comply with these rules or to execute a contract with the Authority) does not comply with subsection 5.16 the bid guaranty will become the property of the Authority, not as a penalty but as liquidated damages, unless the bidder effects compliance within seven (7) business days after the date the bidder is required to submit the bonds and insurance certificate under subsection 5.16. A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty and the Board of Directors, upon request made in writing by bidder and received at such time that the Board may consider the request at a regularly scheduled board meeting prior to the due date for the bids approves of the submission of a bid by the bidder.

5.19. Progress Payments; Retainage and Liquated Damages.

(a) In addition to other provisions required by the Authority, construction and building contracts will provide for the Authority to make progress payments, which shall be reduced by retainage, as work progresses and is approved by the Authority.

(b) Retainage shall be in the amount of five percent (5%) of the contract price until the entire work has been completed and accepted. Unless the Authority agrees otherwise in writing, retainage shall not bear interest or be segregated from other Authority funds. If the Authority agrees to segregate retainage in an interest-bearing account, the Authority may impose terms and conditions on such arrangement, including but not limited to, the following:

(1) retained funds must be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas and approved by the Authority;

(2) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(3) the Authority may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(4) any other terms and conditions prescribed by the Authority as necessary to protect the interests of the Authority.

(c) Without limiting the Authority's right to require any other contract provisions, the Authority, at its sole discretion, may elect to require that a liquidated damages provision be made a part of any contract it enters into.

SECTION 6. PROFESSIONAL SERVICES.

6.1. General. Except as otherwise permitted by Transportation Code, Chapter 370, the Authority shall procure all professional services governed by the Professional Services Procurement Act in accordance with the requirements of that Act. In the event of any conflict between these policies and procedures and the Act, the Act shall control.

6.2. Selection of Provider; Fees.

(a) The Authority may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award based on the provider's:

(1) demonstrated competence and qualifications to perform the service, including pre-certification by TxDOT (if applicable); and

(2) ability to perform the services for a fair and reasonable price.

(b) The professional fees under the contract:

(1) may be consistent with and must not be higher than the recommended practices and fees published by any applicable professional associations and which are customary in the area of the Authority; and

(2) may not exceed any maximum provided by law.

6.3. Request for Qualifications. In order to evaluate the demonstrated competence and qualifications of prospective providers of professional services, the Authority shall invite prospective providers of professional services to submit their qualifications to provide such services as specified in a Request for Qualifications ("RFQ") issued by the Authority. Each RFQ for professional services shall describe the services required by the Authority, the criteria used to evaluate proposals, and the relative weight given to the criteria.

6.4. Notice of RFQs.

(a) Notice of the issuance of an RFQ for professional services must provide (1) the date, time, and place where responses to the RFQ must be submitted, (2) the contact or location from which prospective professional service providers may request the RFQ, and (3) a general description of the type of professional services being sought by the Authority. Alternatively, the Authority may publish or otherwise distribute, in accordance with these procedures, the RFQ itself in lieu of publishing a notice of RFQ. Neither a notice of an RFQ for professional services, nor any RFQ itself shall require the submission of any specific pricing information for the specific work described in the RFQ, and may only require information necessary to demonstrate the experience, qualifications, and competence of the potential provider of professional services. Nothing in this section shall preclude the Authority from requesting information regarding a prospective provider of professional service's general approach to pricing for projects of a similar nature.

(b) The Authority shall publish on its website (www.netrma.org) all notices of the issuance of an RFQ and/or the entirety of the RFQ itself at least two (2) weeks prior to the deadline for the responses.

(c) The Authority may also publish notice of the issuance of an RFQ, or the content of the RFQ itself, in an issue of the *Texas Register*, and in newspapers, trade journals, or other such locations as the Authority determines will enhance competition for the provision of services.

(d) The date specified in the RFQ as the deadline for submission of responses may be extended if the Executive Director determines that the extension is in the best

interest of the Authority.

6.5. Contract for Professional Services.

(a) In procuring professional services, the Authority shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of professional services, the Authority shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The Authority shall continue the process described in this section to select and negotiate with providers until a contract is entered into or until it determines that the services are no longer needed or cannot be procured on an economically acceptable basis.

6.6. Termination of Procurement. The Authority may terminate a procurement of professional services pursuant to this section 6 at any time upon a determination that a continuation of the process is not in the Authority's best interest.

SECTION 7. GENERAL GOODS AND SERVICES.

7.1. Approval of Board. Every procurement of general goods and services costing more than fifty thousand dollars ($50,000.00) shall require the approval of the Board, evidenced by a resolution adopted by the Board. A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

7.2. Purchase Threshold Amounts. The Authority may procure general goods and services costing fifty thousand dollars ($50,000.00) or less by such method and on such terms as the Executive Director determines to be in the best interests of the Authority. General goods and services costing more than fifty thousand dollars ($50,000.00) shall be procured using competitive bidding or competitive sealed proposals. A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

7.3. Competitive Bidding Procedures. Competitive bidding for general goods and services shall be conducted using the same procedures specified for the competitive bidding of construction contracts, except that:

(a) with respect to a particular procurement, the Executive Director may waive the qualification requirements for all prospective bidders;

(b) the Executive Director may waive the submission of payment or performance bonds (or both) and/or insurance certificates by the successful bidder if not otherwise required by law;

(c) notice of the procurement shall be published once at least two (2) weeks before the deadline for the submission of responses in the officially designated newspaper of the Authority, as well as on the Authority's website (www.netrma.org);

(d) in addition to advertisement of the procurement as set forth in subsection 7.3(c) above, the Authority may solicit bids by direct mail, telephone, *Texas Register* publication, advertising in other locations, or via the Internet. If such additional solicitations are made, the prospective bidder may not be solicited by mail, telephone, internet, or in any other manner, nor may the prospective bidder receive bid documents, until such time that the advertisement has appeared on the Authority's website or in the officially designated newspaper of the Authority; and

(e) a purchase may be proposed on a lump-sum or unit price basis. If the Authority chooses to use unit pricing in its notice, the information furnished to the bidder must specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

7.4. Award Under Competitive Bidding.

(a) Contracts for general goods and services procured using competitive bidding shall be awarded to the lowest best bidder based on the same criteria used in awarding construction contacts, together with the following additional criteria:

(1) the quality and availability of the goods or contractual services to be provided and their adaptability to the Authority's needs and uses; and

(2) the bidder's ability to provide, in timely manner, future maintenance, repair parts, and service for goods being purchased.

(b) In accordance with Texas Government Code, Chapter 2252, Subchapter A, the Authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be

required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

7.5. Competitive Sealed Proposals.

(a) Request for Proposals. As an alternative to competitive bidding and at the discretion of the Authority, the Authority may solicit offers for provision of general goods and services by issuing a request for proposals ("RFP"). Each RFP shall contain the following information:

(1) the Authority's specifications for the good or service to be procured;

(2) an estimate of the various quantities and kinds of services to be performed and/or materials to be furnished;

(3) a schedule of items for which unit prices are requested, if applicable;

(4) the time within which the contract is to be performed;

(5) any special provisions and special specifications; and

(6) if applicable, the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises. The Authority shall give public notice of an RFP in the manner provided for requests for competitive bids for general goods and services.

(b) Opening and Filing of Proposals; Public Inspection. The Authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors. The Authority shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as public information.

(c) Revision of Proposals. After receiving a proposal but before making an award, the Authority may permit an offeror to revise its proposal to obtain the best final offer. The Authority may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. The Authority may not disclose information derived from proposals submitted from competing offerors. The Authority shall provide each offeror an equal opportunity to discuss and revise proposals.

(d) Refusal of All Proposals. The Authority shall refuse all proposals if none of those submitted is acceptable.

(e) Contract Execution. The Authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the

Authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the Authority elects otherwise. If the Authority and the first choice candidate cannot agree on the terms of a contract, the Authority may elect not to contract with the first choice candidate, and at the exclusive option of the Authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the Authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the Authority shall have no obligation to submit a contract to the next highest-ranked offeror if the Authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the Authority.

7.6. Proprietary Purchases. If the Executive Director finds that the Authority's requirements for the procurement of a general good or service describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the Authority may solicit a bid for the general good or service solely from the proprietary vendor, without using the competitive bidding or competitive proposal procedures. The Executive Director shall justify in writing the Authority's requirements and shall submit the written justification to the Board. The written justification must (1) explain the need for the specifications; (2) state the reason competing products are not satisfactory; and (3) provide other information requested by the Board.

SECTION 8. CONSULTING SERVICES.

8.1. Contracting for Consulting Services. The Authority may contract for consulting services if the Executive Director reasonably determines that the Authority cannot adequately perform the services with its own personnel.

8.2. Selection Criteria. The Authority shall base its selection on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

8.3. Contract Amounts. The Authority may procure consulting services anticipated to cost no more than fifty thousand dollars ($50,000.00) by such method and on such terms as the Executive Director determines to be in the best interests of the Authority. Without limiting the foregoing, the Executive Director, subject to section 8.9 below, may procure consulting services anticipated to cost no more than fifty thousand dollars ($50,000.00) pursuant to a "single-source contract," if the Executive Director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the Authority at a reasonable fee and within the time limitations required by the Authority. Consulting services anticipated to cost more than fifty thousand dollars ($50,000.00) shall be procured by the Authority's issuance of either a Request for Qualifications ("RFQ") or a Request for Proposals (“RFP”) as the Authority deems appropriate.

8.4. Request for Qualifications. Each RFQ prepared by the Authority shall invite prospective consultants to submit their qualifications to provide such services as specified in the

RFQ. Each RFQ shall describe the services required by the Authority, the criteria used to evaluate proposals, and the relative weight given to the criteria.

8.5. Request for Proposals. Each RFP shall contain the following information:

(a) the Authority's specifications for the service to be procured;

(b) an estimate of the various quantities and kinds of services to be performed;

(c) a schedule of items for which unit prices are requested, if applicable;

(d) the time within which the contract is to be performed;

(e) any special provisions and special specifications; and

(f) if applicable, the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises.

8.6. Notice of Procurement and Solicitation of Responses.

(a) Notice of the issuance of an RFQ or RFP must provide (1) the date, time, and place where responses to the RFQ or RFP will be opened, (2) the address and telephone number from which prospective proposers may request the RFQ or RFP, and (3) a general description of the type of services being sought by the Authority. Alternatively, the Authority may publish and otherwise distribute, in accordance with these procedures, the RFQ or RFP itself in lieu of publishing a notice of issuance of an RFQ or RFP.

(b) Notice of the issuance of an RFQ or RFP, or the content of the RFQ or RFP itself, shall be posted on the Authority's website (www.netrma.org) and shall be published in the officially designated newspaper of the Authority at least once, with the first such notice published at least two (2) weeks before the deadline for the submission of responses.

(c) The Authority may, but shall not be required to, solicit responses to a RFQ or RFP by direct mail, telephone, advertising in trade journals or other locations, or via the Internet. If such additional solicitations are made, the prospective bidder may not be solicited by mail, telephone, internet, or in any other manner, nor may the prospective bidder receive bid documents, until such time that notice of the RFQ or RFP has been made available on the Authority's website or published in the officially designated newspaper of the Authority.

(d) The date specified in the RFQ or RFP as the deadline for submission of responses may be extended if the Executive Director determines that the extension is in the best interest of the Authority. All responses, including those received before an extension is made, must be opened at the same time.

8.7. Opening and Filing of Responses; Public Inspection. The Authority shall avoid disclosing the contents of each response to an RFQ on opening the response and during negotiations with competing respondents. The Authority shall file each response in a register of responses, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure under the Texas Public Information Act or other applicable law.

8.8. Contract Negotiation and Execution.

(a) With regard to consulting services procured through issuance of an RFQ, the Authority shall submit a written contract to the respondent (the "first choice candidate") whose response best satisfies the Authority's selection criteria. If the Authority and the first choice candidate cannot agree on the terms of a contract, the Authority may terminate negotiations with the first choice candidate, and, at the exclusive option of the Authority, the Authority may enter into contract negotiations with the respondent ("second choice candidate") whose response is the next most favorable to the Authority. If agreement is not reached with the second choice candidate, the process may be continued with other respondents in like manner, but the Authority shall have no obligation to submit a contract to the next highest-ranked respondent if the Authority determines that none of the remaining responses is acceptable or that continuing with the procurement is not within the best interest of the Authority.

(b) With regard to consulting services procured through issuance of an RFP, the Authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the Authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the Authority elects otherwise. If the Authority and the first choice candidate cannot agree on the terms of a contract, the Authority may elect not to contract with the first choice candidate, and at the exclusive option of the Authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the Authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the Authority shall have no obligation to submit a contract to the next highest-ranked offeror if the Authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the Authority.

8.9. Single-Source Contracts. If the Executive Director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the Authority at a reasonable fee and within the time limitations required by the Authority, consulting services from that consultant may be procured without issuing an RFQ or RFP; provided, however, that the Executive Director shall justify in writing the basis for classifying the consultant as a single-source and shall submit the written justification to the

Board. The justification shall be submitted for Board consideration prior to contracting with the consultant if the anticipated cost of the services exceeds fifty thousand dollars ($50,000.00). If the anticipated cost of services is less than fifty thousand dollars ($50,000.00) and if otherwise permitted under procedures set forth in the Authority's bylaws, the Executive Director may enter into a contract for services and shall submit the justification to the Board at its next regularly scheduled board meeting.

8.10. Prior Employees. Except as otherwise provided by state or federal law or for those employment positions identified in a resolution of the Board, nothing shall prohibit the Authority from procuring consulting services from an individual who has previously been employed by the Authority or by any other political subdivision of the state or by any state agency; provided, that if a prospective consultant has been employed by the Authority, another political subdivision, or a state agency at any time during the two years preceding the making of an offer to provide consulting services to the Authority, the prospective consultant shall disclose in writing to the Authority the nature of his or her previous employment with the Authority, other political subdivision, or state agency; the date such employment was terminated; and his or her annual rate of compensation for the employment at the time of termination.

8.11. Mixed Contracts. This section 8 applies to a contract that involves both consulting and other non-professional services if the primary objective of the contract is the acquisition of consulting services.

SECTION 9. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

9.1. Comprehensive Development Agreements Allowed. If specifically authorized by an applicable statute, the Authority may enter into a CDA with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project. A CDA shall, at a minimum, provide for the design and construction of a transportation project, may also provide for the financing, acquisition, maintenance, or operation of a transportation project, and shall entitle the private entity to a leasehold interest in the transportation project or the right to operate or retain revenue from the operation of the transportation project. The Authority is also allowed to negotiate provisions relating to professional and consulting services provided in connection with a CDA.

9.2. Competitive Procurement Process For CDA. The Authority may either accept unsolicited proposals relating to a CDA or solicit proposals relating to a CDA in accordance with this section 9. The competitive bidding requirements for highway projects as specified under Chapter 223, Texas Transportation Code, and the Texas Professional Services Procurement Act (Chapter 2254, Texas Government Code) do not apply to a CDA. The CDA procurement process may also provide for the submission of alternative technical concepts ("ATCs") and value added concepts ("VACs") from proposers.

9.3. Unsolicited Proposals.

(a) The Authority may accept unsolicited proposals for a project authorized by statute to be developed through a CDA. An unsolicited proposal must be filed with the Authority and shall be accompanied by a $20,000.00 non-refundable review fee. An unsolicited proposal must include the following information:

(1) the proposed transportation project location, scope, and limits;

(2) information regarding the proposing entity's qualifications, experience, technical competence, and capability to develop the project;

(3) a proposed financial plan for the proposed project that includes, at a minimum (A) projected project costs, and (B) proposed sources of funds; and

(4) the identity of any member of, or proposed subconsultant for, the proposing entity or team who is also performing work, directly or as a subconsultant, for the Authority.

(b) Unsolicited proposals shall be reviewed by the Authority staff and/or consultants. The staff/consultants may request additional information from the proposer. Based on its review, the staff/consultants will make an initial recommendation to the Board (or a designated committee thereof) as to whether the Authority should authorize further evaluation of the unsolicited proposal.

(c) If the Authority authorizes further evaluation of an unsolicited proposal, then the Authority shall publish a request for qualifications ("RFQ") in accordance with the requirements of section 9.4. Evaluation of proposals submitted in response to RFQs shall occur in accordance with the provisions of section 9.5.

9.4. Authority Solicitation of Proposals and Competing Proposals; Requests for Qualifications. The Authority may solicit proposals or competing proposals by issuing an RFQ relating to a CDA project. The Authority shall publish an RFQ (or a notice of availability of an RFQ) in the *Texas Register* and post it on the Authority's website.

(a) An RFQ issued by the Authority shall include the following information:

(1) a description of the project;

(2) criteria used to evaluate the proposals;

(3) the relative weight given to the criteria; and

(4) the deadline by which proposals must be received by the Authority.

(b) A proposal submitted in response to an RFQ issued under this section 9.4, or a competing proposal submitted in response to an RFQ issued under section 9.3(c) above, must include, at a minimum, the following:

(1) information regarding the proposer's qualifications, experience, technical competence, and capability to develop the project;

(2) a proposed financial plan for the proposed project that includes, at a minimum, (A) projected project costs, and (B) proposed sources of funds;

(3) such additional information that the Authority requests within the RFQ;

(4) the identity of any member of, or proposed subconsultant for, the proposing entity or team who is also performing work, directly or as a subconsultant, for the Authority; and

(5) in the case of a competing proposal submitted in response to an RFQ published by the Authority after receipt of an unsolicited proposal, a $20,000 non-refundable proposal review fee.

(c) The Authority may withdraw an RFQ at any time, and may then publish a new RFQ in accordance with this section 9.4.

9.5. Evaluation of Proposals Submitted in Response to a Request For Qualifications.

(a) The Authority shall review responses to a RFQ submitted in accordance with section 9.4 based on the criteria described in the RFQ. The Authority shall evaluate all proposals received, and shall determine which proposers qualify to submit detailed proposals in accordance with the requirements of section 9.6. The Authority may include an interview as part of its evaluation process.

(b) The Authority must qualify at least two (2) private entities to submit detailed proposals in accordance with the procedures under section 9.6, unless the Authority does not receive more than one (1) proposal in response to an RFQ. If only one (1) entity responds to an RFQ (or no entity submits a response to an RFQ issued after receipt of an unsolicited proposal) the Authority may request a detailed proposal from, and may attempt to negotiate a CDA with, the sole proposer.

9.6. Requests For Detailed Proposals.

(a) The Authority shall issue a request for detailed proposals ("RFDP") from all proposers qualified in accordance with section 9.5 above. The Authority shall provide an RFDP directly to the proposer, and such RFDP must contain the following information:

(1) instructions for preparing the technical proposal and items to be included therein;

(2) the process for submission of ATCs and/or VACs and the manner in which they will be considered in the evaluation and scoring process;

(3) the relative weighting of the technical and price proposals and the criteria for evaluating and ranking them;

(4) the stipulated amount to be paid to unsuccessful proposers subject to section 9.12 below, if any; and

(5) the deadline by which proposals must be received.

(b) An RFDP under this section 9.6 shall require proposers to submit a sealed technical proposal and a separate sealed cost proposal. An RFDP under this section 9.6 may require proposers to provide information relating to the following:

(1) the proposer's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the proposer's ability to meet schedules;

(5) costing methodology; and

(6) any other information the Authority considers relevant or necessary to fully assess the project.

(c) The Authority may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the Authority shall have no liability to the entities chosen to submit detailed proposals.

(d) In developing and preparing to issue a RFDP in accordance with section 9.6(a), the Authority may solicit input from entities qualified under section 9.5 or any other person.

(e) After the Authority has issued a RFDP under section 9.6(a) but prior to the submission of RFDP responses, the Authority may solicit input from the proposers regarding ATCs and/or VACs.

9.7. Evaluation and Ranking of Detailed CDA Proposals. (a) The Authority shall first open, evaluate, and score each technical proposal based on the criteria described in the RFDP. The Authority shall subsequently open, evaluate, and score each cost proposal based on the criteria set forth in the RFDP. Based on the weighting of technical and cost proposals described in the RFDP, the Authority shall then identify the proposer whose proposal offers the best value to the Authority. The Authority may interview the proposers as part of its evaluation process.

9.8. Post-Submissions Discussions.

(a) After the Authority has evaluated and ranked the detailed proposals in accordance with section 9.7, the Authority may enter into discussions with the proposer whose proposal offers the apparent best value provided that the discussions must be limited to incorporation of aspects of other detailed proposals for the purpose of achieving the overall best value for the Authority, clarifications and minor adjustments in scheduling, designs, operating characteristics, cash flow, and similar items, and other matters that have arisen since the submission of the detailed proposal.

(b) If at any point in discussions under subsection 9.8(a) above, it appears to the Authority that the highest-ranking proposal will not provide the Authority with the overall best value, the Authority may end discussions with the highest ranking proposer and enter into discussions with the proposer submitting the next-highest ranking proposal.

(c) If, after receipt of detailed proposals, the Authority determines that development of a project through a CDA is not in the best interest of the Authority, or the Authority determines for any other reason that it does not desire to continue the procurement, the Authority may terminate the process and, in such event, it shall not be required to negotiate a CDA with any of the proposers.

9.9. Negotiations for CDA. Subsequent to the discussions conducted pursuant to section 9.8 and provided the Authority has not terminated or withdrawn the procurement, the Authority and the highest-ranking proposer shall attempt to negotiate the specific terms of a CDA.

(a) The Authority shall prescribe the general form of the CDA and may include any matter therein considered advantageous to the Authority.

(b) The Authority may establish a deadline for the completion of negotiations for a CDA. If an agreement has not been executed within that time, the Authority may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(c) In the event an agreement is not negotiated within the time specified by the Authority, or if the parties otherwise agree to cease negotiations, the Authority may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing a CDA for the project which is the subject of the

procurement process.

(d) Notwithstanding the foregoing, the Authority may terminate the procurement process, including the negotiations for a CDA, at any time upon a determination that continuation of the process or development of a project through a CDA is not in the Authority's best interest. In such event, the Authority shall have no liability to any proposer beyond the payment provided for under section 9.12 if detailed proposals have been submitted to the Authority.

9.10. CDA Projects with Private Equity Investment.

(a) If a project to be developed through a CDA involves an equity investment by the proposer, the terms to be negotiated by the Authority and the proposer may include, but shall not be limited to:

(1) methods to determine the applicable cost, profit, and project distribution between the proposer and the Authority;

(2) reasonable methods to determine and classify toll rates or user fees;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operational and maintenance standards, expenses and costs.

(b) The Authority may only enter into a CDA with private equity investment if the project which is the subject of the CDA is identified in TxDOT's unified transportation program or is located on a transportation corridor identified in a statewide transportation plan.

(c) The Authority may not incur a financial obligation for a private entity that constructs, maintains, or operates a transportation project. A CDA must include a provision authorizing the Authority to purchase the interest of a private equity investor in a transportation project.

9.11. Authority Property Subject to a CDA. A transportation project (excluding a public utility facility) that is the subject of a CDA is public property and belongs to the Authority, provided that the Authority may lease rights-of-ways, grant easements, issue franchises, licenses, permits or any other lawful form of use to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of any such agreement, the transportation project shall be returned to the Authority in a state of maintenance deemed adequate by the Authority and at no additional cost to the Authority.

9.12. Payment For Submission of Detailed CDA Proposals.

(a) The Authority may pay an unsuccessful proposer that submits a detailed proposal in response to a RFDP under section 9.6 a stipulated amount of the final contract price for any costs incurred in preparing that detailed proposal. If a payment is to be made, the amount may not exceed the lesser of the amount identified in the RFDP or the value of any work product contained in the proposal that can, as determined by the Authority, be used by the Authority in the performance of its functions. Use by the Authority of any design element contained in an unsuccessful detailed proposal is at the sole risk and discretion of the Authority and does not confer liability on the recipient of the stipulated amount under this section.

(b) After payment of the stipulated amount, if any, the Authority shall own the exclusive rights to, and may make use of, any work product contained in the detailed proposal, including technologies, techniques, methods, processes, and information contained in the project design. In addition, the work product contained in the proposal becomes the property of the Authority.

9.13. Confidentiality of Negotiations for CDAs. The Authority shall use its best efforts to protect the confidentiality of information generated and/or submitted in connection with the process for entering into a CDA to the extent permitted by Transportation Code §370.307. The Authority shall notify any proposer whose information submitted in connection with the process for entering into a CDA is the subject of a Public Information Act request received by the Authority.

9.14. Performance and Payment Security.

(a) The Authority shall require any private entity entering into a CDA to provide a performance and payment bond or an alternative form of security in an amount sufficient to insure the proper performance of the agreement and to protect the Authority and payment bond beneficiaries who have a direct contractual relationship with the private entity and subcontractors of the private entity who supply labor or materials. A performance or payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project, provided that if the Authority determines that it is impracticable for a private entity to provide security in such amount, the Authority shall set the amount of the bond or alternative form of security.

(b) An alternative form of security may not be utilized unless requested by the private entity proposing to enter into a CDA. Such request shall include an explanation as to why an alternative form of security is appropriate, the form of alternative security to be utilized, and the benefits and protections provided to the Authority through use of the requested form of alternative security. A decision on whether to accept alternative forms of security, in whole or in part, shall be at the sole discretion of the Authority.

(c) A payment or performance bond or alternative form of security is not required for

that portion of a CDA that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(d) In no event may the amount of the payment security be less than the performance security.

(e) Alternative forms of security may be permitted or required in the following forms:

(1) a cashier's check drawn on a financial entity specified by the Authority;

(2) a U.S. Bond or Note;

(3) a irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the Authority.

9.15. Legal Sufficiency Review. The Authority may require a private entity engaged in post-submission discussions or negotiations with the Authority concerning a proposed CDA to pay for or reimburse the Authority for an examination fee assessed in connection with the legal sufficiency review required by section 371.051, Transportation Code. The Authority may elect to make the cost of the examination fee non-refundable in the event that the CDA is not executed.

10. DESIGN-BUILD AND DESIGN-BUILD-FINANCE AGREEMENTS.

10.1. SECTION Design-Build and Design-Build-Finance Agreements Allowed. The Authority may use the design-build or design-build-finance method to procure the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alternation, or repair of a transportation project. The Authority may not, however, enter into more than two design-build or design-build-finance agreements in any fiscal year.

10.2. Competitive Procurement Process For Design-Build and Design-Build-Finance Agreements. The Authority must solicit proposals for a design-build or design-build-finance agreement in accordance with this section 10. The Professional Services Procurement Act does not apply to a design-build or design-build-finance agreement. The design-build or design-build-finance procurement process may also provide for the submission of alternative technical concepts ("ATCs") and value added concepts ("VACs") from proposers.

10.3. Use of Engineer and Other Professional Services. The Authority must select or designate an engineer or a qualified engineering firm that is independent of the design-build contractor to act as the Authority's representative during the procurement of a design-build or design-build-finance agreement. The engineer representative may be an engineer that is an employee of the Authority; the Authority's general engineering consultant, if any; or a qualified engineer or engineering firm hired by the Authority pursuant to the Professional Services Procurement Act. Additionally, the authority must provide for (through existing engineering resources), or contract for, inspection services, construction materials engineering and testing, and verification testing

services independent of the design-build contractor. Any engineer or firm selected pursuant to this section 10.3 must be selected in accordance with the Professional Services Procurement Act and this Policy.

10.4. Requests for Qualifications. The Authority must solicit proposals for a design-build or design-build-finance agreement by issuing a Request for Qualifications ("RFQ"). The Authority shall publish the RFQ (or notice of availability of the RFQ) in the *Texas Register* and post it on the Authority's website.

(a) An RFQ issued by the Authority shall include the following information:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) the criteria that will be used to evaluate the proposals, which must include the proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight given to the criteria; and

(5) the deadline by which proposals must be received by the Authority.

(b) The Authority may withdraw an RFQ at any time, and may then publish a new RFQ in accordance with this section 10.4.

10.5. Evaluation of Proposals Submitted in Response to a Request For Qualifications.

(a) The Authority shall review responses to an RFQ submitted in accordance with section 10.4 based on the criteria described in the RFQ. The Authority shall evaluate all proposals received, and shall determine which proposers qualify to submit detailed proposals in accordance with the requirements of section 10.6. The Authority may include an interview as part of its evaluation process.

(b) The Authority must qualify at least two (2) but no more than five (5) private entities to submit detailed proposals in accordance with the procedures under section 10.6, unless the Authority does not receive more than one (1) proposal in response to an RFQ. If only one (1) entity responds to an RFQ the Authority shall terminate the procurement process.

10.6. Requests For Detailed Proposals.

(a) The Authority shall issue a request for detailed proposals ("RFDP") to all

proposers qualified or short-listed in accordance with section 10.5 above. The Authority shall provide a RFDP directly to the proposer, and such RFDP must contain the following information:

(1) information on the overall project goals;

(2) the Authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of the Authority rules or goals related to awarding of contracts to disadvantaged businesses;

(10) available geotechnical or other detailed instructions for preparing the information related to the project;

(11) the status of the environmental review process;

(12) detailed instructions for preparing the technical proposal, including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals and the formula by which the proposals will be evaluated and ranked;

(14) the criteria and weighting for each element of the technical proposal;

(15) any risks or costs to be assumed by the design-build contractor and associated with scope changes and modifications, unknown or differing site conditions, environmental clearance and other regulatory permitting, and natural disasters and other force majeure events;

(16) a general form of the design-build or design-build-finance agreement; and

(17) the deadline by which proposals must be received, which shall be no more than 180 days after the issuance of the final RFDP.

(b) A RFDP under this section 10.6 shall require proposers to submit a sealed technical proposal and a separate sealed cost proposal. The cost proposal shall be weighted at least 70 percent in the formula for evaluating and ranking proposals. A technical proposal under this section 10.6 must address the following:

(1) the proposer's qualifications and demonstrated technical competence (exclusive of information included in the proposer's response to the RFQ);

(2) the feasibility of developing the project as proposed, including identification of anticipated problems and proposed solutions, the ability of the proposer to meet deadlines, and the conceptual engineering design proposed.

A cost proposal under this section 10.6 must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

(c) The Authority may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the Authority shall have no liability to the entities chosen to submit detailed proposals.

(d) In developing and preparing to issue a RFDP in accordance with section 10.6(a), the Authority may solicit input from entities qualified under section 10.5 or any other person.

(e) If the Authority provides for the submission of ATCs and/or VACs, the Authority shall establish a process for submission and review of ATCs and/or VACs prior to submission of a technical proposal. Only those ATCs and/or VACs approved by the Authority may be included in an entity's technical proposal. The Authority shall notify a proposer whether its ATCs and/or VACs are approved for inclusion in the technical proposal.

(f) The Authority may conduct meetings with or interview proposers submitting a response to an RFDP.

10.7. Evaluation and Ranking of Detailed Design-Build and Design-Build-Finance Proposals. The Authority shall first open evaluate, and score each responsive technical proposal based on criteria set forth in the RFDP. The Authority shall subsequently open, evaluate, and score each cost proposal based on criteria set forth in the RFDP. The Authority shall then rank the proposers in accordance with the formula provided in the RFDP.

10.8. Unapproved Changes to Team. The Authority may reject as nonresponsive a proposal that makes a significant change to the composition of the proposer's design-build team as initially submitted that was not approved by the Authority.

10.9. Contract Negotiations.

(a) After the Authority has evaluated and ranked the detailed proposals in accordance with section 10.7, the Authority shall first attempt to negotiate a contract with the highest-ranked proposer. If the Authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the Authority shall, formally and in writing, end negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

(b) If the RFDP provides for payment of a stipend to unsuccessful proposers, the Authority may include in the negotiations ATCs and/or VACs approved for inclusion in RFDP responses of other proposers.

(c) The Authority may establish a deadline for the completion of negotiations for a design-build or design-build-finance agreement. If an agreement has not been executed within that time, the Authority may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(d) In the event an agreement is not negotiated within the time specified by the Authority, or if the parties otherwise agree to cease negotiations, the Authority may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing a design-build or design-build-finance agreement for the project which is the subject of the procurement process.

(e) Notwithstanding the foregoing, the Authority may terminate the procurement process at any time upon a determination that continuation of the process or development of a project through a design-build or design-build-finance agreement is not in the Authority's best interest. In such event, the Authority shall have no liability to any proposer beyond the payment provided for under section 10.9 if detailed proposals have been submitted to the Authority.

10.10. Payment For Submission of Detailed Design-Build or Design-Build-Finance Proposals.

(a) Pursuant to the provisions of an RFDP, the Authority shall pay an unsuccessful proposer that submits a detailed proposal in response to a RFDP a stipend for work product contained in the proposal. The stipend must be specified in the RFDP and must be at least two-tenths of one percent of the contract amount, provided that the stipend shall not exceed the value of the work product contained in the proposal to the Authority.

(b) After payment of the stipend, the Authority may make use of, any work product contained in the detailed proposal, including techniques, methods, processes, and information contained in the proposal. In addition, the work product contained in the proposal becomes the property of the Authority.

10.11. Confidentiality of Negotiations for Design-Build and Design-Build-Finance Agreements. The Authority shall use its best efforts to protect the confidentiality of information generated and/or submitted in connection with the process for entering into a design-build or design-build-finance agreement to the extent permitted by law. The Authority shall notify any proposer whose information submitted in connection with the process for entering into a design-build or design-build-finance agreement is the subject of a Public Information Act request received by the Authority.

10.12. Performance and Payment Security.

(a) The Authority shall require a design-build contractor to provide a performance and payment bond, an alternative form of security, or a combination of a performance and payment bond and alternative security in an amount equal to the cost of constructing or maintaining the project. If, however, the Authority determines that it is impracticable for a private entity to provide security in such amount, the Authority shall set the amount of the bond or alternative form of security.

(b) A payment or performance bond or alternative form of security is not required for that portion of a design-build or design-build-finance agreement that includes only design services only.

(c) Alternative forms of security may be permitted or required in the following forms:

(1) a cashier's check drawn on a financial entity specified by the Authority;

(2) a U.S. Bond or Note;

(3) a irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or

(4) any other form of security determined suitable by the Authority.

SECTION 11. PARTICIPATION IN STATE AND COOPERATIVE PURCHASING PROGRAMS; AND INTERGOVERNMENTAL AGREEMENTS.

11.1. Voluntary GSC Program. Pursuant to and in accordance with § 2155.204 of the Government Code and Subchapter D, Chapter 271 of the Local Government Code, the Authority may request the Texas Building and Procurement Commission ("TBPC") to allow the Authority

to participate on a voluntary basis in the program established by TBPC by which the TBPC performs purchasing services for local governments.

11.2. Catalog Purchase of Automated Information Systems. Pursuant to and in accordance with § 2157.067 of the Government Code, the Authority may utilize the catalogue purchasing procedure established by the TBPC with respect to the purchase of automated information systems.

11.3. Cooperative Purchases. Pursuant to and in accordance with Subchapter F, Chapter 271 of the Local Government Code, the Authority may participate in one or more cooperative purchasing programs with local governments or local cooperative programs.

11.4. Interlocal Agreements with TxDOT or Other Governmental Entities. Subject to limitations imposed by general law, the Authority may enter into interlocal agreements with TxDOT or another governmental entity to procure goods and services.

11.5. Effect of Procurements Under Section 11. Purchases made through the TBPC, a cooperative program or by interlocal agreement shall be deemed to have satisfied the procurement requirements of this Policy and shall be exempted from the procurement requirements contained in this Policy.

SECTION 12. EMERGENCY PROCUREMENTS.

12.1. Emergency Procurement Procedures. The Authority may employ alternate procedures for the expedited award of construction contracts and to procure goods and services to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with the foregoing rules. Types of work which may qualify for emergency contracts include, but are not limited to, emergency repair or reconstruction of streets, roads, highways, building, facilities, bridges, toll collection systems and other Authority property; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards.

(a) Before a contract is awarded under this section, the Executive Director or his or her designee must certify in writing the fact and nature of the emergency giving rise to the award.

(b) To be eligible to bid on an emergency construction and building projects, a contractor must be qualified to bid on TxDOT construction or maintenance contracts or be pre-qualified by the Authority to bid on Authority construction or building contracts.

(c) A bidder need not be qualified or pre-qualified by the Authority to be eligible to bid on emergency non-construction or non-building projects.

(d) After an emergency is certified, if there are three or more firms qualified to bid on

the contract as reflected by the Authority's files, the Authority will send bid documents for the work to at least three qualified contractors. The Authority will notify recipients of the bid documents of the date and time by which the bids must be submitted and when the bids will be opened, read, and tabulated. The Authority will also notify the recipients of any expedited schedule and information required for the execution of the contract. Bids will be opened, read, and tabulated, and the contract will be awarded, in the manner provided in the other subsections of this Policy as required to procure construction contracts or general goods and services, as the case may be.

SECTION 13. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY.

13.1. Sale by Bid or Auction. The Authority may periodically sell the Authority's salvage or surplus property by competitive bid or auction. Salvage or surplus property may be offered as individual items or in lots at the Authority's discretion.

13.2. Trade-In for New Property. Notwithstanding subsection 13.1, the Authority may offer salvage or surplus property as a trade-in for new property of the same general type if the Executive Director considers that action to be in the best interests of the Authority.

13.3. Heavy Equipment. If the salvage or surplus property is earth-moving, material-handling, road maintenance, or construction equipment, the Authority may exercise a repurchase option in a contract in disposing of such types of property. The repurchase price of equipment contained in a previously accepted purchase contract is considered a bid under subsection 13.1.

13.4. Sale to State, Counties, etc. Notwithstanding subsection 13.1 above, competitive bidding or an auction is not necessary if the purchaser is the State or a county, municipality, or other political subdivision of the State. The Authority may accept an offer made by the State or a county, municipality, or other political subdivision of the State before offering the salvage or surplus property for sale at auction or by competitive bidding.

13.5. Failure to Attract Bids. If the Authority undertakes to sell property under subsection 13.1. and is unable to do so because no bids are made for the property, the Executive Director may order such property to be destroyed or otherwise disposed of as worthless. Alternatively, the Executive Director may cause the Authority to dispose of such property by donating it to a civic, educational or charitable organization located in the State.

13.6. Terms of Sale. All salvage or surplus property sold or otherwise disposed of by the Authority shall be conveyed on an "AS IS, WHERE IS" basis. The location, frequency, payment terms, inspection rights, and all other terms of sale shall be determined by the Authority in its sole and absolute discretion.

13.7. Rejection of Offers. The Authority or its designated representative conducting a sale of salvage or surplus property may reject any offer to purchase such property if the Executive Director or the Authority's designated representative finds the rejection to be in the best interests of the Authority.

13.8. Public Notices of Sale. The Authority shall publish the address and telephone number from which prospective purchasers may request information concerning an upcoming sale in at least two issues of the officially designated newspaper of the Authority, or any other newspaper of general circulation in each county of the Authority, and the Authority may, but shall not be required to, provide additional notices of a sale by direct mail, telephone, or via the internet.

SECTION 14. SOLICITATION OF EMPLOYEE APPLICANTS.

14.1. Solicitation of Employee Applicants. In conjunction with efforts to solicit applicants for available employment positions with the Authority, Authority staff shall follow the solicitation and application guidelines set forth in this Section 14 in order to (1) provide notice of the employment position opening, (2) provide a method of allowing potential applicants to receive detailed information regarding particular criteria and requirements for the individual employment position, and (3) provide information related to any application deadlines or extensions of deadlines.

14.2. Solicitation of Applicants for Professional or Managerial Positions. In order to reach the largest potential pool of qualified applicants for employment positions that are either professional or managerial in nature, Authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for applications for professional or managerial staff positions in the following manner:

(a) Notice of employment position openings with the Authority shall be published on the Authority's website, and shall include: (1) employment position title; (2) a general description of position duties and responsibilities; (3) educational and prior work experience requirements; (4) the statement that the Authority is an equal opportunity employer; (5) materials required to be submitted for position applications; (6) the physical mailing address and/or e-mail address for submitting application materials; and (7) the telephone number for questions regarding the employment position description and/or application process.

(b) Notice of employment position openings with the Authority may be published in the officially designated newspaper of the Authority, the *Texas Register*, trade journals, and other sources that the Authority determines are appropriate for contacting potentially qualified applicants. In addition, the Authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(c) The application deadline specified in the notice of employment position opening may be extended if the Executive Director determines that the extension is in the best interest of the Authority.

14.3. Solicitation of Administrative or Clerical Applicants. Authority staff shall post information regarding potential employment opportunities, detailed position descriptions,

and requirements for application for administrative or clerical staff positions in the following manner:

(a) Notice of employment position openings with the Authority shall be published on the Authority's website, and shall include: (1) employment position title; (2) a general description of position duties and responsibilities; (3) educational and prior work experience requirements; (4) the statement that the Authority is an equal opportunity employer; (5) materials required to be submitted for position applications; (6) the physical mailing address and/or e-mail address for submitting application materials; and (7) the telephone number for questions regarding the position description or application process. Authority staff may include any and all of the required information listed in (1)-(7) above in a standard employment application form issued by the Authority.

(b) Notice of employment position openings with the Authority may be published in the officially designated newspaper of the Authority and in such other places that the Authority determines are appropriate for contacting potentially qualified applicants. In addition, the Authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(c) The application deadline specified in the notice of employment position opening may be extended if the Executive Director determines that the extension is in the best interest of the Authority.

SECTION 15. DISPUTE RESOLUTION PROCEDURES.

The Authority shall have the general ability and authority, when negotiating the terms and conditions of any contract to be entered into with any entity, to negotiate for the inclusion of dispute resolution procedures in such contract. Such dispute resolution procedures may vary from contract to contract, provided that, at a minimum, the procedures require that a meeting of principles, mediation, and/or formal alternative dispute resolution procedures be followed before any party may file suit against, or initiate an arbitration proceeding against, the Authority for an alleged breach of contract claim.

POLICIES AND PROCEDURES
FOR ENVIRONMENTAL
REVIEW OF NET RMA PROJECTS

TABLE OF CONTENTS

SECTION		PAGE
1.	Purpose	1
2.	Definitions	1
3.	Review of Non-NEPA Authority Projects	2
4.	Public Involvement Process and Procedures	2
5.	Categorical Exclusions	6
6.	Environmental Assessments	8
7.	Environmental Impact Statements	9

POLICIES AND PROCEDURES
FOR ENVIRONMENTAL
REVIEW OF NET RMA PROJECTS

SECTION 1. PURPOSE.

These procedures are adopted pursuant to Transportation Code §370.188 and are applicable only to transportation projects that are not otherwise subject to review under (1) the National Environmental Policy Act (NEPA) (42 U.S.C. Section 4321, *et seq*.); or (2) environmental review and approval conducted by the Texas Department of Transportation ("TxDOT") or the Texas Transportation Commission (the "Commission"). The policies and procedures are intended to be consistent with the spirit and intent of NEPA.

SECTION 2. DEFINITIONS.

The following words and terms, when used in these policies, shall have the following meanings, unless the context clearly indicates otherwise.

1. Authority: The North East Texas Regional Mobility Authority.

2. Authority Project: For purposes of these policies and procedures, authority projects which are not subject to review under NEPA or the procedures for environmental review and approval adopted and administered by TxDOT or the Commission.

3. Board: The board of directors of the authority.

4. Environmental Document: A decision making document which incorporates environmental studies, coordination, and consultation efforts, and engineering elements. Documents may include categorical exclusion assessments, environmental assessments, and environmental impact statements.

5. Environmental Studies: The investigation of potential environmental impacts of an authority project.

6. Public Hearing: A hearing held after public notice is provided to solicit public input in determining a preferred alternative for an authority project. All testimony given at a public hearing will be made part of the public hearing record.

7. Public Involvement: An ongoing phase of the project planning process which encourages and solicits public input, and provides the public the opportunity to become fully informed regarding development of an authority project.

8. Public Meeting: Informal discussions intended to assist in the preparation of environmental documents. These may be held with local public officials, interested citizens or the general public, and local, neighborhood, or special interest groups for the purpose of exchanging ideas, and collecting input on the need for, and possible alternatives to, a given authority project. Notice of a public meeting will depend upon anticipated audience attendance.

9. Significantly: This term shall have the same meaning as is used, and has been interpreted, under 42 U.S.C. § 4332 of NEPA.

SECTION 3. REVIEW OF NON-NEPA AUTHORITY PROJECTS

Environmental studies for authority projects which are not subject to review under NEPA or are not subject to review and approval through processes administered by TxDOT or the Commission will be accomplished in accordance with these policies and procedures and other applicable state and federal laws including, but not limited to, the Endangered Species Act of 1973, as amended, 16 USC §§ 1531 *et seq*.; the Rivers and Harbors Act of 1899, as amended, 42 USC §§ 401 *et seq*.; the Federal Water Pollution Act, as amended, 33 USC § 1251 *et seq*., 33 CFR Parts 114 through 115; the Safe Drinking Water Act, as amended, 42 USC § 300f *et seq*.; Texas Transportation Code, Chapter 370. In addition, the authority will coordinate with the Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department in conducting environmental studies under these policies and procedures.

These policies and procedures are intended to establish the minimum guidelines to be followed for environmental review of the authority projects to which they apply. In addition, the authority anticipates utilizing forms of public involvement when feasible, including, without limitation, processes implementing context sensitive design and other processes intended to encourage public involvement.

