

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

Moving The Region
In A New Direction

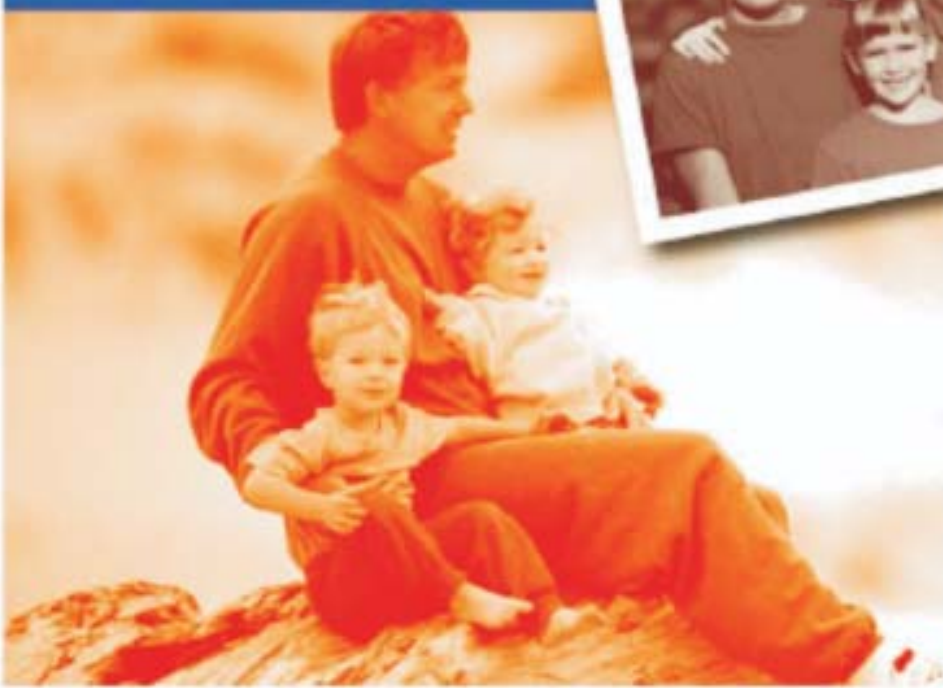


Table of Contents

Letter to CTRMA Board of Directors	3
Executive Summary	4
Introduction	8
Section 1:	
Innovative Transportation Policies.....	9
Tolls Are Not a Tax	
CTRMA is Accountable to the Public	
Longer Board Terms Make Sense	
CTRMA is Building Mobility	
Section 2:	
A Government Run Business.....	14
CTRMA is Building an Organization	
Contracting Procedures Comply With the Law	
Section 3:	
A Commitment to Public Service.....	16
Thorough Process Used to Select Executive Director	
No Conflicts of Interest Found	
All Business Activities Legal	
Qualified Contractors Are Utilized	
Section 4:	
Money Well Spent.....	25
Reimbursement Policies Comply with State Law	
Contractors Follow CTRMA Expense Policies	
Building an Experienced Management Team	
CTRMA Does Not Pay For Alcohol	
Open Communication a Top Priority	

Table of Contents

Appendices.....31

TCPA’s Specific Recommendations and CTRMA’s Response

Attachment 1: July 2003 Letter to Travis and Williamson Counties

Attachment 2: Mike Heiligenstein Executive Director Letter

Attachment 3: District Attorney’s Letter

Attachment 4: TxDOT Letter

Attachment 5: Zmud Email

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Attachment 7: Letter from Mayor Will Wynn and Councilman Brewster McCracken

Attachment 8: Email Regarding Lobbying Expenses

Attachment 9: Mike Heiligenstein Letter to Don Martin



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March 30, 2005

To the Board of Directors
of the Central Texas Regional Mobility Authority:

CTRMA has recently experienced what certainly could be described as a very comprehensive review of its operations and management by the Texas Comptroller of Public Accounts. What the review was not is also clear: it was not a financial audit as many citizens expected. In fact, CTRMA has had not one, but two external financial audits this past year, both of which found no exceptions to the highest standards of accounting and financial procedures adhered to by CTRMA. In this time of seemingly endless headlines about poor corporate accounting practices, the Authority has set a very high standard for itself and for future regional mobility authorities across the state.

The Board will note that that it's Executive Director accepts several of the Comptroller's recommendations as worthy of consideration. This response is also forward-looking and will discuss those improvements that either have or can enhance our already efficient operations. Conversely, I will also take issue with several aspects of the Comptroller's report and will seek to clarify either erroneous conclusions or others not supported by the full disclosure of relevant facts.

As your Executive Director, I take great pride in managing an efficient, wholly accountable enterprise. Above all else, I demand the following from my staff: as a publicly created authority, we must and will remain open to scrutiny and be above reproach. We will always remain open and forthright when dealing with the press, review agencies, or the public in general. While we may disagree with a particular analysis or critique, the CTRMA will be receptive to constructive and critical recommendations that will make us a better agency.

Over the past five months, we have worked closely with the staff of the Comptroller in the spirit of partnership to produce a worthy report. Literally thousands of tax and rate-payer dollars were invested in this process. We expected to be able to review the document prior to its release to the media. Unfortunately, the opportunity for such a review was not allowed.

I look forward to your review and comments and assure you that we will take any suggestions of the Comptroller that contain merit very seriously.

Sincerely,

Mike Heiligenstein
Executive Director

Enhancing Mobility and Opportunity in Central Texas



CTRMA has conducted a thorough review of the report and has prepared a detailed response.

Executive Summary

On March 9, 2005 the Texas Comptroller of Public Accounts (TCPA) released a report on the Central Texas Regional Mobility Authority (CTRMA) entitled, “Central Texas Regional Mobility Authority: A Need For a Higher Standard.” The report was billed as an audit of the Authority, but instead focused primarily on issues of public policy. CTRMA has conducted a thorough review of the report and has prepared a detailed response.

Foremost, in numerous places the TCPA report highlighted the positive work CTRMA has been doing under challenging circumstances and with limited resources. The TCPA also made a number of recommendations that CTRMA found to be of value and has already begun implementing. On the other hand, there were numerous implications of impropriety that were unsubstantiated and lacked legal merit. Among the key findings in this regard:

- CTRMA Board Chairman Bob Tesch and Board Member Johanna Zmud do not have any conflicts of interest, have not violated any laws, and calling for their resignation was unwarranted.
- CTRMA has a proactive policy requiring board members, staff, and prime contractors to disclose any potential conflict of interest. The TCPA found no conflicts of interest and no violations of state law.
- CTRMA does not reimburse for alcohol or first class airfare as a normal business practice. The three items cited in the TCPA report were isolated incidents.
- All of the contractors and subcontractors utilized by CTRMA have been hired in accordance with state statutes. All are highly qualified and successfully completed the tasks assigned to them.

Positive Findings in the Report

CTRMA is a new organization, established just two years ago. It has evolved quickly taking on major highway projects with limited funding and an extremely small staff. Despite these limitations CTRMA has made significant progress. Although not highlighted, the TCPA report refers to many of the positive aspects of CTRMA and its innovative approach to meeting the transportation needs of Central Texas.

- CTRMA is accountable to the community through the state legislature, TxDOT, CAMPO, Williamson County, and Travis County.
- The startup money provided by Travis and Williamson Counties has given CTRMA the financial support and flexibility necessary to meet its obligations to the community and the bond holders.
- CTRMA is solely responsible for the debt incurred to build 183A. The federal, state, and local governments have no legal liability should there be a default on toll revenue bonds. Over \$200 million in taxpayer money that would have been spent on 183A can now be used to fund other priority projects in the region.
- CTRMA achieved an average interest rate of 4.6% on its bond issue, among the lowest financing costs in 30 years for a bond issue of its type.
- CTRMA has put together a comprehensive financing package from a wide variety of sources that “indicates a strong commitment to making its public dollars stretch as far as possible.”
- CTRMA has conflict of interest policies concerning staff, board members, prime contractors, and key contract personnel.
- Although CTRMA is not required to comply with the Local Government Code regarding conflicts of interest, CTRMA has voluntarily done so.
- All invoices go through a multi-step approval process that includes reviews by HNTB, CTRMA’s accountant, CTRMA Executive Director, and TxDOT.
- CTRMA’s General Engineering Consultant HNTB is responsible for any expenses that TxDOT deems unreimbursable.
- CTRMA has reinvested in the community by using a large number of local contractors.

Recommended Changes

CTRMA is committed to being the type of government agency of which Central Texas can be proud. With a focus on efficiency and service to the customer, CTRMA is diligently developing an organizational structure, assembling an experienced staff, and implementing programs and policies intended to maximize performance while insuring accountability. With that in mind CTRMA has reviewed the recommendations of the TCPA and has begun implementing a number of the productive suggestions. These changes include:

- Assure that a CTRMA employee is dedicated to contract management
- Require criminal background checks
- Continue efforts to join the State Travel Management Program
- Hire additional support personnel as warranted
- Re-examine reimbursement policies in light of additional staffing

Inaccurate Claims

CTRMA worked cooperatively with the TCPA to provide all information requested during the audit review. CTRMA produced an extensive number of documents and readily responded to

all questions and inquiries. Despite the thorough nature of the TCPA's inquiry, there were numerous statements in the TCPA report that were inaccurate or lacked a complete and thorough explanation. In this report CTRMA has provided detailed information clarifying all of these inaccurate claims. Some of our more obvious concerns include:

- *“RMAs are not directly accountable to the people of Texas.”* – CTRMA is accountable to numerous organizations comprised of elected officials including the state legislature, CAMPO, Williamson County, and Travis County.
- *“Few if any jurisdictions have ever embarked on a project of the magnitude of US 183A with so little in the way of public supervision and oversight.”* – There are hundreds of similar special authority's around the country that build highways, airports, power plants, dams and other infrastructure all with similar organizational structures.
- *“The CTRMA operated for two years without a budget.”* – The CTRMA Board was first presented a budget in August 2003.
- *“CTRMA has authorized as of this writing, more than \$2*

CTRMA worked cooperatively with the TCPA to provide all information requested during the audit review.

CTRMA has an extensive process for reviewing contractor invoices and monitoring the quality of work products produced by contractors.

million for public relations, marketing, and “outreach” services, much of it expended in areas miles away from any impact on US 183-A, may have and before any construction started.” - CTRMA has spent \$668,952.54 thru December 2004 on communication activities. Potential users of the 183A Project are located throughout the region, and CTRMA is expected to build and/or operate additional projects throughout the area. Tolling is new to the region, and CTRMA will be installing an electronic toll collection system that will require a comprehensive marketing program to encourage toll tag use.

- *“Another significant restriction in the bond agreements is a covenant not to build competing systems....This provision....effectively prevents CTRMA from improving vehicle mobility in the vicinity of US 183A.” – The bond covenant only prevents CTRMA from financing other projects that would have a direct negative impact on the toll revenue required to service the bond debt. It does not restrict improvements that will not have an adverse economic impact, and it does not prohibit improvements by cities, counties, or TxDOT.*
- *“CTRMA acknowledges that it has no formal contract*

monitoring program or procedure in place to assess its contractor’s performance effectively.” – CTRMA has an extensive process for reviewing contractor invoices and monitoring the quality and timeliness of work product.

Introduction

On October 1, 2004, the Central Texas Regional Mobility Authority was notified by the Texas Comptroller of Public Accounts (TCPA) that her office had received a request from two members of the Capital Area Metropolitan Planning Organization (CAMPO) to review CTRMA's operations. The TCPA indicated that she would undertake that review. In a letter to the TCPA dated October 5, 2004, CTRMA Chairman Bob Tesch pledged CTRMA's full cooperation with the review process.

In the ensuing five months CTRMA staff and consultants compiled and made available vast amounts of records and supporting materials concerning CTRMA operations and expenditures. Authority staff and consultants also responded to numerous written inquiries and made themselves available for several hours of interviews conducted by TCPA staff. All of this was done in an effort to adhere to the Chairman's commitment of full cooperation, and it was done at a significant cost to the Authority.

The TCPA's report was issued on March 9, 2005. The report consists of four sections and a total of 27 specific recommendations. Many of the recommendations pertain to legislative and policy issues which are beyond the ability of the authority to control. Some offer constructive suggestions, which the CTRMA Executive Director has started working with state legislators to implement. However, a number including those highlighted during the

TCPA's press conference are based on isolated fact situations or erroneous legal conclusions. For example, the call for the resignation of two directors is simply not supported by applicable law; a point that has been proven by recent actions of the Travis County District Attorney's Office and TxDOT. Likewise, the highly publicized references to purchases of alcohol amount to no more than two isolated incidents among millions of dollars in expenditures. The first case involved an inadvertent failure to remove \$12.00 in personal alcohol purchases from an expense reimbursement submittal, and second involved the inadvertent submittal of a \$17.21 restaurant bill with a \$3.00 beer charged to it. In both instances CTRMA has been reimbursed for these expenses that were inadvertently charged.

Set forth below is a section-by-section review of the TCPA's report, focusing primarily on factual assertions and "findings" concerning CTRMA operations. Following that, in Appendix A, is a review of the TCPA's specific recommendations and the Executive Director's response to each.

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SECTION I Innovative Transportation Policies

Tolls are voluntary and are only charged to those individuals who choose to use a toll facility.

There is a growing transportation crisis in the United States. Motor fuel tax revenues are not keeping pace with the need to rehabilitate aging infrastructure and at the same time provide new highway capacity to serve a growing population that is driving more and more each year. In states like Texas the problem is exacerbated by a population growth rate that is much greater than the national average. In Central Texas the population grew 167% over the last 30 years and is expected to double again by 2030.

Meanwhile a growing resistance to tax increases has made it difficult for policy makers at all levels of government to raise additional revenue. The federal motor fuel tax has not been increased since 1993, and Texas has not increased its state gas tax since 1991. In 2003 Texas collected \$2 billion in motor fuel taxes, and all of it was budgeted to highway maintenance.¹ With a renewed push for more fuel efficient vehicles and the use of alternative fuels, the funding gap is projected to worsen. Already Texas only has enough money to fund 36% of its transportation needs. At this point even doubling the motor fuel tax would not generate enough revenue for the state to catch up.