SECTION 4. PUBLIC INVOLVEMENT PROCESS AND PROCEDURES

Public involvement shall be encouraged as an important element of authority project planning. It shall be initiated by the authority staff and will depend on, and be consistent with, the type and complexity of each authority project. Authority staff shall use its best efforts to maintain a list of individuals and groups interested in authority project development, and shall provide notification of public hearing activities to these individuals and groups. Public involvement shall include:

A. INFORMAL MEETINGS

Informal meetings, as one form of public involvement, will be held with affected property owners, residents, any known neighborhood associations within the area of the authority project and which have notified the authority in writing of their interest in the project, and affected local governments and public officials, when such projects require:

1. detours and/or a minimal amount of right-of-way acquisition, or use of temporary construction easements; and

2. a minor location or design revision after an environmental document for an authority project has been approved and public involvement requirements have previously been completed, provided that if a location or design revision is deemed by the authority to be significant an additional opportunity for a public hearing will be provided.

Notice of informal meetings, and the time and location of such meetings, will depend upon the nature of the authority project and the number of individuals or entities directly affected by the project.

B. PUBLIC MEETINGS

Public meetings, as a form of public involvement, will be held:

1. at any time during project planning and development that the board directs in order to keep the public informed;

2. during the drafting of the draft environmental impact statement, as discussed in Section 8 below;

3. as early as the authority staff determines feasible to encourage beneficial public input to project planning and consideration of project alternatives;

4. at a time and place convenient to the public in the vicinity of the authority project; and

5. pursuant to notice provided by such means as the authority deems appropriate given the scope and magnitude of the project, provided that at a minimum the notice shall be posted on the authority's website. Mailed notice (or email notice in lieu of mailing) shall also be provided to persons or organizations included on any lists of interested parties maintained by the authority for the project, any known neighborhood associations within the area of the authority project and which have notified the authority in writing of their interest in the project, and affected local governments and public officials.

C. PUBLIC HEARINGS

1. Permissive Public Hearings.

(a) An opportunity for public hearings shall be afforded for authority projects which require or result in:

(i) the acquisition of significant amounts of rights-of-way;

(ii) a substantial change in the layout or function of the connecting roadways or of the facility being improved;

(iii) a measurable adverse impact on abutting real property;

(iv) there is otherwise a substantial social, economic, or environmental effect which may result from the authority project; or

(v) a finding of no significant impact (FONSI), as discussed in Section 7 below, with such hearing to be afforded at such time as the environmental assessment is considered technically complete and is initially approved by the Board to proceed with public involvement.

(b) The following procedures will be followed for providing notice of an opportunity for a public hearing:

(i) Two notices of the opportunity for public hearing shall be published in local newspaper(s) having general circulation. The first notice shall be published approximately 30 days in advance of the deadline set by the authority for submittal of written requests for holding of public hearings; and the second notice shall be published approximately 10 days prior to the deadline date. In the event an authority project is expected to directly affect an area that is predominantly Spanish-speaking, the notices required herein shall be published in a Spanish language newspaper of general circulation in the area of the project, if available.

(ii) Notices of the opportunity for public hearing shall also be mailed to landowners abutting the roadway as identified by tax rolls, known neighborhood associations whose boundaries encompass all or part of the authority project and which have notified the authority, in writing, of their interest in the project, and to affected local governments and public officials.

No further action will be taken to hold a public hearing if at the end of the time set for affording an opportunity for a public hearing no requests are received.

2. Mandatory Public Hearings.

(a) For projects with substantial public interest, such as authority projects requiring an environmental impact statement or high profile FONSI authority projects, or when a request for hearing is received as discussed in the preceding paragraph, or when the authority project requires the taking of public land designated as a park, recreation areas, wildlife

refuge, historic site, or scientific area (as covered in the Parks and Wildlife Code, § 26.001 *et seq*.), a public hearing will be held to receive suggestions as to project alternatives; to present project alternatives already considered; and to solicit public comment, and shall be held at such time as location and design studies have been developed and when the public can be given a feasible proposal with appropriate environmental studies. The hearing notice for a public hearing under this provision shall at a minimum contain the following information:

(i) time, date, and location of the hearing;

(ii) description of the project termini, improvements, and right-of-way needs;

(iii) reference to maps, drawings, and environmental studies and/or documents, and other information about the project, that are available for public inspection at a designated location;

(iv) reference to the potential for relocation of residences and businesses and the availability of relocation assistance for displacements;

(v) a statement that verbal and written comments may be presented for a period of 10 days after the hearing;

(vi) the address where written comments may be submitted; and

(vii) the existence of any floodplain, wetland encroachment, taking of endangered species habitat; or encroachment on a sole source aquifer recharge zone by an authority project.

(b) Except for authority projects requiring the taking of public land designated as a park, recreation area, wildlife refuge, historic site, or scientific area, notice of the public hearing must be given by the publication of two notices in local newspapers having general circulation, with the first notice published approximately 30 days before the hearing, and the second notice published approximately 10 days before the hearing. In the event an authority project is expected to directly affect an area that is predominantly Spanish-speaking, the notices required herein shall be published in a Spanish language newspaper of general circulation in the area of the project, if available. Notices of the public hearing shall also be mailed to landowners abutting the roadway as identified by tax rolls, known neighborhood associations whose boundaries encompass all or part of the authority project and which have notified the authority, in writing, of their interest in the project, and affected local governments and public officials. For authority projects requiring the taking of public land

designated as a park, recreation area, wildlife refuge, historic site, or scientific area, notice of the public hearing shall be given in accordance with Texas Parks and Wildlife Code § 26.002.

3. Public Hearing Record. The public shall have 10 days after the close of a public hearing to submit written comments to the authority office regarding a proposed authority project. Public hearings shall be considered complete at the time and date designated by the authority staff after receipt of a verbatim transcript of the public hearing. As another method of public involvement, there shall be published in a local newspaper of general circulation the notice of the availability of the environmental assessment in order to inform the public of its availability and advising where to obtain information concerning the authority project, and that any written comments should be furnished within a 30-day period of the date of the notice in order to be included within the public hearing record.

SECTION 5. CATEGORICAL EXCLUSIONS (CE).

A. An authority project will be classified as a categorical exclusion (CE) if it does not:

1. involve significant environmental impacts;

2. induce significant impacts to planned growth or land use of the authority project area;

3. require the relocation of significant numbers of people;

4. have a significant impact on any natural, cultural, recreational, historic, or other resource;

5. involve significant air, noise, or water quality impacts;

6. significantly impact travel patterns; or

7. either individually or cumulatively, have any significant environmental impacts.

B. The following actions are examples of authority projects which meet the criteria of a CE as found in paragraph A. of this subsection and will not in most cases require further environmental review or approval by the authority:

1. those which do not involve or lead directly to construction, such as planning and technical studies, grants or training and research programs, engineering feasibility studies that either define the elements of a proposed project or identify alternatives so that social, economic, and environmental effects can be assessed for potential impact;

2. approval of utility installations along or across an authority project;

3. construction of bicycle and pedestrian lanes, paths, and facilities;

4. landscaping;

5. installation of fencing, signs, pavement markings, small passenger shelters, and traffic signals, when no substantial land acquisition or traffic disruption will occur;

6. emergency repairs as defined in 23 USC § 125;

7. acquisition of scenic easement; and

8. alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

C. For any authority project not of a type described in paragraph B, the authority may conduct appropriate environmental studies to determine if the CE classification is proper. Any other actions meeting the criteria for a CE as found in paragraph A. of this subsection will require board review and approval.

1. Board approval will be based on staff submitting a brief environmental overview which demonstrates that the specific conditions or criteria for classification of a CE as found in paragraph A. of this Section is satisfied and that significant environmental impacts will not result, including the results of any coordination effected with resource agencies.

2. Examples may include, but are not limited to, the following:

(a) modernization of a roadway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes such as parking, weaving, turning, climbing, and correcting substandard curves and intersections with only minor amounts of additional right-of-way required;

(b) highway safety or traffic operation improvement projects including the installation of ramp metering control devices and lighting;

(c) bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings;

(d) transportation corridor fringe parking facilities;

(e) approvals for changes in access control; and

(f) approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

D. The authority may classify other authority projects as a CE if, from the documentation required to be submitted, a determination is made that the project meets the CE classification. Classification as a CE means that no further environmental review is required. Board approval is required for any CE classification under this provision.

SECTION 6. ENVIRONMENTAL ASSESSMENTS (EA).

A. Preparation. For authority projects for which the extent of impacts is not readily discerned, an EA will be prepared to determine the nature and extent of environmental impacts, with either a finding of no significant impact anticipated or a finding that an environmental impact statement is required. An EA is not required for any project which is the subject of an Environmental Impact Statement.

B. Coordination and consultation. For authority projects that require an EA, the interested agencies, local political subdivisions and others to achieve the following objectives:

1. definition of the scope of the project;

2. identification of any alternatives to the proposed actions including different modes of transportation;

3. determination as to which aspects of the proposed actions have potential for environmental impact;

4. identification of measures and alternatives which might mitigate adverse environmental impacts; and

5. identification of other environmental review and consultation requirements which should be prepared concurrently.

C. Notice. As required in Section 4.C., the notice of the public hearing or of opportunity for a public hearing will announce the availability of the EA and where it may be obtained or reviewed.

D. Revised determination. If, at any point in the EA process, the authority staff determines that the project may have a significant impact on the environment, the preparation of an Environmental Impact Statement (EIS) as discussed in Section 7 of these policies will be required.

E. Finding of no significant impact. The board, after its review of the EA, proposed mitigation measures, and any public hearing statement or comments received regarding the EA, and if in agreement with the staff recommendations, will make a separate written

finding of no significant impact (FONSI), incorporating the EA and any other appropriate environmental documents and agency consultations and coordinations. The FONSI completes the environmental studies and public involvement process for an authority project.

F. Notification of FONSI. After issuance of the FONSI, a notice of the availability of the FONSI shall be published by the authority. Notification will also be given to the local media through a press release.

SECTION 7. ENVIRONMENTAL IMPACT STATEMENTS (EIS).

A. Required. An EIS will be required for authority projects in which there are likely to be significant environmental impacts. The preparation of the EIS will occur in two stages:

1. the draft EIS (DEIS); and

2. the final EIS (FEIS).

B. Not required. If the analyses or review comments indicate that significant impacts to the human environment will not occur, an EIS should not be prepared.

C. Notice of intent. Prior to the preparation of an EIS there shall be prepared a notice of intent (NOI) to prepare an EIS.

1. The NOI should:

(a) briefly detail the project;

(b) identify significant impacts on the human environment; and

(c) identify any preliminary alternatives under consideration by the authority.

2. The NOI shall be sent to applicable agencies for their early review and comment. Any comments received will be used as the basis for the DEIS, as described in paragraph D of this Section.

3. A summary of the NOI shall also be published in the *Texas Register*, on the authority's website, and in a local newspaper of general circulation.

D. Draft environmental impact statement. The DEIS shall identify and evaluate all reasonable alternatives to the authority project; discuss the elimination of other alternatives, if applicable; summarize the studies, reviews, consultations, and coordination required by law to the extent appropriate; and designate a preferred alternative if appropriate.

1. When the staff determines that the DEIS complies with these and other requirements, the DEIS will be approved for circulation by signing and dating the cover sheet.

2. The DEIS will be circulated for comment after a notice is published in the *Texas Register*, on the authority's website, and in a local newspaper of general circulation which describes a circulation and comment period of no less than 45 days, and identifies where comments are to be sent.

3. The DEIS shall be transmitted to state and applicable federal agencies.

4. The DEIS will be made available to interested public officials, interest groups, and members of the public at the request of any such group or individuals. Notice of availability of the DEIS will be mailed to affected local governments and public officials.

5. A fee which is not more than the actual cost of reproduction of the DEIS and administrative costs of the reproduction may be charged for any written request received for a copy of the DEIS.

6. The DEIS may also be reviewed at designated public locations.

7. Either an opportunity for public hearing shall be afforded or a public hearing shall be held for a DEIS authority project.

8. The DEIS will be made available at the authority for the general public at a minimum of 30 days in advance of the public hearing for authority projects.

E. Final Environmental Impact Statement. After the DEIS is circulated and comments reviewed, a FEIS shall be prepared by the authority.

1. The FEIS shall:

(a) identify the preferred alternative and evaluate all reasonable alternatives considered;

(b) discuss substantive comments received on the DEIS and responses to those comments;

(c) summarize public involvement that has been afforded for the project;

(d) describe the mitigation measures that are to be incorporated into the authority project;

(e) document compliance, to the extent possible, with all applicable environmental laws, or provide reasonable assurance that requirements can be met; and

(f) identify those issues and the consultations and all reasonable efforts made to resolve interagency disagreements.

2. The authority will indicate approval of the FEIS by signing and dating the cover page.

3. The initial printing of the FEIS shall be in sufficient quantities to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals.

4. A fee which is not more than the actual cost of reproduction and administrative costs associated with the reproduction of the FEIS may be charged for purchase of the document.

5. Copies of the FEIS may also be placed in appropriate public locations, such as local governmental offices, libraries, or other public institutions.

6. Notice detailing the availability of the FEIS shall be published in the *Texas Register*, on the authority's website, and in a local newspaper of general circulation.

(a) The notice shall include information on obtaining copies.

(b) The public and interested organizations will have 30 days following publication of the notice in the *Texas Register* to submit comments.

7. Following the approval of the FEIS, it will be made available to agencies which made substantive comments on the DEIS; however, in the event the FEIS is voluminous, the authority may provide for alternative circulation such as notifying agencies of the availability of the FEIS, and by providing a method for these agencies to request a copy.

8. The authority will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the availability of the FEIS notice in the *Texas Register*. Until any required ROD has been signed, no further approvals may be taken except for administrative activities taken to secure further project funding. The ROD will:

(a) present the basis for the decision and summarize any mitigation measures; and

(b) be published in the *Texas Register*.

F. Re-evaluations. An evaluation to determine whether a supplement to the DEIS or a new DEIS is needed shall be prepared by the authority if an acceptable FEIS is not submitted within three years from the date of circulation of the DEIS. The re-evaluation will:

1. not be circulated for agency review, although resource agency coordination may be required;

2. be required before further approvals may be granted if major steps to advance the action such as authority to undertake final design or acquire significant portions of right-of-way, or approval of the plans, specifications, and estimates have not occurred within three years after the approval of the FEIS, supplemental FEIS, or the last major departmental approval.

G. Supplemental environmental impact statements. A DEIS or FEIS may be supplemented at any time.

1. An EIS will be supplemented whenever the authority determines that:

   (a) changes to the project would result in significant environmental impacts that were not evaluated in the EIS; or

   (b) new information or circumstances relevant to environmental concerns bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

2. A supplemental EIS will not be necessary when:

   (a) changes to the project, new information, or new circumstances result in a lessening of adverse impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

   (b) the authority decides to approve an alternative fully evaluated in the approved FEIS but not identified as the preferred alternative.

3. When there is an uncertainty of the significance of new impacts, the authority will develop appropriate environmental studies, or if deemed appropriate, an EA to assess the impacts of the changes, new information, or new circumstances.

4. If the authority determines, based on studies, that a supplemental EIS is not necessary, it shall so indicate in the project record.

5. A supplemental EIS shall be developed using the same process and format as an original EIS, except that early coordination shall not be required.

6. A supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation, or the evaluation of location or design variations for a limited portion of an overall project. In this situation the preparation of the supplemental EIS shall not necessarily:

(a) prevent the granting of new approvals;

(b) require the withdrawal of previous approvals; or

(c) require the suspension of project activities for any activity not directly affected by the supplement.

MOBILITY AUTHORITY

POLICY CODE

CENTRAL TEXAS
Regional Mobility Authority

CURRENT AS OF JANUARY 1, 2014

[This page is intentionally blank.]

TABLE OF CONTENTS

Page

CHAPTER 1: GOVERNANCE (BYLAWS) 1

Article 1. General 1

101.001 The Authority 1
101.002 Principal Office 1
101.003 General Powers 1
101.004 Contracts and Purchases 1
101.0041 Records Retention 1
101.005 Sovereign Immunity 2
101.006 Rates and Regulations 2
101.007 Seal 2
101.008 Logo 2
101.009 Indemnification by the Authority 2
101.010 Expenses Subject to Indemnification 3
101.011 Procedure for Indemnification 4
101.012 Additional Indemnification 4
101.013 Strategic Plan, Annual Report, and Presentation to Commissioners Courts 4
101.014 Appeals Procedure 4
101.015 Amendments to Bylaws 5

Article 2. Directors 6

101.016 Qualifications of Directors 6
101.017 Vacancies 7
101.018 Resignation and Removal 7
101.019 Compensation of Directors 7
101.020 Conflict of Interest 8
101.021 Additional Obligations of Directors 8
101.022 Officers 8
101.023 Chairman 8
101.024 Vice Chairman 8
101.025 Secretary 9
101.026 Treasurer 9
101.027 Election and Term of Office 10
101.028 Removal and Vacancies 10
101.029 Meetings 10
101.030 Meetings by Telephone 11
101.031 Notice to Directors 11
101.032 Waiver of Notice 12
101.033 Attendance as Waiver 12
101.034 Voting; Quorum 12
101.035 Procedure 12
101.036 Committees 12

Article 3. Administration 14
Subchapter A. Administrative Staff 14
101.037 Administrators 14
101.038 Executive Director 14
101.039 Interim Executive Director 15
101.040 Termination of Employees 15
Subchapter B. Personnel Policies 15
101.041 Employee Handbook 15
101.042 Extended Sick Leave 16
Subchapter C. Drug And Alcohol Policy 16
101.043 Policy Regarding Drug and Alcohol Use 16
101.044 Prohibited Behavior By Employees 16
101.045 Consequences 17
101.046 Definitions 17
101.047 Employee Treatment And Education 18
101.048 Employee Drug Testing Program 18
101.049 Coordination With Law Enforcement Agencies 19
101.050 Reservation Of Rights 19
101.051 Other Laws And Regulations 19
101.052 Officers and Directors 19
Subchapter D. Travel Expense Policy 20
101.053 Applicability 20
101.054 Submission of Expense Reimbursement Requests 20
101.055 Requests for Reimbursements that include Overnight Travel 20
101.056 Airfare 20
101.057 Hotel accommodations 21
101.058 Meals 21
101.059 Incidentals 21
101.060 Rental vehicles 21
101.061 Mileage Reimbursement 22
101.062 Food Service at Local Meetings 22
101.063 Other expenses 22

Article 4. Conflict of Interest 23
Subchapter A. Conflict of Interest Policy for Consultants 23
101.064 Purpose 23
101.065 Key Personnel and Firms 23
101.066 Disclosure of Business Relationship 23
101.067 Submittal of Form 24
101.068 Executive Committee Decision 24
101.069 Amendments 24
Subchapter B. Conflict of Interest Policy for Financial Team Members 25
101.070 Purpose 25
101.071 Key Financial Personnel and Firms 25
101.072 Disclosure by Proposers 25
101.073 Disclosure by Key Financial Personnel 25

101.074 Form for Disclosure 26
101.075 Participation Ineligibility 26
101.076 Executive Committee Decision 26
101.077 Amendment 27

CHAPTER 2: FINANCES 28

Article 1. Investment Policy 28
201.001 Overview 28
201.002 Scope 28
201.003 Objectives 28
201.004 Standards Of Care 30
201.005 Ethics and Conflicts 30
201.006 Designation of Investment Officer 31
201.007 Investment Advisor 31
201.008 Required Training 31
201.009 Investment Strategies 31
201.010 Diversification 32
201.011 Authorized Financial Institutions and Qualified Brokers 32
201.012 Custody - Delivery vs. Payment 33
201.013 Safekeeping of Securities 33
201.014 Authorized And Suitable Investments 33
201.015 Reporting and Review 35
201.016 Current Investments Exempted from Policy 36
201.017 Annual Review 36

Article 2. Swap Policy 37
201.018 Purpose 37
201.019 Authorization 37
201.020 General Guidelines for Interest Rate Swap Agreements 37
201.021 Basis of Award 39
201.022 Management of Swap Transaction Risk 39
201.023 Counterparty Approval Guidelines 41
201.024 Form of Swap Agreements and Other Documentation 44
201.025 Modification of Swaps 44
201.026 Aggregation of Swaps 44
201.027 Reporting Requirements 44

Article 3. Reserve Fund Policy 45
201.028 Purpose 45
201.029 Fund Balance 45

Article 4. Damage Claims by CTRMA 46
201.030 Purpose 46
201.031 Definitions 46
201.032 Collection of Damage Claims 46

CHAPTER 3: OPERATIONS 48

Article 1. Toll Policies 48
Subchapter A. Toll Rates 48
301.001 Priority of Bond Documents 48
301.002 Toll Rates 48
301.003 Annual Toll Rate Escalation 50
301.004 Exemption from Toll 51
301.005 Discounts and Incentives 51
Subchapter B. Toll Collections 52
301.006 Purpose 52
301.007 Transponder Account 52
301.008 Unauthorized Transfer of Transponder 52
301.009 Video Billing 52
301.010 Establishment of Administrative Fee for Unpaid Tolls 53
301.011 Customer Service and Violation Policies 53
301.012 Procedures for Disputing Toll Violations 54

Article 2. Operations 54
301.013 Statement of General Policy 54
301.014 Definitions 54
301.015 Speed Limits 55
301.016 183A Turnpike 55
301.017 Parking 55
301.018 Median Strip 56
301.019 No U-Turn 56
301.020 Pedestrians 56
301.021 Prohibited Modes of Transportation 56
301.022
301.023 Trees, Shrubs and Plants 57
301.024 State Laws 58
301.025 Penalties 58

Article 3. Access Management Standards 59
301.026 Application and Permit Required 59
301.027 Criteria for Approval of an Access Connection 59
301.028 Prohibited Direct Access 59
301.029 Costs of Associated Infrastructure Improvements 59
301.030 Appeal 60

Article 4. Encasement Protected Right-of-Way 61
301.031 Applicability 61
301.032 Definitions 61
301.033 Utility Facility in Encasement Protected ROW. 61
301.034 Agreement to Install a Utility Facility in an Authority Encasement 61

CHAPTER 4: PROCUREMENT OF GOODS AND SERVICES 65

Article 1. General 65
401.001 Statement of General Policy. 65
401.002 Definitions. 65
401.003 Conflict of Interest. 69
401.004 Disadvantaged Business Participation; Compliance With Policy. 70
401.005 Dispute Resolution Procedures 70
Emergency Procurements 70

Article 2. State Cooperative Purchasing Programs and Intergovernmental Agreements 72
401.007 State of Texas CO-OP Purchasing Program. 72
401.008 Catalog Purchase of Automated Information Systems. 72
401.009 Cooperative Purchases. 72
401.010 Interlocal Agreements with TxDOT. 72
401.011 Effect of Procurements under this Article. 72

Article 3. General Goods and Services 73
401.012 Approval of Board. 73
401.013 Purchase Threshold Amounts. 73
401.014 Competitive Bidding Procedures. 73
401.015 Award Under Competitive Bidding. 74
401.016 Competitive Sealed Proposals. 74
401.017 Proprietary Purchases. 75

Article 4. Consulting Services 76
401.018 Contracting for Consulting Services. 76
401.019 Selection Criteria. 76
401.020 Contract Amounts. 76
401.021 Request for Qualifications. 76
401.022 Request for Proposals. 76
401.023 Notice of RFQs and RFPs. 77
401.024 Opening and Filing of Responses; Public Inspection. 78
401.025 Contract Negotiation and Execution. 78
401.026 Single-Source Contracts. 78
401.027 Prior Employees. 79
401.028 Mixed Contracts. 79

Article 5. Professional Services 80
401.029 General. 80
401.030 Selection of Provider; Fees. 80
401.031 Request For Qualifications. 80
401.032 Notice of RFQs. 80
401.033 Contract for Professional Services. 81

Article 6. Construction and Building Contracts 82
401.034 Competitive Bidding. 82

401.035 Qualification of Bidders. 82
401.036 Qualifying with the Authority. 82
401.037 Notice of Contract Letting 83
401.038 Bid Documents. 83
401.039 Issuance of Bid Documents. 84
401.040 Withholding Bid Documents. 84
401.041
401.042 Revision of Bid by Bidder. 86
401.043 Withdrawal of Bid. 86
401.044 Acceptance, Rejection, and Reading of Bids. 86
401.045 Tabulation of Bids. 87
401.046 Award of Contract. 87
401.047 Rejection of Bids; Nonresident Bidders. 88
401.048 Bid Protests. 88
401.049 Contract Execution; Submission of Ancillary Items. 89
401.050 Unbalanced Bids. 90
401.051 Bid Guaranty. 90
401.052 Progress Payments; Retainage and Liquated Damages. 90

Article 7. Design-Build Contract; Comprehensive Development Agreement 92
Subchapter A. Design-Build Procurement 92
401.300 Design-Build Contract for a Transportation Project 92
401.301 Definitions 92
401.302 Procurement Process 92
401.303 Use of Engineer or Engineering Firm and Other Professional Services 93
401.304 Requests for Qualifications 93
401.305 Withdrawal of an RFQ 94
401.306 Evaluation of Responses to an RFQ 94
401.307 Requests For Detailed Proposals 94
401.308 Alternative Technical Concepts 95
401.309 Separate Technical and Cost Proposals 96
401.310 Deadline for Response to RFDP 96
401.311 Withdrawal of an RFDP 96
401.312 Unapproved Changes to Team 97
401.313 Evaluation and Ranking of Responses to an RFDP 97
401.314 Stipend for Unsuccessful Proposers 97
401.315 Contract Negotiations 98
401.316 Performance and Payment Security 98
Subchapter B. Comprehensive Development Agreements 99
401.350 Comprehensive Development Agreement Allowed 99
401.351 Confidentiality of Negotiations for a CDA 99
401.352 Competitive Procurement Process for a CDA 100
401.353 Filing an Unsolicited Proposal for a CDA 100
401.354 Review of an Unsolicited Proposal 101
401.355 Authority Solicitation of Requests for Qualifications 101
401.356 Evaluation of the Responses to a Request for Qualifications 102

401.357 Request for Detailed Proposals 103
401.358 Evaluation and Ranking of Detailed CDA Proposals 104
401.359 Post-Submissions Discussions 104
401.360 Negotiations for CDA 105
Property Subject to a CDA 105
401.362 Payment by Authority for Submission of Detailed CDA Proposal 105
401.363 Performance and Payment Security 106
401.364 Review by Attorney General 107

Article 8. Business Opportunity Program and Policy 108
401.067 Purpose 108
401.068 Applicability 108
401.069 Policy Statement and Objectives Of Business Opportunity Program 108
401.070 Administration of Business Opportunity Program 108
401.071 BOPP Liaison Officer 109
401.072 Departmental Responsibilities 110
401.073 Outreach 111
401.074 Program Monitoring 112
401.075 Program Inquiries 112
401.076 Directories and Designations of Disadvantaged Businesses 112
401.077 General Requirements of Contractors/Vendors: 112
401.078 DBE Program 113
401.079 Definitions 114
401.080 DBE Program Adoption. 118
401.081 DBE Certification 118
401.082 DBE Goal Setting/DBE Annual Goal : 118
401.083 DBE Contract Goals 119
401.084 Good Faith Effort 119
401.085 DBE Contractor/Vendor Obligations 119
401.086 Adherence To Equal Opportunity 120
401.087 SBE Program 120
401.088 SBE Certification 120
401.089 SBE Goals 121
401.090 SBE Contractor/Vendor Obligations 121
401.091 Compliance With Program 123
401.092 Claims of Program Violations 123
401.093 Compliance And Severability Clause 123
401.094 Effective Date 124

Article 9. Solicitation of Employee Applicants 125
401.095 Solicitation Of Employee Applicants 125
401.096 Solicitation of Applicants for Professional or Managerial Positions. 125
401.097 Solicitation of Administrative or Clerical Applicants. 126

Article 10. Disposition of Salvage or Surplus Property 127
401.098 Sale by Bid or Auction. 127

401.099 Trade-In for New Property. 127
401.100 Heavy Equipment. 127
401.101 Sale to State, Counties, etc. 127
401.102 Failure to Attract Bids. 127
401.103 Terms of Sale. 127
401.104
401.105 Public Notices of Sale. 128

CHAPTER 5: ENVIRONMENTAL REVIEW FOR PROJECTS 129

501.001 Purpose 129
501.002 Definitions. 129
501.003 Review Of Non-NEPA Authority Projects 130
501.004 Public Involvement 130
501.005 Public Involvement Methods 130
501.006 Categorical Exclusions (CE). 133
501.007 Environmental Assessments (EA). 135
501.008 Environmental Impact Statements (EIS). 136
501.009 Notice of intent. 136
501.010 Draft Environmental Impact Statement. 137
501.011 Final Environmental Impact Statement. 137
501.012 Re-evaluations. 139
501.013 Supplemental Environmental Impact Statements. 139

CHAPTER 6: APPENDIXES 141

Appendix 1: [Deleted by Resolution No. 12-022, March 28, 2012] 141

Appendix 2: Conflict of Interest Disclosure Form for Consultants 142

Appendix 3: Conflict of Interest Disclosure Form for Key Financial Personnel 143

Chapter 1: GOVERNANCE (BYLAWS)

Article 1. GENERAL

101.001 The Authority

101.002 Principal Office

The domicile and principal office of the authority shall be in one of the counties composing the authority.

101.003 General Powers

The activities, property, and affairs of the authority will be managed by its board (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 Act, the RMA rules, and these bylaws.

101.004 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 and its agencies.

101.0041 Records Retention

(a) The Mobility Authority shall comply with a retention schedule for local government records adopted by the Texas State Library and Archives Commission, including the following schedules hereby adopted and incorporated by reference into this subsection:

(1) Local Schedule GR (Revised Fourth Edition), effective July 4, 2012; and

(2) Local Schedule PW 13 TAC §7.125(b)(2) (Second Edition), effective April 11, 2011.

(b) If the Texas State Library and Archives Commission adopts a new record retention schedule, or revises an existing record retention schedule, that applies to a record maintained by the Mobility Authority, the executive director shall ensure that the Mobility Authority complies with the new or

revised retention schedule as if that new or revised schedule were specifically adopted by reference into subsection (a).

101.005 Sovereign Immunity

Unless otherwise required by law, the authority will not by agreement or otherwise waive or impinge upon its sovereign immunity.

101.006 Rates and Regulations

The board shall, in accordance with all applicable trust agreements, the RMA Act, the RMA Rules, or other law, establish toll rates and fees, designate speed limits, establish fines for toll violators, and adopt rules and regulations for the use and occupancy of said turnpike project.

101.007 Seal

The official seal of the authority shall consist of the embossed impression of a circular disk with the words "Central Texas Regional Mobility Authority, 2002" on the outer rim, with a star in the center of the disk.

101.008 Logo

The logo appearing after this sentence is approved and adopted as the official logo of the authority:

101.009 Indemnification by the Authority

(a) 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 attorneys' 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.

(b) A conviction or judgment entered in connection with a 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. However, in the event of a conviction for an offense involving the conduct for which the director, officer, or administrator was indemnified, the officer, director, or administrator shall be liable to the authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid, as provided by Section 370.258 of the RMA Act.

(c) 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 attorneys' 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.

(d) Any indemnification by the authority pursuant to this section shall be evidenced by a resolution of the board.

101.010 **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:

(1) 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

(2) 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.

101.011 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.

101.012 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.

101.013 Strategic Plan, Annual Report, and Presentation to Commissioners Courts

(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 turnpike revenue bond issuances anticipated for 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 not later than February 28 for review, approval, and, subject to revisions required by the board, adoption. Not later than March 31 following the conclusion of the preceding fiscal year, the authority shall file with the Commissioners Court of each county included in the authority the authority's Annual Report, as adopted by the board.

(c) At the invitation of a Commissioners Court of a county in the authority, 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.

101.014 Appeals Procedure

The authority shall maintain an appeals procedure to be adopted by the board and amended from time to time that sets forth the process by which parties may bring to the attention of the authority their questions, grievances, or concerns and may appeal any action taken by the authority.

101.015 **Amendments to Bylaws**

Except as may be otherwise provided by law, these bylaws may be amended, modified, altered, or repealed in whole or in part, at any regular meeting of the board after three days advance notice has been given by the chairman to each Director of the proposed change.

Article 2. DIRECTORS

101.016 Qualifications of Directors

(a) All directors will have and maintain the qualifications set forth in this section and in the RMA Act or RMA Rules.

(b) All appointments to the board shall be made without regard to disability, sex, religion, age, or national origin.

(c) 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. All gubernatorial appointees must be residents of one of the counties comprising the authority at the time of their appointments.

(d) An elected official is not eligible to serve as a director.

(e) 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.

(f) 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 a Texas trade association in the aforementioned fields, is not eligible to serve as a Director or as the authority's executive director.

(g) 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.

(h) Each director shall certify annually to the secretary (as defined in Section 101.025) that said director is not ineligible to serve on the board as a result of any of the foregoing conditions.

101.017 Vacancies

A vacancy on the board shall be filled promptly by the entity that made the appointment that falls vacant. Each director appointed to a vacant position shall be appointed for the unexpired term of the director's predecessor in that position.

101.018 Resignation and Removal

(a) A director may resign at any time upon giving written notice to the authority and the entity that appointed that director.

(b) 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 RMA Act, the RMA Rules, or these bylaws, or if the director violates any of the foregoing.

(c) 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.

(d) If the executive director of the authority knows that a potential ground for removal of a director exists, the executive director shall notify the chairman of the potential ground for removal. The chairman then shall notify the entity that appointed such director of potential ground for removal.

(e) A director shall be considered removed from the board only after the authority receives notice of removal from the entity that appointed such director.

101.019 Compensation of Directors

101.020 Conflict of Interest

(a) A director shall not:

(1) 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

(2) 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.

(b) Directors shall familiarize themselves and comply with all applicable laws regarding conflicts of interest, including Chapter 171, Local Government Code, and any conflict of interest policy adopted by the board.

101.021 Additional Obligations of Directors

Directors shall comply with the requirement to file an annual personal financial statement with the Texas Ethics Commission as provided by Section 370.2521, Transportation Code, and the requirement to complete training on the RMA's responsibilities under the Open Meetings Act and the Public Information Act as provided by Sections 551.005 and 552.012, Government Code.

101.022 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.

101.023 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 Section 101.036; call all regular meetings of the board; and preside at and set the agendas for all meetings of the board, except as provided by Section .

101.024 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.

101.025 **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 and its committees and such other notices as are required by the office of secretary and as may be directed by the RMA 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, accounts, 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 board or the executive director shall require.

101.026 **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 board 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.

101.027 Election and Term of Office

(a) 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 Section 101.028.

(b) The election of officers to succeed officers whose terms have expired shall be by a vote of the board at the first meeting of the board held after February 1 of each year or at such other meeting as the board determines.

101.028 Removal and Vacancies

(a) 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.

(b) Any officer, except the chairman, may resign at any time upon giving written notice to the board.

(c) The chairman may resign at any time upon giving written notice to the board and the Governor.

(d) Any officer except the chairman may be removed from service as an officer at any time, with or without cause, by the affirmative vote of a majority of the board.

(e) The board may at any meeting vote to fill any officer position except the chairman vacated due to an event described in this section for the remainder of the unexpired term.

101.029 Meetings

(a) All regular meetings of the board shall be held in a county of the authority, at a specific site, date, and time to be determined by the chairman.

(b) 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.

(c) 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.

(d) 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.

101.030 Meetings by Telephone

(a) As authorized by Section 370.262 of the RMA Act, the board, committees of the board, staff, or any combination thereof, may participate in and hold open or closed meetings by means of conference telephone or other electronic communications equipment by which all persons participating in the meeting can communicate with each other and at which public participation is permitted by a speaker telephone or other electronic communications equipment at a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(b) Such meetings are subject to the notice requirements of Sections 551.125(c) through (f) of the Texas Open Meetings Act, and the notice must state where members of the public can attend to hear those portions of the meeting open to the public. Such meetings are not, however, subject to the requirements of Section 551.125(b) of the Open Meetings Act.

(c) Participation in a meeting pursuant to this section 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 Section 101.033.

(d) Each part of a meeting conducted by telephone conference call or other electronic means that by law must be open to the public shall be accessible to the public at the location specified in the notice and shall be tape recorded and documented by written minutes. On conclusion of the meeting, the tape recording and the written minutes of the meeting shall be made available to the public.

101.031 Notice to Directors

(a) Notice of each meeting of the board shall be sent by mail, electronic mail, or facsimile to all directors entitled to vote at such meeting.

(b) If sent by mail, such notice will be deemed delivered when it is deposited in the United States mail with sufficient postage prepaid.

(c) If sent by electronic mail or facsimile, the notice will be deemed delivered when transmitted properly to the correct e-mail address or number, provided that an additional copy of such notice shall be sent by overnight delivery as confirmation of the notice sent by electronic mail or facsimile.

(d) Such notice of meetings also may be given by telephone, provided that any of the Chairmen, executive director, secretary, or their designee speaks personally to the applicable director to give such notice.

101.032 **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 persons entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.

101.033 **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.

101.034 **Voting; Quorum**

(a) 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.

(b) 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.

101.035 **Procedure**

(a) 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.

(c) To the extent procedures prescribed by applicable statutes, the RMA Rules, or these bylaws conflict with Robert's Rules of Order, the statutes, the RMA Rules, or these bylaws shall govern.

101.036 **Committees**

(a) The chairman at any time may designate from among the directors one or more ad hoc or standing committees, each of which shall be comprised of two or more 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. The chairman serves as an ex-officio member of each committee.

(b) 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.

(c) 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:

(1) the name of the committee,

(2) whether it is an ad hoc or standing committee,

(3) its assigned function(s) and/or task(s),

(4) 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,

(5) the directors designated as members and alternate members to the committee, and its chairman, and

(6) such other information as requested by any director.

(d) 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 this section.

(e) 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 this section.

(f) A meeting of any committee formed pursuant to this section may be called by the chairman, the chairman of the applicable committee, or by any two members of the committee.

(h) 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.

(i) 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.

Article 3. ADMINISTRATION

Subchapter A. ADMINISTRATIVE STAFF

101.037 Administrators

(a) The chief administrator of the authority shall be the executive director.

(b) 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 director or as set forth in board Resolutions.

(c) Any administrator may be removed, with or without cause, at any time by the executive director.

(d) 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 Executive Committee.

101.038 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:

(2) shall be responsible for preparing a draft of the Strategic Plan for the authority's operations, as described in Section 101.013;

(3) shall be responsible for preparing a draft of the authority's written Annual Report, as described in Section 101.013;

(4) at the invitation of a Commissioners Court of a county in the authority, 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;

(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.

101.039 **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.

101.040 **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.

Subchapter B. PERSONNEL POLICIES

101.041 **Employee Handbook**

(a) The executive director shall adopt an Employee Handbook and shall make it available to all employees of the authority. The executive director may revise the Employee Handbook as the executive director considers necessary or desirable to perform the executive director's duties as chief administrator of the authority under Section 101.037 101.038.

(b) The executive director may elect to bring one or more revisions to the Employee Handbook to the board for its consideration and appropriate action at the discretion of the board.

(c) The executive director is directed to take such steps as may be necessary to effectively communicate the authority's ethics and compliance program to employees and agents and to enforce the requirements of the program.

(d) Staff shall develop and implement a program to provide information on ethics and internal compliance issues to directors.

101.042 **Extended Sick Leave**

(a) The board directs the executive director to develop and implement a policy for extended sick leave and emergency absence to apply to all benefits-eligible employees.

(b) The policy implemented under this section may not provide for more than 30 days of paid leave per year.

Subchapter C. DRUG AND ALCOHOL POLICY

101.043 **Policy Regarding Drug and Alcohol Use**

The objective of this subchapter is to develop a drug and alcohol-free workplace that will help insure a safe and productive workplace for all authority activities. In order to further this objective, the rules in this subchapter regarding alcohol and illegal drugs in the workplace have been established. The authority will not condone substance abuse within the workforce or the workplace and will make every effort to operate in a drug-free environment. This subchapter applies during regular business hours (Monday through Friday, 8 a.m. to 5 p.m.) and at any time while conducting authority business. This Drug and Alcohol Policy is adopted pursuant to, and is in accordance with, the requirements of Section 370.033(h), Transportation Code.

101.044 **Prohibited Behavior By Employees**

(a) Employees are prohibited from working for the authority while under the influence of illegal or controlled substances. It is a violation of this subchapter for any authority employee to use, possess, sell, trade, distribute, dispense, purchase and/or offer for sale, on authority premises or on or in authority property, or regular business hours, any illegal drugs, drug paraphernalia, and/or illegal inhalants. This subchapter includes the misuse of prescription drugs, including controlled substances. Compliance with this prohibition will be strictly enforced. Violation of the drug portion of this subchapter shall result in immediate disciplinary action, which may include termination of employment or removal from office following investigation.

(b) The authority prohibits the consumption of alcohol by authority employees while engaged in the regular performance of official duties during regular business hours. The authority does not condone the consumption of alcohol outside of regular business hours at a level that would materially affect an individual's physical or mental capabilities to a point where judgment is impaired and/or the employee presents a physical risk to themselves or others. Employees must report for work in a condition that allows them to perform their duties safely and efficiently. It is a violation of this subchapter to use, possess, sell, trade, distribute, dispense, purchase and/or offer for sale any alcoholic beverages during regular business hours on the authority premises or on or in authority property. Violation of the alcohol portion of this subchapter may result in disciplinary action, up to and including termination.

(c) If an employee is taking medication that has been medically prescribed, and that person believes that such medication may affect his or her job performance, they should inform their supervisor of this fact. This information must be kept confidential and communicated to the direct supervisor prior to the individual commencing authority-related work or duties. All prescription drugs must be kept in their original container.

(d) This subchapter requires that employees notify their manager or the designated human resources contact of any criminal drug statute conviction for a violation occurring on the authority premises or on or in authority property or during scheduled work time no later than five days after such a conviction. For purposes of this subchapter, criminal drug statute means a criminal statute addressing the manufacture, distribution, dispensation, use, or possession of any illegal drugs, drug paraphernalia and/or illegal inhalants.

101.045 **Consequences**

If an employee violates this subchapter, he or she may be subject to disciplinary action, up to and including termination. Nothing in this subchapter prohibits the authority from disciplining or discharging an employee for other policy violations and/or performance problems.

101.046 **Definitions**

(1) Authority Premises - All authority property including without limitation, offices, warehouses, worksites, rented premises for authority functions, authority vehicles, other vehicles being used for authority business, lockers, and parking lots.

(2) Authority Property - All authority owned or leased property used by employees including without limitation, vehicles, lockers, desks, closets, etc.

(3) Controlled Substance - Any substance listed in Schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), as amended, or as revised and set forth in federal regulations (21 C.F.R. §§1308.11 – 1308.15). Copies of such schedules are maintained by the authority for employee review.

(4) Drug - A drug is any chemical substance that produces physical, mental, emotional or behavioral change in the user.

(5) Drug Paraphernalia - Equipment, a product or material that is used or intended for use in concealing an illegal drug for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug or controlled substance.

(6) Illegal Drug - An illegal drug is any drug or derivative thereof which the use, possession, sale, transfer attempted sale or transfer, manufacture or storage of is illegal or regulated under any federal, state, or local law or regulation and any other drug, including (but not limited to) a

prescription drug, used for any reason other than a legitimate medical reason, and inhalants used illegally. Included is marijuana or cannabis in all forms.

(7) Reasonable Cause/ Reasonable Suspicion – A belief based on observation and specific, articulable, objective facts where the rational inference to be drawn under the circumstances and in light of experience is that the person is under the influence of drugs or alcohol.

101.047 **Employee Treatment And Education**

(a) The authority encourages employees to seek help if they are concerned that they have a drug and/or alcohol problem. The authority encourages employees to utilize the services of qualified professionals in the community to assess the seriousness of suspected drug or alcohol problems and identify appropriate sources of help. However, an employee's participation in any rehabilitation programs does not preclude the authority from taking any disciplinary action, up to and including termination, against any employee.

(b) The authority will not provide any assessment, referral, treatment or education assistance to employees other than as provided by the authority's health care insurance. Entering into or use of any assessment, referral, treatment or education program relating to drug and alcohol abuse shall be at the sole discretion of the employee, and unless the authority's health care insurance pays for such a program, the entire cost of the program shall be borne by the employee.

101.048 **Employee Drug Testing Program**

(a) If the authority has reasonable cause/reasonable suspicion (as defined above) to believe that any employee (including those in non-safety-sensitive positions) is under the influence of illegal drugs, illegal inhalants and/or alcohol, the authority will require the employee to submit to a drug and/or alcohol test. Tests that may be used include (but are not limited to) blood tests, breath analysis, saliva tests, hair tests, as well as urinalysis or other scientific methods. As required under Section 370.033(h), Transportation Code, all testing results will be kept strictly confidential by authority, unless required to be disclosed by a court order, or unless disclosure is otherwise permitted in writing by the individual who is the subject of testing.

(b) In the event that an employee is involved in an accident while driving an authority owned/leased vehicle (including any machinery), the authority will require the employee to submit to a drug and/or alcohol test.

(c) Any employee, who refuses to submit to drug and/or alcohol testing, as provided for in this subchapter, may be asked to leave the office or authority facility immediately and the employee may be terminated.

101.049 Coordination With Law Enforcement Agencies

(a) The authority reserves the right, at all times, and without prior notice, to inspect and search any and all authority property and premises for purposes of determining whether this subchapter or any other authority Policy has been violated, or whether such inspection and investigation is necessary for purposes of promoting safety in the workplace or compliance with state and federal laws.

(b) The sale, use, purchase, transfer or possession of an illegal drug or drug paraphernalia is a violation of the law. The authority will report information concerning possession, distribution, or use of any illegal drugs to law enforcement officials and will turn over to the custody of law enforcement officials any such substances found on authority premises or property. The authority will cooperate fully in the prosecution and/or conviction of any violation of the law.

101.050 Reservation Of Rights

(a) The authority reserves the right to interpret, change, suspend or cancel, with or without notice, all or any part of this subchapter, or procedures or benefits discussed herein. The authority expressly reserves the right to initiate additional testing procedures if the authority determines the same to be advisable. Employees will be provided with a copy of any revisions to this subchapter.