To meet the challenge of funding needed transportation projects without increasing taxes, Texas has embarked on a visionary plan to gradually shift the cost of major transportation projects from taxpayers to users. A key element of the plan has been the creation of

Regional Mobility Authorities (RMAs) such as the Central Texas Regional Mobility Authority. Modeled after similar organizations around the country, RMAs are intended to give local communities a mechanism for funding critical transportation projects. Since RMAs are brand new agencies with little or no financial backing, the state has provided startup assistance through TxDOT.

Tolls Are Not a Tax

By definition tolls are not a tax. A tax applies to all citizens whether they use a particular service or not. Tolls are voluntary and are only charged to those individuals who choose to use a toll facility. In addition, the decision to use motor vehicle fees and/or taxes as seed money for start up toll projects is no more “double taxation” than charging someone to park on a public street, use public transit or visit a public swimming pool. By using a mix of funding sources government is able to make public services easily accessible and more affordable to a wide segment of the population without placing the entire financial burden on the public at large.

CTRMA is Accountable to the Public

RMAs are government entities intended to operate more like a business than a traditional government entity. They are a creation of

RMA's are a creation of government and they serve the public interest.

The current RMA legislation was designed to avoid politicizing regional highway projects that serve a broad constituency.

government and serve the public interest. Because they are ultimately dependent upon user fees for financial solvency, they must operate with intensive focus on customer service and the bottom line. While the TCPA inferred that CTRMA is not accountable to the public, the fact is the Authority is accountable at numerous levels of government to public officials elected by the citizens at large.

First and foremost, RMA's exist under legislation created by the duly elected members of the Texas Legislature. As a result, CTRMA is accountable to the state legislature and is subject to applicable statutes passed by the legislature. The legal process required to establish an RMA involves the approval of the elected representatives of county government. In the case of CTRMA, the county commissioners of both Williamson and Travis counties had to independently vote to support creation of the Authority. Prior to the vote members of the public were given ample opportunity to provide their input through a series of public meetings. Members of the public were also represented by the elected representatives of numerous municipal governments who approved resolutions supporting formation of the RMA. In addition, CAMPO, which is comprised of elected officials from throughout Central Texas, adopted a resolution in favor of CTRMA. The presence of public participation and input was confirmed by TxDOT and the Texas Transportation Commission, whose processes for approving an RMA's formation requires consideration of that input.

Oversight by TxDOT also adds a strong measure of accountability. Not only does the formation of an RMA require approval of the Texas Transportation Commission, an RMA's ongoing operations are subject to TxDOT's formally adopted RMA rules and periodic audits. TxDOT approvals for project development activities are also mandatory.

The TCPA believes county commissioners should have greater oversight over RMA's. The TCPA has recommended giving county commissioners the ability to approve projects and to remove any board member including the chair. While that is ultimately a legislative decision, the current RMA legislation was designed to avoid politicizing regional highway projects that serve a broad constituency, but might be unpopular among local special interest groups. To ensure CTRMA is accountable to the broader regional constituency, state statute requires that all CTRMA projects subject to the MPO process be approved by CAMPO. (See Transportation Code Sec. 370.033). As the TCPA's report notes on pg. 5-6, the CAMPO board is comprised of 21 elected officials (of the 23 total members). If the intent is to assure that elected officials are involved in the process of project selection and approval, state law already meets that objective. However, it does so by placing approval in the purview of a regional planning body, better assuring that transportation planning is accomplished on a regional basis.

Longer board terms also allow board members to develop a stronger institutional knowledge, which provides for more informed decisions on complex policy issues.

The TCPA has also suggested that the County Commissioners Courts should appoint the Board Chair. This is again an issue for legislative consideration. However, since by definition RMAs are intended to provide regional transportation solutions, it makes complete sense that the Chair should be appointed by the Governor. Gubernatorial appointees bring a broader regional perspective to the job. This perspective can be extremely valuable in cases where a multi-county RMA must resolve a difficult issue where the member counties interests are at odds.

Longer Board Terms Make Sense

One issue that has been debated and recently challenged in the courts is the period of time RMA Board members should serve. HB 3588, which established much of the legal framework for operation of RMAs set board member terms at six years. To conform with HB 3588 CTRMA’s bylaws provide for board terms of six years. A recent court filing challenged the six year terms, arguing that under Article XVI, Section 30 of the Texas Constitution, “The duration of all offices not fixed by this Constitution shall never exceed two years.” However, the Constitution goes on to state in Article XVI, Section 30a that, “...such boards as have been, or may hereafter be established by law, may be composed of an odd number of three or more members who serve for a term of six years, with one-third, or as near as one-third as possible, of the members of such boards to be elected or appointed every two years in such manner as the Legislature may determine.”