(b) Although adherence to this subchapter is considered a condition of continued employment, nothing in this subchapter alters an employee's at-will status and shall not constitute nor be deemed a contract or promise of employment for a specified period of time. Employees remain free to resign their employment at any time for any or no reason, without notice, and the authority retains the right to terminate any employee at any time, for any or no reason, without notice.

101.051 Other Laws And Regulations

The provisions of this subchapter shall apply in addition to, and shall be subordinated to, any requirements imposed by applicable federal, state or local laws, regulations or judicial decisions. Unenforceable provisions of this subchapter shall be deemed to be deleted.

101.052 Officers and Directors

Subchapter D. TRAVEL EXPENSE POLICY

101.053 **Applicability**

This subchapter applies to the board and all staff.

101.054 **Submission of Expense Reimbursement Requests**

All expense reimbursement requests must be received by the authority no more than 90 days after the occurrence of the expense. Any items over 90 days may be denied reimbursement.

101.055 **Requests for Reimbursements that include Overnight Travel**

(a) Travel arrangements should be made at lowest cost, using the Internet, if possible, to mitigate fees. Staff will assist in arranging flights. Travel agents may be used on more complicated travel arrangements to reduce staff time and thereby reduce overall costs.

(b) Employee travel should be done in a manner to minimize time away from work.

(c) Hotel shuttles should be used when available. Rental cars should be approved in advance by the executive director or chief financial officer.

(d) Additional lodging reimbursement would be allowed only if there is a significant reduction in airfare over the cost for the extra days lodging and per 'diems. '

(e) All incremental costs of any non-authority companion traveling with an employee or director will be paid for by the employee or director and must be paid in advance or promptly reimbursed to the authority.

(f) Travel expenses must be approved by the executive director before reimbursement. All out of state travel by staff must be approved by the executive director prior to travel.

101.056 **Airfare**

(a) Airfare should be booked at the most economical rate as far in advance as reasonably possible.

(c) Travel agents may be used on more complicated travel arrangements to reduce staff time and thereby reduce overall costs. .

(d) Cancellation fees or fees for ticket changes will be reimbursed if it is in the best interests of the authority or a family emergency.

101.057 **Hotel accommodations**

(a) Hotel stays will be reimbursed or paid for at the lowest reasonable rate.

(b) Exceptions to the above rate would include:

(1) The alternate hotel would reduce total overall costs of travel, such as not requiring a rental car.

(2) Time constraints for business meetings would require staying at a closer hotel.

(3) Conference rate is always acceptable in Conference hotel or one located nearby.

101.058 **Meals**

(a) Meals will be reimbursed without a receipt at $34/day.

(b) Meals above $34/day will require a receipt and justification.

(c) No meals not related to authority business will be allowed.

(d) No reimbursement for alcohol will be allowed.

(a) Reasonable and customary tips and gratuities do not require a receipt.

(b) Parking, toll and taxi receipts will be reimbursed on an actual basis.

(c) Other minor expenditures should have a receipt and justification.

(d) Local calls related to business will be reimbursed.

(e) Long distance calls related to business, including Internet connections will be reimbursed.

(f) There will be no reimbursement for any parking or traffic violations.

(g) There will be no reimbursement for entertainment purposes, including in hotel movies.

101.060 **Rental vehicles**

(a) Vehicle rental should be approved in advance by executive director or chief financial officer.

(b) Preference for compact or mid-sized vehicles, unless multiple persons traveling in vehicle.

(c) Gasoline should be refilled prior to returning.

(d) Loss damage waiver should be used until such time as the authority has either insurance coverage or individual personal coverage extension.

(e) In certain cities, it is cost effective to use private van services in order to meet meeting schedules. The costs should be compared to taxi services for reasonableness.

101.061 Mileage Reimbursement

(a) Use of a personal vehicle on authority business will be reimbursed using the current Internal Revenue Service rate. A request for reimbursement should include:

(1) The purpose of the travel;

(2) The dates of the travel; and

(3) Net Mileage.

(b) If a personal vehicle is used and extended or long-distance trip, the maximum reimbursement will be at the lower of the:

(1) IRS rate times the number of miles driven or

(2) The lowest quoted airfare at the time of travel for overnight stay.

101.062 Food Service at Local Meetings

(1) The purpose of the meeting

(2) The time and location of the meeting

(3) Names of principle attendees

(4) Approval of the reimbursement request by the executive director

101.063 Other expenses

(a) Recruiting expenses for top level candidates, subject to approval by the board.

(b) Organizational membership fees, subject to advance approval by Executive Committee.

Article 4. CONFLICT OF INTEREST

Subchapter A. CONFLICT OF INTEREST POLICY FOR CONSULTANTS

101.064 **Purpose**

The authority anticipates utilizing outside consultants for a significant portion of the work necessary to plan, study, and develop transportation projects. The authority also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The authority recognizes that many of the same individuals and firms that provide services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the authority. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the authority is not compromised, individuals and firms working for the authority, and those seeking to do business with the authority, must adhere to the following procedures:

The authority shall maintain, on its website and in the records of the authority, a list of key personnel and firms performing work for the authority. Any individual or firm receiving more than $10,000 in compensation for goods and services rendered to the authority during the preceding 12 months, as well as any newly hired individual or firm expected to be paid more than $10,000 in a 12 month period, shall be included on that list.

101.066 **Disclosure of Business Relationship**

(a) Any individual, firm, or team, including individual team members, submitting a proposal, including an unsolicited proposal and a response to a solicited proposal, to the authority to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the authority's key personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination or expected termination, if known, of the relationship. Failure to make the disclosure required in this subsection is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.

(b) Separate and apart from the disclosure required to be made by proposers under subsection (a), any key personnel of the authority who are requested to participate in any way in the review of a proposal, the procurement of goods and services leading to a proposal, or the supervision of work to be performed pursuant to a proposal, must disclose the existence of any current or previous

business relationship with any individual, firm, or team, including team members, making a proposal to provide goods or services or a proposal to perform work to be supervised. Failure to make the disclosure required in this subsection is grounds for termination of work by the key personnel failing to make the disclosure. Disclosures required under this subsection shall be made within three business days of receipt of information concerning the identity of a proposer to the authority's general counsel in accordance with Section 101.068, unless the disclosure is required of the general counsel, in which case disclosure shall be made to the executive director.

101.067 Submittal of Form

For any disclosures required under Section 101.066, the affected key personnel shall complete and submit the form attached hereto as Appendix 2. (Submittal of such form shall be sufficient to constitute the disclosure required under Section 101.066.) Completion of the required information is necessary to provide the authority with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key personnel.

101.068 Executive Committee Decision

The authority's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key personnel). The Executive Committee shall determine whether to permit the affected key personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for termination of that work and any further work for the authority. If the Executive Committee does not approve of the continuation of work by the key personnel, the key personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

101.069 Amendments

These policies and procedures may be amended or modified at any time by action of the board. Key personnel and proposers seeking to do business with the authority are responsible for complying with these policies and procedures as amended from time to time.

Subchapter B. CONFLICT OF INTEREST POLICY FOR FINANCIAL TEAM MEMBERS

101.070 **Purpose**

The authority anticipates utilizing outside consultants for a significant portion of the work necessary to develop financial plans for the financing of specific authority projects and for advice concerning the overall management of the authority's financial affairs. The authority also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The authority recognizes that many of the same individuals and firms that provide financial planning and advisory services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the authority. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the authority on financial matters is not compromised, individuals and firms working for the authority, and those seeking to do business with the authority, must adhere to the procedures established by this subchapter.

101.071 **Key Financial Personnel and Firms**

The authority shall maintain, on its website and in the records of the authority, a list of key financial personnel and firms performing work for the authority. At a minimum, this group will include the authority's financial advisor(s), bond counsel, accountants and auditors, and investment banking firms which are part of an underwriting syndicate for any authority project. Other individuals or firms may be classified as authority key financial personnel at the sole discretion of the authority.

101.072 **Disclosure by Proposers**

Any individual, firm, or team (including individual team members) submitting a proposal (including an unsolicited proposal and a response to a solicited proposal) to the authority to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the authority's key financial personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination, or expected termination, if known, of the relationship. Failure to make the disclosure required in this section is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.

101.073 **Disclosure by Key Financial Personnel**

Separate and apart from the disclosure required to be made by proposers under Section 101.072, any key financial personnel of the authority must disclose the existence of any current or previous

business relationship with any individual, firm, or team, including team members, making a proposal to provide goods or services or a proposal to perform work to be supervised. Failure to make the disclosure required in this section is grounds for termination of work by the key financial personnel failing to make the disclosure. Disclosures required under this section shall be made to the authority's general counsel within three business days of receipt of information from the authority concerning the identity of a proposer, including its team members and known subconsultants. Disclosures shall be made in accordance with Section 101.074.

101.074 Form for Disclosure

For any disclosures required under this subchapter, the affected key financial personnel shall complete and submit the form attached hereto as Appendix 3. Submittal of such form shall be sufficient to constitute the disclosure required under Section 101.073. Completion of the required information is necessary to provide the authority with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key financial personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key financial personnel.

101.075 Participation Ineligibility

Except for investment banking firms, key financial personnel shall not be permitted to be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop a transportation project through a comprehensive development agreement. Investment banking firms shall not be permitted to participate in a syndicate of firms designated by the authority to participate in the financing of a project and also be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop that same project (or a variation of that project). Investment banking firms may be part of a team proposing or competing to develop a project for which they have not been designated as part of the underwriting syndicate for that project by the authority. These prohibitions are intended to preclude key financial personnel from working both for the authority and for (or with) entities seeking to do business with the authority in a manner which would result in or create the appearance of conflicting loyalties in financial matters.

101.076 Executive Committee Decision

The authority's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key financial personnel). The Executive Committee shall determine whether to permit the affected key financial personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for

termination of that work and any further work for the authority. If the Executive Committee does not approve of the continuation of work by the key financial personnel, the key financial personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

101.077 **Amendment**

These policies and procedures may be amended or modified at any time action of the board. Key financial personnel and proposers seeking do business with the authority are responsible for complying with these policies and procedures as amended from time to time.

Chapter 2: FINANCES

Article 1. INVESTMENT POLICY

201.001 Overview

This article is adopted and intended to comply with the Texas Public Funds Investment Act, Chapter 2256, Government Code, as that act may be amended from time to time (the "PFIA"). It is the policy of the authority to invest public funds in a manner which will provide the maximum security with the highest investment return while meeting the daily cash flow demands of the authority conforming to all state and local statutes governing the investment of public funds. The authority's investment policy is approved by the board and is adopted to provide investment policy guidelines for use by authority staff and its advisors.

201.002 Scope

This article applies to all investment activities of authority funds except those subject to other investment covenants, or excluded by contract. All funds covered by this article shall be invested in accordance with the PFIA. These funds are accounted for in the authority's annual financial report and include:

(1) Revenue Fund

(2) Rebate Fund

(3) Operating Funds

(4) Debt Service Funds

(5) Debt Service Reserve Funds

(6) Renewal and Replacement Fund

(7) General Fund

201.003 Objectives

The primary objectives, in priority order, of investment activities shall be:

(1) Safety: Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective shall be to mitigate credit risk and interest rate risk.

(2) Credit Risk: Credit risk is the risk of loss due to the failure of the security issuer or backer. Credit risk may be mitigated by:

(3) Limiting investments to the safest types of securities; as listed in Section 201.014.

(4) Pre-qualifying the financial institutions, brokers/dealers, intermediaries, and advisors with which the authority will do business; and,

(5) Diversifying the investment portfolio so that potential losses on individual securities will be minimized.

(6) Interest Rate Risk: Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates. Interest rate risk may be mitigated by:

(7) Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing projects, thereby avoiding the need to sell securities on the open market prior to maturity; and,

(8) By investing operating funds primarily in shorter-term securities, money market mutual funds or similar investment pools and limiting the average maturity of the portfolio in accordance with Section 201.009.

(9) Liquidity: The investment portfolio shall remain sufficiently liquid to meet all project and operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands.

(10) Yield: The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of least importance compared to the safety and liquidity objectives described above. The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall be held to maturity with the following exceptions:

(11) A declining credit security could be sold early to minimize loss of principal;

(13) Liquidity needs of the portfolio require that the security be sold.

(14) Public Trust: Participants in the authority's investment process shall act responsibly as public trust custodians. Investment Officers shall avoid transactions which might impair public confidence in the authority's ability to manage effectively.

201.004 **Standards Of Care**

(a) Prudence: The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. An Investment Officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

(b) Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

201.005 **Ethics and Conflicts**

(a) Investment Officers shall refrain from personal business activity that could conflict with or be perceived to conflict with the proper execution and management of the investment program, or that could impair their ability to make an impartial decision. An Investment Officer shall refrain from undertaking personal investment transactions with an individual person with whom business is conducted on behalf of the authority.

(b) For purposes of this section, an investment officer has a personal business relationship with a business organization if:

(1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization;

(2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or

(c) An Investment Officer shall file with the Texas Ethics Commission and with the board a statement disclosing the existence of the relationship if the Investment Officer:

(1) has a personal business relationship with a business organization offering to engage in an investment transaction with the authority; or

(2) is related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to an individual seeking to sell an investment to the authority.

201.006 Designation of Investment Officer

The chief financial officer and controller are designated and shall act as the Investment Officers of the authority and shall have responsibility for managing the authority's investment program. Additional authority personnel may also be designated as an Investment Officer with approval of the board. Written operational and investment procedures consistent with this chapter shall be established. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this chapter and the established procedures.

201.007 Investment Advisor

The board may select an Investment Advisor to advise the authority on investment of funds and other responsibilities as outlined in this article including but not limited to broker compliance, security selection, competitive bidding, reporting and security documentation. The Investment Advisor must be registered with the Securities and Exchange Commission (SEC) under the Investment Advisor's Act of 1940 as well as with the Texas State Securities Board.

201.008 Required Training

The chief financial officer and controller and any other person designated by resolution of the board as an Investment Officer shall attend at least one training session relating to the responsibilities of maintaining the investment portfolio within 12 months after taking office or assuming duties; and shall attend a training session not less than once every two years and receive not less than ten hours of training. Such training, from an independent source, shall include education in investment controls, security risks, strategy risks, market risks, and compliance with the PFIA. Training required by this section shall be from an independent source certified to provide training required by the PFIA and approved or endorsed by the Government Finance Officers Association of Texas, the Government Treasurers Organization of Texas, the Texas Municipal League, or the North Central Texas Council of Governments.

201.009 Investment Strategies

(a) The authority's investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs.

(b) Market Yield Benchmark: The authority's investment strategy is conservative. Given this strategy, the basis used by the chief financial officer to determine whether minimum market yields are being achieved shall be the six month T-bill rate. Investment Officers and Investment Advisors shall strive to safely exceed minimum market yield within policy and market constraints.

(c) Maximum Maturities: To the extent possible, the authority will attempt to match its individual investments with anticipated cash flow requirements of each fund. However, in no instance shall the maximum stated maturity of an individual investment exceed five years, unless approved by the board.

201.010 **Diversification**

The authority will seek to diversify investments, by security types and maturity dates in order to avoid incurring unreasonable risks.

201.011 **Authorized Financial Institutions and Qualified Brokers**

(a) The board shall approve by separate resolution the financial institutions and qualified brokers authorized to provide investment services and engage in investment transactions with the authority. These may include "primary" brokers or regional brokers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule).

(1) Audited financial statements;

(2) Proof of National Association of Securities Dealers (NASD) certification;

(3) Proof of state registration;

(4) The completed security broker/dealer questionnaire in the form approved by the board in a separate resolution; and,

(5) A written certification relating to this Investment Policy signed by a qualified representative of the firm in the form approved by the board in a separate resolution. The authority will not enter into an investment transaction with a security broker/dealer prior to receiving this written certification and acknowledgement.

(c) A current audited financial statement is required to be on file for each financial institution and broker in which the authority invests. An annual review of the financial condition and registrations of qualified brokers will be conducted by the executive director.

(d) In accordance with state law, the authority requires all funds held by financial institutions above the Federal Deposit Insurance Corporation (FDIC) insurance limit to be collateralized with securities whose market value is pledged at 102% of principal and accrued interest by that institution with the authority's custodial bank. Private insurance coverage is not an acceptable collateralization form. Securities which are acceptable for collateralization purposes are as follows:

(1) FDIC insurance coverage.

(2) A bond bill, certificate of indebtedness, or Treasury note of the United States, or other evidence of indebtedness of the United States that is guaranteed as to principal and interest by the United States (i.e. Treasury Agency issues).

(3) Obligations, the principal and interest on which, are unconditionally guaranteed or insured by the State of Texas.

(4) A bond of the State of Texas or a country, city or other political subdivision of the State of Texas having been rated as investment grade by a nationally recognized rating agency with a remaining maturity of ten years or less.

201.012 Custody - Delivery vs. Payment

All security transactions entered into by the authority shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by the authority's custodial bank and evidenced by safekeeping receipts.

201.013 Safekeeping of Securities

(a) Securities purchased for the authority's portfolios will be delivered in book entry form and will be held in third party safekeeping by a Federal Reserve member financial institution designated as the authority's safekeeping and custodian bank.

(b) The authority will execute Safekeeping Agreements prior to utilizing the custodian's safekeeping services. The safekeeping agreement must provide that the safekeeping agent will immediately record and promptly issue and deliver a safekeeping receipt showing the receipt and the identification of the security, as well as the authority's interest. All securities owned by the authority will be held in a Customer Account naming the authority as the customer.

(c) The safekeeping institution shall annually provide a copy of their most recent report on internal controls (Statement of Auditing Standards no. 70 or SAS 70).

(a) The investment of authority funds will be made using only those investment types approved by the board and which are in accordance with the PFIA. The approved investment types will be limited to the following:

(1) U.S. Treasury and Federal Agency Issues.

(2) Certificates of Deposit as authorized under Section 2256.010 of the PFIA.

(3) Repurchase Agreements, including flexible Repurchase Agreements, collateralized by U.S. Treasury or Federal Agency Securities whose market value is 102% of the authority's investment and are pledged and held with the authority's custodial bank or a third-party safekeeping agent approved by the authority. Repurchase agreements must also be secured in accordance with State law. Each counter party to a repurchase transaction is required to sign a copy of an Investment Repurchase Agreement under the guidelines of Section 2256.011 of the PFIA, using the Bond Market Association Public Securities Association Master Repurchase Agreement as a general guide and with such changes thereto as are deemed in the best interest of the authority. Such an Agreement must be executed prior to entering into any transaction with a repo counter-party.

(4) Guaranteed Investment Contracts (GIC's) collateralized by U.S. Treasury or Federal Agency Securities whose market value is 102% of the authority's investment and are pledged and held with the authority's custodial bank or a third-party safekeeping agent approved by the authority. Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested for a term which exceeds five years from the date of bond issuance.

(5) Obligations of states, agencies, counties, cities, and other political subdivisions of any State having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than "AA" or its equivalent, with fixed interest rates and fixed maturities.

(6) SEC registered no-load money market mutual funds with a dollar weighted average portfolio maturity of 90 days or less; that fully invest dollar for dollar all authority funds without sales commissions or loads; and whose investment objectives include the maintenance of a stable net asset value of $1 per share

(7) Local government investment pools, which are "AAA" rated by a nationally recognized bond rating company (e.g., Moody's, S&P, Fitch), and which participation in any particular investment pool(s) has been authorized by resolution of the board, not to exceed 80% of the total investment portfolio less bond funds. Bond funds may be invested at 100%.

(b) The authority is prohibited from purchasing any security that is not authorized by Texas law, or any direct investment in asset-backed or mortgage-backed securities. The authority expressly prohibits the purchase of inverse floaters, interest-only (IO) and principal-only (PO) collateralized mortgage obligations (CMO's).

(c) An Investment that requires a minimum rating does not qualify as an authorized investment during the period the investment does not have the minimum rating. The Investment Officers shall monitor the credit rating on all authorized investments in the portfolio based upon independent

information from a nationally recognized rating agency. The authority shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating.

201.015 **Reporting and Review**

(a) Quarterly Report Requirements: The Investment Officers shall jointly prepare, no less than on a quarterly basis, an investment report, including a summary that provides a clear picture of the status of the current investment portfolio and transactions made after the ending period of the most recent investment report. The report shall be provided to the board and the executive director. The report shall comply with requirements of the PFIA and shall include the following:

(1) The investment position of the authority on the date of the report.

(2) The signature of each Investment Officer.

(3) Summary for each fund stating:

(A) Beginning market value;

(B) Ending market value.

(4) Beginning and ending book value and market value for each investment along with fully accrued interest for the reporting period.

(5) Maturity date of each investment.

(6) Description of the account or fund for which the investments were made.

(7) Statement that the investment portfolio is in compliance with the authority's investment policy and strategies.

(b) Security Pricing: Current market value of securities may be obtained by independent market pricing sources including, but not limited to, the Wall Street Journal, broker dealers and banks other than those who originally sold the security to the authority as well as the authority's safekeeping agent.

(c) Annual Audit: If the authority places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Executive Committee. In addition, the authority's external auditors shall conduct a compliance audit of management controls on investments and adherence to the Investment Policy.

201.016 **Current Investments Exempted from Policy**

Any investment currently held that does not meet the guidelines of this article or subsequent amended versions shall be exempted from the requirements of this article. At maturity or liquidation, such monies shall be reinvested only as provided by this article.

201.017 **Annual Review**

The authority shall review and approve the Investment Policy annually. This review shall be conducted by the board with recommendations from the executive director. Any approved amendments shall be promptly incorporated into written policy.

Article 2. SWAP POLICY

201.018 Purpose

Interest rate swap transactions can be an integral part of the authority's asset/liability and debt management strategy. By utilizing interest rate swaps, the authority can expeditiously take advantage of market opportunities to reduce costs. Interest rate swaps will allow the authority to actively manage asset and liability interest rate risk, balance financial risk, and achieve debt management goals and objectives through synthetic fixed rate and variable rate financing structures. The authority shall not enter into interest rate swaps for speculative purposes.

201.019 Authorization

(a) By recommendation of the Executive Committee of the board (the "Executive Committee"), approval to execute an interest rate swap on behalf of the authority will be authorized by a resolution passed by the board on a case-by-case basis.

(b) Each swap resolution will authorize the swap agreement and its provisions to include, notional amount, security, payment, and certain other terms in regards to the swap agreement between the authority and qualified swap counterparties ("Counterparties"), and other necessary documents. Each swap resolution shall specify the appropriate authority officials authorized to make modifications to the swaps contemplated, within certain parameters. In the event of a conflict between a swap resolution and the Master Swap Policy, the terms and conditions of the swap resolution shall control.

(c) Such actions of the authority will be taken pursuant to applicable provisions of the Government Code, whereby the authority must make a finding and determine that it is prudent and advisable for the authority to enter into interest rate swap agreements or other such arrangements from time to time based on certain terms and conditions set forth in the swap resolution and this article.

201.020 General Guidelines for Interest Rate Swap Agreements

The following non-exclusive list provides certain guidelines the Executive Committee will follow in the evaluation and recommendation of interest rate swap transactions:

(1) Legality: The Executive Committee must first determine, or have determined by appropriate legal counsel, that the proposed contract fits within the legal constraints imposed by state laws, authority resolutions, and existing indentures and other contracts.

(2) Goals: In the authorizing resolution, the authority must clearly state the goals to be achieved through the swap contract and must adopt execution parameters consistent with the goals.

(3) Rating Agencies: The swap agreement being entered into will not have an adverse impact on any existing authority credit rating. In addition to the legal constraints as noted above, the swap agreement will conform to outstanding commitments with bond insurers, credit enhancers, and surety providers. Where possible, the authority shall obtain confirmation on the underlying ratings of the revenue source obligated under the swap agreement. All swap agreements must be discussed with the rating agencies prior to execution, and cannot be executed if doing so would impact negatively on the authority' s credit ratings.

(4) Term: The authority shall determine the appropriate term for an interest rate swap agreement on a case-by-case basis. However, in no circumstance may the term of a swap agreement entered into for liability management purposes between the authority and a qualified swap Counterparty extend beyond the final maturity date of the underlying debt of the authority, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

(5) Impact on Variable Rate Capacity: The impact of the swap agreement on the authority's variable rate capacity must be quantified prior to execution so as not to hinder the authority's ability to continue the issuance of traditional variable rate products such as commercial paper which is used to fund capital projects.

(6) Enhancements: The authority may utilize other swap enhancement products such as forward swaps, swap options, basis swaps, caps, floors, collars, cancellation options, etc. Utilization and consideration of each of these products will be part of the approval process per swap agreement as detailed 201.024in Section 201.024. The costs, benefits, and other considerations regarding the enhancement will be explained to board as a part of the approval process. In the case of swap options in which the authority would receive up-front cash, the authority will not enter into any such swap agreements.

(7) Bond Covenants: The implementation of derivative products or interest rate swaps will not conflict with existing bond covenants and debt policies. The derivative product will also not contain terms that would cause restrictions on additional bond test and protective covenants of outstanding bonds or create cross defaults.

(9) Staffing: The authority shall maintain appropriate staff with responsibility and knowledge suitable for monitoring swap transactions. Before entering into a swap, the accounting impact of the swap on the authority must be determined.

(10) Exit Strategy: The mechanics for determining termination values at various times and upon various occurrences must be explicit in the swap agreement, and the authority should obtain estimates from its financial advisor and swap advisor of the potential termination costs which

might occur under various interest rate scenarios, and plan for how such costs would be funded.

201.021 **Basis of Award**

(a) Competitive Bid: Competitively bid transactions will be deemed "quasi-competitive" and will include not fewer than three firms. The Executive Committee will recommend to the board the method of sale and which firms will participate in the competitive transaction based on criteria described in Section 201.023. However, for a competitive bid, in situations in which the authority would like to a reward a particular firm or firms, or wishes to achieve diversification of its Counterparty exposure, the Executive Committee may select one of the following bases for award:

(1) Allow the firm or firms not submitting the best bid to amend its bid to match the best bid, and by doing so, be awarded up to a specific percentage of the transaction.

(2) To encourage competition, the second and third place bidders may be allowed to contract for a specific amount of the notional amount as long as their bid is no greater than a pre-specified spread from the best bidder in a proportional manner as specified in bidding parameters.

(3) The authority may award the transaction to a firm or firms that submit the best bid as defined in the solicitation for bid.

(b) Negotiated Transactions: In the case of a pure negotiated transaction, the authority shall rely on its swap advisor to negotiate the price and render a "fair value opinion." The Counterparty shall disclose payments to third parties regarding the execution of the derivative contract.

201.022 **Management of Swap Transaction Risk**

Certain risks will be created as the authority enters into various interest rates swap agreements with numerous swap counterparties. In order to manage the associated risks, guidelines and parameters for each risk category are as follows:

(1) Counterparty Risk: The risk of swap Counterparty default can be reduced by limiting swap agreements between the authority and any single swap Counterparty that qualifies as an eligible swap Counterparty to the authority as described in Section and Section 201.023(c). In addition, the authority may require the posting of collateral by the swap Counterparty, with a mark-to-market as requested by the authority, in accordance with the guidelines described in Section 201.023(d).

(2) Termination Risk:

(A) Optional Termination: At a minimum, the authority shall have the right to optionally terminate a swap agreement at any time over the term of the agreement (elective termination right) at the then-prevailing market value of the swap (so long as a swap Counterparty

receiving payment upon termination is not in default). In general, exercising the right to optionally terminate an agreement should produce a benefit to the authority, either through receipt of a payment from a termination, or if a termination payment is made by the authority, in conjunction with a conversion to a more beneficial (desirable) debt obligation of the authority as determined by the authority. Termination value shall be readily determinable by one or more independent swap counterparties, who may assume the swap obligations of the authority. A Counterparty to the authority shall not have the elective right to terminate the swap agreement except when a termination option has been priced into the terms of the swap at inception. The authority should explore the viability of a unilateral termination provision without being exposed to a termination payment.

(B) Mandatory Termination: A termination payment by the authority may be required in the event of termination of a swap agreement due to a Counterparty default or following a decrease in credit rating of the authority. In some circumstances, the defaulting party will be required to make a termination payment to the non-defaulting party. However, under certain circumstances, upon an event of termination, the non-defaulting party may be required to make a payment to the defaulting party. It is the intent of the authority not to make a termination payment to a Counterparty failing to meet its contractual obligations. At a minimum, prior to making any such termination payment, the authority shall require a suitable time period during which the authority may evaluate whether it is financially advantageous for the authority to obtain a replacement Counterparty to avoid making a termination payment. For example, in order to mitigate the financial impact of making such a payment, at the time such payment is due, the authority will seek to replace the terms of the terminated transaction with a new Counterparty and, as a result, receive value from the replacement Counterparty. The new or replacement Counterparty would make an upfront payment to the authority in an amount that would offset (either in whole or in part) the payment obligation of the authority to the original Counterparty. The market value of each swap agreement (including termination costs) will be calculated by the swap advisor and provided periodically as information to board in accordance with the provisions of Section 201.027 to monitor the transaction's value and in order to implement an appropriate exit strategy in a timely manner, if required.

(3) Amortization Risk (Term): The slope of the swap curve, the marginal change in swap rates from year to year along the swap curve, termination value, and the impact that the term of the swap has on the overall exposure of the authority shall be considered in determining the appropriate term of any swap agreement. Any swap should reflect the amortization of the debt swapped against or will be in place for no longer than the period of time that matching assets are available to hedge the transaction.

(4) Liquidity Risk: The authority should consider if the swap market is sufficiently liquid (i.e., if enough potential qualified counterparties participate actively in the market to assure fair pricing) for the type of swap being considered and the potential ramifications of an illiquid market for such types of swaps. There may not be another appropriate party available to act as

an offsetting Counterparty. The authority may enter into liquidity agreements with qualified liquidity providers and/or credit enhancers to protect against this risk.

(5) Basis (Index) Risk (including Tax Risk): Any index chosen as part of an interest rate swap agreement shall be a recognized market index, including but not limited to The Bond Market Association Municipal Swap Index (TBMA) or London Interbank Offering Rate (LIBOR). The authority shall not enter into swap agreements that do not have a direct (one to one) correlation with the movement of an index without analyzing the risk associated with the enhancement. Any Counterparty for a swap which relies on an index will agree to not lobby, or otherwise influence, any changes to the index that will adversely affect the authority. The tax risk and impact to the authority of each swap transaction shall be detailed through the Counterparty disclosure requirements outlined in Section 201.024.

(6) Bankruptcy Risk: Bond or swap counsel will disclose to the authority the bankruptcy risks and issues associated with the Counterparty and type of swap chosen. Additionally, bond or swap counsel will disclose to the authority the bankruptcy issues associated with the method of collateral required to be posted.

201.023 **Counterparty Approval Guidelines**

(a) Eligibility: The authority shall enter into interest rate swap transactions only with Counterparties. To qualify as a Counterparty under this article, at the time of entry into a swap transaction, the selected swap provider(s):

(1) shall be rated at least AA-/Aa3/AA- by at least two of the three nationally recognized credit rating agencies (Standard & Poor's, Moody's, and Fitch Ratings, respectively) and shall have a minimum capitalization of $50 million, or

(A) that is of a kind and in such amounts as are specified therein and which relate to various rating threshold levels of the Counterparty or its guarantor, from AA-/Aa3/AA- through BBB/Baa3/BBB-, and

(B) that, in the judgment of the authority in consultation with its Financial Advisor, is reasonable and customary for similar transactions, taking into account all aspects of such transaction including without limitation the economic terms of such transaction and the creditworthiness of the Counterparty or, if applicable, its guarantor; or

(C) shall post suitable and adequate collatera1 (separate from any collateral requirements of Section 6.3) at a third party for the benefit of the authority; or

(3) shall obtain credit enhancement from a provider with respect to its obligations under the transaction that satisfies the requirements of subdivision (1) of this subsection, given the undertaking involved with the particular transaction.

(b) The authority shall not enter into an interest rate swap transaction with a firm that does not qualify as a Counterparty. The Counterparty must make available audited financial statements and rating reports of the Counterparty (and any guarantor), and must identify the amount and type of derivative exposure, and the net aggregate exposure to all parties (the authority and others), along with relevant credit reports at the time of entering into a swap and annually thereafter unless the entity or credit enhancer is under credit or regulatory review and in that case immediately upon notice by the appropriate agencies to the entity.

(c) Swap Counterparty Exposure Limits and Transfer: In order to limit and diversify the authority's Counterparty risk, and to monitor credit exposure to each Counterparty, the authority may not enter into an interest rate swap agreement with a qualified swap Counterparty if the following exposure limits are reached per Counterparty:

(1) The maximum notional amount for interest rate swaps between a particular Counterparty (and its unconditional guarantor, if applicable) and the authority shall not exceed the maximum of $100 million. The $100 million limitation shall be the net exposure total of all notional amounts between each Counterparty and the authority. As such, notional amounts for fixed to floating swaps may be used to "offset" the notional amounts for floating to fixed swaps, or vice versa.

(2) Limitations on transfers of swaps with a particular Counterparty should be carefully analyzed and would require the authority's prior written consent. If the Counterparty unilaterally restricts transfer, then the authority should have the ability to terminate the swap without penalty if the swap is transferred or the Counterparty is merged with another entity that changes the credit profile of the swap Counterparty, unless the authority gives its prior written consent.

(3) If the maximum notional limit for a particular Counterparty is exceeded solely by reason of merger or acquisition involving two or more counterparties, the authority shall expeditiously analyze the exposure, but shall not be required to "unwind" existing swap transactions unless the authority determines such action is in its best interest, given all the facts and circumstances.

(4) If the exposure limit is breached by a Counterparty, then the authority shall:

(A) conduct a review .of the exposure limit calculation of the counterparty; and

(B) determine if collateral may be posted to satisfy the exposure limits; and

(C) enter into an offsetting swap transaction, if necessary.

(5) The authority will not enter into contracts with derivative product companies ("DPCs") that are classified as "terminating" or "Sub-T" DPC's by the rating agencies.

(d) Collateral Requirements: Collateral posting requirements between the authority and each swap Counterparty should not be unilateral in favor of the Counterparty. As part of the swap agreement, the authority or the swap Counterparty may require that collateralization to secure any or all swap payment obligations be posted. Collateral requirements shall be subject to the following guidelines:

(1) Collateral requirements imposed on the authority should not be accepted to the extent they would impair the authority's existing operational flow of funds.

(2) Each Counterparty shall be required to provide a form of a Credit Support Annex should the credit rating of the Counterparty fall below the "A-/A3/A-" category by at least two of the nationally recognized agencies:

(4) The market value of the collateral shall be determined on either a daily, weekly, or monthly basis by an independent third party, as provided in the swap documentation.

(5) Failure to meet collateral requirements will be a default pursuant to the terms of the swap agreement.

(6) The authority and each swap Counterparty may provide in the supporting documents to the swap agreement for reasonable threshold limits for the initial deposit and for increments of collateral posting thereafter.

(7) The swap agreement may provide for the right of assignment by one of the parties in the event of certain credit rating events affecting the other party. The authority (or the Counterparty) shall first request that the Counterparty (or the authority) post credit support, or provide a credit support facility. If the Counterparty (or the authority) does not provide the required credit support, then the authority (or the Counterparty) shall have the right to assign the agreement to a third party acceptable to both parties and based on terms mutually acceptable to both parties. The credit rating thresholds to trigger an assignment shall be inc1uded in the supporting documents.

201.024 Form of Swap Agreements and Other Documentation

Each interest rate swap agreement shall contain terms and conditions as set forth in the International Swap & Derivatives Association, Inc. ("ISDA") Master Agreement and such other terms and conditions included in any schedules, confirmations, and credit support annexes as approved in accordance with the authority's swap resolution pertaining to that transaction. The swap Counterparty shall provide a disclosure memorandum that will include an analysis by the Counterparty of the risks and benefits of the transactions, with amounts quantified. This analysis should include, among other things, a matrix of maximum termination values over the life of the swap. The disclosure memorandum shall become a part of the official transcript for the transaction. The swap Counterparty shall also affirm receipt and understanding of the authority's statement of swap policies, and will further affirm that the contemplated transactions fit within the swap policies as described.

201.025 Modification of Swaps

Each swap resolution should provide specific approval guidelines for the swap transactions to which it pertains. These guidelines should provide for modifications to the approved swap transactions, provided such modifications, unless considered and recommended by the Executive Committee, do not .extend the average life of the term of the swap, increase the overall risk to the authority resulting from the swap, or increase the notional amount of the swap. The swap resolution should further designate which authority officers shall be authorized to cause such modifications.

201.026 Aggregation of Swaps

Unless the swap resolution states otherwise, the approval requirements set forth in each swap resolution are applicable for the total notional amount of transactions executed over a consecutive three-month period for a given security or credit. Therefore, the notional amount of swap transactions including the average life of the swap agreements over a consecutive three-month period are considered in total (net of the notional amount of a swap reversal) to determine what approval is required pursuant to a particular swap resolution.

201.027 Reporting Requirements

The Executive Committee shall be required to report the status of all interest rate swap agreements to the board at least on an annual basis and shall present all footnote disclosure items required by GASB Technical Bulletin No. 2003-1.

Article 3. RESERVE FUND POLICY

201.028 Purpose

In Resolution No. 10-12, dated February 26, 2010, the board approved the establishment of a reserve fund. The reserve fund is intended to ensure that the authority maintains adequate funds to satisfy its outstanding financial commitments and operational requirements in the event of unforeseen circumstances or events. The board recognizes that establishment and maintenance of sufficient reserve funds is of particular importance in light of the authority's dependence upon discretionary user fees as its primary revenue stream.

201.029 Fund Balance

(a) It shall be the goal of the authority to maintain twelve months of funds sufficient to pay, maintain, or satisfy all required debt service, debt service coverage, contractual financial commitments, and operational requirements (collectively, "Funding Requirements") as a reserve fund; provided, however, that the executive director shall have the authority to take action resulting in a reduction of the reserve fund to a minimum of nine months of funding sufficient to pay, maintain, or satisfy all Funding Requirements if he determines that such action is necessary, in the best interest of the authority, and will not adversely affect the authority's financial stability.

(b) In the event that the executive director authorizes action on behalf of the authority to reduce the reserve fund balance to less than twelve months of funding sufficient to pay, maintain, or satisfy all Funding Requirements, he shall disclose to the board at the next regular board meeting the amount by which the reserve fund was reduced and the circumstances that led to the reduction.

(c) In no event may the reserve fund balance be reduced to less than nine months of funding sufficient to pay, maintain, or satisfy all Funding Requirements without the prior approval of the board.

Article 4. DAMAGE CLAIMS BY CTRMA

201.030 Purpose

This article sets forth guidelines for management and collection of claims by the authority against an individual, company, or organization for damage to a transportation project. This article is not intended to apply to damage to authority property resulting from the actions of contractors engaged in the construction, maintenance, or repair of authority projects.

201.031 Definitions

(1) Accident: A collision, crash, or impact, with or without apparent cause, involving one or more vehicles.

(2) Damage: Loss or harm to a transportation project resulting from an accident or from a deliberate act, including an act of vandalism. Damage does not include wear and tear caused by normal use of a transportation project.

(4) Responsible Party: The owner or operator of a vehicle involved in an accident resulting in damage or the person responsible for a deliberate act resulting in damage to a transportation project.

(5) Transportation Project: A turnpike project, passenger or freight rail facility, roadway, pedestrian or bicycle facility, or any other facility or structure included within the definition of "transportation project" set forth in Section 370.003(13), Transportation Code.

(6) Vehicle: A device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks. Includes, without limitation, a passenger car, truck, bus, tractor, trailer, semi-trailer, all-terrain vehicle, recreational vehicle, motorcycle, moped, or bicycle.

201.032 Collection of Damage Claims

(a) The authority shall seek reimbursement from the responsible party for costs it incurs to repair damage to a transportation project owned or maintained by the authority, including the cost of labor, materials, equipment. Additionally, the authority may seek reimbursement for any internal or external administrative or other costs the authority necessarily incurs in connection with making repairs to the damage and obtaining reimbursement for those costs.

(b) The executive director shall develop and implement procedures for maintaining records of all damage claims and notifying a responsible party and/or the party's insurer, as appropriate, of the existence and nature of damage claim by the authority and for recovering the cost of the repairs. A responsible party and the insurer shall be provided with a copy of any police report relating to the accident or damage, a description of the damage, and a summary of the costs incurred or estimates of costs to be incurred for repairing the damage. The authority shall provide a process for a responsible party and the insurer to dispute the liability of a responsible party or the existence or amount of a damage claim.

(c) If a responsible party who did not have an insurance policy in effect at the time of an accident fails to pay a claim for damages totaling at least $1,000.00 within 90 days after notice of a claim is sent to the responsible party by the authority, the authority may notify the Texas Department of Public Safety and may recommend that the responsible party's driver's license be suspended in accordance with procedures set forth in Subchapter F, Chapter 601, Transportation Code.

(d) For a damage claim that totals at least $500 against a responsible party who did not have a motor vehicle insurance policy in effect at the time of an accident, the authority may enter into a payment plan with the responsible party; provided, however, that payments shall not extend beyond a one year period.

(e) A damage claim that does not exceed $50,000 may be compromised or settled in the best interests of the authority with the approval of the executive director. A damage claim that exceeds $50,000 may be compromised or settled only with the approval of the board.

(f) If the authority is unable to collect a damage claim through its internal collection procedures, the claim may be assigned to a collection agency or, with the approval of the board, the authority may institute a civil action to recover its damages in a court of competent jurisdiction. All efforts by the authority to recover costs of repairing damage to authority property shall comply with applicable state and federal laws and regulations governing the collection of debts.

Chapter 3: OPERATIONS

Article 1. TOLL POLICIES

Subchapter A. TOLL RATES

301.001 Priority of Bond Documents

Notwithstanding any conflicting provision in this subchapter or in a prior resolution adopting the Toll Policies, the toll rates and schedules set forth in this subchapter shall always be sufficient to meet or exceed all covenants and requirements set forth in all applicable bond documents and obligations of the authority. If any conflict arises between the bond documents and this subchapter or a prior resolution adopting the Toll Policies, the covenants and requirements of the bond documents shall control to the extent of such conflict.

301.002 Toll Rates

(a) Each toll established by this section is subject to an adjustment on January 1 of each year under the procedure set forth in Sec. 301.003 (Annual Toll Rate Escalation). The executive director is authorized and directed to edit a toll established by this section to update and certify any change to a toll made pursuant to Sec. 301.003.

(b) The toll for a passenger car (2 axles) charged at each 183A Turnpike toll gantry is as follows:

183A Turnpike Toll Gantry	Transponder Customer Toll (e.g., TxTAG)	Pay By Mail (Video Tolling) Customer Toll
Crystal Falls Ramps	$0.38	$0.51
Crystal Falls Mainline	$0.99	$1.32
Scottsdale Drive Ramp	$0.56	$0.74
Park Street Mainline	$1.40	$1.86
Brushy Creek Ramps	$0.56	$0.74
Lakeline Mainline	$0.52	$0.69

(c) Beginning on the date Phase 1 of the Manor Expressway is open to traffic and ending on the date the entire length of the Manor Expressay is open to traffic, the toll for a passenger car (2 axles) charged at each Manor Expressway toll gantry is as follows:

Manor Expressway Toll Gantry	**Transponder Customer Toll (e.g., TxTAG)**	**Pay By Mail (Video Tolling) Customer Toll**
US 183 Direct Connectors	$0.50	$0.67
Springdale Road Ramps	$0.50	$0.67

(d) Beginning on the date the entire length of the Manor Expressway is open to traffic, the toll for a passenger car (2 axles) charged at each Manor Expressway toll gantry is as follows:

Toll Gantry	**Transponder Customer Toll (e.g., TxTAG)**	**Pay By Mail (Video Tolling) Customer Toll**
US 183 Direct Connectors	$0.53	$0.71
Springdale Road Ramps	$0.53	$0.71
Giles Lane Ramps	$0.53	$0.71
Giles Lane Mainline	$1.06	$1.41
Harris Branch Parkway Ramps	$0.53	$0.71
Parmer Lane Mainline	$0.53	$0.71

(e) A vehicle with more than two axles will pay the applicable toll rate for a passenger car (2 axles) times (n-1), with "n" being the number of axles on the vehicle.

301.003 **Annual Toll Rate Escalation**

(a) The following provisions are fully adopted and made a part of this subchapter and may be incorporated in any Trust Indenture or Supplemental Trust Indenture issued in conjunction with bond financing to be utilized for the financing of the construction and development of projects by the authority (defined terms in these provisions shall be in accordance with the terms and definitions set forth in the Master Trust Indenture and any applicable Supplemental Trust Indenture):

> Subject in all instances to the provisions, requirements and restrictions of the Master Indenture, as amended and supplemented from time to time, beginning on October 1, 2012 and on each October 1 thereafter (the "Toll Escalation Determination Date"), a percentage increase in the Toll rates charged on all toll facilities in the Turnpike System will be determined in an amount equal to the Toll Rate Escalation Percentage. The Toll Rate Escalation Percentage, as calculated on each Toll Escalation Determination Date, shall be reported to the board each year at its October board meeting. The percentage increase in the Toll rates shall be effective on the January 1 of the next calendar year, unless at such board meeting the board affirmatively votes to modify the Toll Rate Escalation Percentage. If the board votes to modify the Toll Rate Escalation Percentage, the Toll rate increase to be effective on January 1 of the next calendar year shall be based on the modified Toll Rate Escalation Percentage.