The TCPA report recognizes that a two year term is too short and recommends that the Texas Constitution be amended to

allow four year terms for RMA board members. CTRMA believes that the current staggered six year terms are the most effective, providing capital markets with a stable and predictable organization environment that is more attractive to investors. Longer board terms also allow board members to develop a stronger institutional knowledge which provides for more informed decisions on complex policy issues.

Regardless of which approach is taken, CTRMA agrees that the current ambiguity in the law needs to be resolved. Also, it is important to note that if the current board terms were found to be invalid by a court, past decisions by the board would be valid. Case law and attorney general opinions support this conclusion. Furthermore, four of the seven current board members are serving pursuant to two year board appointments that were made prior to the passage of HB 3588. At this point these board members are considered holdovers and their continued service is legal until a new appointment is made. In addition, one other Board member is serving a two year term as part of the staggered appointments required to implement the six year terms proscribed by HB 3588. Thus, five board members are serving pursuant to two-year appointments. As a result, past CTRMA board actions will not be affected by the statutory ambiguity.

(End note)

¹ftp://ftp.dot.state.tx.us/pub/txdot-info/lao/strategic_plan2005.pdf

CTRMA is Building Mobility

Toll roads offer drivers an alternative to congestion. Anytime a new toll road is opened, traffic is drawn away from other roads, reducing congestion within the region.

Toll roads offer drivers an alternative to congestion. Anytime a new toll road is opened traffic is drawn away from other roads, reducing congestion within the region. As a result everyone in the community benefits whether they use the toll road or not. At the same time the cost of the new toll road is being born primarily by the users and not the public at large. Therefore individuals who choose not to use toll roads get improved service on non-tolled facilities and pay no additional taxes for that benefit. In addition, many toll road agencies make improvements to local roads as part of the toll road project. Drivers who travel in and around the toll road corridor benefit from these improvements even if they never enter the toll road.

The 183A project being constructed by CTRMA is a clear example of this principle. The 11.6-mile roadway corridor will provide drivers with increased mobility throughout the corridor. There will also be significant improvements made to local roads that intersect with 183A. The fact is CTRMA will be constructing a roadway system that benefits the entire community.

The TCPA noted that CTRMA's bond covenants prevent CTRMA from "improving vehicular mobility in the vicinity of US 183A." Other CTRMA critics have inferred that the bond covenants prevent other entities from improving competing facilities. The truth is the CTRMA is not prohibited from making mobility improvements in the area unless those mobility improvements would reduce traffic

volumes on 183A to the extent that CTRMA would be unable to meet its financial obligations under the bond documents.

CTRMA can always fund projects which would improve access to 183A. Likewise, per CAMPO Resolution No. 1 regarding the preservation of non-tolled facilities, improvements to the service road system along 183A are specifically excluded from the restrictions in the bond covenant. The actual covenant states:

"To the extent permitted by law and except as necessary for safety reasons or to preserve the condition of existing non-tolled facilities, the Authority agrees to refrain from exercising its discretionary authority to initiate, support, provide funding for, or approve any project undertaken to construct a transportation facility for motorized vehicular traffic where no such facility existed previously or to construct a portion of a transportation facility where additional or widened traffic lanes are physically added on to existing traffic lanes on an already constructed facility, *that would have the purpose or reasonably foreseeable effect of materially adversely affecting the ability of the Authority to comply with the covenants in this Indenture,* particularly those covenants set forth in Sections 502 and 701."

It is important to emphasize again that this covenant only applies to CTRMA, and the more likely entities to construct local road improvements are a city, county, or TxDOT.

SECTION 2 | A Government Run Business

CTMRA was not intended to function like a typical government agency. It has no taxing authority. It was designed to operate like a public sector enterprise (much like a water treatment plant, convention center, or transit organization). With that in mind CTRMA has been very judicious in the development of its organizational structure. CTRMA thoroughly studied other toll agencies and ultimately determined to use a model that relies on a streamlined staff of agency employees who rely on outside consultants to perform most tasks. Consultants offer flexibility, easily adjusting to unpredictable staffing needs. This flexibility was especially helpful during the startup phase when funding was limited and the financial outlook uncertain. Consultants also offer expertise that is unique to the industry and is often acquired through experience in other jurisdictions.