(b) For purposes of determining the Toll Rate Escalation Percentage, the following capitalized terms shall have the meanings given below:

(1) "Toll Rate Escalation Percentage" = shall mean a percentage amount equal to $[(CPI^{t} – CPI^{t-12})/CPI^{t-12}]$. In the event the Toll Rate Escalation Percentage is calculated to equal less than 0%, then the Toll Rate Escalation Percentage shall be deemed to equal 0%.

(2) "CPI^{t}" = the most recently published non-revised index of Consumer Prices for All Urban Consumers (CPI-U) before seasonal adjustment ("CPI"), as published by the Bureau of Labor Statistics of the U.S. Department of Labor ("BLS") prior to the Toll Escalation Determination Date for which such calculation is being made. The CPI is published monthly and the CPI for a particular month is generally released and published during the following month. The CPI is a measure of the average change in consumer prices over time for a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, charges for doctors' and dentists' services, and drugs. In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The contents of the market basket of goods and services and the weights assigned to the various items are updated periodically by the BLS to take into account changes in consumer expenditure patterns. The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100.0. The base reference period for the CPI is the 1982-1984 average.

(3) "CPI^{t-12}" = the CPI published by the BLS in the month that is 12 months prior to the month used to established CPI^{t}.

(4) If the CPI is discontinued or substantially altered, as determined in the sole discretion of the authority, the authority will determine an appropriate substitute index or, if no such substitute index is able to be determined, the authority reserves the right to modify its obligations under this section.

301.004 Exemption from Toll

(a) Users of toll facilities are required to pay the toll established by this subsection unless exempted by state law, or as authorized by the board under state law and the bond documents.

(b) Pursuant to Sections 370.177, 362.901, and 541.201, Transportation Code, the authority will create technical procedures to ensure that authorized emergency vehicles, as well as state and federal military vehicles, are exempt from paying tolls on the authority's toll facilities.

(c) Pursuant to Section 370.177, Transportation Code, and to facilitate a multi-modal transportation system that ensures safe and efficient travel for all individuals in Central Texas, public transportation vehicles with a carrying capacity of 16 or more individuals that are owned or operated on behalf of the Capital Metropolitan Transportation Authority or the Capital Area Rural Transportation System are exempt from paying tolls on the authority's toll facilities.

301.005 Discounts and Incentives

(a) A primary objective of the authority's marketing and public information program is to encourage enrollment of as many customers as possible in interoperable transponder programs. Transponder programs that are interoperable with the authority's facilities currently include the Texas Department of Transportation's TxTag; the North Texas Tollway Authority's TollTag; and the Harris County Toll Road Authority's EZ TAG. The board will determine appropriate introductory and marketing activities on a project-by-project basis by separate resolution, which may include, but not be limited to, those described in subsection (b).

(b) During the initial start-up phase of tolling on a particular project, incentives to customers may be offered depending on the level of toll tag enrollment, such as the following discounts and incentives:

(1) The authority may offer incentives with each new toll project that is opened to encourage ridership.

(2) The authority may offer discounts for transponder users from the toll amount paid by Pay By Mail toll customers.

Subchapter B. TOLL COLLECTIONS

301.006 **Purpose**

This subchapter establishes practices and operations for toll collection systems on designated controlled-access toll roads operating within the turnpike system, and incorporates provisions of Section 370.177, Transportation Code, regarding failure or refusal to pay turnpike project tolls and related penalties and offenses.

301.007 **Transponder Account**

A customer may establish a transponder account by contacting any interoperable Customer Service Center ("CSC"). A transponder is an electronic device that records the presence of a vehicle on a toll road and is usually attached to the windshield of the vehicle. Each CSC that is interoperable with the authority's toll facilities has its own user agreement concerning requirements to open and maintain a transponder account.

301.008 **Unauthorized Transfer of Transponder**

A transponder that is interoperable with the authority's toll facilities is for use with one vehicle per transponder, and should not be transferred to another vehicle once the transponder is attached to the original vehicle's windshield. Transfer of a transponder to a vehicle other than the original vehicle is against authority policy. If a transponder is transferred to another vehicle in violation of this section, the authority may refuse to recognize an electronic toll transaction incurred with respect to an unauthorized vehicle.

301.009 **Video Billing**

(a) The authority offers video billing as payment option for customers that use the authority's toll facilities without a transponder account. The authority, through its Violations Process and Toll Collection Provider (the "Collections Contractor"), will use the license plate information of a vehicle that does not have a valid toll transponder but travels on the authority's toll facilities to determine the registered owner of such a vehicle via an interface with Vehicle Title Registration or similar institution.

(b) The Collections Contractor will send an invoice to the registered owner of the vehicle and accept payment on behalf of the authority. The Collections Contractor will add a $1.00 handling fee for each invoice. The Collections Contractor will retain the additional toll surcharge and handling fee to cover their cost and forward the toll payments to the authority. All toll bills/invoices require payment within 30 days of the date thereof.

301.010 Establishment of Administrative Fee for Unpaid Tolls

(a) Section 370.177, Transportation Code, authorizes the assessment and collection of an administrative fee to recover the authority's cost of collecting unpaid tolls. An administrative fee may not exceed $100.00 per unpaid toll. The authority has determined that such fees may vary depending on how far in the collection process a delinquent account proceeds.

(b) The current administrative fee shall be applied at each phase of the collection process. This means that upon issuance of a notice of non-payment, a $15.00 administrative fee shall be collected in addition to the unpaid toll and any other fees that are due.

(c) If payment is not received in connection with the first notice of non-payment, and a second notice of non-payment is sent, an additional $15.00 administrative fee shall become due. Therefore, full payment of a second notice of non-payment will require payment of $30.00 in administrative fees, in addition to all other amounts due.

(d) If payment is not received in connection with either the first or second notice of non-payment, the unpaid account shall be considered for collection, an additional $30.00 administrative fee shall become due, and the cumulative administrative fee due shall be $60.00.

(e) The board recognizes that the amount of the administrative fee should be subject to periodic change when collection costs and associated matters are considered. Therefore, the board delegates the authority to revise the administrative fee, or any aspect thereof, to the executive director, in consultation with the director of operations, and the executive director may revise an administrative fee by written amendment. The executive director shall give notice to the board of any such revision at the next regularly scheduled board meeting after the revision is put into effect.

301.011 Customer Service and Violation Policies

(a) A tolerant and customer-friendly approach will be employed towards customers who use the road without paying the required toll. While it is understood that the objective of the authority is to collect revenue and minimize toll violation abuse, the authority believes that a moderate approach towards customers who did not pay the toll ultimately will allow for a period of adjustment as customers begin using the toll roads, and will create new toll customers for the authority.

(b) The authority will establish a "Violation Processing Center (VPC)" where vehicle images captured at the toll collection point and for which no toll was paid will be reviewed and processed according to authority policies in accordance with the toll enforcement process established by state law. Repeat offenders will be issued notices of nonpayment and will be given the opportunity to make outstanding toll and administrative payments. Failure to respond to the established customer contact process and to satisfy outstanding, unpaid toll amounts will result in the issuance of citation and prosecution in accordance with state law.

301.012 **Procedures for Disputing Toll Violations**

(a) A customer may dispute an alleged failure to pay a toll on the authority's web site or by contacting the CSC where a valid transponder account has been established.

(b) A customer who has contacted a CSC or the authority's collection contractor and has been unable to satisfactorily resolve a dispute regarding a toll violation may submit a written appeal to the authority. Such appeal shall be for the purposes of the customer providing the authority with the information upon which they base their appeal. The authority may or may not determine that there is any merit to such appeal and is not required to undertake any formal proceedings to make such determination.

Article 2. OPERATIONS

301.013 **Statement of General Policy**

(b) Pursuant to Section 370.033(a)(12), Transportation Code, this article adopts and establishes rules for the use of the authority's transportation projects. These provisions are in addition to and an enhancement of the provisions of Subtitle C, Title 7, Transportation Code (the "Statutory Rules of the Road"). The authority expressly adopts these provisions and those set forth in the Statutory Rules of the Road. To the extent any conflict arises between the provisions hereof and the Statutory Rules of the Road that cannot be overcome through any reasonable consideration of both, the Statutory Rules of the Road shall control.

301.014 **Definitions**

The following words and terms, when used in these policies, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Median: the area between traffic lanes for the purpose of separating traffic

(2) Toll Plaza: The area where tolls are collected

(3) Toll Gantry: A structural frame installed over tolled roadways and/or ramps supporting electronic toll collection systems.

301.015 Speed Limits

(a) Subchapter H, Chapter 545, Transportation Code, "Speed Restrictions," governs speeds on highways in the State of Texas. The authority has the authority to alter prima facie speed limits on its toll roads, provided the Procedures for Establishing Speed Zones are followed.

(b) Guidelines established by Texas Department of Transportation Procedures for Establishing Speed Zones, current edition, will be used in conducting Speed Zone Studies and establishing Speed Limits on authority operated toll roads. The data collected during the Speed Zone Studies are analyzed to determine the 85th Percentile Speed. The 85th Percentile Speed is the speed at which 85% of the traffic at a specific test site is traveling at or slower. The 85th Percentile Speed will be the basis for how the posted speed limit is determined.

(c) Maximum speeds within construction, transitional or reduced speed zones or during any period of adverse atmospheric or weather conditions shall be in accordance with signs displayed for such zones. All regulatory and zoning signs displayed on authority operated toll roads shall be obeyed.

(d) Regulatory signs for toll plaza speed zones shall be placed in advance of, at the beginning, and at the end of the defined speed zone. All regulatory signs displayed at the toll plaza shall be obeyed.

(e) Motor vehicles shall not be driven in excess of the mechanical limits of vehicles or tires. If traffic, weather, pavement or other conditions render the maximum allowable speed hazardous, the speed of motor vehicles shall be reduced consistent with such conditions.

301.016 183A Turnpike

The maximum speed of motor vehicles on the 183A Turnpike shall be limited to 75 miles per hour except within construction, transitional or reduced speed zones or during any period of adverse atmospheric or weather conditions. Notwithstanding the foregoing, the maximum speed of motor vehicles on the portion of the 183A Turnpike as Frontage Roads lying north of FM 1431 shall be 60 miles per hour.

301.017 Parking

(a) Parking or stopping of vehicles on any traffic lane, deceleration lane, acceleration lane, or on any bridge is prohibited. Parking or stopping of vehicles is permitted only on the shoulders to the right of the traffic lane. All wheels and projecting parts of the vehicle or load shall be completely clear of the traffic lane.

(b) During the period beginning 30 minutes after sunset and ending 30 minutes before sunrise or at any other time when insufficient light or unfavorable atmospheric or weather conditions require,

any parked vehicle shall display illuminated parking and tail lights, or lighted flares to indicate its location.

(c) Unnecessary parking or parking of vehicles for extended periods of time (in excess of 24 hours) is prohibited, and the driver of a disabled vehicle shall arrange for its prompt removal from authority operated toll roads.

301.018 Median Strip

(a) The median strip is the area between the dual or triple traffic lanes for the purpose of separating traffic.

(b) Crossing, driving, parking or stopping on the median strip is prohibited, except as necessary for official maintenance, operational or emergency uses.

301.019 No U-Turn

301.020 Pedestrians

Pedestrians are not permitted on the mainlane roadways, access ramps or any interchange of authority toll roads. Solicitation of rides or "hitchhiking", panhandling, passing of handbills, displaying signs, or attempting to sell merchandise is prohibited on authority operated toll roads. Loitering in or about Toll Plazas or upon any Turnpike property is prohibited.

301.021 Prohibited Modes of Transportation

(a) No person shall operate any of the following on any roadway or access ramp operated by the authority:

(1) Animal drawn vehicles.

(2) Animals - led, ridden, or driven.

(3) Vehicles loaded with animals or poultry not properly confined.

(4) Vehicles with flat pneumatic tires.

(5) Vehicles in the charge of intoxicated or otherwise incapacitated operators.

(6) Vehicles with improperly secured loads which may shift or litter the highway.

(7) Vehicles with metal tires or which have solid tires worn to metal.

(8) Rollers, graders, power shovels, or other construction equipment, either self- propelled or in tow of another vehicle, unless such equipment is either:

(A) truck mounted, and such truck can be operated at a minimum speed of 45 miles per hour while traveling on the mainlane roadways of authority operated toll roads, weather and road conditions permitting, or

(B) owned or controlled by the authority or by any contractor in connection with the performance of work authorized by the authority.

(9) Vehicles exceeding the maximum weights allowed on State highways under the motor vehicles laws of the State of Texas in effect from time to time.

(10) Vehicles including any load thereon exceeding the following maximum dimensions are prohibited:

Height	13 feet 6 inches
Width	8 feet 6 inches
Length	The maximum allowable lengths permitted on Interstate highways and other controlled access roadways in Texas pursuant to the motor vehicle laws of the State of Texas, as in effect from time to time, without an over-length permit.

(11) disabled vehicles in tow by tow-rope or chain.

(1) Bicycles or tricycles, with or without motors, and motor driven cycles, including motor scooters, and

(2) Farm implements.

301.022 Evasion of Fare

Entering or leaving authority operated toll roads or any part of its right of way except through the regular Toll Plaza lanes, or committing any act with intent to defraud or evade payment of fare is prohibited.

301.023 Trees, Shrubs and Plants

Culling, mutilating or removing trees, shrubs, or plants located within authority operated toll roads right-of-way is prohibited.

301.024 **State Laws**

All laws, rules and regulations in the State of Texas pertaining to the use of public highways and policing thereof, including but not limited to the Statutory Rules of the Road, shall apply to authority operated toll roads, except insofar as they may be supplemented by this article.

301.025 **Penalties**

Article 3. ACCESS MANAGEMENT STANDARDS

301.026 Application and Permit Required

(a) This article establishes standards and policies to manage access to authority roadways from abutting property.

(b) Before constructing an access connection that connects to an authority roadway, a property owner with a right to establish the access connection must file an application with the authority and receive a direct access permit from the authority in accordance with this article and other applicable law.

301.027 Criteria for Approval of an Access Connection

(a) Unless otherwise specifically provided by this article, an access connection to an authority roadway shall comply with the all criteria and standards established for a frontage road by the *Access Management Manual* adopted by the Texas Department of Transportation, as that manual is in effect on the date the application for the permit is filed with the authority.

(b) A decision under the TxDOT *Access Management Manual* that may be made by a TxDOT employee at the district engineer level or below may under this article be made on behalf of the authority by the executive director or his or her designee.

(c) The executive director may promulgate and adopt application or other forms necessary or desirable to facilitate the review and decision on a direct access permit required by this article.

301.028 Prohibited Direct Access

Direct access to an authority frontage road is prohibited in the vicinity of existing ramp connections to mainlane roadways, as detailed by a defined "control of access" area illustrated on official right-of-way maps for the authority roadway on file with the authority.

301.029 Costs of Associated Infrastructure Improvements

(a) If the executive director determines a proposed access connection may reasonably cause safety or operational problems on the frontage road, including a reduction in the capacity of through lanes on the frontage road, as a condition of approval for a direct access permit the executive director may require the applicant to bear all or a portion of the costs of providing infrastructure improvements necessary to resolve or mitigate the safety or operational problems.

(b) The executive director may negotiate and execute a development agreement and associated agreements with an applicant to implement requirements under subsection (b). Board approval of an agreement under this subsection is required if the authority will pay more than $50,000 in costs that are not reimbursed by the applicant.

301.030 **Appeal**

(a) An applicant may appeal a decision of the executive director to the Board in accordance with the appeal rights and procedures set out the TxDOT *Access Management Manual*, as modified by this section. The board shall exercise the power of the TxDOT Design Division to hear and decide an appeal under the TxDOT *Access Management Manual*.

(b) An applicant must file a written notice of appeal with the executive director no later than 15 days after the date the applicant receives written notice of the decision being appealed.

(c) The executive director shall schedule the appeal for a hearing by the board no sooner than seven days and no later than 45 days after the date the notice of appeal is received.

(d) The decision by the board on an appeal is final.

Article 4. ENCASEMENT PROTECTED RIGHT-OF-WAY

301.031 Applicability

This article applies only to a utility facility constructed in Encasement Protected ROW after January 25, 2012.

301.032 Definitions

In this article:

(1) "Utility Facility" means: (a) a water, wastewater, natural gas, or petroleum pipeline or associated equipment; (b) an electric transmission or distribution line or associated equipment; or (c) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities, used to provide a utility service.

(2) "Authority Encasement" means an encasement installed under a roadway within right-of-way and owned by the authority.

(3) "Encasement Protected ROW" means right-of-way for 183A between its intersections with RM 2243 and Hero Way.

301.033 Utility Facility in Encasement Protected ROW.

(a) A Utility Facility installed in Encasement Protected ROW shall be installed only within a Authority Encasement.

(b) This section does not apply to a Utility Facility that the authority determines cannot reasonably be installed within an Authority Encasement because the Authority Encasement has insufficient capacity to contain the proposed Utility Facility.

301.034 Agreement to Install a Utility Facility in an Authority Encasement

(a) A Utility Facility may not be installed in an Authority Encasement unless the owner of the Utility Facility executes an agreement with the authority.

(b) An agreement under this section must:

(1) include such terms and conditions as are reasonably necessary to protect the interests of the authority and its customers, as may be recommended by the executive director and approved by the board;

(2) include payment terms that fully reimburse the authority for its actual costs incurred to design, construct, and maintain the Authority Encasement; and

(3) be competitively neutral and nondiscriminatory among similarly situated users of the Encasement Protected ROW.

(c) A requirement of this section that directly conflicts with another law relating to use of authority right-of-way for a Utility Facility shall be subject to the provisions of the other law to the extent of such conflict.

Article 5. MONUMENTS ON AUTHORITY RIGHT-OF-WAY

301.035 Definitions

In this article:

(1) a "monument" is a freestanding sign or structure that identifies a local government;

(2) a "local government" is a city, county, or other Texas political subdivision whose jurisdiction includes authority right-of-way; and

(3) "guidelines" are standards promulgated and adopted by the executive director to implement the requirements of this article.

301.036 Requirements

(a) A monument shall:

(1) be located in right-of-way between the outer limit of the authority's right-of-way and an existing or planned authority frontage road;

(3) display only the local government's name, logo, graphic, seal, slogan associated with the community, or any combination thereof as desired by the local government;

(4) be designed and maintained to be consistent with the community design context established and maintained by the authority at and near the monument location, including appropriate size, scale, and landscaping;

(5) be designed and maintained in a manner that does not create a distraction or safety issue for those who operatxe a vehicle on an authority roadway; and

(6) be removed by the local government at its expense no later than 60 days after the executive director provides written notice to the local government that the board, after notice to the local government, has determined that the best interests and operational needs of the authority require removal of the monument.

301.037 **Application**

(a) A local government that seeks to install a monument shall file an application with the authority that includes the following:

(1) the name of the local government and the name, title, mailing address, telephone numbers, and email address of the person authorized to file the application on behalf of the local government;

(2) an agreement to pay all costs incurred by the authority in its review and processing of the application for board consideration;

(3) an agreement to pay all costs related to the design, installation, maintenance, and removal of the monument, as set forth in the license agreement promulgated under Section 301.039; and

(4) a detailed description of the proposed monument establishing that the monument, as constructed and maintained as proposed, will comply with the requirements of this article and the guidelines.

(b) The executive director may adopt and revise guidelines to implement this article, an application form, and other requirements to facilitate processing of an application under this section.

301.038 **Board Approval**

After considering the recommendation of the executive director, the board may approve an application for a monument if the board, in its sole discretion, determines the proposed monument complies with the requirements established by this article and the guidelines. The Board in its sole discretion may waive compliance with a standard established by the guidelines, and may condition its approval of a proposed monument on a standard or requirement specific to a proposed monument:

301.039 **License Agreement and Financial Requirement**

(a) A local government that installs a monument is responsible for all costs related to the design, construction, maintainence, and removal of the monument and associated landscaping.

(b) Before a local government may begin the installation of an approved monument, the local government shall:

(1) enter into a license agreement in the form promulgated by the executive director that establishes the respective obligations of the local government and the authority relating to the monument; and

(2) pay all costs incurred by the authority to review and process the application.

Chapter 4: PROCUREMENT OF GOODS AND SERVICES

Article 1. GENERAL

401.001 Statement of General Policy.

It is the policy of the authority that all authority procurements shall be based solely on economic and business merit in order to best promote the interests of the citizens of the counties served by the authority.

401.002 Definitions.

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Available bidding capacity: Bidding capacity less uncompleted work under a construction or building contract.

(2) Bid or quote: The response to a request for the pricing of products, goods, or services (other than professional services or certain consulting services) that the authority proposes to procure.

(3) Bid documents: Forms promulgated by the authority which the bidder completes and submits to the authority to document the bidder's bid on a contract to be let by the authority. Bid documents promulgated by the authority for a procurement will include the following information:

(A) the location and description of the proposed work;

(B) an estimate of the various quantities and kinds of work to be performed and/or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed;

(E) any special provisions and special specifications; (vi) the amount of bid guaranty, if any, required; and

(F) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises, in accordance with the authority's policies regarding such participation.

(4) Bid guaranty: The security designated in the bid documents for a construction or building contract to be furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

(5) Bidder: An individual, partnership, limited liability company, corporation or any combination submitting a bid or offer of goods or services.

(6) Bidding capacity: The maximum dollar value a contractor may have under a construction or building contract at any given time, as determined by the authority.

(7) Building contract: A contract for the construction or maintenance of an authority building, toll plaza, or appurtenant facilities.

(8) Comprehensive Development Agreement: An agreement entered into and subject to the requirements of Subchapter B, Article 7 of this chapter. [Amended by Resolution No. 12-021, March 28, 2012]

(9) Construction contract: A contract for the construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project.

(10) Consulting service: The service of advising or preparing studies or analyses for the authority under a contract that does not involve the traditional relationship of employer and employee. Except in connection with comprehensive development agreements consulting services may not be procured under a construction or building contract. Consulting services are not professional services or general goods and services as defined by this chapter.

(11) Counties of the Authority: Travis and Williamson Counties, as well as any counties which may subsequently join the authority.

(12) Emergency: Any situation or condition affecting a transportation project resulting from a natural or man-made cause, which poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the safe and efficient flow of traffic and commerce or which has caused unforeseen damage to machinery, equipment or other property which would substantially interfere with or prohibit the collection of tolls in accordance with the authority's bonding obligations and requirements.

(13) Executive director: The executive director of the authority or any individual designated by the Board to act as the chief administrative officer of the authority.

a transportation project, funded in whole or in part with funds provided by the government of the United States or any department thereof.

(15) General goods and services: Goods, services, equipment, personal property and any other item procured by the authority in connection with the fulfillment of its statutory purposes that are not procured under a construction or building contract or that are not consulting services or professional services as defined by this chapter.

(16) Highway: A road, highway, farm-to-market road, or street under the supervision of a state or political subdivision of the State.

(17) Intermodal hub: A central location where cargo containers can be easily and quickly transferred between trucks, trains and airplanes.

(18) Lowest best bidder: The lowest responsible bidder on a contract that complies with the authority's criteria for such contract, as described in this chapter.

(20) Mathematically unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

(21) Official newspaper of the authority: A general circulation newspaper published in the counties of the authority. If there are multiple newspapers which are published in the counties of the authority, the board shall designate which one is the official newspaper of the authority.

(22) Professional services: Services which political subdivisions of the State must procure pursuant to the Professional Services Procurement Act, which are services defined by state law of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing, or services provided in connection with the employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse. Except in connection with a comprehensive development agreement professional services may not be procured under a construction or building contract.

(23) Professional Services Procurement Act: Subchapter A, Chapter 2254. Government Code, as amended from time to time.

(24) Public Utility Facility: A

(A) water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit and wireless communications facilities.

(25) Salvage property: Personal property (including, without limitation, supplies, equipment, and vehicles), other than items routinely discarded as waste, that through use, time, or accident is so damaged, used, consumed, or outmoded that it has little or no value to the authority.

(26) Surplus property: Personal property (including, without limitation, supplies, equipment, and vehicles) that is not currently needed by the authority and is not required for the authority's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

(27) State: The State of Texas.

(28) System: A transportation project or a combination of transportation projects designated as a system by the board in accordance with Section 370.034, Transportation Code.

(29) Transportation Project: Includes a(n):

(A) turnpike project;

(B) system;

(D) roadway with a functional classification greater than a local road or rural minor collector;

(E) ferry;

(F) airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) pedestrian or bicycle facility;

(H) intermodal hub;

(I) automated conveyor belt for the movement of freight;

(J) border crossing inspection station;

(K) air quality improvement initiative;

(L) public utility facility;

(M) a transit system; and

(N) projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact.

(30) Turnpike Project: A highway of any number of lanes, with or without grade separations, owned or operated by the authority and any improvement, extension or expansion to the highway, including:

(A) an improvement to relieve traffic congestion or promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the board considers necessary to operate the project;

(D) property rights, easements and interests the board acquires to construct or operate the project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the board considers necessary, useful, or beneficial for the operation of a turnpike project; and

(31) TxDOT: The Texas Department of Transportation.

401.003 **Conflict of Interest.**

(a) In addition to any other requirements or restrictions imposed by state law, a director or an employee or agent of the authority shall not:

(1) contract with the authority or, without disclosure and recusal, be directly or indirectly interested in a contract with the authority or the sale of property to the authority;

(2) accept or solicit any gift, favor, or service that might reasonably tend to influence that director, employee or agent in the making of procurement decisions or that the director, employee or agent knows or should have known is being offered with the intent to influence the director's, employee's or agent's making of procurement decisions; or

(3) accept other compensation that could reasonably be expected to impair the director's, employee's or agent's independence of judgment in the making of procurement decisions.

(b) A bidder shall not be eligible to contract with the authority if a director, employee or agent is related to the bidder within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code. A bidder shall be required to complete a conflict of interest disclosure statement disclosing any business or familial relationships with directors, employees or agents of the authority which may disqualify the bidder from consideration.

401.004 Disadvantaged Business Participation; Compliance With Policy.

Disadvantaged Business Enterprises will be encouraged to participate in the procurement process. If the authority adopts a policy regarding Disadvantaged Business Enterprises, all procurements shall comply with such policy.

401.005 Dispute Resolution Procedures

The authority shall have the general ability and authority, when negotiating the terms and conditions of any contract to be entered into with any entity, to negotiate for the inclusion of dispute resolution procedures in such contract. Such dispute resolution procedures may vary from contract to contract, provided that, at a minimum, the procedures require that a meeting of principles, mediation, and/or formal alternative dispute resolution procedures be followed before any party may file suit against, or initiate an arbitration proceeding against, the authority for an alleged breach of contract claim.

401.006 Emergency Procurements

(a) Emergency Procurement Procedures. The authority may employ alternate procedures for the expedited award of construction contracts and to procure goods and services to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with the foregoing rules. Types of work which may qualify for emergency contracts include, but are not limited to, emergency repair or reconstruction of streets, roads, highways, building, facilities, bridges, toll collection systems and other authority property; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards.

(b) Before a contract is awarded under this section, the executive director or his designee must certify in writing the fact and nature of the emergency giving rise to the award.

(c) To be eligible to bid on an emergency construction and building projects, a contractor must be qualified to bid on TxDOT construction or maintenance contracts or be pre-qualified by the authority to bid on authority construction or building contracts.

(d) A bidder need not be qualified or pre-qualified by the authority to be eligible to bid on emergency non-construction or non-building projects.

(e) After an emergency is certified, if there are three or more firms qualified to bid on the contract as reflected by the authority's files, the authority will send bid documents for the work to at least three qualified contractors. The authority will notify recipients of the bid documents of the date and time by which the bids must be submitted and when the bids will be opened, read, and tabulated. The authority will also notify the recipients of any expedited schedule and information required for the execution of the contract. Bids will be opened, read, and tabulated, and the contract will be awarded, in the manner provided in the other sections of this chapter as required to procure construction or goods and services, as the case may be.

Article 2. STATE COOPERATIVE PURCHASING PROGRAMS AND INTERGOVERNMENTAL AGREEMENTS

401.007 State of Texas CO-OP Purchasing Program.

Pursuant to and in accordance with Section 2155.204, Government Code, and Subchapter D, Chapter 271, Local Government Code, the authority may request the Texas Comptroller of Public Accounts to allow the authority to participate on a voluntary basis in the program established by the comptroller by which the comptroller performs purchasing services for local governments.

401.008 Catalog Purchase of Automated Information Systems.

Pursuant to and in accordance with Chapter 2157, Government Code, the authority may utilize the catalogue purchasing procedure established by the comptroller with respect to the purchase of automated information systems.

401.009 Cooperative Purchases.

Pursuant to and in accordance with Subchapter F, Chapter 271, Local Government Code, the authority may participate in one or more cooperative purchasing programs with local governments or local cooperative programs.

401.010 Interlocal Agreements with TxDOT.

Subject to limitations imposed by general law, the authority may enter into inter-local agreements with TxDOT to procure goods and services from TxDOT.

401.011 Effect of Procurements under this Article.

Purchases made through the comptroller, a cooperative program or by interlocal agreement shall be deemed to have satisfied the procurement requirements of this chapter and shall be exempted from a procurement requirement contained in another article of this chapter.

Article 3. GENERAL GOODS AND SERVICES

401.012 Approval of Board.

(a) Every procurement of general goods and services costing more than $50,000 shall require the approval of the board, evidenced by a resolution adopted by the board.

(b) A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

401.013 Purchase Threshold Amounts.

(a) The authority may procure general goods and services costing $50,000 or less by such method and on such terms as the executive director determines to be in the best interests of the authority.

(b) General goods and services costing more than $50,000 shall be procured using competitive bidding or competitive sealed proposals.

(c) A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

401.014 Competitive Bidding Procedures.

Competitive bidding for general goods and services shall be conducted using the same procedures specified for the competitive bidding of construction contracts, except that:

(1) with respect to a particular procurement, the executive director may waive the qualification requirements for all prospective bidders;

(2) the executive director may waive the submission of payment or performance bonds (or both) and/or insurance certificates by the successful bidder if not otherwise required by law;

(3) notice of the procurement shall be published once at least two weeks before the deadline for the submission of responses in the officially designated newspaper of the authority, as well as on the authority's website (www.ctrma.org).

(4) in addition to advertisement of the procurement as set forth in subsection 7.3(c) above, the authority may solicit bids by direct mail, telephone, Texas Register publication, advertising in other locations, or via the Internet. If such solicitations are made in addition to newspaper advertising, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that the advertisement has appeared on the authority's website (www.ctrma.org); and

(5) a purchase may be proposed on a lump-sum or unit price basis. If the authority chooses to use unit pricing in its notice, the information furnished to bidder must specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

401.015 **Award Under Competitive Bidding.**

(a) Contracts for general goods and services procured using competitive bidding shall be awarded to the lowest best bidder based on the same criteria used in awarding construction contacts, together with the following additional criteria:

(1) the quality and availability of the goods or contractual services to be provided and their adaptability to the authority's needs and uses; and

(2) the bidder's ability to provide, in timely manner, future maintenance, repair parts, and service for goods being purchased.

(b) In accordance with Subchapter A, Chapter 2252, Government Code, the authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

401.016 **Competitive Sealed Proposals.**

(a) Request for Proposals. The authority may solicit offers for provision of general goods and services by issuing a request for proposals ("RFP"). Each RFP shall contain the following information :

(2) an estimate of the various quantities and kinds of services to be performed and/or materials to be furnished;

(3) a schedule of items for which unit prices are requested;

(4) the time within which the contract is to be performed;

(5) any special provisions and special specifications; and

(6) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises. The authority shall give public notice of a RFP in the manner provided for requests for competitive bids for general goods and services.

(b) Opening and Filing of Proposals; Public Inspection. The authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors. The authority shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as public information.

(c) Revision of Proposals. After receiving a proposal but before making an award, the authority may permit an offeror to revise its proposal to obtain the best final offer. The authority may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. The authority may not disclose information derived from proposals submitted from competing offerors. The authority shall provide each offeror an equal opportunity to discuss and revise proposals.

(d) Refusal of All Proposals. The authority shall refuse all proposals if none of those submitted is acceptable.

(e) Contract Execution. The authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the authority elects otherwise. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may elect not to contract with the first choice candidate, and at the exclusive option of the authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked offeror if the authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the authority.

401.017 **Proprietary Purchases.**

If the executive director finds that the authority's requirements for the procurement of a general good or service describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the authority may solicit a bid for the general good or service solely from the proprietary vendor, without using the competitive bidding or competitive proposal procedures. The executive director shall justify in writing the authority's requirements and shall submit the written justification to the board. The written justification must:

(2) state the reason competing products are not satisfactory; and

(3) provide other information requested by the board.

Article 4. CONSULTING SERVICES

401.018 Contracting for Consulting Services.

The authority may contract for consulting services if the executive director reasonably determines that the authority cannot adequately perform the services with its own personnel.

401.019 Selection Criteria.

The authority shall base its selection on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

401.020 Contract Amounts.

(a) The authority may procure consulting services anticipated to cost no more than $50,000 by such method and on such terms as the executive director determines to be in the best interests of the authority. Without limiting the foregoing, the executive director may procure consulting services anticipated to cost no more than $50,000 pursuant to a "single-source contract," if the executive director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the authority at a reasonable fee and within the time limitations required by the authority.

(b) Consulting services anticipated to cost more than $50,000 shall be procured by the authority's issuance of either a Request for Qualifications ("RFQ") or a Request for Proposals ("RFP") as the authority deems appropriate.

401.021 Request for Qualifications.

Each RFQ prepared by the authority shall invite prospective consultants to submit their qualifications to provide such services as specified in the RFQ. Each RFQ shall describe the services required by the authority, the criteria used to evaluate proposals, and the relative weight given to the criteria. In procuring consulting services through issuance of a RFQ, the authority shall follow the notices set forth in Section 401.0326 of these policies for the procurement of professional services.

401.022 Request for Proposals.

(a) Each RFP shall contain the following information:

(1) the authority's specifications for the service to be procured;

(2) an estimate of the various quantities and kinds of services to be performed;

(4) the time within which the contract is to be performed;

(5) any special provisions and special specifications; and

(6) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises. The authority shall give public notice of a RFP in the manner provided for requests for competitive bids for general goods and services.

(b) In procuring consulting services through issuance of a RFP, the authority shall follow the notices set forth in Section 401.014 for the procurement of general goods and services.

401.023 **Notice of RFQs and RFPs.**

(a) Notice of the issuance of a RFQ or RFP must provide:

(1) the date, time, and place where responses to the RFQ or RFP will be opened,

(2) the address and telephone number from which prospective proposers may request the RFQ or RFP, and

(3) a general description of the type of services being sought by the authority.

(b) Alternatively, the authority may publish and otherwise distribute, in accordance with these procedures, the RFQ or RFP itself in lieu of publishing a notice of issuance of a RFQ or RFP.

(c) The authority shall publish the notice of issuance of a RFQ or RFP on its website and shall either:

(1) publish notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, in an issue of the Texas Register; or

(2) publish in the officially designated newspaper of the authority notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, once at least two weeks before deadline for the submission for responses in the officially designated newspaper of the authority.

(d) The authority may, but shall not be required to, solicit responses to a RFQ or RFP by direct mail, telephone, advertising in trade journals or other locations, or via the Internet. With regard to RFPs, if such solicitations are made in addition to the required publications, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that notice of the RFP has been made available on the authority's website.

(e) The date specified in the RFQ or RFP as the deadline for submission of responses may be extended if the executive director determines that the extension is in the best interest of the authority.

401.024 Opening and Filing of Responses; Public Inspection.

The authority shall avoid disclosing the contents of each response to a RFQ on opening the response and during negotiations with competing respondents. The authority shall file each response in a register of responses, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as an open record.

401.025 Contract Negotiation and Execution.

(a) With regard to consulting services procured through issuance of a RFQ, the authority shall submit a written contract to the respondent (the "first choice candidate") whose response best satisfies the authority's selection criteria. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may terminate negotiations with the first choice candidate, and, at the exclusive option of the authority, the authority may enter into contract negotiations with the respondent ("second choice candidate") whose response is the next most favorable to the authority. If agreement is not reached with the second choice candidate, the process may be continued with other respondents in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked respondent if the authority determines that none of the remaining responses is acceptable or that continuing with the procurement is not within the best interest of the authority.

(b) With regard to consulting services procured through issuance of a RFP, the authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the authority elects otherwise. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may elect not to contract with the first choice candidate, and at the exclusive option of the authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked offeror if the authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the authority.

401.026 Single-Source Contracts.

If the executive director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the

authority at a reasonable fee and within the time limitations required by the authority, consulting services from that consultant may be procured without issuing a RFQ or RFP. Provided, however, that the executive director shall justify in writing the basis for classifying the consultant as a single-source and shall submit the written justification to the board. The justification shall be submitted for board consideration prior to contracting with the consultant if the anticipated cost of the services exceeds $50,000. If the anticipated cost of services does not exceed $50,000, the executive director, with the prior approval of the Executive Committee, may enter into a contract for services and shall submit the justification to the board at its next regularly scheduled board meeting.

401.027 **Prior Employees.**

Except as otherwise provided by state or federal law or for those employment positions identified in a resolution of the board, nothing shall prohibit the authority from procuring consulting services from an individual who has previously been employed by the authority or by any other political subdivision of the state or by any state agency; provided, that if a prospective consultant has been employed by the authority, another political subdivision, or a state agency at any time during the two years preceding the making of an offer to provide consulting services to the authority, the prospective consultant shall disclose in writing to the authority the nature of his or her previous employment with the authority, other political subdivision, or state agency; the date such employment was terminated; and his or her annual rate of compensation for the employment at the time of termination.

401.028 **Mixed Contracts.**

This article applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

Article 5. PROFESSIONAL SERVICES

401.029 General.

Except as otherwise permitted by Chapter 370, Transportation Code, the authority shall procure all professional services governed by the Professional Services Procurement Act in accordance with the requirements of that Act. In the event of any conflict between these policies and procedures and the Act, the Act shall control.

401.030 Selection of Provider; Fees.

(a) The authority may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award based on the provider's:

(1) demonstrated competence and qualifications to perform the service, including pre-certification by TxDOT; and

(2) ability to perform the services for a fair and reasonable price.

(b) The professional fees under the contract:

(1) may be consistent with and must not be higher than the recommended practices and fees published by any applicable professional associations and which are customary in the area of the authority; and

(2) may not exceed any maximum provided by law.

401.031 Request For Qualifications.

(a) In order to evaluate the demonstrated competence and qualifications of prospective providers of professional services, the authority shall invite prospective providers of professional services to submit their qualifications to provide such services as specified in a Request for Qualifications ("RFQ") issued by the authority.

(b) Each RFQ for professional services shall describe the services required by the authority, the criteria used to evaluate proposals, and the relative weight given to the criteria.

401.032 Notice of RFQs.

(1) the date, time, and place where responses to the RFQ will be opened,

(2) the contact or location from which prospective professional service providers may request the RFQ, and

(3) a general description of the type of professional services being sought by the authority.

(b) Alternatively, the authority may publish or otherwise distribute, in accordance with these procedures, the RFQ itself in lieu of publishing a notice of RFQ. Neither a notice of a RFQ for professional services, nor any RFQ itself shall require the submission of any specific pricing information for the specific work described in the RFQ, and may only require information necessary to demonstrate the experience, qualifications, and competence of the potential provider of professional services.

(c) The authority shall publish on its website (www.ctrma.org) all notices of the issuance of a RFQ and/or the entirety of the RFQ itself at least two weeks prior to the deadline for the responses.

(d) The authority may also publish notice of the issuance of a RFQ, or the content of the RFQ itself, in an issue of the *Texas Register*, and in newspapers, trade journals, or other such locations as the authority determines will enhance competition for the provision of services.

(e) The date specified in the RFQ as the deadline for submission of responses may be extended if the executive director determines that the extension is in the best interest of the authority.

401.033 **Contract for Professional Services.**

(a) In procuring professional services, the authority shall:

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of professional services, the authority shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The authority shall continue the process described in this section to select and negotiate with providers until a contract is entered into or until it determines that the services are no longer needed or cannot be procured on an economically acceptable basis.

Article 6. CONSTRUCTION AND BUILDING CONTRACTS

401.034 Competitive Bidding.

A contract requiring the expenditure of public funds for the construction or maintenance of the authority's transportation projects may be let by competitive bidding in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria for such contract, and such bidder shall constitute the lowest best bidder in accordance with this article. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this article.

401.035 Qualification of Bidders.

A potential bidder must be qualified to bid on construction contracts of the authority. Unless the authority elects, in its sole discretion, to separately qualify bidders on a construction project, only bidders qualified by TxDOT to bid on construction or maintenance contracts of TxDOT will be deemed qualified by the authority to bid on the authority's construction contracts. At its election, the authority may waive this section with respect to bidders on building contracts.

401.036 Qualifying with the Authority.

(a) If, in its sole discretion, the authority elects to separately qualify bidders on a construction project, the authority will require each potential bidder not already qualified by TxDOT to submit to the authority an application for qualification containing :

(1) a confidential questionnaire in a form prescribed by the authority, which may include certain information concerning the bidder's equipment, experience, references as well as financial condition;

(2) the bidder's current audited financial statement in form and substance acceptable to the authority; and

(3) a reasonable fee to be specified by the authority to cover the cost of evaluating the bidder's application.

(b) An audited financial statement requires examination of the accounting system, records, and financial statements of the bidder by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements and conformity with generally accepted accounting principles.

(c) Upon the recommendation of the executive director and with the concurrence of the board, the authority may waive the requirement that a bidder's financial statement be audited if the

estimated amount of the contract is one-million dollars ($1,000,000.00) or less. A bidder with no prior experience in construction or maintenance shall not receive a bidding capacity of more than one hundred thousand dollars ($100,000.00).

(d) The authority will advise the bidder of its qualification and approved bidding capacity or of its failure to qualify. A bidder qualified by the authority will remain qualified at its approved bidding capacity for 12 months from the date of the bidder's financial statement; provided, however, that the authority may require updated audited information at any time if circumstances develop which might alter the bidder's financial condition, ownership structure, affiliation status, or ability to operate as an ongoing concern, and the authority may revoke or modify the bidder's qualification and approved bidding capacity based on such updated information. All such decisions concerning bidder qualifications shall be at the authority's sole discretion.

401.037 **Notice of Contract Letting**

(a) Each notice of contract letting must provide :

(1) the date, time, and place where contracts will be let and bids opened;

(2) the address and telephone number from which prospective bidders may request bid documents; and

(3) a general description of the type of construction, services, or goods being sought by the authority.

(b) The authority shall post a notice of contract letting and any addenda to a notice on its website (www.ctrma.org) for at least two weeks before the date set for letting of a contract.

(c) Notice of a contract letting for a federal-aid project shall also be published in the officially designated newspaper of the authority no later than three weeks before the date set for letting of the contract.

(d) The authority may also publish notice of contract lettings in the *Texas Register*, trade publications, or such other places that the authority determines will enhance competition for the work.

(e) The date specified in the notice may be extended if the executive director, in his or her sole discretion, determines that the extension is in the best interest of the authority. All bids, including those received before an extension is made, must be opened at the same time.

401.038 **Bid Documents.**

The authority will prepare a set of bid documents for each construction or building contract to be let through the procedures of this article.

401.039 **Issuance of Bid Documents.**

(a) Except as otherwise provided in this article, the authority will issue bid documents for a construction contract or building contract upon request and only after proper notice has been given regarding the contract letting.

(b) A request for bid documents for a federal-aid project must be submitted in writing and must include a statement in a form prescribed by the authority certifying whether the bidder is currently disqualified by an agency of the federal government as a participant in programs and activities involving federal financial and non-financial assistance and benefits.

(c) A request for bid documents for any other construction or building contract may be made orally or in writing.

(d) Unless otherwise prohibited under this article, the authority will, upon receipt of a request, issue bid documents for a construction contract as follows:

(1) to a bidder qualified by TxDOT, if the estimated cost of the project is within that bidder's available bidding capacity as determined by TxDOT;

(2) to a bidder qualified by the authority, if the estimated cost of the project is within that bidder's available bidding capacity as determined by the authority; and

(3) to a bidder who has substantially complied with the authority's requirements for qualification, as determined by the authority.

401.040 **Withholding Bid Documents.**

The authority will not issue bid documents for a construction contract if:

(1) the bidder is suspended or debarred from contracting with TxDOT or the authority;

(2) the bidder is prohibited from rebidding a specific project because of default of the first awarded bid;

(3) the bidder has not fulfilled the requirements for qualification under this article, unless the bidder has substantially complied with the requirements for qualification, as determined by the authority;

(4) the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or

(5) the bidder or its subsidiary or affiliate has received compensation from the authority to participate in the preparation of the plans or specifications on which the bid or contract is based.

401.041 Completion and Submission of Bid Documents.

(a) At the option of the authority, a pre-bid conference may be held before opening bids to allow potential bidders to seek clarification regarding the procurement and/or the bid documents. Alternatively, bidders may submit written requests for clarification.

(b) Bidders shall complete all information requested in bid documents by typing, printing by computer printer, or printing in ink. The bidder shall submit a unit price, expressed in numerals, for each item for which a bid is requested (including zero dollars and zero cents, if appropriate), except in the case of a regular item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates. Unit prices shown on acceptable computer printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded.

(c) Each set of bid documents shall be executed in ink in the complete and correct name of the bidder making the bid and shall be signed by the person or persons authorized to bind the bidder.

(d) If required by the bid documents, the bidder must submit a bid guaranty with the bid. The bid guaranty shall be in the amount specified in the bid documents, shall be payable to the authority, and shall be in the form of a cashier's check, money order, or teller's check issued by a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank"). The authority will not accept cash, credit cards, personal checks or certified checks, or other types of money orders. Bid bonds may be accepted at the sole discretion of the authority. Failure to submit the required bid guaranty in the form set forth in this subsection shall disqualify a bidder from bidding on the project described in the bid documents.

(e) A bid on a federal-aid project shall include, in a form prescribed by the authority, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds; such certification shall cover the three-year period immediately preceding the date of the bid. Information adverse to the bidder as contained in the certification will be reviewed by the authority and by the Federal Highway Administration, and may result in rejection of the bid and disqualification of the bidder.

(f) The bidder shall place each completed set of bid documents in a sealed envelope which shall be clearly marked "Bid Documents for _____" (name of the project or service). When

submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received at the location designated in the notice on or before the hour, as established by the official clock of the authority, and date set for the receipt. The official clock at the place designated for receipt of bids shall serve as the official determinant of the hour for which the bid shall be submitted and shall be considered late.

401.042 **Revision of Bid by Bidder.**

(a) A bidder may change a bid price before it is submitted to the authority by changing the price and initialing the revision in ink.

(b) A bidder may change a bid price after it is submitted to the authority by requesting return of the bid in writing prior to the expiration of the time for receipt of bids. The request must be made by a person authorized to bind the bidder.

(c) The authority will not accept a request by telephone, telegraph, or electronic mail, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

401.043 **Withdrawal of Bid.**

(a) A bidder may withdraw a bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder.

(b) The authority will not accept telephone, telegraph, or electronic mail requests, but will accept a properly signed facsimile request.

401.044 **Acceptance, Rejection, and Reading of Bids.**

(a) Bids will be opened and read at a public meeting held at the time, date and place designated in the notice. Only the person so designated by the authority shall open bids on the date specified in the notice, or as may have been extended by direction of the executive director.

(b) The authority, acting through the executive director or the executive director's designee, will not accept and will not read a bid if:

(2) the bid is in a form other than the official bid documents issued to the bidder;

(3) the form and content of the bid do not comply with the requirements of the bid documents and/or subsection 5.8;

(4) the bid, and if required, federal-aid project certification, are not signed;

(5) the bid was received after the time or at some location other than specified in the notice or as may have been extended;

(6) the bid guaranty, if required, does not comply with subsection 5.8;

(7) the bidder did not attend a specified mandatory pre-bid conference, if required under the bid documents;

(9) the bidder was not authorized to be issued a bid under this article;

(10) more than one bid involves a bidder under the same or different names.

401.045 **Tabulation of Bids.**

(a) Except for lump sum building contracts bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts. Bid entries such as "no dollars and no cents" or "zero dollars and zero cents" will be interpreted to be one-tenth of a cent ($.001) and will be entered in the bid tabulation as $.001. Any entry less than $.001 will be interpreted and entered as $.001.

(b) If a bidder submits both a completed set of bid documents and a properly completed computer printout of unit bid prices, the authority will use the computer printout to determine the total bid amount of the bid. If the computer printout is incomplete, the authority will use the completed bid documents to determine the total bid amount of the bid. If a bidder submits two computer printouts reflecting different totals, both printouts will be tabulated, and the authority will use the lowest tabulation.

(c) If a unit bid price is illegible, the authority will make a documented determination of the unit bid price for tabulation purposes. If a unit bid price has been entered for both the regular bid and a corresponding alternate bid, the authority will determine the option that results in the lowest total cost to the authority and tabulate as such. If both the regular and alternate bids result in the same cost to the authority, the authority will select the regular bid item or items.

401.046 **Award of Contract.**

(a) Except as otherwise provided in this article, if the authority does not reject all bids, it will award the contract to the lowest best bidder.

(b) In determining the lowest best bidder, in addition to price the authority shall consider:

(1) the bidder's ability, capacity, and skill to perform the contract or provide the service required;

(2) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;

(3) the bidder's character, responsibility, integrity, reputation, and experience;

(4) the quality of performance by the bidder of previous contracts or services;

(5) the bidder's previous and existing compliance with laws relating to the contract or service; and

(6) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.

401.047 **Rejection of Bids; Nonresident Bidders.**

(a) The authority, acting through the executive director or his designee, may reject any and all bids opened, read, and tabulated under this article. It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the low bid is determined to be both mathematically and materially unbalanced;

(3) the lowest best bid is higher than the authority's estimate and the authority determines that re-advertising the project for bids may result in a significantly lower low bid or that the work should be done by the authority; or

(4) the board, acting on the recommendation of the executive director, determines, for any reason, that it is in the best interest of the authority to reject all bids.

(b) In accordance with Subchapter A, Chapter 2252, Government Code, the authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

401.048 **Bid Protests.**

(a) All protests relating to advertising of bid notices, alleged improprieties or ambiguities in bid documents, deadlines, bid openings and all other bid-related procedures must be made in writing and submitted to the executive director within five days of the bid opening. Each protest must include the following:

(1) the name and address of the protester, and the vendor it represents, if different;

(2) the identification number, reference number, or other identifying criteria specified in the bid documents to identify the procurement in question;

(3) a statement of the grounds for protest; and

(4) all documentation supporting the protest.

(b) A decision and response to the protest will be prepared by the executive director within a reasonable time after receipt of a properly prepared written protest.

(c) Appeals of responses and decisions regarding protests must be made to the board in writing, and must be filed with the executive director of the authority, with a copy to the chairman of the board, within ten days after the response and decision regarding the original protest are issued. Written appeals shall include all information contained in the original written protest, as well as any newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed. Subject to all applicable laws governing the authority, the decision of the board regarding an appeal shall be final.

401.049 **Contract Execution; Submission of Ancillary Items.**

(a) Within the time limit specified by the authority, the successful bidder must execute and deliver the contract to the authority together with all information required by the authority relating to the Disadvantaged Business Enterprises participation to be used to achieve the contract's Disadvantaged Business Enterprises goal as specified in the bid documents and the contract.

(b) After the authority sends written notification of its acceptance of the successful bidder's documentation to achieve the Disadvantaged Business Enterprises goal, if any, the successful bidder must furnish to the authority within the time limit specified by the authority:

(1) a performance bond and a payment bond, if required and as required by Chapter 2253, Government Code, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law;

(2) a certificate of insurance on form ACORD-27 showing coverages in accordance with contract requirements; provided, however, that a successful bidder on a routine construction contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the authority's order to begin work.

401.050 **Unbalanced Bids.**

The authority will examine the unit bid prices of the apparent low bid for reasonable conformance with the authority's estimated prices. The authority will evaluate, and may reject, a bid with extreme variations from the authority's estimate, or where obvious unbalancing of unit prices has occurred.

401.051 **Bid Guaranty.**

(a) Not later than seven days after bids are opened, the authority will mail the bid guaranty of all bidders to the address specified on each bidder's bid documents, except that the authority will retain the bid guaranty of the apparent lowest best bidder, second-lowest best bidder, and third-lowest best bidder, until after the contract has been awarded, executed, and bonded.

(b) If the successful bidder (including a second-lowest best bidder or third-lowest best bidder that ultimately becomes the successful bidder due to a superior bidder's failure to comply with these rules or to execute a contract with the authority) does not comply with subsection 5.16 the bid guaranty will become the property of the authority, not as a penalty but as liquidated damages, unless the bidder effects compliance within seven days after the date the bidder is required to submit the bonds and insurance certificate under subsection 5.16.

(c) A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty and the board, upon request made in writing by bidder and received at such time that the board may consider the request at a regularly scheduled board meeting prior to the due date for the bids approves of the submission of a bid by the bidder.

401.052 **Progress Payments; Retainage and Liquated Damages.**

(a) In addition to other provisions required by the authority, construction and building contracts will provide for the authority to make progress payments, which shall be reduced by retainage, as work progresses and is approved by the authority.

(b) Retainage shall be in the amount of five percent of the contract price until the entire work has been completed and accepted. Unless the authority agrees otherwise in writing, retainage shall not bear interest or be segregated from other authority funds. If the authority agrees to segregate retainage in an interest-bearing account, the authority may impose terms and conditions on such arrangement, including but not limited to, the following:

(1) retained funds must be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas and approved by the authority;

(2) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(3) the authority may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(4) any other terms and conditions prescribed by the authority as necessary to protect the interests of the authority.

(c) Without limiting the authority's right to require any other contract provisions, the authority, at its sole discretion, may elect to require that a liquidated damages provision be made a part of any contract it enters into.

Article 7. DESIGN-BUILD CONTRACT; COMPREHENSIVE DEVELOPMENT AGREEMENT

Subchapter A. DESIGN-BUILD PROCUREMENT

401.300 Design-Build Contract for a Transportation Project

(a) The authority may use the design-build method to procure the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project. In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(b) The authority may enter into not more than two design-build contracts in any fiscal year.

(c) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

401.301 Definitions

In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which the authority contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a transportation project.

401.302 Procurement Process

(a) The authority must solicit proposals for a design-build contract under this subchapter.

(b) The Professional Services Procurement Act, Chapter 2254, Government Code, does not apply to a design-build contract.

401.303 Use of Engineer or Engineering Firm and Other Professional Services

(a) The authority must select or designate an engineer or a qualified engineering firm that is independent of the design-build contractor to act as the authority's representative during the procurement of a design-build contract.

(b) The engineer representative selected or designated under this section may be:

(1) an engineer that is an employee of the authority;

(2) the authority's general engineering consultant, if any; or

(3) a qualified engineer or engineering firm hired by the authority pursuant to the Professional Services Procurement Act, Chapter 2254, Government Code.

(c) The authority must provide or contract for, independently of the design build contractor, the following services as necessary for acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(d) The authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications, in accordance with applicable law.

401.304 Requests for Qualifications

(a) The authority must solicit proposals for a design-build contract by issuing a Request for Qualifications ("RFQ").

(b) The authority shall publish a notice advertising the issuance of the RFQ in the *Texas Register* and on the authority's website, and shall publish the RFQ on the authority's website.

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

401.305 Withdrawal of an RFQ

The authority may withdraw an RFQ at any time.

401.306 Evaluation of Responses to an RFQ

(a) If the authority receives only one responsive proposal to an RFQ, the authority shall terminate the procurement.

(b) The authority shall evaluate each qualifications statement received in response to an RFQ based on the criteria identified in the request.

(c) The authority may interview responding proposers.

(d) Based on the evaluation of qualifications statements and interviews, if any, the authority shall qualify or short-list at least two, but no more than five, proposers to submit detailed proposals.

401.307 Requests For Detailed Proposals

(a) The authority shall issue a request for detailed proposals ("RFDP") to proposers qualified or short-listed under Section 401.306.

(b) Before issuing an RFDP under this section, the authority may issue a draft RFDP to the proposers eligible under Subsection (a) for purposes of receiving their input.

(c) An RFDP must include:

(1) information on the overall project goals;

(2) the authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that the authority is not required to undertake an effort to locate utilities;

(8) the location of relevant structures;

(9) notice of authority rules or goals relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required by Section 401.309, including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required by this section and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal;

(14) the criteria and weighting for each element of the technical proposal;

(15) the risks and costs that should be assumed by the design-build contractor, including

(A) all risks and costs associated with:

(i) scope changes and modifications, as requested by the authority;

(ii) unknown or differing site conditions;

(iii) environmental clearance and other regulatory permitting for the project; and

(iv) natural disasters and other force majeure events; and

(B) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project;

(16) a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution; and

(17) the deadline established by Section 401.310

401.308 **Alternative Technical Concepts**

(a) The authority may provide for the submission of alternative technical concepts by a proposer in the response to the RFDP.

(b) If the authority provides for the submission of alternative technical concepts, the authority must prescribe the process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

401.309 Separate Technical and Cost Proposals

(a) Each response submitted to an RFDP shall include a sealed technical proposal and a separate sealed cost proposal.

(b) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 401.304;

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(c) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

401.310 Deadline for Response to RFDP

401.306.

401.311 Withdrawal of an RFDP

(a) The authority may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the authority shall have no liability to the entities chosen to submit detailed proposals.

(b) If the authority provides for the submission of ATCs and/or VACs, the authority shall establish a process for submission and review of ATCs and/or VACs prior to submission of a technical proposal. Only those ATCs and/or VACs approved by the authority may be included in an

entity's technical proposal. The authority shall notify a proposer whether its ATCs and/or VACs are approved for inclusion in the technical proposal.

(c) The authority may conduct meetings with or interview proposers submitting a response to an RFDP.

401.312 Unapproved Changes to Team

The authority may reject as nonresponsive a proposal from a proposer qualified or short-listed under Section 401.306 that makes a significant change to the composition of the proposer's design-build team as initially submitted if that change was not approved by the authority as provided in the RFQ.

401.313 Evaluation and Ranking of Responses to an RFDP

(a) The authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the RFDP and assign points on the basis of the weighting specified in the request for detailed proposals.

(b) After completing the scoring required by Subsection (a), the authority shall subsequently open, evaluate, and score each cost proposal based on criteria set forth in the RFDP and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

(c) The authority shall then rank the proposers in accordance with the formula provided in the RFDP.

401.314 Stipend for Unsuccessful Proposers

(a) Pursuant to the provisions of the RFDP, the authority shall pay an unsuccessful proposer that submits a responsive proposal to the RFDP a stipend for work product contained in the proposal. The stipend must be specified in the initial RFDP in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in determining value.

(b) After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal.

(c) The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this section.

(d) The authority may provide in the RFDP for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

401.315 Contract Negotiations

(a) After ranking the proposers under Section 401.313, the authority shall first attempt to negotiate a contract with the highest-ranked proposer.

(b) If the authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

(c) If the authority has committed in the RFDP to paying a stipend to unsuccessful proposers in accordance with Section 401.314, the authority may include in the negotiations alternative technical concepts proposed by other proposers.

(d) The authority may establish a deadline for the completion of negotiations with a proposer for a design-build contract. If a design-build contract has not been executed by that deadline, the authority may terminate the negotiation under Subsection (b) or, at its discretion, may extend the deadline for negotiating a design-build contract with that proposer.

(e) Notwithstanding the foregoing, the authority may terminate the procurement process at any time upon a determination that continuation of the process or development of a project through a design-build contract is not in the authority's best interest. If the procurement process is terminated after the deadline for responses to the RFDP under Section 401.310, the authority shall have no liability to any proposer other than paying the stipend in accordance with the terms of Section 401.314.

401.316 Performance and Payment Security

(a) The authority shall require a design-build contractor to provide:

(1) a performance and payment bond;

(2) an alternative form of security; or

(3) a combination of a performance and payment bond and alternative security.

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract that includes design services only.

(e) The authority may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or

(4) any other form of security determined suitable by the authority.

Subchapter B. COMPREHENSIVE DEVELOPMENT AGREEMENTS

401.350 **Comprehensive Development Agreement Allowed**

(a) The authority may enter into a comprehensive development agreement (a "CDA") for a transportation project authorized by state law in accordance with requirements and procedures established by this subchapter.

(b) The authority may enter into a CDA with a private entity that, at a minimum:

(1) provides for the design and construction of a transportation project;

(2) may provide for the financing, acquisition, maintenance, or operation of a transportation project; and

(3) entitles the private entity to:

(A) a leasehold interest in the transportation project; or

(B) the right to operate or retain revenue from the operation of the transportation project.

(c) The authority may negotiate provisions relating to professional and consulting services provided in connection with a CDA.

401.351 **Confidentiality of Negotiations for a CDA**

(a) The authority shall use its best efforts to protect the confidentiality of information made confidential by Sections 370.307 and 371.052(d), Transportation Code, as established by state law and detailed in Subsection (b).

(b) The following information in the possession of the authority or its agents is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed CDA project is entered into:

(1) all or part of a proposal submitted by a private entity for a CDA, except:

(A) information regarding the proposed transportation project's location, scope, and limits; and

(B) information regarding the proposing private entity's qualifications, experience, technical competence, and capability to develop the project;

(2) supplemental information or material submitted by a private entity in connection with a proposal submitted under this subchapter; and

(3) information created or collected by an authority or its agent during consideration of a proposal submitted under this subchapter, including without limitation financial forecasts and traffic and revenue reports prepared by or for the authority before the authority enters into a CDA.

(c) After the authority completes its final ranking of proposals under Section 401.358, the final rankings of each proposal under each of the published criteria are not confidential.

(d) After the authority enters into a CDA, financial forecasts and traffic revenue reports prepared by or for the authority before it entered into the CDA are public information.

401.352 Competitive Procurement Process for a CDA

(a) The authority may consider an unsolicited proposal to enter into a CDA or may solicit proposals for a CDA in accordance with this subchapter.

(b) The competitive bidding requirements for highway projects as specified under Chapter 223, Transportation Code, and Chapter 2254, the Texas Professional Services Procurement Act, Government Code, do not apply to a CDA.

401.353 Filing an Unsolicited Proposal for a CDA

(a) An unsolicited proposal for a CDA filed with the authority shall comply with the requirements and procedures established by this section.

(b) An unsolicited proposal filed with the authority must include a $20,000.00 non-refundable review fee payable to the authority.

(c) An unsolicited proposal must also include the following information:

(1) the proposed transportation project location, scope, and limits;

(2) information regarding the proposing private entity's qualifications, experience, technical competence, and capability to develop the project;

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs;

(B) proposed sources of funds; and

(4) the name and business address of each person and business entity with a substantial interest in the business entity that is the proposing private entity filing the unsolicited proposal, as the terms "business entity" and "substantial interest" are defined under Chapter 171, Government Code, and the name and business address of each consultant or subconsultant the private entity anticipates using if the private entity develops the proposed project.

401.354 Review of an Unsolicited Proposal

(a) An unsolicited proposal shall be reviewed by the executive director, who may interview, and who may request additional information from, the proposing private entity. Based on that review, the executive director shall make a recommendation to the board on whether the board should consider further evaluation of the unsolicited proposal.

(b) If the board authorizes further evaluation of an unsolicited proposal, then the board shall direct the executive director to issue an RFQ under Section 401.355.

401.355 Authority Solicitation of Requests for Qualifications

(a) Under this subchapter, the authority may solicit proposals for a CDA to develop a transportation project or for competing proposals to an unsolicited proposal filed with the authority by issuing an RFQ relating to the transportation project.

(b) The authority shall publish a notice advertising the issuance of the RFQ in the *Texas Register* and on the authority's website, and shall publish the RFQ on the authority's website.

(c) An RFQ issued under this section shall include the following:

(1) a description of the project;

(A) the private entity's qualifications, experience, technical competence, and capability to develop the project;

(B) the private entity's proposed financial plan for the proposed project that includes, at a minimum:

(i) projected project costs; and

(ii) proposed sources of funds; and

(3) the criteria to be used by the authority to evaluate proposals received in response to the RFQ;

(4) the relative weight given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

(d) A proposal submitted in response to an RFQ issued under this section must include, at a minimum, the information required to be submitted under Subsection (c)(2), and, if the RFQ solicits competing proposals to an unsolicited proposal filed under Section 401.353, the fee required by Section 401.353(b).

(e) The authority may withdraw the RFQ at any time, and may then publish a new RFQ for a CDA in accordance with this section.

401.356 **Evaluation of the Responses to a Request for Qualifications**

(a) The executive director shall review each response received to an RFQ issued under Section 401.355

(b) After completing the review, the executive director shall make a recommendation to the board on whether the board should consider further evaluation of a CDA for the project.

(c) If the board decides to proceed with further evaluation of a CDA for the project, the board shall direct the executive director to issue a request for detailed proposals (an "RFDP") under Section 401.357.

(d) If the authority has received and reviewed more than one proposal from a private entity under Section 401.353, Section 401.355, or both, the board shall qualify at least two private entities to respond to the RFDP issued under Section 401.357.

(e) If only one private entity has filed a proposal with the authority under this subchapter, the board may request a response from the sole private entity to an RFDP issued under Section 401.357.

401.357 **Request for Detailed Proposals**

(a) Before issuing an RFDP, the authority may solicit input from all private entities qualified under Section 401.356 and from any other person.

(b) The authority shall issue an RFDP to all private entities qualified under Section 401.356. The authority shall mail or hand deliver the RFDP directly to the private entity.

(1) instructions for preparing the proposal and the items included therein;

(2) the criteria to be used by the authority to evaluate the detailed proposals, including factors related to:

(A) oversight of the toll project;

(B) maintenance and operations costs of the toll project;

(C) the structure and rates of tolls;

(D) economic development impacts of the toll project;

(E) benefits and impacts of the toll project; and

(F) any other factors the authority determines appropriate;

(3) the relative weight to be given to the criteria;

(4) a stipulated amount to be paid to unsuccessful proposers subject to Section 401.362, if any, including any terms and conditions relating to payment of the stipulated amount;

(5) the general form of a CDA sought by the authority, including any matters relating to the CDA the authority considers advantageous to the authority; and

(6) the date and time by which the detailed proposal must be received by the authority.

(d) An RFDP under this subchapter may require the private entity to provide additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) costing methodology; and

(6) any other information the authority considers relevant or necessary to fully assess the private entity's proposal.

(e) The RFDP may require a responding private entity to submit a sealed technical proposal and a separate, sealed cost proposal.

(f) The authority may withdraw an RFDP at any time. In such event the authority shall have no liability to a private entity chosen to submit a detailed proposal, except as may be specified in the RFDP regarding a stipulated amount offered under Subsection (c)(4) and Section 401.362.

(g) After the authority has issued an RFDP under this section, the authority may solicit input regarding alternative technical concepts.

401.358 Evaluation and Ranking of Detailed CDA Proposals

The authority shall evaluate and rank each detailed proposal received based on the criteria described in the RFDP and shall identify the private entity whose proposal offers the best value to the authority. The authority may interview the private entities as part of its evaluation process.

(a) After the authority has evaluated and ranked the detailed proposals in accordance with Section 401.358, the authority may enter into discussions with the private entity whose proposal offers the apparent best value provided, The discussions under this section shall be limited to:

(1) incorporation of aspects of other detailed proposals for the purpose of achieving the overall best value for the authority;

(2) clarifications and minor adjustments in scheduling, designs, operating characteristics, cash flow, and similar items; and

(3) other matters that have arisen since the submission of the detailed proposal.

(b) If at any point in discussions under Subsection (a), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may end discussions with the highest-ranking private entity and enter into discussions with the private entity submitting the next-highest ranking proposal.

(c) The authority may withdraw a request issued under Section 401.357 at any time. The authority may then publish a new request for competing proposals and qualifications under Section 401.355.

401.360 **Negotiations for CDA**

(a) Subsequent to the discussions conducted pursuant to Section 401.359 and provided the authority has not terminated or withdrawn the procurement, the authority and the highest-ranking proposer shall attempt to negotiate the specific terms of a CDA.

(b) The authority shall prescribe the general form of the CDA and may include any matter therein considered advantageous to the authority.

(c) The authority may establish a deadline for the completion of negotiations for a CDA. If an agreement has not been executed within that time, the authority may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(d) In the event an agreement is not negotiated within the time specified by the authority, or if the parties otherwise agree to cease negotiations, the authority may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing a CDA for the project which is the subject of the procurement process.

(e) Notwithstanding the foregoing, the authority may terminate the procurement process, including the negotiations for a CDA, at any time upon a determination that continuation of the process or development of a project through a CDA is not in the authority's best interest. In such event, the authority shall have no liability to any proposer other than paying the stipend in accordance with the terms of Section 401.362 if detailed proposals have been submitted to the authority.

401.361 **Property Subject to a CDA**

(a) A transportation project (excluding a public utility facility) that is the subject of a CDA is public property and belongs to the authority.

(b) The authority may lease rights-of-ways, grant easements, issue franchises, licenses, permits or any other lawful form of use to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of any such agreement, the transportation project shall be returned to the authority in a state of maintenance deemed adequate by the authority and at no additional cost to the authority.

(a) The authority may pay an unsuccessful private entity that submits a response to an RFDP issued under Section 401.357 a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A stipulated amount may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an

unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this section.

(b) After payment of a stipulated amount under Subsection (a):

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

401.363 **Performance and Payment Security**

(a) The authority shall require any private entity entering into a CDA under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) insure the proper performance of the agreement; and

(2) protect:

(3) the authority; and

(4) payment bond beneficiaries who have a direct contractual relationship with the private entity and subcontractors of the private entity who supply labor or materials.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or alternative form of security.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) If the authority prescribes requirements for alternative forms of security, in addition to performance and payment bonds the authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

401.364 **Review by Attorney General**

(a) The authority may not enter into a CDA unless the Texas Attorney General reviews the proposed agreement and determines the CDA is legally sufficient, in accordance with Subchapter B, Chapter 371, Transportation Code.

(b) The authority may require the private entity who intends to enter into a CDA with the authority to pay the examination fee assessed by the attorney general for the legal sufficiency review required by Section 371.051, Transportation Code.

Article 8. BUSINESS OPPORTUNITY PROGRAM AND POLICY

401.067 Purpose

In accordance with state and federal law, the authority is required to facilitate and assure the participation of disadvantaged and small businesses in the authority's procurement process. The authority is also generally required to procure its goods and services and construction contracts through a competitive bid process. To facilitate compliance with federal and state laws regarding disadvantaged businesses and competitive bid procurement, the board adopted Resolution No. 03-60, which establishes the Disadvantaged Business Enterprise ("DBE") Policy Statement and this Business Opportunity Program and Policy ("BOPP"). The BOPP incorporates the policies and objectives of state and federal laws, and establishes goals that attempt to monitor and encourage disadvantaged and small businesses to participate in the process and award of governmental contracts. The BOPP will consist of two separately administered programs: (1) the DBE Program; and (2) the Small Business Enterprise (SBE) Program.

401.068 Applicability

The policies, procedures and contract clause(s) established under the BOPP apply to authority procurements, bidders and recipients of contracts, and to related subcontracts, to the extent that these provisions are not inconsistent with state or federal law or other rules and regulations.

401.069 Policy Statement and Objectives Of Business Opportunity Program

(a) It is the policy of the authority to ensure that disadvantaged businesses, as defined in 49 C.F.R. Part 26 and under this BOPP, have an equal opportunity to receive and participate in contracts. It is the policy of the authority never to exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. In administering its BOPP, the authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of federal and state law with respect to individuals of a particular race, color, sex, or national origin. In implementing these policies and objectives, the authority will strive to ensure that the DBE Program is narrowly tailored in accordance with applicable law.

(b) This program also incorporates the DBE Policy Statement adopted by the board in Resolution No. 03-60, dated November 5, 2003.

401.070 Administration of Business Opportunity Program

The DBE and SBE programs will be administered through and in accordance with the BOPP. All authority departments, personnel, and/or consultants having or sharing responsibility for awarding contracts and/or making procurements, will support and assist in promoting and carrying out this

BOPP. Examples of such departments, or consultant services, include Administration, Engineering, Information Technology, Maintenance, Contract Management, Legal, and Purchasing.

401.071 **BOPP Liaison Officer**

The executive director will appoint a BOPP Liaison Officer who will report directly to the executive director regarding the implementation, status and compliance with the BOPP. The BOPP Liaison Officer's duties for this BOPP include, but are not limited to, the following:

(1) implementing, coordinating, administering and monitoring the BOPP;

(2) developing and presenting annual and other reports as may be requested by the executive director or board;

(3) coordinating and conducting outreach efforts with other authority departments, TxDOT, FHWA and other agencies;

(4) educating and advising the staff as necessary for effective implementation of the BOPP, and the DBE and SBE programs;

(5) developing and maintaining procedures to ensure that disadvantaged businesses are afforded an equitable opportunity to compete on all contracts by providing assistance and opportunities through workshops and trade fairs, distributing handbooks, conducting pre-bid/pre-proposal conferences, and assuring timely dissemination of bid/contract information;

(6) developing, administering and enforcing policies, standards, definitions, criteria and procedures to govern the implementation, interpretation, and application of the BOPP in a manner that is designed to achieve its purposes;

(7) assuring that listings or directories of SBEs are developed, maintained and available to persons seeking to do business with the authority;

(8) receiving and reviewing inquiries and making recommendations concerning the DBE and/or SBE programs, including concerns about violations and/or abuse of the DBE and/or SBE programs;

(10) considering and evaluating whether efforts for DBE and SBE utilization by contractors satisfy the good faith requirements of the BOPP;

(11) recommending, in cooperation with other departments, appropriate DBE and/or SBE goals and any program changes, which may be appropriate to improve the overall effectiveness of the BOPP;

(12) ensuring that appropriate provisions of the DBE and/or SBE Program are included in bid proposals and contract specifications;

(13) periodically reviewing applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly DBEs and SBEs, to bid more competitively on all contracts;

(14) compiling information to determine the level of DBE and/or SBE utilization; and

(15) reviewing contracting requirement and recommending modification of requirements, where appropriate, that may tend to create barriers for minority, women owned and small businesses.

401.072 **Departmental Responsibilities**

All authority departments, and consultants, when applicable, will cooperate with the BOPP Liaison Officer in the implementation of the goals and intent of this BOPP. However, certain departments and consultants will have particular responsibilities because of their procurement activity. Examples of such departments and consultant services include Engineering, Information Technology, Maintenance and Purchasing. These responsibilities for this BOPP include, but are not limited to, the following:

(1) assisting the BOPP Liaison Officer in gathering information to determine the availability of qualified disadvantaged businesses, as defined in this BOPP;

(2) assisting and participating in workshops, trade fairs, outreach seminars, and other similar programs designed to identify and increase the participation of disadvantaged businesses in authority projects;

(3) working with the BOPP Liaison and other departments and coordinating with TxDOT, where appropriate, in establishing BOPP goals;

(5) ensuring that applicable provisions of the DBE and/or SBE programs are included in bid proposals and specifications and in contracts awarded;

(6) assisting in evaluating whether there are opportunities to present bid packages and requests for proposal in a manner that provides DBEs and/or SBEs a maximum opportunity for competitive participation; and

(7) ensuring that purchasing procedures are consistent with the BOPP.

401.073 **Outreach**

The authority will maintain and participate in outreach programs that are designed to maximize the opportunities for disadvantaged and small businesses to contract with the authority. The outreach efforts will include, but not be limited to, one or more of the following:

(1) Website: The authority's official website will include information about its procurement process and how to do business with the authority.

(2) Notice Of Bidding Opportunities: The authority will advertise bidding opportunities in accordance with the Procurement Policy. The authority may advertise in newspapers or other publications that target small, minority-owned, and/or woman-owned businesses. The authority will take reasonable steps to include disadvantaged and small businesses on its mailing lists for the receipt of bid documents.

(3) Assistance In Bidding Process: Upon request, the authority will assist small, minority-owned, and woman-owned businesses by providing them information regarding bid specifications, contracting opportunities, and prerequisites for bidding on authority contracts.

(4) Structure Of Bidding Opportunities: When determined to be feasible, the authority will structure its solicitations for bid proposals so that they include bidding opportunities for businesses of varying sizes and delivery schedules and encourage opportunities for disadvantaged and small businesses.

(5) Simplification Or Reduction Of Bonding Requirements: When determined to be feasible, the authority will simplify or reduce bonding and financing requirements to encourage disadvantaged and small business participation.

(6) Directory For Prime Contractors: The authority will utilize and refer contractors to the DBE participant directories developed and maintained by TxDOT, to directories maintained by other agencies, and may prepare and maintain one or more of its own directories of disadvantaged and small businesses. The authority will make the directory(ies) available to its prime contractors and known potential prime contractors, and encourage prime contractors to subcontract with the disadvantaged and small businesses.

(7) Encouragement Of Joint Ventures: The authority may encourage joint ventures between and with businesses that qualify as disadvantaged and small businesses by providing access to it directories.

(8) Use Of Financial Institutions: The authority will make reasonable efforts to use small, woman-owned or minority-owned financial institutions. The authority will encourage prime contractors to use such institutions.

(9) TxDOT/FHWA Programs: The authority will use and cooperate with programs administered by TxDOT in its DBE Program.

401.074 **Program Monitoring**

The authority will keep track of disadvantaged and small business participation in contracts, including those with and without specific contract goals. "Participation" by disadvantaged and small businesses for this purpose means that payments have actually been made to the disadvantaged and/or small business. The record will show the commitments and attainments as required by 49 C.F.R. § 27.37. The BOPP Liaison Officer will monitor the authority's progress toward its annual overall goal as may be required by law or the executive director. Progress toward the federal DBE Program goal will be calculated in accordance with 49 C.F.R. § 26.55.

401.075 **Program Inquiries**

Any questions about the Programs or Policies, including allegations about possible violation and/or abuse of the Programs or Policies, must be submitted to the BOPP Liaison Officer.

401.076 **Directories and Designations of Disadvantaged Businesses**

As part of the authority's efforts to identify and ensure participation of disadvantaged and small businesses on projects, the authority will rely on listings (directories) of certified small, woman-owned and minority-owned businesses maintained by TxDOT and other entities and governmental units that satisfy the authority's certification requirements, including the Texas Unified Certification Program for Federal DBE Certification, as administered through TxDOT and the City of Austin's Department of Small and Minority Business Resource (as the designated Texas DBE certifying agency for Hays, Travis, Williamson, Caldwell and Bastrop Counties), or any other recognized certification that the authority finds acceptable.

401.077 **General Requirements of Contractors/Vendors:**

(when requested by the authority) sufficient for the authority to determine the following to effectuate a waiver of applicable BOPP requirements:

(1) That it is a normal business practice of the contractor/vendor to perform the elements of the contract with its own work forces without the use of subcontractors;

(2) That the technical nature of the proposed project does not facilitate subcontracting nor any significant supplier opportunities in support of the project; and/or;

(3) That the contractor/vendor in fact has demonstrated its capabilities to perform the elements of the contract with its own work forces without the use of subcontracts.

(b) The authority may also require the same demonstration by contractors/vendors who propose to perform a contract with the authority that is subject to the SBE Program.

(c) Payment Of Subcontractors In A Timely Manner: Each contract the authority signs with a prime contractor/vendor will also contain provisions with regard to the timely payment of subcontractors as required by 49 C.F.R. § 26.29. The following language is an example of the type of language to be included, however, such language may be subject to modification and approval by TxDOT:

> The contractor agrees to pay its subcontractors for satisfactory performance of their contracts no later than 30 days from its receipt of payment from the authority. The contractor shall also promptly return any retainage payments to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the authority. This clause applies to payments to all subcontractors.

(d) Reasonable Efforts To Use Local DBE/SBE Financial Institutions: Prime contractors subject to the DBE Program will also be encouraged to make reasonable efforts to identify and use financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities pursuant to 49 C.F.R. § 26.27.

(e) Approval For Replacement of DBE: A contactor must obtain approval from the authority to substitute another firm for a DBE firm listed on an approved commitment and demonstrate written justification for the substitution, for example, that the original firm is unable or unwilling to carry out the terms of the contract.

401.078 **DBE Program**

The authority is required, as a condition of receiving federal financial assistance for transportation projects, to provide certain assurances that it will comply with 49 C.F.R. Part 26, which requires the creation of a DBE Program that applies to contracts, including roadway construction contracts and

related purchases, funded in whole or in part with federal funds received from the United States Department of Transportation ("DOT"), including funds received through the Federal Highway Administration ("FHWA"), or funded in whole or in part with such federal funds received by the authority through the Texas Department of Transportation ("TxDOT"). To comply with the federal regulations, the authority may elect to adopt the federally approved TxDOT DBE Program pursuant to 49 C.F.R. § 26.45(c)(4) and the Recreational Trails Program Guidance (Revised 2 June 2000) of the DOT. The authority may agree to a Memorandum of Understanding ("MOU") between the authority, TxDOT and the FHWA concerning the authority's adoption and operation of its DBE program under TxDOT's DBE program for contracts involving federal assistance.

401.079 **Definitions**

The following are definitions of terms used in this article based primarily on definitions found in 49 C.F.R. § 26.5:

(1) Aspirational Goal: A level of SBE participation that the authority will strive to achieve which may be based upon a numeric formula or other milestones.

(2) Availability: The calculated estimate of qualified small business enterprises in a particular trade and/or profession. In defining availability of small business enterprises, a common sense approach with respect to geographical basis, customs that apply to firms and logistics of timely completion of work orders are taken into consideration.

(3) Bidder/Proposer: Any person, firm, partnership, corporation, association or joint venture as herein provided seeking to be awarded an contract, award or lease by a competitive process.

(4) Business Enterprise: Any legal entity which is organized to engage in lawful commercial transactions and is actively engaged in such transactions as a means of livelihood, such as a sole proprietorship, partnership or corporation, but not a joint venture except as hereinafter provided.

(5) Commercially Useful Function: Means the DBE/SBE is responsible for a distinct element of the work of a contract and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations related to the satisfactory completion of the contracted work.

(6) Contract: An award by the authority whereby the authority expends or commits the expenditure of its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(7) Contractor: One who participates through a contract or subcontract in a transportation construction project.

(8) DBE Goal: A flexible target determined by the authority and/or TxDOT, in accordance with the requirements and formulas set forth in 49 C.F.R. Part 26, and applicable rules promulgated thereunder, based on estimates of the availability of qualified and certified disadvantaged business enterprises ("DBEs") in the applicable marketplace, and known circumstances and conditions. In no case will a goal be construed as constituting a quota.

(9) Disadvantaged Business: A minority-owned, woman-owned, or otherwise economically disadvantaged small business in general, used in this BOPP to refer to both DBEs and SBEs, as may be more particularly defined by certifying agencies.

(10) Disadvantaged Business Enterprise ("DBE"): A for-profit small business enterprise:

(A) which is at least 51.0 percent owned, as defined herein, by one or more Socially and Economically Disadvantaged Individual(s), or, in the case of any publicly owned business, at least 51.0 percent of the stock of which is owned by one or more Socially and Economically Disadvantaged Individual(s); and

(B) whose management and daily business operations are controlled, as defined herein, by one or more of the Socially and Economically Disadvantaged Individual(s) who own it; and

(C) which receives appropriate certification status through the appropriate federally-designated or approved DBE certification agency.

The Texas Unified Certification Program, administered by TxDOT, is the certifying agency for businesses within the state of Texas.

(11) Good Faith Efforts: Efforts to achieve a goal or other requirements that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the BOPP.

(12) Joint Venture: An association of two or more persons, partnerships, corporations or any combination thereof, founded to carry on a single business activity, which is limited in scope and duration. The degree to which a joint venture may satisfy the stated DBE goal cannot exceed the proportionate interest of the DBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture for which the DBE contractor is to perform 50.0 percent of the contract work itself shall be deemed equivalent to having DBE participation of 50.0 percent of the work. DBE member(s) of the joint venture must have financial, managerial, or technical skills in the work to be performed by the joint venture.

(13) Minority Business Enterprise (MBE): A business enterprise that is owned and controlled by one or more minority person(s). Minority persons include the ethnic categories listed under the definition of "Socially and Economically Disadvantaged Individuals" in this section. The MBE must also satisfy the owned and controlled provisions set forth in the definitions of

"Disadvantaged Business Enterprise" and "Socially and Economically Disadvantaged Individuals."

(14) Prime Contractor: Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded an contract or agreement.

(15) Professional Services: Those Services as defined by Chapter 2254, Professional Services Procurement Act, Government Code.

(16) Race-and-Gender Conscious: Describes a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

(17) Race-and-Gender Neutral: Describes a measure or program that is, or can be, used to assist all small businesses.

(18) Small Business Concern: As defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business shall not include any business or group of businesses controlled by the same Socially and Economically Disadvantaged Individual(s) which has annual average gross receipts in excess of the standards established by the Small Business Administration's regulation under 13 C.F.R. Part 121 for a consecutive three-year period. However, no firm is considered small if, including its affiliates, it averages annual gross receipts in excess of $16.6 million per year over the previous three fiscal years. The definition of "Small Business Concern" applies only to federal DBE certification, and not to the authority state SBE program set forth in Section 401.087.

(19) Small Business Enterprise: A business is considered a "Small Business Enterprise" for purposes of the BOPP if it meets the definition of "small business concern" as set forth in Section 3 of the U.S. Small Business Act. This provision defines a "small business concern" as any business concern (including those limited to enterprises engaged in the business of production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries) which is independently owned and operated and which is not dominant in its field of operation. 13 C.F.R. § 121.201 sets forth the "size standards, " in either number of employees or average annual receipts, that define the maximum size that a concern, together with all of its affiliates, may be to be eligible for federal small business programs. The Small Business Administration organizes these specific size standards according to North American Industry Classification System (NAICS) Codes, as published in the Small Business Administration's "Table of Small Business Size Standards."

(20) Socially and Economically Disadvantaged Individuals: As included in 49 C.F.R. Part 26, individuals who are citizens of the United States (or lawfully admitted permanent residents), and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small

Business Act, or individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. There shall be a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged, and DBE Program officials may also determine, on a case-by-case basis, that individuals who are not members of one of the following groups are socially and economically disadvantaged :

(A) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(B) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

(C) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

(D) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, and the U.S. Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(E) "Subcontinent Asian Americans," which include persons whose origins are from India, Pakistan and Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;

(F) "Women;" and

(G) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(21) Subcontractor: Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract with a prime contractor on a contract.

(23) Women Business Enterprise (WBE): A business enterprise that is owned and controlled by one or more females. The WBE must also satisfy the owned and controlled provisions under the definition of "Disadvantaged Business Enterprise" in .

401.080 **DBE Program Adoption.**

(a) This DBE Program is created pursuant to 49 C.F.R. Part 26 and applies only to procurements that are federally-assisted and only until such time that all funds from DOT have been expended. As a sub-recipient of federal funds through TxDOT, the authority may establish a distinct federal DBE Program, or may comply with the federal regulations by adopting the federally approved TxDOT DBE Program.

(b) In order to facilitate the administration of the federal DBE requirements, the authority, and TxDOT may enter into a Memorandum of Understanding (MOU) to establish the obligations and responsibilities of the authority, TxDOT and FHWA in each agency's collective efforts to abide by and implement the policies and objectives of the federal DBE regulations. Should the authority adopt the TxDOT DBE Program, it will conduct its DBE Program in accordance with the MOU that is adopted by the board and incorporated herein for all purposes pursuant to 49 C.F.R. § 26.45(c)(4). If the MOU requirements are inconsistent with the DBE Program requirements, the MOU will govern.

401.081 **DBE Certification**

The authority will ensure that only businesses certified as DBEs are allowed to participate as DBEs in its DBE Program. To be certified as a DBE, a business must meet the definition of Disadvantaged Business Enterprises as set forth in Section 401.079 and the certification standards set forth at 49 C.F.R. Part 26, Subpart D. The authority will recognize DBE certification by TxDOT, the Texas Unified Certification Program, and the City of Austin Department of Small and Minority Business Resources (as the Federal DBE certifying entity for Hays, Travis, Williamson, Caldwell, and Bastrop Counties), and other agencies, to the extent approved by TxDOT to process applications for DBE certification.

401.082 **DBE Goal Setting/DBE Annual Goal :**

(a) Process For Establishing DBE Goal: The authority will establish a DBE participation goal following the process set forth in 49 C.F.R. § 26.45 or the MOU. The authority will not use quotas in any way in the administration of this article.

(b) Race- and Gender-Neutral And Race- and Gender-Conscious Participation: The authority will meet the maximum feasible portion of its overall goal by using race- and gender-neutral efforts of facilitating DBE participation. The authority will adjust the estimated percentage of race- and gender-neutral and race- and gender-conscious participation as needed to reflect actual DBE participation and will track and report race- and gender-neutral and race- and gender-conscious participation separately. For reporting purposes, race- and gender-neutral DBE participation is defined in this BOPP.

(c) Race- and Gender-Neutral Efforts To Achieve Annual DBE Goals: Race-and gender-neutral DBE participation exists when a DBE:

(1) wins a prime contract through customary competitive procurement procedures;

(2) is awarded a subcontract on a prime contract that does not carry a DBE goal; or

(3) is awarded a subcontract on a prime contract that carries a DBE goal if the prime contractor awarded the subcontract without regard to DBE status.

401.083 DBE Contract Goals

Contract goals may be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the authority's overall DBE goal that is not projected to be met through the use of race- and gender-neutral efforts. Contract goals may be set only if the authority determines that it will not meet its annual overall DBE participation goal by race and gender neutral efforts, and that the contract at issue will have subcontracting opportunities. In this event, contract goals shall be set in accordance with 49 C.F.R. § 26.51(e), (f) and (g) and race- and gender-neutral efforts shall be increased to achieve the overall goal. If a contract goal is set, the contract must include provisions requiring the contractor to make good faith efforts to achieve the contract goal and may only be awarded to a bidder who agrees to do so. The authority need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work). The authority will express its DBE contract goals as a percentage of the total contract, including both federal and any other funds; however, for purposes of reporting to the U.S. DOT, emphasis will be placed on the percentage of federal funds that were ultimately paid to DBEs.

401.084 Good Faith Effort

The authority will make a good faith effort to meet or exceed the goal of this DBE Program, using good faith efforts and the race- and gender-neutral methods described in this article. Contractors will be required to make good faith efforts to obtain DBE participation as described in Appendix A to 49 C.F.R. Part 26 and the TxDOT DBE Program, if applicable. The authority will grant no preferences to DBEs in the bidding/contracting process.

401.085 DBE Contractor/Vendor Obligations

(b) Compliance With This Program: Authority contracts that involve federal financial assistance will include a contract provision requiring the contractor:

(1) to encourage the use of DBEs in subcontracting and material supply activities;

(2) to prohibit discrimination against DBEs; and

(3) to provide a method of reporting race-and gender neutral DBE participation.

401.086 Adherence To Equal Opportunity

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

401.087 SBE Program

(a) The SBE Program is created pursuant to Section 370.183, Transportation Code, and applies to all contracts and procurements that do not involve federal financial assistance (i.e. contracts and procurements funded strictly by state, local or private means, or any combination thereof).