CTRMA is Building an Organization

As a brand new agency CTRMA has been gradually adopting processes, procedures, and policies as the need has arisen. The TCPA criticized CTRMA for failing to have a budget during the first two years of existence. The fact is CTRMA held a budget workshop in August 2003 and even provided a draft budget to Travis and Williamson Counties in July 2003 (See Attachment 1). A more recent budget which was

included in the TCPA report was prepared in anticipation of selling bonds for 183A and establishing a defined source of revenue to fund CTRMA's operations.

With the recent bond sale resulting in a stable long term funding source, CTRMA was able to begin the process of hiring a permanent staff. CTRMA agrees that it would have been preferable to have a core staff on board sooner in the process and would support efforts to provide the financial resources necessary for other RMAs to hire staff in the early stages of organizational development.

Contracting Procedures Comply With the Law

CTRMA has policies in place to ensure contracting processes and procedures conform to state statute and are free from influence and favoritism. CTRMA policies require contractors to comply with state laws and regulations. CTRMA also has a conflict of interest policy that applies to board members, staff, and prime contractors.

Despite a thorough review of CTRMA's contracting processes, the TCPA produced just one inconsequential criticism of the Authority. In a single case a proposal score was adjusted based on additional information that was received about the firm. The additional information

indicated that the firm had more resources available to service CTRMA than had previously been considered. The financial resources of a firm bear on the overall qualifications and ability of the firm to service CTRMA's needs. During the proposal review process it is not uncommon for scores to be adjusted as new information becomes available. This happens frequently following oral presentations where reviewers learn more about an organization than might have been indicated in the written proposal.

The TCPA report provided a lengthy historical description of CTRMA's contracting relationships, but only identified a few minor contracting issues. The TCPA also reviewed subcontracting practices and acknowledged that CTRMA's prime contractor HNTB "hired subcontractors directly without using a public purchasing process, as allowed by law." While the TCPA found no improper subcontracting procedures, the TCPA did acknowledge that "the management of subcontractors is a perennial problem in large state contracts." CTRMA agrees that closer oversight of contractors is warranted and many of the business practices suggested by the TCPA will be considered for implementation. This will be accomplished through staff additions that recent funding (from the bond sale) has made possible.

The TCPA report indicated that CTRMA has no formal contract monitoring process. This conclusion ignores information presented to the TCPA demonstrating that CTRMA does, in fact, monitor contract compliance. The Executive Director and Board of

Directors review contract compliance and a consultant, Everett Owen, was retained primarily for this purpose. In addition the GEC monitors its subcontracts and is accountable to CTRMA for their performance. What CTRMA does not have is an employee whose sole task is to provide contract oversight. That function will be provided by the staff that CTRMA is currently assembling. Based on the recommendations of the TCPA CTRMA is also considering whether an employee hired solely to assist the staff with contract management is warranted.

The TCPA found no improper subcontracting procedures.

SECTION 3 **A Commitment to Public Service**

Despite an intensive review of CTRMA and the business interests of its Board members, the TCPA was unable to find any evidence that anyone associated with CTRMA has broken any conflict of interest laws.

CTRMA is a public agency and has implemented conflict of interest policies to ensure that policy decisions are based on sound analysis, objective data and professional judgement. As noted by the TCPA, CTRMA attempts to comply with the Local Government Code Chapter 171 regarding conflicts of interest “even though it is not legally required to do so.” CTRMA is committed to serving the public and has been responsive to all requests for information about the organization and its operations.

Open Process Used to Select Executive Director

The TCPA criticized the hiring of Mike Heiligenstein as Executive Director of CTRMA, but found no inappropriate actions in regard to his hiring. For example the report notes, without indicating why it is relevant, that “one of the persons responsible for creating CTRMA found himself in the authority’s top position.”

Such criticism is wholly unjustified. As is acknowledged in the report, CTRMA functioned for almost a year without hiring an executive director. The TCPA found no evidence to even suggest that Mr. Heiligenstein had any knowledge at the time that CTRMA was formed (by action of the Williamson and Travis County Commissioners Courts) that he

would have a potential role within the organization. Indeed, the very future of CTRMA was in question at the time of its formation due to legislative infirmities.

The truth is Mr. Heiligenstein was solicited to submit an application for CTRMA position (See Attachment 2), a fact which the TCPA report failed to note. Mr. Heiligenstein did not pursue the job on his own initiative, as one would otherwise expect of somebody who had attempted to create their own job opportunity. Finally, the implication that the hiring of Mr. Heiligenstein was part of some conspiracy involving his Williamson County colleagues is discounted by the fact that an appointee of the Travis County Commissioners Court made the motion to hire Mr. Heiligenstein, and another Travis County appointee seconded that motion.

No Conflicts of Interest Found

Despite an intensive review of CTRMA and the business interests of its Board members, the TCPA was unable to find any evidence that anyone associated with CTRMA has broken any conflict of interest laws.