(b) The SBE Program applies to contracts and procurements that do not involve federal financial assistance. In accordance with Section 370.183, Transportation Code, the Procurement Policy, and consistent with general law, the authority will:

(1) set goals for the award of contracts to disadvantaged and small businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged and small businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged and small businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

401.088 SBE Certification

(a) The authority will require SBEs to be certified according to its standards, which may vary from the DBE certification. The authority will recognize as certified SBEs certifications for small, minority-owned, women-owned, historically underutilized, and disadvantaged business enterprises.

Such certifications may be provided by one or more of the following agencies or entities: TxDOT; the Texas Unified Certification Program for Federal DBE Certification; the Texas Building and Procurement Commission's Historically Underutilized Business ("HUB") Program Certification; the City of Austin's Department of Small and Minority Business Resources; or any other recognized certification that the authority finds acceptable.

(b) Firms that desire or are required by the authority to be certified for SBE participation must complete and submit a SBE Status Certification Affidavit which identifies the status certification and the group providing the certification. The MWSBE status certification is effective for as long as it is effective with the certifying entity, unless terminated earlier by the authority.

401.089 **SBE Goals**

(a) The authority will identify overall SBE aspirational goals for the construction, professional services, consulting services and other goods and services procurements. The aspirational goal may generally establish a level of participation that the authority will strive to achieve. The aspirational goal may be based upon a numeric formula and/or based on other factors. During the process of developing SBE goals, the authority may review and consider information on the availability of SBEs in the authority's applicable marketplace, as well as any other information and data which the authority believes is pertinent to goal setting.

(b) The overall SBE aspirational goal(s) may be established or reaffirmed on an annual basis and will reflect the authority's commitment to facilitate opportunities for the participation of small business enterprises in the authority procurement process and awards.

(c) The goals may be expressed as a broad and general aspiration, as a percentage of the total estimated dollar amount of all contracts and subcontracts to be awarded during the applicable fiscal year, or as a specific percentage of the dollar amount on a given contract. The goal may reflect the authority's estimate of overall SBE participation that is attainable given available authority SBE resources and the performance of the authority in its efforts to achieve previous goals under the Program.

(d) If contract-specific goals are established, no contract will be executed until the lowest responsible bidder/proposer has achieved or demonstrated an acceptable good-faith effort toward achievement of the SBE goal. If goals are established and are not met, no sanctions will be recommended or imposed provided the successful bidder/proposer can fully demonstrate that he/she made an acceptable good-faith effort, as defined by the authority, to achieve the goals.

401.090 **SBE Contractor/Vendor Obligations**

All contracts and specification packages and requests for bids or proposals will incorporate the following provisions specifically or by reference :

(1) It is the policy of the board that disadvantaged and small businesses will have the maximum practicable opportunity to participate in the awarding of contracts and related subcontracts.

(2) The bidder, proposer, contractor or vendor agrees to employ good-faith efforts to carry out this policy through award of subcontracts to small or disadvantaged business enterprises to the fullest extent consistent with the efficient performance of the contract, and/or the utilization of SBE suppliers where feasible. Authority contractors are expected to make a good faith effort to solicit bids for subcontractors/suppliers from available SBEs.

(3) The bidder, proposer, contractor or vendor specifically agrees to comply with all applicable provisions of the SBE Program, and to include federal requirements when applicable.

(4) The contractor/vendor will maintain records, as specified in his/her contract, showing:

(A) subcontract/supplier awards, specifically to small business enterprises;

(B) specific efforts to identify and award such contracts to small business enterprises; and,

(C) submit, when requested, copies of executed contracts to establish actual SBE participation and how much DBEs were paid.

(5) The contractor/vendor agrees to submit periodic reports of subcontract and/or supplier awards to small business enterprises in such form and manner, and at such time, as the authority shall prescribe and will provide access to books, records and accounts to authorized officials of the authority, state or federal agencies for the purpose of verifying SBE participation and good-faith efforts to carry out this SBE policy. All contractors may be subject to a post-contract SBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future contracts.

(6) The contractor/vendor will appoint an official or representative knowledgeable as to this Policy and Program to administer and coordinate the contractor's efforts to carry out this SBE policy.

(7) Where possible and/or practical, all vendors and/or contractors will make good-faith efforts to subcontract and meet the SBE goal. Contractors may be required to provide documentation demonstrating that they have made good-faith efforts, as defined by the authority, in attempting to do so by submitting an acceptable SBE Utilization Statement. Bidders are required to satisfy applicable SBE Program requirements prior to the award of contract. Bidders that fail to meet these requirements will be considered non-responsive or in non-compliance.

(8) Vendors or contractors will report any changes in proposed or actual SBEs, and will make good-faith efforts to replace SBE subcontractors or subconsultants unable to perform on the contract with another SBE.

(9) Failure or refusal by a bidder, proposer, contractor or vendor to comply with the SBE provisions herein or any applicable provisions of the SBE Program, either during the bidding process or at any time during the term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the authority, may be canceled, terminated or suspended in whole or in part; and, the contractor may be debarred from further contracts with the authority as a non-responsible contractor.

401.091 Compliance With Program

The BOPP Liaison Officer will monitor compliance by all prime contractors with the requirements under these Programs, implement appropriate mechanisms to ensure compliance by all program participants, and verify that the work committed to disadvantaged and small businesses is actually performed by the disadvantaged and/or small business.

401.092 Claims of Program Violations

(a) Allegations about violations and/or abuse should be made in writing and identify the person making the allegation. The BOPP Liaison Officer will review the information presented and take whatever steps he or she determines to be appropriate under the circumstances to resolve the issues raised by the allegation. The BOPP Liaison Officer may conduct an investigation of the allegations. The authority cannot assure complete confidentiality in conducting its investigation, which may require the disclosure of information to other governmental agencies or affected third parties. Allegations that are made anonymously or verbally will be reviewed as is deemed appropriate. It may not be possible to investigate an issue if insufficient information is provided.

(b) Notification of TxDOT, DOT and Other Agencies: The authority will notify TxDOT, FHWA, the DOT and other appropriate agencies of any false, fraudulent, or dishonest conduct in connection with the federal DBE Program, so that TxDOT and/or DOT can take the necessary steps to investigate the alleged conduct as provided in 49 C.F.R. § 26.109.

401.093 Compliance And Severability Clause

(a) It is the intent of the authority to comply with all applicable federal and state laws and regulations and to comply with the TxDOT DBE Program, where applicable. The BOPP will not apply to contracts that are subject to overriding state or federal laws, regulations, policies or guidelines, including those regarding small, minority-owned, or woman-owned businesses. In the event that an apparent conflict arises between the language contained in this Program and federal, state or local law or ordinance, the language will be construed so as to comply with the federal, state or local law or ordinance.

(b) Nothing in this Business Opportunity Program or Policy should be construed as requiring a set-aside or mandatory quota. Any questions regarding the authority's Business Opportunity Program should be directed to the BOPP Liaison Officer.

401.094 **Effective Date**

This Business Opportunity Program and Policy (BOPP) shall become effective on November 5, 2003, and apply to any contract or procurement executed thereafter. The authority shall approve any amendment, modification, or replacement of this BOPP by resolution, with such resolution including either an explicit repeal of specific sections and provisions of this BOPP, or a replacement of this BOPP with entirely new provisions.

Article 9. SOLICITATION OF EMPLOYEE APPLICANTS

401.095 Solicitation Of Employee Applicants

In conjunction with efforts to solicit applicants for available employment positions with the authority, authority staff shall follow the solicitation and application guidelines set forth in this article in order to

(1) provide notice of the employment position opening,

(2) provide a method of allowing potential applicants to receive detailed information regarding particular criteria and requirements for the individual employment position, and

(3) provide information related to any application deadlines or extensions of deadlines.

401.096 Solicitation of Applicants for Professional or Managerial Positions.

(a) In order to reach the largest potential pool of qualified applicants for employment positions that are either professional or managerial in nature, authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for applications for professional or managerial staff positions in the following manner:

(b) Notice of employment position openings with the authority shall be published on the authority's website, and shall include:

(1) employment position title;

(2) a general description of position duties and responsibilities;

(3) educational and prior work experience requirements;

(4) the statement that the authority is an equal opportunity employer;

(5) materials required to be submitted for position applications;

(7) the telephone number for questions regarding the employment position description and/or application process.

(c) Notice of employment position openings with the authority may be published in the officially designated newspaper of the authority, the Texas Register, trade journals, and other sources that the authority determines are appropriate for contacting potentially qualified applicants. In addition, the authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(d) The application deadline specified in the notice of employment position opening may be extended if the executive director determines that the extension is in the best interest of the authority.

401.097 **Solicitation of Administrative or Clerical Applicants.**

(a) Authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for application for administrative or clerical staff positions in the following manner:

(1) Notice of employment position openings with the authority shall be published on the authority's website, and shall include:

(2) employment position title;

(3) a general description of position duties and responsibilities;

(4) educational and prior work experience requirements;

(5) the statement that the authority is an equal opportunity employer;

(6) materials required to be submitted for position applications;

(7) the physical mailing address and/or e-mail address for submitting application materials; and

(9) Notice of employment position openings with the authority may be published in the officially designated newspaper of the authority and in such other places that the authority determines are appropriate for contacting potentially qualified applicants. In addition, the authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(b) The application deadline specified in the notice of employment position opening may be extended if the executive director determines that the extension is in the best interest of the authority.

Article 10. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY

401.098 Sale by Bid or Auction.

The authority may periodically sell the authority's salvage or surplus property by competitive bid or auction. Salvage or surplus property may be offered as individual items or in lots at the authority's discretion.

401.099 Trade-In for New Property.

Notwithstanding subsection 12.1, the authority may offer salvage or surplus property as a trade-in for new property of the same general type if the executive director considers that action to be in the best interests of the authority.

401.100 Heavy Equipment.

If the salvage or surplus property is earth-moving, material-handling, road maintenance, or construction equipment, the authority may exercise a repurchase option in a contract in disposing of such types of property. The repurchase price of equipment contained in a previously accepted purchase contract is considered a bid under subsection (a).

401.101 Sale to State, Counties, etc.

Notwithstanding subsection 12.1 above, competitive bidding or an auction is not necessary if the purchaser is the State or a county, municipality, or other political subdivision of the State. The authority may accept an offer made by the State or a county, municipality, or other political subdivision of the State before offering the salvage or surplus property for sale at auction or by competitive bidding.

401.102 Failure to Attract Bids.

If the authority undertakes to sell property under subsection 12.1. and is unable to do so because no bids are made for the property, the executive director may order such property to be destroyed or otherwise disposed of as worthless. Alternatively, the executive director may cause the authority to dispose of such property by donating it to a civic, educational or charitable organization located in the State.

401.103 Terms of Sale.

All salvage or surplus property sold or otherwise disposed of by the authority shall be conveyed on an “AS IS, WHERE IS” basis. The location, frequency, payment terms, inspection rights, and all other terms of sale shall be determined by the authority in its sole and absolute discretion.

401.104 **Rejection of Offers.**

The authority or its designated representative conducting a sale of salvage or surplus property may reject any offer to purchase such property if the executive director or the authority's designated representative finds the rejection to be in the best interests of the authority.

401.105 **Public Notices of Sale.**

The authority shall publish the address and telephone number from which prospective consultants may request information concerning an upcoming sale in at least two issues of the officially designated newspaper of the authority, or any other newspaper of general circulation in each county of the authority, and the authority may, but shall not be required to, provide additional notices of a sale by direct mail, telephone, or via the internet.

Chapter 5: ENVIRONMENTAL REVIEW FOR PROJECTS

501.001 Purpose.

(a) These procedures are adopted pursuant to Section 370.188, Transportation Code, and are applicable only to transportation projects that are not otherwise subject to review under

(1) the National Environmental Policy Act (NEPA) (42 U.S.C. Section 4321, et seq.); or

(2) environmental review and approval conducted by the Texas Department of Transportation ("TxDOT") or the Texas Transportation Commission (the "Commission").

(b) The policies and procedures are intended to be consistent with the spirit and intent of NEPA.

501.002 Definitions.

The following words and terms, when used in these policies, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Authority Project: For purposes of these policies and procedures, authority projects which are not subject to review under NEPA or the procedures for environmental review and approval adopted and administered by TxDOT or the Commission.

(2) Environmental Document: A decision making document which incorporates environmental studies, coordination, and consultation efforts, and engineering elements. Documents may include categorical exclusion assessments, environmental assessments, and environmental impact statements.

(4) Public Hearing: A hearing held after public notice is provided to solicit public input in determining a preferred alternative for an authority project. All testimony given at a public hearing will be made part of the public hearing record.

(5) Public Involvement: An ongoing phase of the project planning process which encourages and solicits public input, and provides the public the opportunity to become fully informed regarding development of an authority project.

(6) Public Meeting: Informal discussions intended to assist in the preparation of environmental documents. These may be held with local public officials, interested citizens or the general public, and local, neighborhood, or special interest groups for the purpose of exchanging ideas, and collecting input on the need for, and possible alternatives to, a given authority project. Notice of a public meeting will depend upon anticipated audience attendance.

(7) Significantly: This term shall have the same meaning as is used, and has been interpreted, under 42 U.S.C. § 4332 of NEPA.

501.003 Review Of Non-NEPA Authority Projects

(a) Environmental studies for authority projects which are not subject to review under NEPA or are not subject to review and approval through processes administered by TxDOT or the Commission will be accomplished in accordance with these policies and procedures and other applicable state and federal laws including, but not limited to, the Endangered Species Act of 1973, as amended, 16 USC §§ 1531 et seq.; the Rivers and Harbors Act of 1899, as amended, 42 USC §§ 401 et seq.; the Federal Water Pollution Act, as amended, 33 USC § 1251 et seq., 33 CFR Parts 114 through 115; the Safe Drinking Water Act, as amended, 42 USC § 300f et seq.; Chapter 370, Transportation Code. In addition, the authority will coordinate with the Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department in conducting environmental studies under these policies and procedures.

(b) These policies and procedures are intended to establish the minimum guidelines to be followed for environmental review of the authority projects to which they apply. In addition, the authority anticipates utilizing forms of public involvement when feasible, including, without limitation, processes implementing context sensitive design and other processes intended to encourage public involvement.

501.004 Public Involvement

Public involvement shall be encouraged as an important element of authority project planning. It shall be initiated by the authority staff and will depend on, and be consistent with, the type and complexity of each authority project. Authority staff shall use its best efforts to maintain a list of individuals and groups interested in authority project development, and shall provide notification of public hearing activities to these individuals and groups.

501.005 Public Involvement Methods

(a) INFORMAL MEETINGS: Informal meetings, as one form of public involvement, will be held with affected property owners, residents, any known neighborhood associations within the area of the authority project and which have notified the authority in writing of their interest in the project, and affected local governments and public officials, when such projects require:

(1) detours and/or a minimal amount of right-of-way acquisition, or use of temporary construction easements; and

(2) a minor location or design revision after an environmental document for an authority project has been approved and public involvement requirements have previously been completed,

provided that if a location or design revision is deemed by the authority to be significant an additional opportunity for a public hearing will be provided.

(3) Notice of informal meetings, and the time and location of such meetings, will depend upon the nature of the authority project and the number of individuals or entities directly affected by the project.

(b) PUBLIC MEETINGS: Public meetings, as a form of public involvement, will be held:

(A) at any time during project planning and development that the board directs or the authority staff, with the approval of the Executive Committee, deems appropriate in order to keep the public informed;

(B) during the drafting of the draft environmental impact statement, as discussed in Section 501.008;

(C) as early as the authority staff determines feasible to encourage beneficial public input to project planning and consideration of project alternatives;

(D) at a time and place convenient to the public in the vicinity of the authority project; and

(E) pursuant to notice provided by such means as the authority deems appropriate given the scope and magnitude of the project, provided that at a minimum the notice shall be posted on the authority's website. Mailed notice (or email notice in lieu of mailing) shall also be provided to persons or organizations included on any lists of interested parties maintained by the authority for the project, any known neighborhood associations within the area of the authority project and which have notified the authority in writing of their interest in the project, and affected local governments and public officials.

(c) PUBLIC HEARINGS

(1) Permissive Public Hearings. An opportunity for public hearings shall be afforded for authority projects which require or result in:

(A) the acquisition of significant amounts of rights-of-way;

(B) a substantial change in the layout or function of the connecting roadways or of the facility being improved;

(D) there is otherwise a substantial social, economic, or environmental effect which may result from the authority project; or

(E) a finding of no significant impact (FONSI), as discussed in Section 501.007below, with such hearing to be afforded at such time as the environmental assessment is considered technically complete and is initially approved by the board to proceed with public involvement.

(2) The following procedures will be followed for providing notice of an opportunity for a public hearing:

(A) Two notices of the opportunity for public hearing shall be published in local newspaper(s) having general circulation. The first notice shall be published approximately 30 days in advance of the deadline set by the authority for submittal of written requests for holding of public hearings; and the second notice shall be published approximately ten days prior to the deadline date. In the event an authority project is expected to directly affect an area that is predominantly Spanish-speaking, the notices required herein shall be published in a Spanish language newspaper of general circulation in the area of the project, if available.

(B) Notices of the opportunity for public hearing shall also be mailed to landowners abutting the roadway as identified by tax rolls, known neighborhood associations whose boundaries encompass all or part of the authority project and which have notified the authority, in writing, of their interest in the project, and to affected local governments and public officials.

(C) No further action will be taken to hold a public hearing if at the end of the time set for affording an opportunity for a public hearing no requests are received.

(3) Mandatory Public Hearings. For projects with substantial public interest, such as authority projects requiring an environmental impact statement or high profile FONSI authority projects, or when a request for hearing is received as discussed in the preceding paragraph (c)(2)(C), or when the authority project requires the taking of public land designated as a park, recreation areas, wildlife refuge, historic site, or scientific area (as covered in Chapter 26, Parks and Wildlife Code), a public hearing will be held to receive suggestions as to project alternatives; to present project alternatives already considered; and to solicit public comment, and shall be held at such time as location and design studies have been developed and when the public can be given a feasible proposal with appropriate environmental studies. The hearing notice for a public hearing under this subsection shall at a minimum contain the following information:

(A) time, date, and location of the hearing;

(B) description of the project termini, improvements, and right-of-way needs;

(C) reference to maps, drawings, and environmental studies and/or documents, and other information about the project, that are available for public inspection at a designated location;

(D) reference to the potential for relocation of residences and businesses and the availability of relocation assistance for displacements;

(E) a statement that verbal and written comments may be presented for a period of 10 days after the hearing;

(F) the address where written comments may be submitted; and

(G) the existence of any floodplain, wetland encroachment, taking of endangered species habitat; or encroachment on a sole source aquifer recharge zone by an authority project.

(H) Except for authority projects requiring the taking of public land designated as a park, recreation area, wildlife refuge, historic site, or scientific area, notice of the public hearing must be given by the publication of two notices in local newspapers having general circulation, with the first notice published approximately 30 days before the hearing, and the second notice published approximately 10 days before the hearing. In the event an authority project is expected to directly affect an area that is predominantly Spanish-speaking, the notices required herein shall be published in a Spanish language newspaper of general circulation in the area of the project, if available. Notices of the public hearing shall also be mailed to landowners abutting the roadway as identified by tax rolls, known neighborhood associations whose boundaries encompass all or part of the authority project and which have notified the authority, in writing, of their interest in the project, and affected local governments and public officials. For authority projects requiring the taking of public land designated as a park, recreation area, wildlife refuge, historic site, or scientific area, notice of the public hearing shall be given in accordance with Section 26.002, Parks and Wildlife Code.

(d) Public Hearing Record. The public shall have 10 days after the close of a public hearing to submit written comments to the authority office regarding a proposed authority project. Public hearings shall be considered complete at the time and date designated by the authority staff after receipt of a verbatim transcript of the public hearing. As another method of public involvement, there shall be published in a local newspaper of general circulation the notice of the availability of the environmental assessment in order to inform the public of its availability and advising where to obtain information concerning the authority project, and that any written comments should be furnished within a 30-day period of the date of the notice in order to be included within the public hearing record.

501.006 **Categorical Exclusions (CE).**

(a) An authority project will be classified as a categorical exclusion (CE) if it does not:

(1) involve significant environmental impacts;

(2) induce significant impacts to planned growth or land use of the authority project area;

(3) require the relocation of significant numbers of people;

(4) have a significant impact on any natural, cultural, recreational, historic, or other resource;

(5) involve significant air, noise, or water quality impacts;

(6) significantly impact travel patterns; or

(7) either individually or cumulatively, have any significant environmental impacts.

(b) The following actions are examples of authority projects which meet the criteria of a CE as found in this section and will not in most cases require further environmental review or approval by the authority:

(1) those which do not involve or lead directly to construction, such as planning and technical studies, grants or training and research programs, engineering feasibility studies that either define the elements of a proposed project or identify alternatives so that social, economic, and environmental effects can be assessed for potential impact;

(2) approval of utility installations along or across an authority project;

(3) construction of bicycle and pedestrian lanes, paths, and facilities;

(4) landscaping;

(5) installation of fencing, signs, pavement markings, small passenger shelters, and traffic signals, when no substantial land acquisition or traffic disruption will occur;

(6) emergency repairs as defined in 23 USC § 125;

(7) acquisition of scenic easement; and

(8) alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(c) For any authority project not of a type described in this section, the authority may conduct appropriate environmental studies to determine if the CE classification is proper. Any other actions meeting the criteria for a CE as found in subsection (a) will require board review and approval.

(d) Board approval will be based on staff submitting a brief environmental overview which demonstrates that the specific conditions or criteria for classification of a CE as found in subsection (a) is satisfied and that significant environmental impacts will not result, including the results of any coordination effected with resource agencies. Examples may include, but are not limited to, the following:

(1) modernization of a roadway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes such as parking, weaving, turning, climbing, and correcting substandard curves and intersections with only minor amounts of additional right-of-way required;

(2) highway safety or traffic operation improvement projects including the installation of ramp metering control devices and lighting;

(3) bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings;

(4) transportation corridor fringe parking facilities;

(5) approvals for changes in access control; and

(6) approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(e) The authority may classify other authority projects as a CE if, from the documentation required to be submitted, a determination is made that the project meets the CE classification. Classification as a CE means that no further environmental review is required. Board approval is required for any CE classification under this provision.

501.007 **Environmental Assessments (EA).**

(a) Preparation. For authority projects for which the extent of impacts is not readily discerned, an EA will be prepared to determine the nature and extent of environmental impacts, with either a finding of no significant impact anticipated or a finding that an environmental impact statement is required. An EA is not required for any project which is the subject of an Environmental Impact Statement.

(b) Coordination and consultation. For authority projects that require an EA, the interested agencies, local political subdivisions and others to achieve the following objectives:

(1) definition of the scope of the project;

(2) identification of any alternatives to the proposed actions including different modes of transportation;

(3) determination as to which aspects of the proposed actions have potential for environmental impact;

(4) identification of measures and alternatives which might mitigate adverse environmental impacts; and

(5) identification of other environmental review and consultation requirements which should be prepared concurrently.

(c) Notice. As required in Section 501.005(c), the notice of the public hearing or of opportunity for a public hearing will announce the availability of the EA and where it may be obtained or reviewed.

(d) Revised determination. If, at any point in the EA process, the authority staff determines that the project may have a significant impact on the environment, the preparation of an Environmental Impact Statement (EIS) as discussed in Section 501.008 will be required.

(f) Notification of FONSI. After issuance of the FONSI, a notice of the availability of the FONSI shall be published by the authority. Notification will also be given to the local media through a press release.

501.008 **Environmental Impact Statements (EIS).**

(a) Required. An EIS will be required for authority projects in which there are likely to be significant environmental impacts. The preparation of the EIS will occur in two stages:

(1) the draft EIS (DEIS); and

(2) the final EIS (FEIS).

(b) Not required. If the analyses or review comments indicate that significant impacts to the human environment will not occur, an EIS should not be prepared.

501.009 **Notice of intent.**

(a) Prior to the preparation of an EIS there shall be prepared a notice of intent (NOI) to prepare an EIS.

(b) The NOI should:

(1) briefly detail the project;

(2) identify significant impacts on the human environment; and

(3) identify any preliminary alternatives under consideration by the authority.

(c) The NOI shall be sent to applicable agencies for their early review and comment. Any comments received will be used as the basis for the DEIS, as described in subsection (d).

(d) A summary of the NOI shall also be published in the Texas Register, on the authority's website, and in a local newspaper of general circulation.

(a) The DEIS shall identify and evaluate all reasonable alternatives to the authority project; discuss the elimination of other alternatives, if applicable; summarize the studies, reviews, consultations, and coordination required by law to the extent appropriate; and designate a preferred alternative if appropriate.

(b) When the staff determines that the DEIS complies with these and other requirements, the DEIS will be approved for circulation by signing and dating the cover sheet.

(c) The DEIS will be circulated for comment after a notice is published in the Texas Register, on the authority's website, and in a local newspaper of general circulation which describes a circulation and comment period of no less than 45 days, and identifies where comments are to be sent.

(d) The DEIS shall be transmitted to state and applicable federal agencies.

(e) The DEIS will be made available to interested public officials, interest groups, and members of the public at the request of any such group or individuals. Notice of availability of the DEIS will be mailed to affected local governments and public officials.

(f) A fee which is not more than the actual cost of reproduction of the DEIS and administrative costs of the reproduction may be charged for any written request received for a copy of the DEIS.

(g) The DEIS may also be reviewed at designated public locations.

(h) Either an opportunity for public hearing shall be afforded or a public hearing shall be held for a DEIS authority project.

(i) The DEIS will be made available at the authority for the general public at a minimum of 30 days in advance of the public hearing for authority projects.

501.011 **Final Environmental Impact Statement.**

(a) After the DEIS is circulated and comments reviewed, a FEIS shall be prepared by the authority.

(b) The FEIS shall:

(1) identify the preferred alternative and evaluate all reasonable alternatives considered;

(2) discuss substantive comments received on the DEIS and responses to those comments;

(3) summarize public involvement that has been afforded for the project;

(4) describe the mitigation measures that are to be incorporated into the authority project;

(5) document compliance, to the extent possible, with all applicable environmental laws, or provide reasonable assurance that requirements can be met; and

(6) identify those issues and the consultations and all reasonable efforts made to resolve interagency disagreements.

(c) The authority will indicate approval of the FEIS by signing and dating the cover page.

(d) The initial printing of the FEIS shall be in sufficient quantities to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals.

(e) A fee which is not more than the actual cost of reproduction and administrative costs associated with the reproduction of the FEIS may be charged for purchase of the document.

(f) Copies of the FEIS may also be placed in appropriate public locations, such as local governmental offices, libraries, or other public institutions.

(g) Notice detailing the availability of the FEIS shall be published in the Texas Register, on the authority's website, and in a local newspaper of general circulation.

(h) The notice shall include information on obtaining copies.

(i) The public and interested organizations will have 30 days following publication of the notice in the Texas Register to submit comments.

(j) Following the approval of the FEIS, it will be made available to agencies which made substantive comments on the DEIS; however, in the event the FEIS is voluminous, the authority may provide for alternative circulation such as notifying agencies of the availability of the FEIS, and by providing a method for these agencies to request a copy.

(k) The authority will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the availability of the FEIS notice in the Texas Register. Until any required ROD has been signed, no further approvals may be taken except for administrative activities taken to secure further project funding. The ROD will:

(1) present the basis for the decision and summarize any mitigation measures; and

(2) be published in the Texas Register.

501.012 **Re-evaluations.**

An evaluation to determine whether a supplement to the DEIS or a new DEIS is needed shall be prepared by the authority if an acceptable FEIS is not submitted within three years from the date of circulation of the DEIS. The re-evaluation will:

(1) not be circulated for agency review, although resource agency coordination may be required;

(2) be required before further approvals may be granted if major steps to advance the action such as authority to undertake final design or acquire significant portions of right-of-way, or approval of the plans, specifications, and estimates have not occurred within three years after the approval of the FEIS, supplemental FEIS, or the last major departmental approval.

501.013 **Supplemental Environmental Impact Statements.**

(a) A DEIS or FEIS may be supplemented at any time.

(b) An EIS will be supplemented whenever the authority determines that:

(1) changes to the project would result in significant environmental impacts that were not evaluated in the EIS; or

(2) new information or circumstances relevant to environmental concerns bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(c) A supplemental EIS will not be necessary when:

(1) changes to the project, new information, or new circumstances result in a lessening of adverse impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) the authority decides to approve an alternative fully evaluated in the approved FEIS but not identified as the preferred alternative.

(d) When there is an uncertainty of the significance of new impacts, the authority will develop appropriate environmental studies, or if deemed appropriate, an EA to assess the impacts of the changes, new information, or new circumstances.

(e) If the authority determines, based on studies, that a supplemental EIS is not necessary, it shall so indicate in the project record.

(f) A supplemental EIS shall be developed using the same process and format as an original EIS, except that early coordination shall not be required.

(g) A supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation, or the evaluation of location or design variations for a limited portion of an overall project. In this situation the preparation of the supplemental EIS shall not necessarily:

(1) prevent the granting of new approvals;

(2) require the withdrawal of previous approvals; or

(3) require the suspension of project activities for any activity not directly affected by the supplement.

Chapter 6: APPENDIXES

APPENDIX 1: [DELETED BY RESOLUTION NO. 12-022, MARCH 28, 2012]

APPENDIX 2: CONFLICT OF INTEREST DISCLOSURE FORM FOR CONSULTANTS

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with _____. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Central Texas Regional Mobility Authority's Conflict of Interest Policy for Consultants. The undersigned acknowledges that approval of the proposed management plan in within the sole discretion of the Central Texas Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

_____
_____
_____
_____
_____
_____

SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

_____
_____
_____
_____
_____
_____

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

REPRESENTING: _____

APPROVED BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

APPENDIX 3: CONFLICT OF INTEREST DISCLOSURE FORM FOR KEY FINANCIAL PERSONNEL

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with _____. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Central Texas Regional Mobility Authority's Conflict of Interest Policy for Financial Team Members. The undersigned acknowledges that approval of the proposed management plan in within the sole discretion of the Central Texas Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

_____
_____
_____
_____
_____
_____

SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

_____
_____
_____
_____
_____
_____

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

REPRESENTING: _____

APPROVED BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

Central Texas Regional Mobility Authority
Conflict of Interest Policy for Financial Team Members

The Central Texas Regional Mobility Authority (CTRMA) anticipates utilizing outside consultants for a significant portion of the work necessary to develop financial plans for the financing of specific CTRMA projects and for advice concerning the overall management of the CTRMA's financial affairs. The CTRMA also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The CTRMA recognizes that many of the same individuals and firms that provide financial planning and advisory services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the CTRMA. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the CTRMA on financial matters is not compromised, individuals and firms working for the CTRMA, and those seeking to do business with the CTRMA, must adhere to the following procedures:

1. The CTRMA shall maintain, on its website and in the records of the authority, a list of key financial personnel and firms performing work for the CTRMA. At a minimum, this group will include the CTRMA's financial advisor(s), bond counsel, accountants and auditors, and investment banking firms which are part of an underwriting syndicate for any CTRMA project. Other individuals or firms may be classified as CTRMA key financial personnel at the sole discretion of the authority.

2. Any individual, firm, or team (including individual team members) submitting a proposal (including an unsolicited proposal and a response to a solicited proposal) to the CTRMA to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the CTRMA's key financial personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination (or expected termination, if known) of the relationship. *Failure to make the disclosure required in this paragraph is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.*

3. Separate and apart from the disclosure required to be made by proposers under the preceding paragraph, any key financial personnel of the CTRMA must disclose the existence of any current or previous business relationship with any individual, firm, or team (including team members) making a proposal to provide goods or services or a proposal to perform work to be supervised. *Failure to make the disclosure required in this paragraph is grounds for termination of work by the key financial personnel failing to make the disclosure.* Disclosures required under this paragraph shall be made to the CTRMA's general counsel within three business days of receipt of information from the CTRMA concerning the identity of a proposer (including its team members and known subconsultants). Disclosures shall be made in accordance with paragraph 6 below.

4. For any disclosures required under paragraphs 2 or 3 above, the affected key financial personnel shall complete and submit the form attached hereto as Attachment A. (Submittal of such form shall be sufficient to constitute the disclosure required under paragraph 3 above.) Completion of the required information is necessary to provide the CTRMA with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key financial personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key financial personnel.

5. Except for investment banking firms, key financial personnel shall not be permitted to be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop a transportation project through a comprehensive development agreement. Investment banking firms shall not be permitted to participate in a syndicate of firms designated by the CTRMA to participate in the financing of a CTRMA project and also be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop that same project (or a variation of that project). Investment banking firms may be part of a team proposing or competing to develop a project for which they have not been designated as part of the underwriting syndicate for that project by the CTRMA. These prohibitions are intended to preclude key financial personnel from working both for the CTRMA and for (or with) entities seeking to do business with the CTRMA in a manner which would result in or create the appearance of conflicting loyalties in financial matters.

6. The CTRMA's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key financial personnel). The Executive Committee shall determine whether to permit the affected key financial personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. *If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for termination of that work and any further work for the authority.* If the Executive Committee does not approve of the continuation of work by the key financial personnel, the key financial personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

7. These policies and procedures may be amended or modified at any time action of the CTRMA board of directors. Key financial personnel and proposers seeking do business with the CTRMA are responsible for complying with these policies and procedures as amended from time to time.

Adopted: 11/05/03

CONFLICT OF INTEREST POLICY FOR FINANCIAL TEAM MEMBERS-
IDENTIFICATION OF KEY FINANCIAL PERSONNEL

On November 5, 2003, the Central Texas Regional Mobility Authority adopted a conflict of interest policy for financial team members. Copies of the policy and the disclosure form may be obtained from the Mobility Authority's website: (www.MobilityAuthority.com) or from the Mobility Authority's general counsel, Andrew Martin, at 301 Congress Avenue, Suite 650, Austin, Texas 78701.

The conflict of interest policy requires that the Mobility Authority designate key financial personnel for purposes of disclosing potential conflicts of interest. The key financial personnel are as follows:

Key Financial Personnel:

First Southwest Company
Ladd Patillo & Associates
JP Morgan Securities, Inc.
Vinson & Elkins, LLP

NOTE: There is a separate conflict of interest policy for non-financial consultants, and separate designation of key personnel for conflict disclosure purposes. Firms proposing to do business with the Mobility Authority are required to comply with both policies. Also, the Mobility Authority's conflict of interest policies are intended to supplement, and not replace, any other conflict of interest laws, rules, and regulations.

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

RECEIVED
DEC 07 2007
CTRMA
AUSTIN, TEXAS

1 Name of Local Government Officer

HENRY GILMORE

2 Office Held

Director, Central Texas Regional Mobility Authority

3 Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code

MUNICIPAL SERVICES BUREAU

4 Description of the nature and extent of employment or other business relationship with person named in item 3

Provide legal counsel and services to business entity as a licensed attorney

5 List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

CECILIA A. MARTINEZ
MY COMMISSION EXPIRES
July 13, 2009

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

H. H. ML

Signature of Local Government Officer

Henry Gilmore

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said HENRY GILMORE, this the 7TH day of DECEMBER, 20 07, to certify which, witness my hand and seal of office.

Cecilia A. Martinez — CECILIA A MARTINEZ — NOTARY PUBLIC

Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

Adopted 06/29/2007

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received
RECEIVED
FEB 13 2008
CTRMA
AUSTIN, TEXAS

1 **Name of person who has a business relationship with local governmental entity.**

TCB INC. (formerly known as Turner Collie & Braden Inc.)

2 [X] **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has employment or business relationship.**

Nikelle Meade, CTRMA Board Member
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

[X] Yes [ ] No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

[ ] Yes [X] No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

[ ] Yes [X] No

D. Describe each employment or business relationship with the local government officer named in this section.

TCB has employed Nikelle Meade with respect to certain City of Austin issues. TCB last engaged Ms. Meade in December 2006. See Page 2 for additional disclosures.

4

Signature of person doing business with the governmental entity

February 12, 2008
Date

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

RECEIVED

JUN 0 1 2009

CTRMA
AUSTIN, TEXAS

1 **Name of person who has a business relationship with local governmental entity.**

PBS&J

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has employment or business relationship.**

Mike Heiligenstein (Chris Heiligenstein - Family Member)

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☒ Yes ☐ No Chris is a part-time temporary employee of PBS&J.

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ No

D. Describe each employment or business relationship with the local government officer named in this section.

PBS&J employs Chris Heiligenstein as a part-time temporary employee in our cultural resources laboratory.

4

Signature of person doing business with the governmental entity

June 1, 2009

Date

Adopted 06/29/2007

Additional Disclosures in Connection With Key CTRMA Personnel

TCB INC. (TCB) is currently providing the following services:

- Subconsultant to HNTB Corporation (HNTB) on US 290 PMC project (Houston, TX)
- Subconsultant to HDR Engineering, Inc. on SR 78 Bridge project (San Diego, CA)

TCB, as GEC for the Hays County Bond Program and as an agent for Hays County, supervised the design work of HNTB and PBS&J.

Daron K. Butler (Officer-in-Charge of TCB's Austin office) and CTRMA Board Members Bob Tesch, James Mills, and Nikelle Meade are all members of the Austin Area Research Organization (AARO), a private, non-profit group dedicated to the improvement of the quality of life for all Central Texans.

Management Plan to Deal with Potential Conflicts of Interest

In accordance with TCB's General Memorandum 231, employees of the company shall report conflicts of interest or concerns about potential conflicts to their supervisor, Regional Officer-in-Charge, or the General Counsel.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

RECEIVED

APR 30 2008

CTRMA
AUSTIN, TEXAS

1 **Name of person who has a business relationship with local governmental entity.**

JP MORGAN SECURITIES INC.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has employment or business relationship.**

HENRY GILMORE, DIRECTOR CTRMA
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☒ XX Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ XX No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ XX No

D. Describe each employment or business relationship with the local government officer named in this section.

The local governmental officer is a law partner in the firm DuBois, Bryant & Campbell LLP, and the firm provides legal services to the filer.

4

On Behalf of JP Morgan Securities, Inc — April 30, 2008

Signature of person doing business with the governmental entity — Date

Adopted 06/29/2007

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

RECEIVED
JUL 25 2008
CTRMA
AUSTIN, TEXAS

1 **Name of person who has a business relationship with local governmental entity.**

GILA CORPORATION d/b/a MUNICIPAL SERVICES BUREAU

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has employment or business relationship.**

HENRY GILMORE
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☒ XX Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ XX No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☒ XX No

D. Describe each employment or business relationship with the local government officer named in this section.

Mr. Gilmore provides legal representation to the filer as a licensed attorney.

4 By: _____

Gila Corporation d/b/a Municipal Services bureau — 9/25/2008

Signature of person doing business with the governmental entity — Date

Adopted 06/29/2007

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

RECEIVED

SEP 03 2008

CTRMA
AUSTIN, TEXAS

1 Name of Local Government Officer

NIKELLE S. MEADE

2 Office Held

Director, Central Texas Regional Mobility Authority

3 Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code

TCB Inc., under consideration for contract procurement

4 Description of the nature and extent of employment or other business relationship with person named in item 3

Officer is a licensed attorney and a partner in a law firm (Brown McCarroll L.L.P.) that represents TCB Inc. in various legal matters

5 List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

JULIA H. PEARSON
Notary Public, State of Texas
My Commission Expires
OCT. 26, 2008

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

Nikelle S. Meade

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Nikelle S. Meade, this the 2nd day of September, 20 08, to certify which, witness my hand and seal of office.

Julia Pearson	JULIA PEARSON	LEGAL SECRETARY
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath

Adopted 06/29/2007

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

RECEIVED
JUN 0 2 2009
CTRMA
AUSTIN, TEXAS

1 Name of Local Government Officer

Mike Heiligenstein

2 Office Held

Executive Director, Central Texas Regional Mobility Authority

3 Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code

PBS&J

4 Description of the nature and extent of employment or other business relationship with person named in item 3

Mike Heiligenstein's son, Chris, is a part-time temporary employee of PBS&J.

5 List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)

Date Gift Accepted N/A Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

CECILIA A. MARTINEZ
MY COMMISSION EXPIRES
July 13, 2009

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Mike Heiligenstein, this the 2 day of June, 20 09, to certify which, witness my hand and seal of office.

Cecilia A. Martinez — Cecilia A. Martinez — NOTARY

Signature of officer administering oath — Printed name of officer administering oath — Title of officer administering oath

Adopted 06/29/2007

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

RECEIVED

AUG 25 2009

CTRMA
AUSTIN, TEXAS

1 **Name of Local Government Officer**

Nikelle S Meade

2 **Office Held**

Board Member, Central Texas RMA

3 **Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code**

PBS+J

4 **Description of the nature and extent of employment or other business relationship with person named in item 3**

Represent PBS+J as attorney and lobbyist on matters with [redacted] various agencies; represent [redacted] PBS+J in litigation matters

5 **List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)**

Date Gift Accepted ∅ Description of Gift _____

Date Gift Accepted ∅ Description of Gift _____

Date Gift Accepted ∅ Description of Gift _____

(attach additional forms as necessary)

6 **AFFIDAVIT**

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

JULIA H. PEARSON
Notary Public, State of Texas
My Commission Expires
OCTOBER 26, 2012

Nikelle S. Meade
Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said NIKELLE S. MEADE, this the 24th day of AUGUST, 20 09, to certify which, witness my hand and seal of office.

Julia H Pearson	JULIA H. PEARSON	LEGAL SECRETARY
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath

Adopted 06/29/2007

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

RECEIVED

AUG 25 2009

CTRMA
AUSTIN, TEXAS

1 **Name of Local Government Officer**

Nikelle S. Meade

2 **Office Held**

Board Member, Central Texas RMA

3 **Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code**

AECOM

4 **Description of the nature and extent of employment or other business relationship with person named in item 3**

Represent AECOM in matters related to the City of Austin and SAWS.

5 **List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)**

Date Gift Accepted ϕ Description of Gift _____

Date Gift Accepted ϕ Description of Gift _____

Date Gift Accepted ϕ Description of Gift _____

(attach additional forms as necessary)

6 **AFFIDAVIT**

JULIA H. PEARSON
Notary Public, State of Texas
My Commission Expires
OCTOBER 26, 2012

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

Nikelle S. Meade
Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said NIKELLE S. MEADE, this the 24th day of AUGUST, 2009, to certify which, witness my hand and seal of office.

Julia Hpearson	JULIA H. PEARSON	LEGAL SECRETARY
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath

Adopted 06/29/2007

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 **Name of Local Government Officer**

Nikelle S Meade

2 **Office Held**

Director

3 **Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code**

Greater Austin Development Company

4 **Description of the nature and extent of employment or other business relationship with person named in item 3**

Brown McCarroll LLP serves as legal counsel to Greater Austin Development Company

5 **List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)**

Date Gift Accepted n/a Description of Gift n/a

Date Gift Accepted n/a Description of Gift n/a

Date Gift Accepted n/a Description of Gift n/a

(attach additional forms as necessary)

6 **AFFIDAVIT**

JULIA H. PEARSON
Notary Public, State of Texas
My Commission Expires
OCTOBER 26, 2012

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

Nikelle S Meade
Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said NIKELLE S. MEADE, this the 29th day of SEPTEMBER, 20 09, to certify which, witness my hand and seal of office.

Julia Hpearson — JULIA H. PEARSON — SECRETARY

Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

Adopted 06/29/2007

12-13-12 P01:07

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

Received
12/13/2012

1 **Name of Local Government Officer**

Charles H. Heimsath

2 **Office Held**

Director, Central Texas Regional Mobility Authority

3 **Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code**

Jacobs Engineering Group, Inc.

4 **Description of the nature and extent of employment or other business relationship with person named in item 3**

My company, Capitol Market Research, provides services to Jacobs Engineering Group, Inc., for compensation in an amount that exceeded $2,500.00 during the 12-month period preceding the date of this disclosure statement.

5 **List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed $250 during the 12-month period described by Section 176.003(a)(2)(B)**

Date Gift Accepted None. Description of Gift None.

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 **AFFIDAVIT**

SANDRA K. MAXWELL
MY COMMISSION EXPIRES
July 1, 2013

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

Charl H. Heimsath
Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Charles H. Heimsath, this the 12th day of Dec. 20 12 to certify which, witness my hand and seal of office.

Sandra K Maxwell Sandra K Maxwell Notary
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

Adopted 06/29/2007

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with _____. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Central Texas Regional Mobility Authority's Conflict of Interest Policy for Financial Team Members. The undersigned acknowledges that approval of the proposed management plan in within the sole discretion of the Central Texas Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

_____
_____
_____
_____
_____
_____

SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

_____
_____
_____
_____
_____
_____

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

REPRESENTING: _____

APPROVED BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

Confidential

CAMINO REAL REGIONAL MOBILITY AUTHORITY
BOARD RESOLUTION

WHEREAS, effective January 1, 2010, all entities that receive financial assistance from the Texas Department of Transportation (TxDOT) pursuant to 43 Tex. Admin. Code §27.50 *et. seq.* (the "Toll Equity Rules") are required to adopt and enforce an ethics and compliance program that meets certain requirements set forth in 43 Tex. Admin. Code §1.8;

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is permitted to seek funding pursuant to the Toll Equity Rules and the CRRMA recognizes the importance of adopting and implementing an ethics and compliance program that addresses standards of conduct for CRRMA officers and employees and ensures that such standards are effectively communicated and enforced;

WHEREAS, CRRMA consultants have prepared a proposed Ethics and Compliance Policy, attached hereto as Exhibit "A", describing ethical obligations and duties of CRRMA officers and employees, setting forth an employee code of conduct and providing for appropriate oversight and enforcement of the CRRMA's ethics and compliance standards and procedures; and

WHEREAS, the CRRMA is committed to ensuring that its compliance standards and procedures are effectively communicated to CRRMA employees and agents and are consistently enforced and that the CRRMA Board receives appropriate information on ethics and internal compliance issues;

NOW, THEREFORE, BE IT RESOLVED BY THE CAMINO REAL REGIONAL MOBILITY AUTHORITY:

THAT the CRRMA hereby approves and adopts the CRRMA Ethics and Compliance Policy, attached hereto as Exhibit "A"; and **THAT** the CRRMA Ethics and Compliance Policy may be amended from time to time at the discretion of the CRRMA Board; and **THAT** the Chair is directed to take such steps as may be necessary to effectively communicate the CRRMA's ethics and compliance program to CRRMA employees and agents and to enforce the requirements of the program; and **THAT** CRRMA staff and consultants shall develop and implement a program to provide information on ethics and internal compliance issues to members of the CRRMA Board.