The truth is the report points to nothing which substantiates a violation of the law or which rises to the level of a conflict of interest that would preclude either Board Chairman Bob Tesch or

Board Member Johanna Zmud, Ph.D. from continuing to serve as directors. This was demonstrably confirmed by the recent announcement by the Travis County District Attorney's Office that, after reviewing alleged conflicts of interest regarding land holdings of Chairman Tesch and other board members, no evidence of criminal conduct was discovered (See Attachment 3). Likewise, TxDOT, through its Office of General Counsel, unequivocally stated that Dr. Zmud's business interest created no conflict of interest under the TxDOT rule the TCPA cites. (See Attachment 4). Since no conflicts of interest exist, the call for Chairman Tesch and Dr. Zmud to resign is without merit.

The Facts About Board Chairman Robert Tesch

As previously acknowledged by Chairman Tesch, widely reported in the local media, and rehashed again in the TCPA report, Chairman Tesch owns interests in property located within 800 feet to two miles from the 183A right-of-way amounting to 254 acres. As indicated in the attached exhibit. All of the properties were acquired prior to the formation of CTRMA except for one small parcel that was part of an unrelated land exchange. Under Section 370.251(g) of the Texas Transportation Code, a person is only precluded from serving as the director of a RMA if they are 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." At no time has the property that Chairman Tesch owns been subject to actual or potential acquisition by CTRMA for use as right-of-way for any CTRMA project, including 183A. His property holdings therefore would not have precluded his initial appointment.

Texas Administrative Code Section 26.51 and Transportation Code Section 370.252 also preclude a director or a director's spouse from making personal investments that would create a conflict between the director's private interest and that of the RMA. Since his appointment Chairman Tesch has not made any investments that would create such a conflict. The only change in his landholdings since appointment as Chairman involved an unrelated land swap involving property that Williamson County needed for the extension of Parmer Lane. The land exchange had no connection to the 183A project or CTRMA. Thus, his land holdings do not represent an investment made by a director that could reasonably have been expected to create a conflict. He knew nothing about the RMA when he purchased the land and expectation of a conflict was not even possible.

Similarly, even if the prohibition on investments extended to those holdings acquired prior to appointment there is nothing about Chairman Tesch's present ownership of property near 183A that would constitute a conflict of interest. The 183A route was selected prior to the creation of CTRMA and CTRMA has not made any adjustments to the route which would have a

*Nothing
CTRMA
has done
has
provided a
special
economic
benefit to
the
Chairman
Bob Tesch.*

material impact on the value of Chairman Tesch's property.

Above and beyond compliance with Texas Administrative Code and Transportation Code, Chairman Tesch has also complied with the requirements of Chapter 171 of the Texas Local Government Code. That chapter which CTRMA voluntarily uses prohibits a local public official from participating in a vote on a matter involving a business entity or real property in which the official has a substantial interest if it is reasonably foreseeable that an action on the matter would have a "*special economic effect on the value of the his or her own property that is distinguishable from its effect on the general public.*" While it is apparent (in fact obvious) that property located in the vicinity of the 183A project has increased in value in recent years, there is nothing that CTRMA has done to confer a special economic benefit on Chairman Tesch's property (such as move the alignment of the project or location of entrance/exit ramps). Any increase in the value of his property is indistinguishable from the benefit all landowners in the area have received.

Therefore it is clear that Chairman Tesch's property ownership does not create a conflict of interest under applicable laws and regulations. Nothing that CTRMA has done has provided a special economic benefit to the Chairman and any increase in value in his property holdings is reflective of the broader real estate market and is in no way unique to his specific property holdings.

The Facts About Board Member Johanna Zmud, PhD

The TCPA report ignored the distinction between a direct contractual relationship with TxDOT and a subcontractor role.

The TCPA report proclaimed that CTRMA Director Johanna Zmud, Ph.D. should resign based solely on the opinion that her company's work as a subcontractor on a project "appears to be a violation of TxDOT's rule 26.51". This section of the TCPA report is remarkably brief and cursory for such a serious allegation. Neither Dr. Zmud, nor her company, NuStats, has a direct contract with TxDOT; and Dr. Zmud and CTRMA General Counsel went to extensive lengths to ensure that any work NuStats performed complied fully with the applicable rules.

Section 26.51(b) of TxDOT's RMA rules provides that a person may not serve as a director if the person is employed by or participates in the management of a business that is "regulated by or receives funds from the department, the RMA, or a member county," or if the person directly or indirectly owns or controls more than a 10% interest in a business that receives funds from the department, the RMA or a member county. In this instance, the phrase "department" refers to TxDOT.