PASSED AND APPROVED THIS 16TH DAY OF DECEMBER 2009.

CAMINO REAL REGIONAL MOBILITY AUTHORITY

Harold W. Hahn, Chair

ATTEST:

Dr. Tony Payan, Alternate Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

CAMINO REAL
REGIONAL MOBILITY
AUTHORITY

EXHIBIT "A"
CRRMA ETHICS AND COMPLIANCE POLICY

2 Civic Center Plaza, 9th Floor • El Paso, Texas 79901
(915) 541-4986 Telephone • (915) 541-4576 Facsimile

CAMINO REAL REGIONAL MOBILITY AUTHORITY

ETHICS & COMPLIANCE POLICY

I. General Statement of Policy

The Camino Real Regional Mobility Authority ("CRRMA") is committed to conducting its business in an ethical, honest, and open manner and to maintaining high ethical standards among its officers and employees. In furtherance of that commitment, the CRRMA adopts the following Ethics & Compliance Policy.

In addition to complying with the requirements of this Policy, CRRMA officers and employees must at all times abide by applicable federal and state laws and rules, the CRRMA bylaws, and CRRMA policies.

II. Employee Code of Conduct

Employees of the CRRMA and/or employees of the City of El Paso who are assigned to spend more than 20 hours per week working on behalf of the CRRMA and are subject to supervision or direction by the Executive Director or the CRRMA Board of Directors (collectively, "Employees") must at all times comply with the City of El Paso Employee Handbook, a copy of which is attached as Attachment "A", including, without limitation, the City of El Paso's policies on Equal Employment Opportunity, Sexual Harassment, and Reporting of Fraud and Illegal Activity discussed therein. Additionally, Employees must comply with the standards of conduct set forth below.

Conflicts of Interest, etc.

Employees are prohibited from engaging in any activity that could create a conflict of interest or even the appearance of a conflict of interest with the employee's duties and responsibilities to the CRRMA. Activities that could create a conflict of interest include, but are not limited to:

1. Transaction of CRRMA business with any entity in which the Employee is an officer, agent, member, or owner of a controlling interest;

2. Participation in a CRRMA project in which the Employee has a direct or indirect monetary interest;

3. Outside business or professional activities that could interfere with the Employee's performance of duties on behalf of the CRRMA or impair the Employee's independence of judgment with respect to the Employee's performance of CRRMA duties;

4. Personal investments that are likely to create a substantial conflict between the Employee's private interest and the interest of the CRRMA; and

5. Any activity that could result in the disclosure of confidential or sensitive information that the Employee has access to as a result of the Employee's position with the CRRMA.

Additionally, Employees of the CRRMA are subject to the conflict of interest provisions contained in Section 2.1 of the CRRMA's Policies and Procedures Governing the Procurement of Goods and Services.

If an Employee is uncertain as to whether a particular activity could create a conflict of interest, the Employee should consult the CRRMA's Executive Director or Outside Counsel prior to engaging in the activity.

Gifts and Honoraria

Employees are prohibited from accepting gifts, favors, benefits, or other compensation, whether in the form of money or other thing of value, which could influence them or even have the appearance of influencing them in the performance of their official duties. Additionally, as provided by Section 2.1 of the CRRMA's Policies and Procedures Governing the Procurement of Goods and Services, Employees may not accept or solicit any gift, favor, or service that might reasonably tend to influence them in the making of procurement decisions or that the Employee knows or should have known is being offered with the intent to influence the Employee's making of procurement decisions. Employees may accept meals offered in the course of normal business relationships and promotional items that do not exceed an estimated $25 in value and are distributed as a normal means of advertising; provided, however, that Employees are explicitly prohibited from accepting any meals, gifts, or other items of value from potential vendors during pending procurements of the CRRMA involving such potential vendors or from individuals or firms reasonably expected to become a potential vendor to the CRRMA.

Employees may not accept an honorarium for appearing at a conference, workshop seminar, or symposium as a representative of the CRRMA other than reimbursement for food, transportation, or lodging.

If an Employee is uncertain as to whether he or she may accept a gift, favor, or benefit, the Employee should consult the CRRMA's Executive Director or Outside Counsel prior to acceptance.

Use of CRRMA and City of El Paso Property

Computers, including all software, hardware, internet, and email systems; modems; printers; telephones; cellular phones; fax machines; copy machines; and other electronic and communications equipment owned or leased by the CRRMA or provided by the City of El Paso for use by the CRRMA may be used for official CRRMA purposes only. Employees may, however, make brief personal telephone calls for which neither the CRRMA nor the City of El Paso incurs any additional charges. Employees do not have an expectation of privacy when using CRRMA or City of El Paso electronic and communications equipment, and all emails, computer files, and telephone records are the property of the CRRMA and are subject to disclosure under the Texas Public Information Act, discovery in litigation, and/or examination by managers or supervisors.

Employees must immediately report lost or stolen CRRMA or City of El Paso property to the Executive Director or to the Chairman of the CRRMA. Misuse or theft of CRRMA or City of El Paso property may result in disciplinary action, including criminal prosecution.

Criminal Activity

The CRRMA will perform criminal background checks on all final applicants for any position involving the disbursement of CRRMA funds or the handling of cash, checks or credit cards; negotiable documents and materials; or highly confidential or sensitive information. All applicants admitting a felony conviction on their application materials will also be subject to a criminal background check. Additionally, the CRRMA may at its discretion perform criminal background checks on applicants for any other position.

If an Employee is charged with a felony or a misdemeanor other than a traffic violation, the Employee is required to immediately inform the Executive Director of the CRRMA. If the Executive Director is charged with a felony or a misdemeanor other than a traffic violation, the Executive Director is required to immediately inform the Chairman of the CRRMA. The CRRMA may take steps to respond to criminal violations consistent with Section V below, up to and including termination of employment.

Records Retention and Open Records

Employees must maintain all CRRMA records in accordance with the CRRMA's Policies and Procedures for Retention of Records. In the event that litigation is filed against the CRRMA or is reasonably anticipated to be filed, the CRRMA's Outside Counsel may determine that it is necessary to implement a litigation hold in order to ensure the preservation of all records related to the lawsuit. Employees must refrain from destroying any records that are the subject of a litigation hold.

Members of the public may make written requests for records maintained by the CRRMA. In the event that an Employee receives a written request for information, the Employee must notify the Executive Director immediately so that the CRRMA may respond to the request within the time frame prescribed by the Texas Public Information Act. Employees must refrain from destroying any records that are the subject of a pending public information request.

Acknowledgement

All Employees must sign an acknowledgment, in the form attached as Attachment "B", acknowledging that they have received, read, and understand this Code of Conduct and that they will comply with the requirements herein.

III. Training Regarding Ethics & Compliance Standards

Upon beginning service or employment with the CRRMA, all officers and Employees shall be provided with an a copy of this Ethics & Compliance Policy and shall receive orientation on ethics laws and policies. Additionally, officers and Employees of the CRRMA shall receive

periodic training on the requirements of this Ethics & Compliance Policy and on ethics issues generally.

IV. Oversight & Reporting of Suspected Violations

The Executive Director of the CRRMA is responsible for monitoring and enforcing Employee compliance with this Ethics & Compliance Policy and has full authority over all Employee functions and activities.

If an officer or Employee becomes aware of a suspected violation of this Ethics & Compliance Policy, a violation of law, or a breach of fiduciary duty by any officer, Employee, or agent of the CRRMA, he or she must immediately report the suspected violation to the Executive Director or the Chairman of the CRRMA. The Executive Director or Chairman shall respond to evidence of any suspected violation or breach by taking appropriate action, including adopting or enforcing appropriate remedial measures or sanctions. Retaliation against those who come forward to raise concerns or report suspected violations will not be tolerated by the CRRMA.

V. Enforcement & Response to Offenses

Conduct that violates state or federal law or this Ethics & Compliance Policy or that discredits or interferes with operations of the CRRMA will not be tolerated and may result in an Employee's immediate dismissal. Additionally, Employees are subject to discipline and dismissal under the terms of the City of El Paso Employee Handbook.

Examples of behavior that may result in an Employee's immediate dismissal include, but are not limited to:

- gross negligence of job duties
- theft or misuse of CRRMA or City of El Paso property
- fraud, dishonesty, or falsification of CRRMA records
- unlawful use, sale, manufacture, distribution, dispensation, or possession of narcotics, drugs, or controlled substances while on CRRMA or City of El Paso premises
- violation of the City of El Paso's policy on sexual harassment or offensive or degrading remarks about another person's race, ethnicity, color, ancestry, national origin, disability, religion, creed, age, gender, sex, sexual orientation, or any other characteristic protected by law
- assault of or verbal threat to a fellow Employee, officer, agent, or customer
- criminal conduct
- insubordination
- job abandonment
- violation of safety rules
- failure to address a recurring problem for which the Employee has already been disciplined
- unprofessional conduct or behavior that negatively impacts the CRRMA's public image, credibility, or integrity.

The CRRMA may, but is not required, to take corrective action to make an Employee aware of a problem related to the Employee's conduct and to provide an opportunity for the employee to remedy the problem. Such corrective action may include an oral conference, a written warning, and/or suspension. However, nothing herein shall limit the CRRMA's right to terminate an at will employee at any time, for any reason, with or without cause or notice.

APPROVED AND ADOPTED THIS 16TH DAY OF DECEMBER, 2009.

CAMINO REAL REGIONAL MOBILITY AUTHORITY

Harold W. Hahn, Chair

ATTEST:

Dr. Tony Payan, Alternate Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

Attachment "A"

City of El Paso Employee Handbook

City of El Paso
EMPLOYEE HANDBOOK

February 2006

W E L C O M E

Joyce A. Wilson, City Manager

We welcome you as a new employee of the City of El Paso. It is our sincere hope that you find your work here enjoyable and rewarding.

As a new employee you will want to get acquainted, not only with your job and your co-workers, but also with our procedures and programs. This handbook will assist you in learning your responsibilities as a City employee and understanding City Government.

This handbook is not an official rulebook, employment contract or legal document. It is an introduction and a guide designed to help you make a smooth adjustment to your job. If, after reading this handbook and attending New Employee Orientation, you find that something is still unclear, do not hesitate to ask your supervisors. If they do not have the answers to your questions, please do not hesitate to contact the Human Resources Department. We are here to serve you in any way we can.

CONGRATULATIONS on your new job. We hope that your employment with the City of El Paso will be a satisfying and productive experience.

EQUAL OPPORTUNITY EMPLOYER

Table of Contents

YOUR CITY GOVERNMENT 1

CIVIL SERVICE COMMISSION 2

WHAT THE CITY EXPECTS OF YOU 3

INFORMATION ABOUT YOUR JOB

- Equal Opportunity 4
- HIV/AIDS Policy 5
- Training 5
- Personnel Records 5
- Working Hours 6
- Tardiness or Absence 7
- Pay Day and Deductions 7
- Drug Free Workplace 7
- Smoking Policy 9
- Sexual Harassment 9
- Reporting Violations of Sexual Harassment or Other Type Discrimination 10
- Reporting Fraud or Other Illegal Acts 10
- Return to Duty with Medical or Physical Restrictions 11
- Family and Medical Leave 15
- Tuition Assistance Program 20
- Social Security 20
- Deferred Compensation 20
- Compensation 20
- "Out-Of-Spec" Work 21
- Health and Life Coverage 21
- Professional Appearance Standards 21
- Travel 23
- Exit Interview 23
- Employee Associations 23
- Safety Policy 23
- Concealed Handguns/Weapons Policy 25
- Workplace Violence Policy 25
- Voice Mail Policy 26
- Flex-Time Policy 27
- Employee Suggestion Program (ESP) 28
- A Final Note 28

Y O U R C I T Y G O V E R N M E N T

A Mayor and eight District Representatives govern the City of El Paso. These officials, as well as the Judges of the Municipal Courts, are elected. The City Manager is appointed by a majority of vote of the Council. All other employees are appointed by the City Manager or by Department Heads. The City Manager is the Chief Administrative Officer and is responsible for the operation of all departments within the City.

The City Council is the lawmaking body and sets the policy for matters over which the municipal government has jurisdiction. City laws must be introduced at a public hearing and passed at a Council meeting. Our City operates under a City Charter that may be revised by the voters. Normally a majority vote of the Council is required to establish policies, rules or ordinances. A majority of the Council constitutes a quorum and, with or without the Mayor, they can take official action. The Mayor can veto any Ordinance or Resolution, except for any City Council action that removes the City Manager, and the Representatives can override a veto with a three-fourths vote of the entire body.

The Mayor and Representatives appoint members of various advisory boards and committees to assist in the operation of city government. The members of these boards and committees are volunteers and receive no compensation.

CIVIL SERVICE COMMISSION

The Civil Service Commission oversees the operation of the Civil Service system and ensures its fairness, economy and efficiency. The Mayor and City Council, in consultation with the Commission, appoint nine Civil Service Commissioners. Commissioners serve staggered three-year terms. The Commission meets on the second and fourth Thursday of each month and holds special and emergency meetings when necessary. The members of the Commission serve without salary.

The Commission recommends, to the Council, amendments to the Civil Service Rules and hears appeals or complaints by or concerning employees of the classified service.

What the CITY EXPECTS OF YOU

You are now part of an active and progressive City Government. You must set the example for our fellow citizens and co-workers. We are continuously working to make El Paso a more enjoyable and attractive place to live. Your personal contribution is required to make our City government responsive and efficient for the citizens of El Paso and your co-workers.

Our primary function is to provide service. You are a very important person to the citizens and your co-workers. They will be the recipients of the service that you provide. The effectiveness of our organization depends upon each employee. Our combined efforts will result in a well-run, efficient City Government.

Employees, who are required to answer a phone, will answer not later than the third ring, identify their department and give their name. Be knowledgeable about your department and the City organization so you may assist the caller in the most efficient manner. If necessary, take a message, get the information requested and return the call.

Whether your job demands enforcement of laws, ordinances, paving streets, filing cards, or answering inquiries, it is extremely important that your contacts with the public and your co-workers be professional, fair and courteous. Treat all inquiries as if you were on the receiving end of the information or assistance. Just as the City Government believes each City employee is an important individual, the rights of citizens and your co-workers should be respected. It is essential that every citizen and co-worker be treated with dignity and consideration. The public will judge your department and all of El Paso City Government by your attitude and efficiency.

You are expected to carry out your responsibilities and to follow all City Charter provisions, Civil Service Commission Rules, City policies and Departmental rules and procedures as they relate to you and your job.

INFORMATION ABOUT YOUR JOB

EQUAL OPPORTUNITY

It is the policy and practice of the City to recruit, hire, train and promote employees without discrimination on the basis of race, religion, color, political affiliation, physical or mental disability, national origin, sex, marital status, age, sexual orientation, gender identification, or membership or non-membership in any employee association or any other non-job related characteristic.

In accordance with the Americans with Disabilities Act (ADA), employment discrimination against a "qualified individual" with regards to all aspects of employment activities of the City of El Paso is a violation of the Act and is strictly forbidden. "Qualified" is defined as a disabled person who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

The City has a policy which ensures that no qualified individual with a disability shall solely by reason of their disability, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any programs, activities or employment practices. The City abides by all state and federal regulations regarding employment discrimination and has established both an "Affirmative Action Plan" and an "Equal Employment Opportunity Plan" to comply with all Equal Employment Opportunity laws.

It is the policy of the City to maintain a working environment free of harassment and intimidation, and to foster the fair and respectful treatment of employees and individuals interested in employment with the City.

The City is ONLY interested in your ability to perform your duties. This policy and practice applies to all aspects of Human Resources administration such as recruiting of applicants, testing, interviewing, hiring, training, promoting, disciplining, transferring, compensating, granting leaves of absences, and participating in benefit programs.

HIV/AIDS POLICY

The City prohibits employment discrimination against persons infected with HIV. It is the policy of the City of El Paso to treat all medical information regarding HIV/AIDS as confidential. The City considers AIDS a medical disability as defined under the American with Disabilities Act and as defined by the Texas Commission on Human Rights Act. The City ensures that its HIV/AIDS policies are consistent with current information from public health authorities, such as the Center for Disease Control of the United States Public Health Services, and with State and Federal laws and regulations.

TRAINING

An orientation, conducted by the Human Resources Department, is held for new employees within the first few months of employment. This program is designed to acquaint you with the history and functions of the City organization. It will inform you of what to expect and what is expected of you as a City employee.

The Organizational Development division of the Human Resources Department is responsible for assisting departments with employee developmental needs by conducting needs analysis, evaluating learning results and providing training that leads to professional development and promotional opportunities.

PERSONNEL RECORDS

The Human Resources Department keeps official City

employment records of present and former employees. Your personnel file is a record of your employment application, correspondence, performance evaluation ratings and changes in your official status such as salary changes, promotions and transfers.

A record of awards earned, training completed, commendations received, disciplinary actions and similar information is also maintained in your file. You may want to include in your personnel record any academic studies you have completed that may be a factor in furthering your career with the City. It is important that you keep your personnel file current.

You have an obligation to help your department and the Human Resources Department keep your records up-to-date. They should be advised immediately of any changes in your name, marital status, number of dependents, address, telephone number and beneficiaries. You may review the contents of your personnel file, but you may not remove or change any document or information. You may also request a copy of any document in your file. Appointments to review your file should be made with the Payroll and Records Section of the Human Resources Department.

WORKING HOURS

The City renders service 24 hours a day, seven days a week. As a consequence, the daily hours of work and the workweek of City employees varies according to the services rendered by the particular department or division.

Most employees work from 8:00 A.M. to 5:00 P.M., Monday through Friday with a one-hour lunch period. Some departments may vary this schedule. Your department supervisor will inform you of your work, break and lunch schedule. In order to meet operational needs, some Departments may not allow "breaks" or "lunch". Breaks are a privilege extended by the Department and may not be combined or accrued. Employees may not leave their work site during "breaks". Your supervisor must approve all work schedule adjustments. Firefighters, Police Officers and some other City employees have "shift" schedules and work accordingly.

TARDINESS OR ABSENCE

You are expected to report to work on time at the beginning of your scheduled work period. If you know in advance that you are going to be late or absent, be sure to notify your supervisor prior to your report time so arrangements can be made for someone to cover your workstation. An unexcused absence of three or more successive days will be cause for suspension, demotion or termination.

PAY DAY AND DEDUCTIONS

You will be paid bi-weekly by check at your workstation or through direct deposit. Bi-weekly pay dates are every other Friday throughout the year. In the event these dates fall on a City holiday, the City customarily issues the paychecks on the day preceding the holiday.

As you may know, the net amount you receive in your paycheck is not the full amount of money you earn. An earnings statement showing your total gross earnings, deductions, the year-to-date dollar amounts and leave balances will be provided to you each pay period. It is your responsibility to check this earnings statement for any errors.

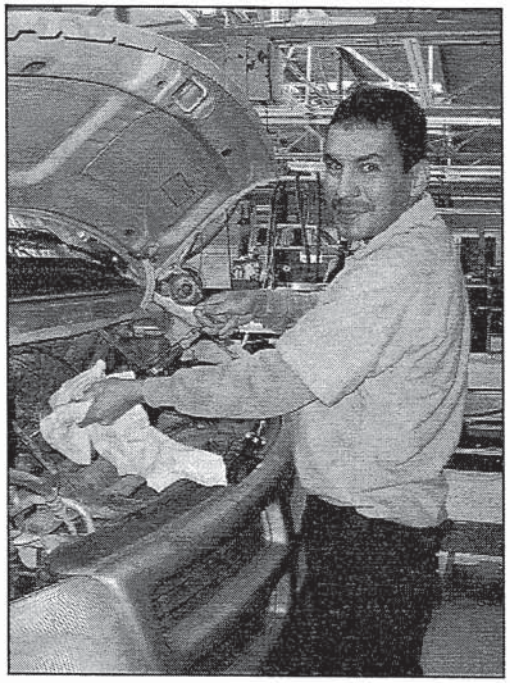
DRUG FREE WORKPLACE

It is the policy of the City of El Paso to provide a drug-free, healthful, safe and secure work environment. This policy applies to all City employees. Any use, possession, manufacture, sale or distribution of illegal drugs, inhalants or drug paraphernalia on City premises, vehicles or work sites during working hours or reporting to

work under the influence of drugs, inhalants or alcohol are causes for disciplinary action up to and including termination.

City employees shall not report to work, remain on duty, or be on-call for duty while under the influence of illegal drugs or alcohol. It is also the policy of the City that employees shall not have their ability to work impaired as a result of the use of alcohol or drugs. All employees are required to comply with this policy. Any employee engaging in such activities will be subject to disciplinary action for misconduct, up to and including termination.

The Director of Human Resources will inform employees of the existence and content of the Drug-Free Workplace policy and possible consequences of violation of its requirements. Employees who are convicted of any alcohol, inhalant, or drug violation which occurs in the workplace or while off duty must report the conviction to their Department Head and to the Director of Human Resources within five (5) calendar days of the conviction. Employees are also required to report deferred adjudications and or pleas of nolo contendere. Employees who are convicted of any alcohol, inhalant or drug violation which occurs in the workplace or while off duty may be subject to disciplinary action, up to and including termination.



SMOKING POLICY

It is the policy of the City of El Paso "Workplace Smoking Policy" to prohibit smoking in its buildings and vehicles.

SEXUAL HARASSMENT

Sexual harassment, which is any unwelcome sexual conduct which occurs under one or more of the following conditions, is prohibited and shall not be tolerated. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature will be considered harassment when:

- Submission to such conduct is made either openly or by implication of a term or condition of an indivual's employment;
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; or
- Such conduct unreasonably interferes with the individual's work performance or creates an intimidating, hostile, or offensive working environment.

Any manager, supervisor or employee who engages in such conduct is subject to discipline up to and including termination.

Sexually oriented jokes, remarks, gestures, or pictures will not be tolerated.

REPORTING VIOLATIONS OF SEXUAL HARASSMENT OR OTHER TYPE DISCRIMINATION

Employees who experience discrimination based on race, gender, national origin, sex, marital status, age, or sexual harassment,—should immediately report it to their supervisor. However, if the employee, for whatever reason, does not want to report it to the immediate supervisor, the employee may report it directly to the Department Head. If the employee does not feel comfortable reporting the complaint to the immediate supervisor or to the Department Head, the employee may report the complaint to the Human Resources Department. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting violations of this policy in good faith.

REPORTING FRAUD OR OTHER ILLEGAL ACTS

Any City employee who has reason to believe that theremay have been an instance of fraud, or other illegal act in connection with a City program, function or activity shall report it immediately to their supervisor or manager or to their department head, the City Manager's Office or the City Auditor as soon as possible.

Reports will be investigated as expeditiously as possible. Where investigation confirms that fraud or another illegal act has occurred, appropriate corrective action will be taken. Employees who commit fraud or other illegal acts will be subject to disciplinary action up to and including termination of employment.

Employees who report incidents of fraud or illegality or who assist in an investigation shall be protected from retaliation of any sort. However, any employee who assists in an investigation but who is found to have participated in the illegal act or fraud being investigated remains subject to discipline. In addition, if it is determined that a report was not made in good faith, or that an employee intentionally provided false information regarding an allegation, disciplinary action may be taken.

Any employee who believes that he/she has experienced retaliation for making a report or assisting in an investigation shall report this as soon as possible to the department head, Director of Human Resources, or to the appropriate manager.

RETURN TO DUTY WITH MEDICAL OR PHYSICAL RESTRICTIONS

The City has no permanent light duty positions. However, it is the City's policy to attempt to assist employees in their recovery by trying to accommodate employees who are returning to work with temporary medical or physical restrictions. The accommodation benefits the employee by allowing the employee to continue to earn income while recovering from illness or injury. The accommodation also benefits the City by helping the employees maintain proficiency in their skills and the employee continues to perform services for the City. The City will balance the possibility of accommodation with the Department's ability to continue to function efficiently and effectively.

Employees returning to work with medical or physical restrictions, either temporary or permanent, will be evaluated to determine whether the employee is able to perform the essential functions of the position, with or without reasonable accommodation. The assessment of whether an employee can be accommodated does not

denote, represent, or signify that the employer regards the employee as a "qualified individual" with a disability under the requirements of the Americans with Disabilities Act.

Temporary Medical or Physical Restrictions

1. A temporary restriction is a restriction that does not exceed three months.
2. Once an employee knows he or she is going to be released to return to duty with a temporary restriction, the employee should provide his or her immediate supervisor with documentation immediately. The employee may fax the documents to the supervisor.
3. The written documentation from the employee's health care provider must indicate the nature of the illness or injury, the type of restrictions, and the duration of the restrictions. If the employee returns to work with documentation that does not indicate the nature of the illness or injury, the type of restrictions, and the duration of the restrictions, the employee will be asked to provide additional medical documentation to clarify the nature and extent of the restrictions.

The employee will not be allowed to work until such documentation is provided. The employee will be placed on unpaid leave, unless the employee opts to use any accumulated sick or vacation leave, the exercise of such option must be in writing.

4. Once a supervisor receives appropriate documentation, the supervisor will meet with the Department Head or the Section Head to determine whether the restrictions impact any of the essential functions of the position. The determination will be made based upon a review of the job specifications for the position.
5. Once a determination is made that the restrictions do not prevent the employee from performing any of the essential functions of the position, the Department Head will determine whether the restrictions, to include the duration of the restrictions, will impact the operational needs and requirements of the department.
6. If the temporary restriction(s) do not affect the employee's ability to perform the essential functions of the position and will have a minimal impact on the operational needs and requirements of the department, the supervisor will notify the employee and the employee must report to work the next day after notification.
7. If a determination is made that the temporary restrictions prevent the employee from performing the essential functions of the position or the impact on the operational needs and requirements of the department are significant, the employee will be placed on unpaid leave until the restrictions are lifted. The employee may opt to use any accumulated sick or vacation leave, the exercise of such option must be in writing.
8. Pending the determination of whether the restrictions prevent the employee from performing the essential functions of the position, the employee will be placed on unpaid leave, unless the employee opts to use any accumulated sick or vacation leave, the exercise of such option must be in writing.

Permanent Medical or Physical Restrictions

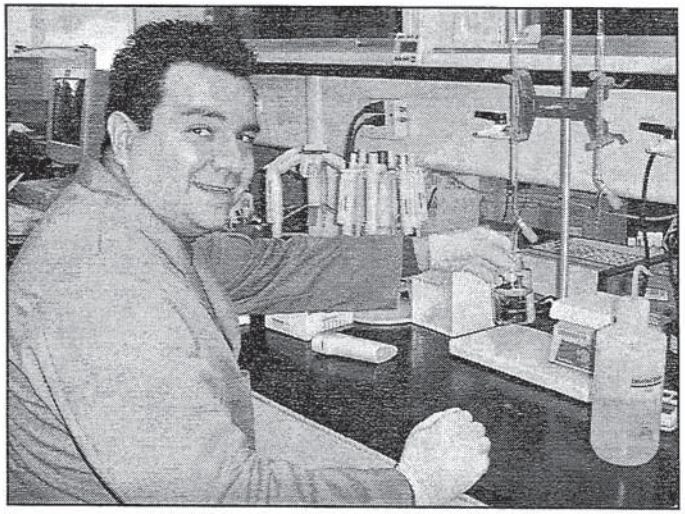
1. Once an employee knows he or she is going to be released to return to duty with a permanent restriction, the employee should provide his or her immediate supervisor with documentation immediately. The employee may fax the documents to the supervisor.
2. The written documentation from the employee's health care provider must describe the nature, severity, and duration of the impairment; the activity or activities that the impairment limits, the extent to which the impairment limits the employee's ability to perform the activity or activities and substantiate why the accommodation is needed. If the employee returns to work with documentation that does not indicate the nature of the illness or injury, the type of restrictions, and the duration of the restrictions, the employee will be asked to provide additional medical documentation to clarify the nature and extent of the restrictions. The employee will not be allowed to work until such documentation is provided. The employee will be placed on unpaid leave, unless the employee opts to use any accumulated sick or vacation leave, the exercise of such option must be in writing.
3. Once a supervisor receives the documentation, the supervisor will immediately notify the Human Resource Department. The HR Department, in conjunction with the Department Head or the Section Head will determine whether the employee can perform the essential functions of the position, with or without reasonable accommodation. If the employee can perform the essential functions of the position, the supervisor will notify the employee and the employee must report to work within the next three working days.
4. If the employee cannot perform the essential functions of the position, with or without reasonable accommodation, then the Human Resources Department will advise the employee of the option of requesting a medical reassignment. Under the medical reassignment provsions, the employee will be considered for reassignment to a vacant equal or lower-grade position.

The employee must meet the minimum education and experience requirements of a vacant position and

must be able to perform the essential functions of the position in question with or without a reasonable accommodation. If no such position exists, the employee will be placed on a reinstatement list.

FAMILY AND MEDICAL LEAVE

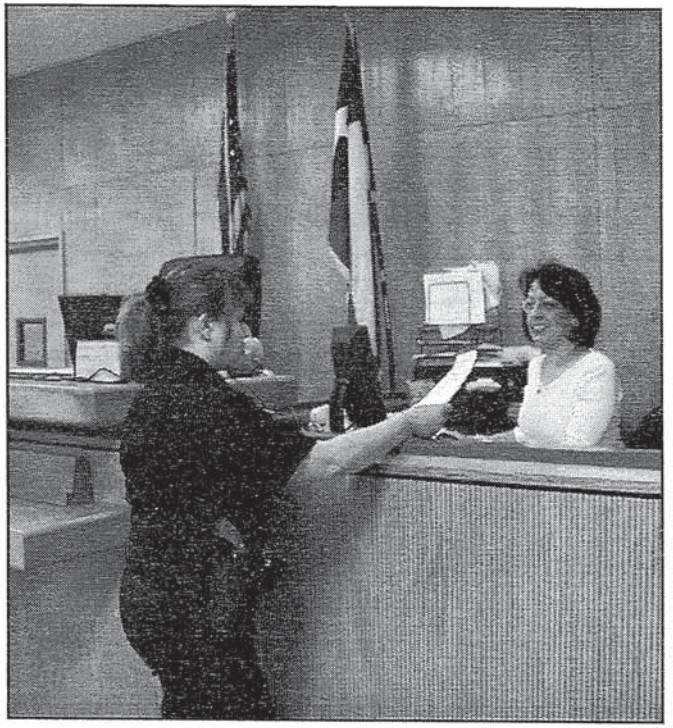
The Family and Medical Leave Act ("FMLA") guarantees many eligible City employees rights to certain types of unpaid leave and job reinstatement upon returning from such leave. Additional information on the FMLA can be obtained by contacting the Human Resources Department and by referring to the FMLA notice posted on the official bulletin board at each department. Generally, the FMLA allows up to 12 weeks of leave during a "rolling" 12-month period for the birth of a child; the adoption of a child or placement of a child for foster care; to care for a spouse, son, daughter, or parent who has a serious health condition; or because of an employee's own serious health condition that makes the employee unable to perform the functions of his job.



Requesting FMLA Leave

To obtain a leave of absence based on an employee's own serious health condition, the employee must provide his or her supervisor with a note from the employee's doctor no later than the fifteenth calendar day of absence indicating the date on which the serious health condition commenced,

the probable duration of the condition, appropriate medical facts within the knowledge of the employee's doctor regarding the condition, and that the employee is unable to perform the functions of his or her position because of the condition. The employee will be required to provide periodic updates from the employee's doctor on the serious health condition, as well as a fitness-for-duty certification when the employee seeks to be reinstated, consistent with the FMLA. If, for medical reasons, the employee is unable to deliver any doctor's note required under this paragraph, the employee may have a friend, family member or health care provider deliver them. The employee must provide a medical release upon returning from any medical leave.



To obtain leave so that an employee may care for a spouse, child or parent with a serious health condition, the employee must provide his or her supervisor with a note from that individual's doctor stating that the employee is needed to care for the individual and estimating the amount of time involved. The employee may be required to provide periodic updates on the family member's con-

dition and on the employee's continued need to care for that person consistent with the FMLA.

To obtain leave based on the birth or placement for adoption or foster care of a child or on planned medical treatment and such leave is foreseeable, an employee must notify his or her supervisor or the Human Resources Department not less than 30 days before the employee plans to commence leave. If it is not possible to give 30 days' notice, the employee must give as much advance notice as is practicable.

Generally, FMLA can be taken intermittently or on a reduced leave schedule. However, when the qualifying event is the birth or placement of a child, an employee can only take intermittent or reduced leave with the permission of his or her Department Head. Any requests for intermittent or reduced leave should be made to the Human Resources Department.

Benefits During FMLA Leave

The City requires any employee taking leave under FMLA to utilize accrued but unused vacation and sick leave during the leave of absence, provided that it is not used to receive more compensation than the employee would receive were the employee working. The City also requires employees to utilize, to the maximum extent allowed, any other City-sponsored benefits (such as disability or wage benefits) while the employee is on FMLA leave.

Obviously, any family and medical leave taken by the employee will be counted against the employee's allowance of twelve weeks' leave provided by the FMLA. The 12-month period in which the 12 weeks of leave entitlement occurs will be calculated based on the 12-month period measured forward from the date any employee's first FMLA leave begins. Thus, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.

During an approved leave of absence, there is no break in

an employee's seniority unless an employee is on an unpaid leave of absence for thirty or more consecutive days. However, any performance reviews which would normally occur at a time when the employee is on leave will be rescheduled and review dates will be adjusted to reflect the period of leave.

Employees on unpaid leave of absence are not entitled to holiday pay for those holidays falling during the leave. Additionally, benefits such as vacation time and sick leave do not accrue during an unpaid leave of absence.

During any FMLA leave, the City will maintain its share of an employee's coverage under any group health or insur-

ance plan on the same conditions as if the employee was not on leave. This means that, during any unpaid leave of absence, an employee must continue to pay his or her share of the cost of any insurance coverage that the employee has elected to make under the City's benefit program. The employee must make arrangements with the Insurance and Benefits Department to make any such payments.

Returning from FMLA Leave

An employee must present an acceptable fitness-for-duty certification upon return from FMLA leave which was the result of the employee's own serious health condition. An employee returning from FMLA will normally be reinstated to the same position the employee held before the leave or to a position with equivalent pay, benefits, and other terms and conditions of employment.

If an employee fails to return to work at the expiration of his or her approved leave of absence, the employee will be considered to have voluntarily resigned the day after completion of the leave of absence and be terminated effective on that date. If an employee is offered a job for which the employee is qualified and refuses it, or if the employee accepts other employment during the leave, the employee will be considered to have voluntarily terminated his or her employment. In the event that an employee does not return to work following FMLA leave, the City may, in certain circumstances, recover from the employee the cost of any payments made to maintain the employee's benefit coverage. Please contact the Human Resources Department if you have any questions about this issue.

Key Employee Exception

The City may deny certain FMLA rights to an employee who is considered a "key employee" under the Act. Under this exception, employees who are paid on a salary basis and are among the highest paid 10% of all employees within a 75-mile area of the employee's worksite may not be entitled to restoration following FMLA leave if the restoration of that employee will cause substantial and grievous economic injury to the operations of the City. In this "key employee" situation, the employee may be

given an opportunity to return to work for the City in an alternative position, but not necessarily at the same level or pay.

TUITION ASSISTANCE PROGRAM

Permanent employees are eligible to enroll in the Tuition Assistance program after completion of 6 months of continuous service. The City will reimburse up to 80% of the cost of tuition and applicable fees, based on the current tuition rates set forth by the University of Texas at El Paso.

To be qualified for reimbursement, employees must file a program application with the Human Resources Department.

SOCIAL SECURITY

The employee and the City contribute to the cost of Federal Social Security Benefits, each at a rate of 7.65% of gross pay. Additional information about Social Security benefits or eligibility may be obtained by contacting the local Social Security Administration Office. Uniformed Fire and Police employees do not participate in the City's Social Security Plan.

DEFERRED COMPENSATION

This is a program that permits you to authorize a portion of your salary to be withheld, invested and returned to you at a later date. Neither the deferred amount nor earnings on the investments are subject to current Federal Income Taxes. Taxes become payable when the deferred income plus earnings are distributed to you.

COMPENSATION

All positions in the City are evaluated on the basis of the complexity of the duties to be performed, level of responsibility, necessary experience and skills, required licenses and other related factors. Based on these factors, positions are assigned to appropriate job classes and grades. Each class grade consists of a pay range having a minimum and maximum salary level and a fixed number of intermediate levels.

"OUT-OF-SPEC" WORK

Although employees are hired to perform specific job duties, your supervisors may ask you to perform other duties not listed in your job description. In such cases the working out of class rule will apply.

HEALTH AND LIFE COVERAGE

The City is self-insured for health benefits and purchases life insurance coverage for City employees. Full-time City employees may enroll in the City of El Paso Health Benefit Program. The health coverage is also available for eligible dependents. The employee and the City share the cost of health benefit coverage. The City provides basic term life coverage, accidental death and dismemberment coverage and life coverage for spouse and eligible dependents at no cost to the employees. Health and life coverage selected by the employee become effective after 30 days of full-time employment. You must enroll in these programs to receive these benefits. If you wish to make any changes to your coverage after your initial selection, you must contact the Insurance and Benefits Office.

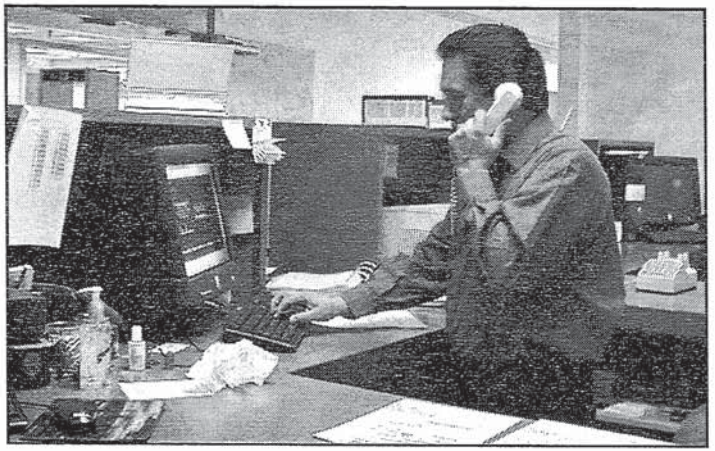
Uniformed Fire and Police employees should refer to their current collective bargaining agreements to determine their benefit coverage.

PROFESSIONAL APPEARANCE STANDARDS

As representatives of the City of El Paso, employees must recognize that their appearance is a direct reflection of the level of professionalism in the organization. For this reason, all employees shall follow these basic minimum standards in regard to dress and personal appearance.

Standards

1. Employees in an office environment that require contact with the general public (i.e., citizens, contractors, governmental representatives, etc.) should dress in a manner that is in keeping with the accepted standards of professional office attire. Even though the essential functions of an employee's job may not involve direct contact with the public, being housed in a building where members of the public visit constitutes direct contact. Athletic clothing, unless job-related, is prohibited. Denim garments are prohibit-



ed for employees who work primarily in an office setting, except as authorized in section 2.

2. Non-uniformed employees in non-office positions should dress suitably for their work environment. Denim clothing will not be allowed for any employee who works primarily in an office setting, with the following exception. The last Friday of every month employees are allowed to wear nice denim clothing, properly laundered and in good condition.
3. Footwear should also be appropriate for the work environment. Acceptable items include oxfords, pumps, boots and flats. Athletic shoes are prohibited. Hosiery is optional when wearing attire below the knee. All other times, hosiery is required.
4. If an employee requires an exception regarding their dress, they should contact the Personnel Department. Accommodation requests that are reasonable, for bona fide reasons and do not result in undue hardship for the City, will be granted.
5. An employee who is in doubt about the appropriateness of a particular mode of dress must consult their supervisor or Department Director in advance. Department directors and supervisors are charged with the responsibility of enforcing these standards.
6. Employees not conforming to the City's professional appearance standards will be sent home. An employee may return to work only when he/she is in full compliance with the standards. In addition, employees who refuse to comply with these standards will be subject to disciplinary action up to and including termination of employment.

TRAVEL

All travel requests must be processed in accordance with the City's travel policy.

EXIT INTERVIEW

Upon notice of separation from City employment, you must report to the Human Resources Department for an exit interview. The exit interview is held so that the City can identify those factors that may affect its operations and implement corrective measures. You will also be advised of provisions that affect your separation status.

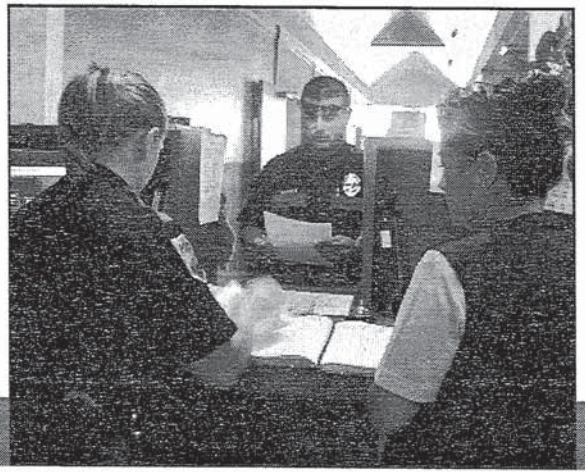
EMPLOYEE ASSOCIATIONS

City employees may belong to employee associations. The uniformed Fire and Police have employee associations with collective bargaining rights. Other City employee unions or associations do not have collective bargaining rights. Information regarding associations can be obtained from the local chapter of the American Federation of State, County and Municipal Employees, or the El Paso Municipal Employee Association.

SAFETY POLICY

The purpose of the government and employees of the City of El Paso is to provide a variety of services essential to the health, safety and well-being of the community and its citizens. We are obligated to provide the citizens of El Paso with the best and most complete services possible. Incidents that result in injury to city employees and/or damage to city property delay or prevent the successful accomplishment of our jobs.

It is the policy of the City of El Paso that no job or task is so urgent or important that it must be completed by putting the safety of persons or property at risk. Department heads must provide their employees with safe working conditions so that the employees may do their jobs without endangering their safety or health. These conditions should include, but are not limited to, a safe place to work, safe equipment with which to work, proper training in safe work procedures, and co-workers who also perform their jobs in a safe manner. All employees are issued a copy of the City's Employee Safety Procedures Manual.



There are two areas of safety that require employees to be particularly careful, driving and back injury. Automobile accidents are one of the most common and dangerous for our employees. Auto accidents cause much suffering and lost work. Please drive safely whether on or off duty. Back injury is also an accident that robs employees and the City of time and productivity. Your supervisor can advise you of proper lifting techniques to avoid this common injury. If you have a back injury, the City provides a class to help you prevent re-injury.

Accidents don't just happen; they are caused. When a hazardous condition exists, it is your responsibility to bring it to the attention of a supervisor or the Department Safety Coordinator. All accidents, injuries or incidents should be reported immediately to a supervisor.

CONCEALED HANDGUNS/WEAPONS POLICY

Employees, with the exception of licensed peace officers employed by the City as peace officers and/or those who are hired under Contract with the City of El Paso and acting within the scope and performance of their official duties, are prohibited from possessing or storing a concealed handgun or other weapon while on duty or performing services for the City, or while in City uniform or in a City vehicle, regardless of whether the employee is on City property or not.

While off duty, employees other than licensed peace officers employed by the City as peace officers are prohibited from possessing or storing a concealed handgun or any other weapon on the property leased, owned or controlled by the City; to the extent pre-empted by state law, this provision shall not apply to City parks, political rallies, political meetings or parades. This paragraph does not apply to public streets or sidewalks, nor does it prohibit an off-duty employee from traveling through the airport and transporting firearms, as long as the transportation is in compliance with all laws.

Employees who violate this policy may be disciplined up to and including termination of employment.

WORKPLACE VIOLENCE POLICY

The City is committed to promoting a work environment that is free of harassment and intimidation. Harassment is abusive, obscene or threatening conduct or communication that is intended to harass, annoy, alarm, torment, embarrass or injure another. Employees who engage in such conduct while on duty or on City premises will be subject to discipline. While on duty or on City premises, employees shall not use obscene or abusive language or offensive gestures in their communication with coworkers or members of the public; employees shall not by oral, written, electronic or other means of communication threaten or intimidate coworkers or members of the public; and employees shall not physically endanger, intimidate or injure coworkers or members of the public. Such conduct will not be tolerated.

City employees are required to report incidents of threats or acts of physical violence of which he or she is aware.

Each incident of violent behavior, whether the incident is committed by another employee or a member of the public, must be reported to the Department Head immediately.

If an employee is aware of a threat of imminent physical harm to him/herself, another employee or member of the public, the employee should attempt to remove him/herself from the dangerous situation and immediately notify appropriate emergency personnel by calling "911." The employee should report this emergency call to his/her supervisor or management immediately.

In critical incidents in which a serious threat or injury occurs, emergency responders such as Police and Fire personnel must be immediately notified.

VOICE MAIL POLICY

The City of El Paso voice mail system is covered under the Electronic Communications Privacy Act of 1986. The City has made all possible efforts to prevent the dissemination of offensive unsolicited communication within our voice mail network, but cannot guarantee and shall not be responsible for receipt or transmittal of such material. To report receipt of offensive unsolicited communication please contact the IS Help Desk at 541-4466.

All employees provided access to voice mail understand that inappropriate use of the system could result in the revocation of their access. Authorized voice messaging users are not permitted to engage in any of the following activities either during working or nonworking hours, using City equipment or facilities:

1. Activities for any illegal purpose
2. To transmit threatening, obscene or harassing correspondence
3. For unauthorized distribution of city data and information
4. Unauthorized attribution of statements, data or information to the city
5. To interfere with or disrupt network users, services or equipment

6. Private purposes such as marketing or business transactions
7. Solicitation for religious and political causes
8. Unauthorized not-for-profit business activities
9. Private advertising of products services
10. Any activity meant to foster personal gain
11. Unauthorized access to obscene materials, including knowingly retrieving and/or storing such materials

FLEX-TIME POLICY

1. Purpose. Flex time is a tool used to allow employees to work hours that are not within the standard 8:00 A.M. to 5:00 P.M. range. There are times when a department's operational needs require employees to either come in earlier than their normal reporting time, or to stay later than their normal end of shift time. Flex time may allow a Department Head to allow an employee to fluctuate their weekly schedule and either leave earlier on Friday or come in later on Friday. Flex time may also allow an eligible employee to take longer lunch periods.
2. The adjustment of an employee's work schedule must be approved by the supervisor prior to the employee taking the time off. It is the responsibility of the supervisor to verify and ensure performance of employees who are given flex-time. Good relationships among everyone involved are important for a successful flex-time policy. Trust is a big factor; supervisors must feel confident that employees will not abuse the benefits that are inherent in a flex-time schedule. On the other hand, supervisors should view flex time as a legitimate reason for an employee to be out of the office, just as if an employee was out of the office on annual or sick leave. Everyone should realize that flex time is a privilege, not a right, and if abused, can be taken away at the discretion of the supervisor.
3. Types of Flex-Time Schedules
   a. *Adjusted leave or start time.* An employee may be allowed to report later or leave earlier.
   b. *Adjusted Lunch Period.* An employee's length of

their lunch period, may be adjusted while still working an 8-hour day.

c. *Compressed Workweek.* An employee may be allowed to work four 9 hour days and one 4 hour day.

EMPLOYEE SUGGESTION PROGRAM (ESP)

The City rewards initiative when it improves City services. The goal of the Employee Suggestion Program is to generate and recognize employee creativity and innovations to operations or procedures. If you have an idea on how to improve work procedures, service quality, safety or material costs, you may be eligible for an award including a cash award, if your idea is implemented. When you have an idea call the Human Resources Department to initiate the process!

A FINAL NOTE

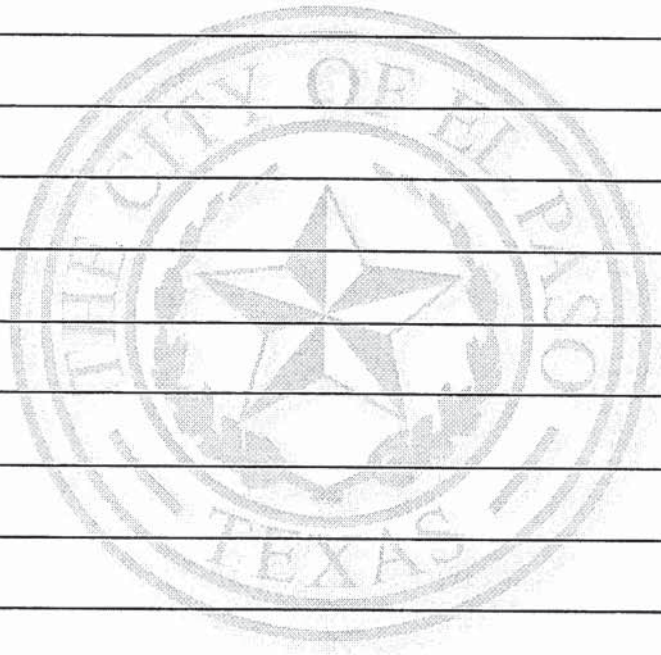
If you have read this handbook carefully, you have probably learned a great deal about the organization you have joined. Every job has an important place in the total effort to provide quality services to our community. To be satisfied in your job, it is necessary that you understand the ultimate aim of our organization. No organization can be sound and productive unless each employee feels that they are a necessary part of the whole.

It is our hope that through this handbook you will find your place in our organization; and, that you will start your new job with a good understanding of what is expected of you and what you may expect in return.

The Human Resources staff of the City of El Paso is sincerely interested in making this job the best job you've ever had. We hope that you will do your best for your own good and for the good of the people we serve!

REMEMBER - "TO THE PUBLIC, YOU ARE THE CITY"

Notes:



Attachment "B"

Employee Acknowledgement

CAMINO REAL REGIONAL MOBILITY AUTHORITY
EMPLOYEE CODE OF CONDUCT

Acknowledgement

I, _____, DO HEREBY ACKNOWLEDGE THAT I HAVE RECEIVED, READ, AND UNDERSTAND THE CRRMA EMPLOYEE CODE OF CONDUCT AND THAT I WILL COMPLY WITH THE REQUIREMENTS SET FORTH THEREIN.

_____

EMPLOYEE

_____

DATE


ONE WAY
CAMINO REAL
REGIONAL MOBILITY
AUTHORITY
2010
STRATEGIC PLAN


CRRMA

INTRODUCTION FROM THE CHAIR

Regional mobility authorities are tasked with seeking out and implementing regionally significant mobility projects that can make a difference in their respective regions. Through this 2010 Strategic Plan, the Camino Real Regional Mobility Authority (CRRMA) has developed goals and strategies to ensure a significant, positive impact on the region's transportation system over the next five years. The CRRMA's identified goals and strategies provide the parameters within which the agency will continue its development into a comprehensive provider of mobility solutions for the entire Paso del Norte region, which includes not only West Texas and Southern New Mexico, but also the northern Mexican state of Chihuahua.

The exercise of developing a strategic plan is also a good opportunity to review an organization's recent past in order to help the organization shape its goals for the near future. This 2010 Strategic Plan for the CRRMA is no exception. There have been numerous changes to the organization since its inception in 2007, including most recently, my appointment as Chair and the addition of Rosario Holguin and Jim Volk as new Board members. Rosario and Jim have brought new energy and ideas to this agency that I believe will serve us well into the future, some of which have already been incorporated into this Strategic Plan. This bodes well for the agency, as these new members exhibit an interest and engagement in the subject matter and organization matching those of our other Board members. I look forward to working with each of them as we pursue the goals outlined within this document and work to ensure we are proactive in dealing with the mobility challenges facing our region.

On behalf of the entire CRRMA Board and staff, I am pleased to submit this 2010 Strategic Plan to the public. I look forward to assisting the organization as it continues to implement innovative, timely and cost effective mobility solutions for our region.

Sincerely,

Scott McLaughlin, Chair
Camino Real Regional Mobility Authority

EXECUTIVE SUMMARY

Through this 2010 Strategic Plan, the Camino Real Regional Mobility Authority (CRRMA) seeks to establish a theme for the coming five years: one of growth and increased regional collaboration. Undoubtedly, the CRRMA continues its growth as a provider of mobility solutions; having been involved in several of the most significant recent infrastructure projects in the area through various roles in financing, development or construction. However, the CRRMA now looks to increase its role throughout the area by collaboration with other entities in the area that will allow for development of transportation projects elsewhere in the Paso del Norte region. With growth and regional collaboration as the theme, the CRRMA seeks to pursue the following goals over the coming years:

GOAL 1 - Develop Public Awareness, Public Interest and Public Participation in the CRRMA

GOAL 2 - Develop the CRRMA into a Truly Regional Agency

GOAL 3 - Identify and Pursue Innovative Funding Alternatives

GOAL 4 - Identify and Expedite the Completion of Needed Mobility Projects

GOAL 5 - Support Regional Businesses and Regional Economic Development

GOAL 6 - Pursue Multimodal Solutions to the Region's Mobility Issues

This 2010 Strategic Plan also identifies the strategies by which the CRRMA will pursue these identified goals. Also provided within this publication is information relative to the Board Members, the organization's vision and mission statements, its guiding principles and potential future projects. This document shall serve as the roadmap for the CRRMA as it seeks to continue its growth and expand its regional collaboration over the next five fiscal years.

CRRMA BOARD OF DIRECTORS

Scott McLaughlin
Chair

Ralph Adame
Vice Chair

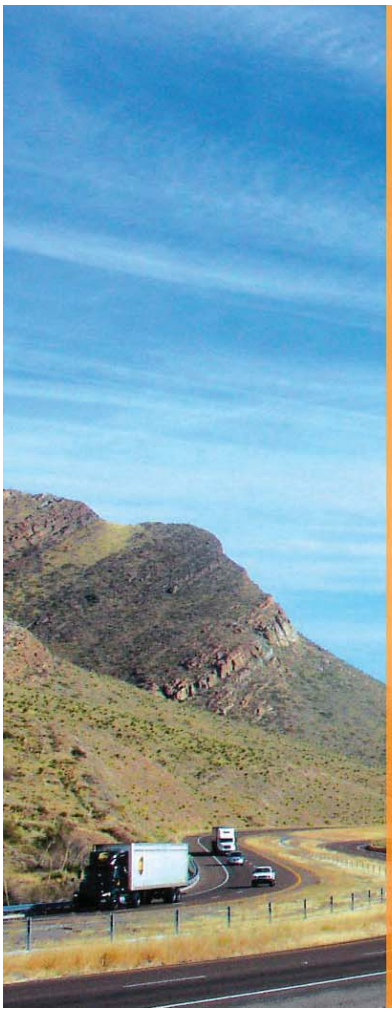
Susan A. Melendez
Secretary

David Marcus
Treasurer

Dr. Tony Payan
Alternate Secretary

Rosario Holguin
Board Member

James Volk
Board Member



CRRMA VISION STATEMENT

The vision of the Camino Real Regional Mobility Authority is to become an active and effective partner with other local and regional entities interested in alleviating the mobility concerns of the region through the development of innovative and sustainable multimodal solutions.

CRRMA MISSION STATEMENT

The mission of the Camino Real Regional Mobility Authority is to assist in the establishment of a comprehensive transportation system to directly benefit the traveling public within the El Paso region through the development of additional transportation alternatives within the region.

CRRMA GUIDING PRINCIPLES

As established in the petition to create the entity, the guiding principles of the CRRMA are:

- No future tolling of existing vehicular travel lanes of non-toll roadways
- Acceleration of projects concerning trade corridor improvements
- Promoting of projects that offer an alternative to traditional auto transit
- Transparency in deliberations through the televising of CRRMA meetings

CRRMA GOALS FOR 2011-2015

The Camino Real Regional Mobility Authority (CRRMA) was created by a Resolution of the El Paso City Council on March 13, 2007. Although still a young organization, the CRRMA has taken an active role in the community by participating in some of the area's largest transportation projects. Through this 2010 Strategic Plan, the CRRMA outlines the agency's goals for the next five fiscal years, as the CRRMA continues to grow in the region of West Texas, Southern New Mexico and Northern Chihuahua, Mexico. This Strategic Plan also identifies the CRRMA's strategies for achieving the six identified goals for the plan period.

While several of the CRRMA's goals remain consistent from the agency's prior strategic plan document, others have been expanded upon to better reflect the current and potential growth of the agency. Working within the parameters of the CRRMA's Vision Statement, Mission Statement and Guiding Principles, the CRRMA Goals for fiscal years 2011-2015 are as follows:

GOAL 1 - Develop Public Awareness, Public Interest and Public Participation in the CRRMA

GOAL 2 - Develop the CRRMA into a Truly Regional Agency

GOAL 3 - Identify and Pursue Innovative Funding Alternatives

GOAL 4 - Identify and Expedite the Completion of Needed Mobility Projects

GOAL 5 - Support Regional Businesses and Regional Economic Development

GOAL 6 - Pursue Multimodal Solutions to the Region's Mobility Issues

CRRMA STRATEGIES TO ACHIEVE 2011-2015 GOALS

Goal 1 - Develop Public Awareness, Public Interest and Public Participation in the CRRMA

The tenets of this goal have been a significant consideration in the agency's development to date and will continue increasing in scope through the coming years. The key to achieving this goal is for the CRRMA to focus on three distinct areas as it moves forward: (i) convenient public access to board meetings; (ii) a continuous and accessible presence in the public arena; and (iii) an active community outreach program.

Convenient Public Access to Board Meetings

The CRRMA Board continues to hold its meetings in the El Paso City Council Chambers and televise, replay periodically on the City's public access channel, stream live online and archive on the CRRMA's website. The numerous options available to the public to attend or view the actions of the CRRMA also fits squarely within the agency's Guiding Principle regarding transparency in deliberations through the televising of meetings.

Continuous and Accessible Presence in the Public Arena

The CRRMA must be proactive in establishing itself to the public as a provider of transportation solutions for the entire region. To this end, the CRRMA will strive to make information about its activities known and easily accessible through all available outlets, including television, radio, print and online sources. CRRMA participation in television, radio and print interviews has become more common and will be increased in the coming years, especially as projects develop further. The CRRMA continues to expand its presence on the internet through its website (www.crrma.org) and participation in various social media efforts (e.g., Facebook and Twitter). Additional proposed enhancements to the website will include improvements to the Contact page, creation of an Outreach page, addition of video content, development of eNewsletters/mobility alerts, expansion of the Projects page and an increase in links.

Active Community Outreach Program

The CRRMA Board and staff spent considerable time identifying and speaking with community groups to date but will increase such outreach efforts in the coming years. The addition of an Outreach page to the website should assist in making the organization even more available to civic and community groups. Further, the CRRMA will look to the development of advisory groups to assist in generating public interest in the organization.

CRRMA STRATEGIES TO ACHIEVE 2011-2015 GOALS

GOAL 2 - Develop the CRRMA into a Truly Regional Agency

Regional mobility authorities are created in order to address mobility issues throughout the regions in which they were created. In the case of the CRRMA, the applicable region is most commonly identified as the area incorporating West Texas, Southern New Mexico and Northern Chihuahua, Mexico. A tri-state, bi-national location such as the Paso del Norte region requires mobility solutions that incorporate the input and involvement of all areas within the region while recognizing that bi-national infrastructure development is part of the solution to critical border transportation issues. The creation of a seamless and safe transportation system that assures investors currently concerned with border safety and logistics is imperative. Although all projects currently being pursued by the CRRMA are within the limits of the City of El Paso, the CRRMA commits to further its development of transportation partners throughout this region in order for the CRRMA to evolve into a truly regional organization. The location and enabling legislation for the CRRMA allows for the development of international and interstate projects that substantially impact the region. Accordingly, in the coming years, the CRRMA will seek to develop projects in other areas of the Paso del Norte area that provide benefits to the entire region.

Using the partnership between the CRRMA, the El Paso Metropolitan Planning Organization, the City of El Paso and the Texas Department of Transportation through the 2008 Comprehensive Mobility Plan as an example, the CRRMA will look for other mobility partners in which to develop the region's priority projects through innovative and cooperative relationships. This could result in one-time partnerships or expansion of the Board to include other political entities. Either way, the goal for the CRRMA is to become a mobility solution provider for the entire region through cooperative and collaborative relationships with the various members of the El Paso Metropolitan Planning Organization study area. As stated in the prior strategic planning document, the CRRMA understands that in communities like this one, the cooperation of the various implementing entities is an absolute necessity in order to achieve a cohesive approach to providing the region's transportation needs. With this in mind, the CRRMA intends to evolve into a truly regional agency.

CRRMA STRATEGIES TO ACHIEVE 2011-2015 GOALS

GOAL 3 - Identify and Pursue Innovative Funding Alternatives

With national, state and local economies still in recovery and transportation funding sources seemingly declining further each day, the importance of this goal has increased significantly. The CRRMA has experience with innovative funding sources and will continue to develop unique approaches to funding in an effort to continue addressing the needs of the region.

Along with its regional partners, the CRRMA has successfully combined various funding sources into innovative financial structures for important projects. By way of example, the CRRMA's $146 million Americas Interchange Project uses four separate funding sources: American Recovery and Reinvestment Act Funds, Coordinated Border Infrastructure Funds, Pass-Through Financing and State Infrastructure Bank Loan proceeds structured as a Build America Bond (to be repaid through one of the state's first Transportation Reinvestment Zones).

It is evident that traditional funding sources are simply no longer available, yet the delay of a project only results in the increase in cost, due to material, labor and other incremental increases. Accordingly, the CRRMA's willingness to utilize all available funding sources will continue as the CRRMA pursues other important regional projects. The CRRMA will continue to seek out all funding sources available to the region, including but not limited to:

- Transportation Revenue Bonds
- Texas Department of Transportation Grants and Loans
- State Infrastructure Bank Loans
- North American Development Bank Loans
- Texas Mobility Funds
- Coordinated Border Infrastructure Funds
- Transportation Reinvestment Zone Funding
- Pass-Through Financing
- Toll Equity Financing
- Other Federal, State and Local Funding Sources
- All other funding sources available to the CRRMA now or in the future

CRRMA STRATEGIES TO ACHIEVE 2011-2015 GOALS

GOAL 4 - Identify and Expedite the Completion of Needed Mobility Projects

As the CRRMA seeks to evolve into a truly regional agency, it now seeks to identify regionally significant projects that would improve the movement of people and goods in and around the referenced tri-state, bi-national area. In addition, the CRRMA further seeks the expedited completion of any such project in order to increase the effectiveness of the region's transportation system. This delineation between the identification and expedited completion of regionally important projects marks an important step in the evolution of the agency.

As a partner in the 2008 Comprehensive Mobility Plan, the CRRMA helped identify fifteen regionally significant transportation projects that were prioritized for completion, many of which are now under way. In fact, the CRRMA is actively involved in five of those projects. As transportation planning and project implementation is often an extremely long process, it is now time for the agency to begin identifying additional significant regional projects in order to commence their study and potential implementation.

Potential projects will be examined from all areas of the region and could consist of any type of project authorized by the legislation governing regional mobility authorities. Examples could include rail projects, trolley projects, heavy highway facilities (toll or non-toll) and international bridges. In essence, the CRRMA will seek to work with the regional partners to identify any regionally significant project that would improve the movement of people or goods in the region and to which the CRRMA could bring value through its involvement. As with all projects being pursued by the CRRMA, the ultimate goal is to improve the region's transportation system.

CRRMA STRATEGIES TO ACHIEVE 2011-2015 GOALS

GOAL 5 - Support Regional Businesses and Regional Economic Development

The current condition of federal, state and local economies only serves to amplify the importance of this goal to the CRRMA. The CRRMA continues to recognize the real and significant economic impact a large scale transportation project can have on the area through the use of regional sources of labor, materials and other indirect project expenses. Specifically, as currently evidenced with the CRRMA's $146 million Americas Interchange Project, the CRRMA has a real potential to participate in the economic development of the region. The CRRMA's program includes additional significant, multimillion dollar projects, which will continue to have significant positive effects on the area's economy through the use of regional labor, material and service providers. Therefore, the CRRMA again commits to the support of regional businesses in its pursuit and implementation of mobility projects whenever possible.

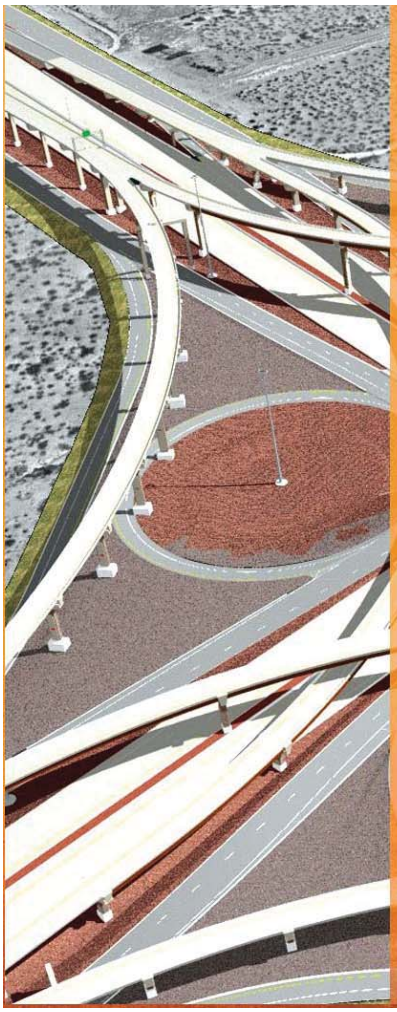
In seeking to improve the transportation system in the region, the CRRMA also indirectly supports the economic development of the region. The concept behind the use of a Transportation Reinvestment Zone (TRZ) illustrates this point clearly. Increased property values within a TRZ are used to fund the transportation improvements responsible for such property value increases. This is but a single example of economic development that the CRRMA is involved in and committed to continuing. Recognition of the economic development impacts of transportation facilities will continue to be a consideration evaluated by the CRRMA when identifying and pursuing projects in the region.

CRRMA STRATEGIES TO ACHIEVE 2011-2015 GOALS

GOAL 6 - Pursue Multimodal Solutions to the Region's Mobility Issues

According to a statement of intent included in the petition to create the agency, the CRRMA must adhere to the promotion of projects that offer an alternative to traditional auto transit. This goal, then, comes directly from the organizational documents used to create the CRRMA. Further, as noted within other stated agency goals, the CRRMA is committed to pursuing projects of all types, including multimodal alternatives available for the betterment of the region's transportation system.

While currently examining the potential for multimodal additions to current highway facilities (e.g., transit accommodations, high occupancy vehicle lanes, bicycle and pedestrian facilities), the CRRMA is interested in reviewing for possible development all forms of mobility projects that would help improve the region's mobility. The CRRMA can pursue any of the following types of projects: rail, trolley, hike and bike, pedestrian facilities, mass transit options and all other modes available for the movement of goods and people, which may be pursued by regional mobility authorities. The CRRMA may also pursue creative cross-border solutions to the region's international mobility issues, including projects previously identified by regional partners, such as bi-national mass transit or truck-to-train systems as an alternative to traditional commercial vehicles. As the CRRMA has committed to actively pursue various types of projects in the coming years, the CRRMA further commits to pursue projects that include or consist of multimodal solutions to the mobility issues of the entire region.



POTENTIAL FUTURE CRRMA PROJECTS

Through its involvement in the 2008 Comprehensive Mobility Plan (2008 CMP), the CRRMA identified a number of potential future projects. Of the eight projects slated for development by the CRRMA, the 2008 CMP identified funding for five:

Project 3 – Loop 375 (Woodrow Bean Transmountain Northeast) Mainlanes Expansion

Project 5 – Loop 375 (Joe Battle) at FM 659 (Zaragoza) Direct Connectors

Project 6 – Loop 375 (Joe Battle) at I-10 (Americas Interchange)

Project 11 – I-10 Corridor Aesthetic Improvements

Project 12 – Loop 375 Southern Corridor Phase I (César Chávez)

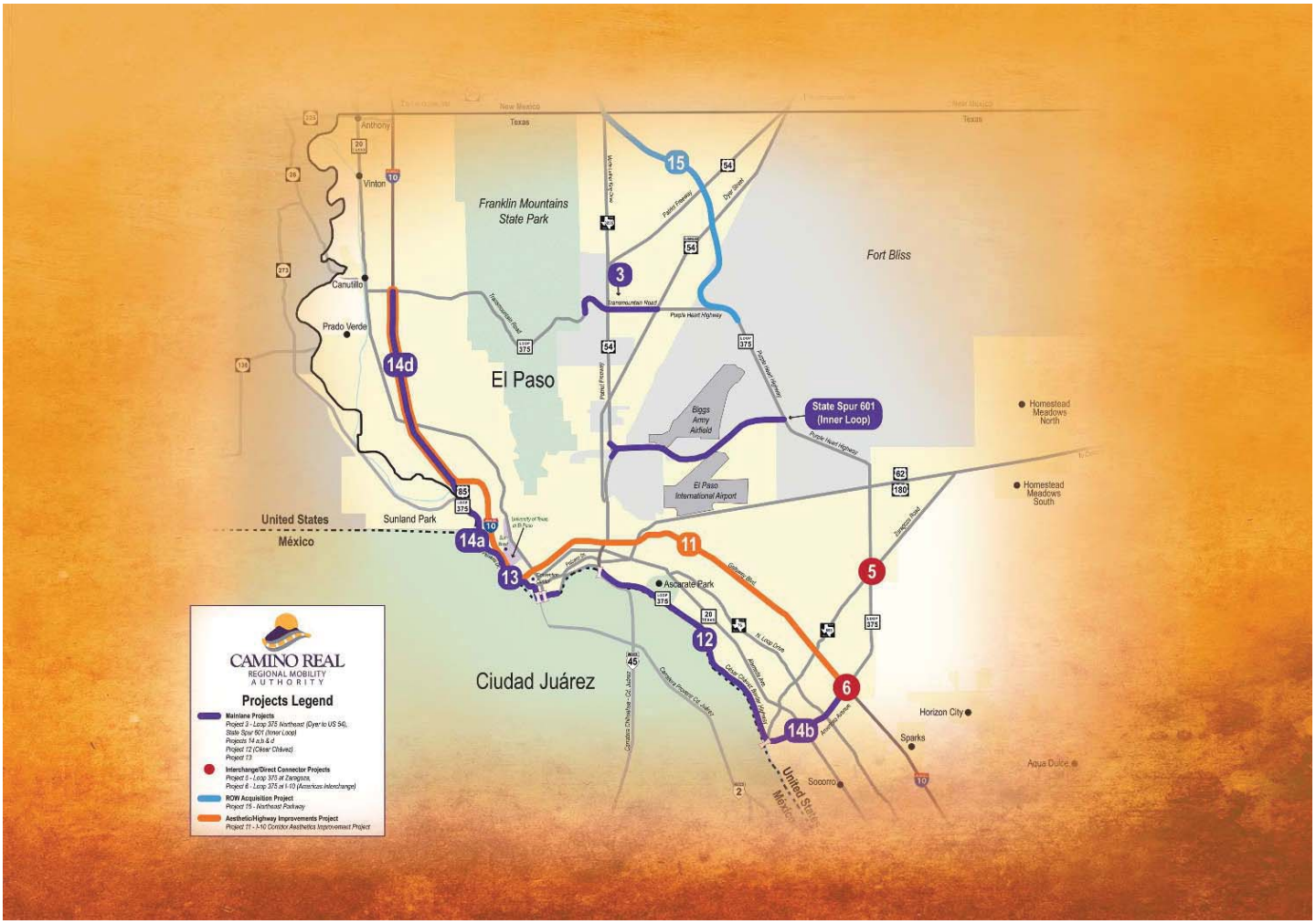
The CRRMA selected a design-build developer for Project 6 and is involved in the development of each of the other four funded projects, with the hopes of putting each of the other funded projects out to bid in 2011 or 2012. The 2008 CMP also identifies three proposed future CRRMA projects that are in varying degrees of development, which the CRRMA will continue to evaluate, assess and seek funding solutions for:

Project 13 – Loop 375 Southern Corridor Phase II

Project 14 – Loop 375 Southern Corridor Phase III

Project 15 – Northeast Parkway, Phase I

Additional project details can be found at the CRRMA website (www.crrma.org) on the Projects and Documents pages. As noted elsewhere in this document, the CRRMA is anxious to begin identifying additional potential future projects in line with its goal of becoming a truly regional entity. However, the 2008 CMP projects identified above are the only projects currently recognized as potential future CRRMA projects.



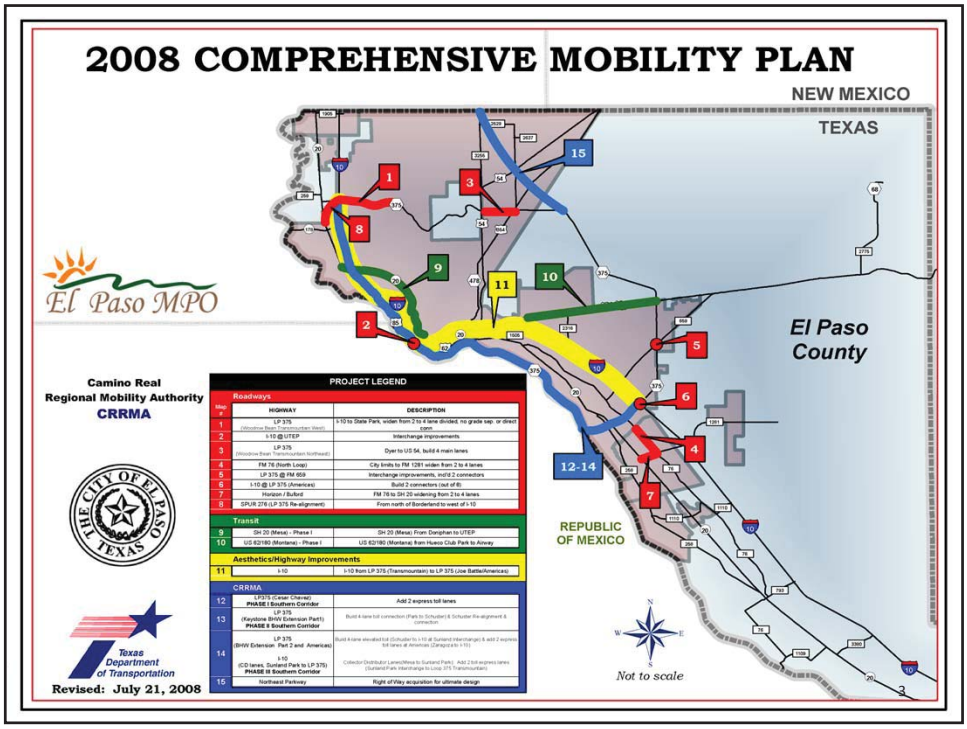
2 Civic Center Plaza, 9th Floor • El Paso, Texas 79901
(915) 541-4986 • www.crrma.org

TRZ Case Examples

Location	Project Type	RMA Participation
City of El Paso	•Road projects •Single jurisdiction	**Yes**
Hidalgo County	•Road project (Hidalgo Loop) •Single jurisdiction	**Yes**
City of Forney	•Road project •Single jurisdiction	**No**
El Paso County, Cities of Socorro and Horizon	•Road project •Multiple jurisdictions	**Yes**
Port of Corpus / Counties of Nueces & San Patricio	•Bridge project •Multiple jurisdictions	**No**

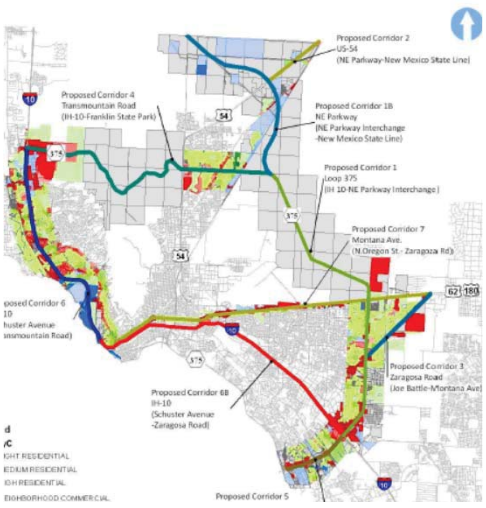
City of El Paso TRZs

- El Paso was the first major city in Texas to implement TRZs
- TRZ No.1 first approved in late 2008, but rescinded in 2010 due to data quality and contiguity issues
- TRZs No.2 and No.3 approved in 2010, after boundaries and revenue estimates were recalibrated
- Key funding mechanism for the El Paso Comprehensive Mobility Plan (CMP)
  - CMP is a multimodal plan (traditional roadways, transit, aesthetics, toll roads)
  - CMP Financial Plan includes $70 million in TRZ revenue along with tolls and other traditional funds

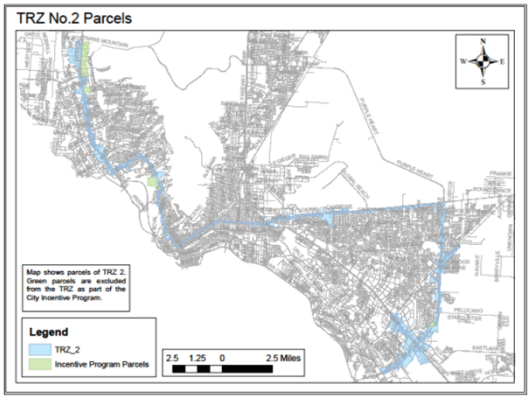


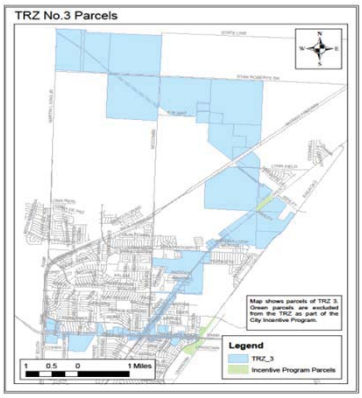
El Paso's TRZ No.1- Lessons Learned

- Data quality issues forced conservative estimates
  - CAD upgrading its databases and systems - data available in multiple, non-compatible formats
  - Large TRZ – negative impact on general fund
- Military base broke contiguity
  - Potential for questioning TRZ legality



City of El Paso TRZ No 2 and 3





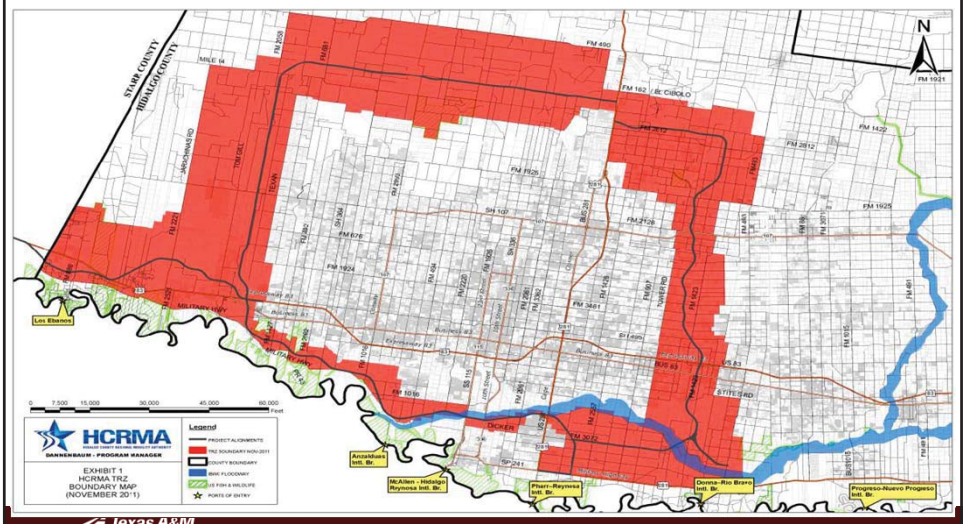
Baseline and PV of Revenue for City of El Paso TRZ No. 2 and 3

TRZ No. 2	Developed	Vacant	Grand Total
Total Acreage	1,806	2,628	4,434
Taxable Value (Tax Base)	$ 986,260,002	$ 119,291,602	$ 1,105,551,604
PV of Revenue (Tax Rate 0.633%)			**$ 65,041,931**
TRZ No. 3	**Developed**	**Vacant**	**Grand Total**
Total Acreage	350	5,163	5,513
Taxable Value (Tax Base)	$ 98,733,299	$ 6,699,764	$ 105,433,063
PV of Revenue (Tax Rate 0.633%)			**$ 6,361,429**
Grand Total	**Developed**	**Vacant**	**Grand Total**
Total Acreage	2,156	7,791	9,947
Taxable Value (Tax Base)	$ 1,084,993,301	$ 125,991,366	$ 1,210,984,667
PV of Revenue (Base Year)			**$ 71,403,360**

Hidalgo County TRZ No 1 and 2

- First County TRZ set up in Texas, with TRZ No 1 adopted by the County Commissioners Court in December 2008
- Led by Hidalgo Co. Regional Mobility Authority with the objective of funding the Hidalgo Loop project
- Hidalgo Co. Commissioners Court rescinded TRZ No 1 and approved TRZ No 2 in December 2011 to expand original TRZ boundaries
- Not active until a Commissioner's Court order is passed to activate County tax abatement
- Zone Terminates December 31, 2021 if not activated by that time

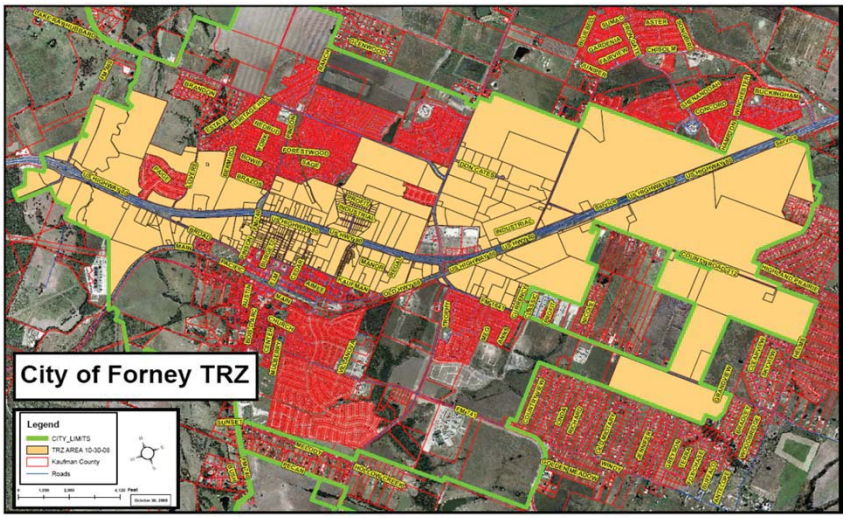
Hidalgo County TRZ No 2 (2 of 2)



City of Forney TRZ No 1 - History

- TRZ No 1 was established in December 2008 and included over 5,000 acres of land
- TRZ No 1 was rescinded in October 2011 - no new TRZ has been created yet
  - Because of economic downturn, TRZ No 1 did not accumulate much or any tax increment revenue
  - Project expected to drive the TRZ creation failed to be included in Pass-Thru-Toll agreement between TxDOT and City of Forney
  - Therefore, no specific projects were identified for TRZ No 1 funding

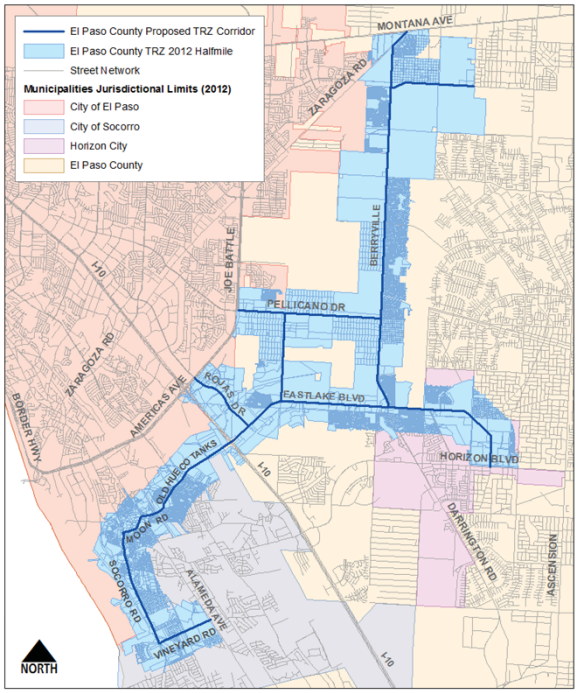
City of Forney TRZ No 1 - Boundaries



Multiple jurisdiction TRZs in El Paso County

- Improvement of 8 connected roadways located in 3 different jurisdictions within El Paso County
  - County of El Paso
  - City of Socorro
  - Town of Horizon
- Objective of improvements is to mitigate increasing congestion on existing roads and expedite area development
  - Estimated cost of $90 million
- All 3 jurisdictions interested in jointly funding it using the TRZ mechanism within their respective jurisdictions

- El Paso County TRZ: ½-mi buffer from centerline
- **Horizon City TRZ: ½-mile buffer**
- **City of Socorro TRZ: ½-mi buffer**



Texas A&M Transportation Institute

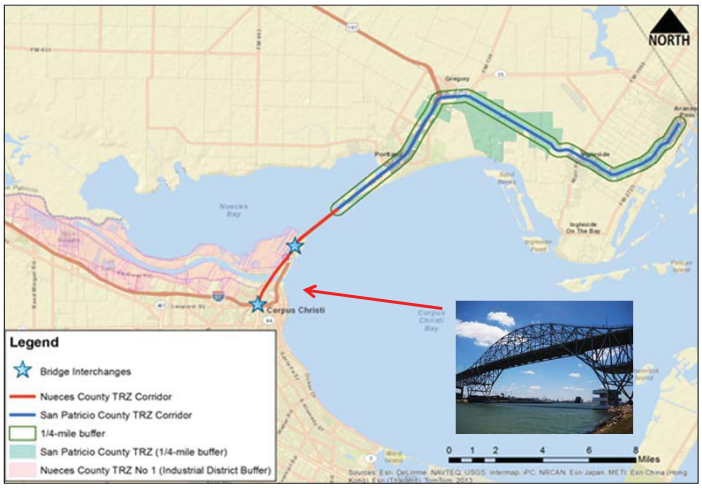
Baseline and PV of Revenue for Multi-jurisdiction TRZs in El Paso County

El Paso County TRZ	Developed	Vacant	Grand Total
Total Acreage	2,495	13,235	15,730
Taxable Value (Tax Base)	$ 833,965,638	$ 99,578,041	$ 933,543,679
PV of Revenue (Tax Rate 0.4089%)			**$77,596,799**
Horizon City TRZ	**Developed**	**Vacant**	**Grand Total**
Total Acreage	463	1,243	1,706
Taxable Value (Tax Base)	$ 207,475,206	$ 9,120,153	$ 216,595,359
PV of Revenue (Tax Rate 0.3228%)			**$8,109,224**
City of Socorro TRZ	**Developed**	**Vacant**	**Grand Total**
Total Acreage	480	819	1,299
Taxable Value (Tax Base)	$ 147,116,278	$ 5,379,422	$ 152,495,700
PV of Revenue (Tax Rate 0.5658%)			**$12,604,103**
Grand Total	**Developed**	**Vacant**	**Grand Total**
Total Acreage	3,437	15,297	18,734
Taxable Value (Tax Base)	$ 1,188,557,122	$ 114,077,616	$ 1,302,634,738
PV of Revenue (Base Year)			**$ 98,310,126**

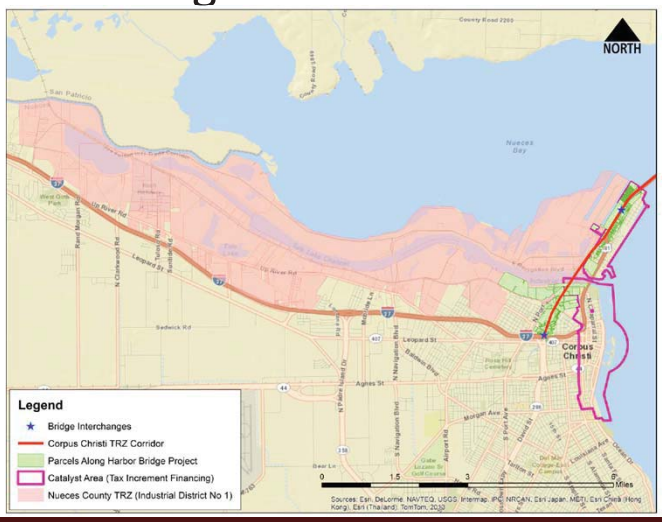
Corpus Christi Harbor Bridge: Nueces Co. and San Patricio Co. TRZs

- Critical infrastructure link connecting US-181 across the Port of Corpus Christi ship channel
  - Only direct link between Nueces Co. and San Patricio Co.
  - Port is nation's 5th by tonnage (80-million tons in 2011)
  - 138 ft clearance allows movement of < Panamax
- Current bridge built in 1959 constrains post-Panamax navigational traffic growth and is structurally deficiencient
- Planned replacement will improve safety and connectivity, and allow post-Panamax ships to use the port
  - Replacement cost: $870 million (federal, state and local funds)
  - Counties to raise between $25-$40 million in TRZ finance

Nueces Co. and San Patricio Co. TRZs (varying buffers)



Nueces County - Consideration of Pre-Existing TIF Commitments



Baseline and PV of Revenue for TRZs in Nueces and San Patricio Counties

Nueces County TRZ	Developed	Vacant	Grand Total
Total Acreage	4,587	6,408	10,995
Taxable Value (Tax Base)	$ 72,489,484	$ 142,885,782	$ 215,375,266
PV Revenue (Tax Rate 0.3510 %)			**$ 12,186,464**
San Patricio TRZ	**Developed**	**Vacant**	**Grand Total**
Total Acreage	1,565	1,894	3,459
Taxable Value (Tax Base)	$457,145,237	$24,728,278	$481,873,515
PV Revenue (Tax Rate 0.4812%)			**$ 24,736,860**
Grand Total	**Developed**	**Vacant**	**Grand Total**
Total Acreage	6,152	8,301	14,454
Taxable Value (Tax Base)	$ 529,634,721	$ 167,614,060	$ 697,248,781
PV Revenue (Base Year)			**$ 36,923,324**

Case Example Conclusions

- Local governments in Texas have successfully used TRZs to fund transportation projects
- Diverse case examples provide a cross-section of TRZ applications
  - Roadway and bridge projects
  - Geographic location
  - Project purpose
- Location, location, location … and project purpose are key considerations
  - Locality-specific factors - land use, development, property values and local tax rates
  - How does the project promote development?