During the summer of 2004, Dr. Zmud contacted CTRMA's General Counsel with an inquiry as to whether NuStats could submit a proposal in response to a TxDOT RFP for research work unrelated to CTRMA. Based on these provisions, CTRMA's General Counsel concluded, after discussions with the Office of General Counsel at TxDOT, that Dr. Zmud would be precluded from serving on CTRMA Board of Directors if NuStats were to receive a contract from TxDOT. Based on this analysis Dr. Zmud and NuStats did not pursue the work.

However further conversations between CTRMA's Executive Director, CTRMA General Counsel, TxDOT Executive Director, and TxDOT General Counsel concerning the issue led to further guidance that the rule did not prohibit a firm with financial ties to an RMA board member from serving as a subcontractor to a firm contracted with TxDOT. In other words, a firm serving as a subcontractor to another firm with a TxDOT contract does not, itself, have a contract with TxDOT; does not receive funds directly from the department; and therefore is not subject to the statutory and rule provisions. (This conclusion is confirmed by recent correspondence from TxDOT's General Counsel to Senator Gonzalo Barrientos, Chair of the CAMPO Board (See Attachment 4)).

Subsequent to these discussions an opportunity arose for NuStats to serve as a subcontractor to a firm seeking TxDOT work, and Dr. Zmud pursued that opportunity based on the advice she previously received. Dr. Zmud's commitment to adherence to the applicable rules is reflected in an email from CTRMA's General Counsel to the TCPA staff, a copy of which is attached as Attachment 5.

The scant five-sentence analysis contained in the TCPA report, combined with TxDOT's interpretation of its own rule, underscores the fact that there is no basis on which to conclude that Dr. Zmud has a prohibited conflict of interest that would require her resignation.

At Team Texas issues of common interest are discussed in an effort to share the benefit of each authority's experience, which ultimately will benefit the users of all toll projects.

All Business Activities Legal

The TCPA report provided a sensationalized description of business meetings and activities that were in direct compliance with state law regarding gifts, favors, or service. Section 370.252(a) of the Transportation Code provides that “[a] director or employee of an authority may not 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.” The report incorrectly characterizes this as a “no gift” rule (p. 33). However, this provision does not prohibit all gifts – only those intended to influence an official act.

Though not cited in the report, other laws add definition to the issue of permissible/impermissible gifts. Section 36.08 of the Texas Penal Code prohibits a public servant from taking a gift from someone “interested in, or likely to become interested in any contract, purchase, payment, claim; or transaction involving the exercise of his discretion.” However, non-cash gifts of less than \$50 are excluded from this prohibition, as are “food, lodging, transportation, or entertainment accepted as a guest...” Tex. Penal Code Sec. 36.10. Thus, subject to the standard for likelihood of influence, gifts of meals and lodging do not violate the law. It is against this backdrop that the TCPA report says that CTRMA has

participated in activities that “appear to violate” the gift provisions.

Team Texas

As noted in the TCPA’s report: “Team Texas is a non-profit organization created to provide a forum for Texas toll authorities to discuss issues and share ideas relating to the tolling industry.” Issues of common interest are discussed in an effort to share the benefit of each authority’s experience and to foster discussion of issues which ultimately will benefit the users of all toll projects through enhanced interoperability (i.e., the ability to use a single toll tag on each toll authority system) and similar issues. The participating tolling authorities themselves do not pay membership fees, and certain costs (as well as ancillary functions) are underwritten by private firms. However, costs of attendance are not borne by sponsors or private entities – staff and directors of CTRMA are reimbursed by the Authority for the costs of attendance.

The implication of the TCPA’s report seems to be that the underwriting of certain costs by private firms is an impermissible gift. However, the staff and director expenses are paid by CTRMA. Any of the other ancillary “benefits” – such as lunch during the meeting provided to all of those present (not just to CTRMA directors or employees), would be unlikely to

“influence conduct” and therefore would not constitute a violation of the law.

The TCPA’s report recites the definition of a “Texas trade association” and notes the statutory prohibition on a person who is an officer of a Texas trade association serving as a director or chief administrative officer of an RMA. It then notes that CTRMA Executive Director serves as the treasurer for Team Texas, which the report concludes, “appears” to be a violation of Section 370.252(c).

A “trade association” is defined as an “association of business or professional competitors.” (Sec. 370.252(d)). CTRMA and the state’s other toll authorities are not competitors; they are all political subdivisions with issues of common interest. The fact that private entities assist with costs does not change the purpose or effect of the organization. As the TCPA report itself notes, Team Texas is a “forum for Texas toll authorities to discuss issues and share ideas.” It is not a trade association, and neither CTRMA’s participation or the service by the Executive Director as an officer are improper. To the contrary, participation in the organization benefits the Authority and ultimately the users of its facilities.

Four Seasons Hotel Reception

The TCPA report also makes reference to a reception at the Four Seasons Hotel for area legislators. As noted in the report (based on information obtained from the

Authority) HNTB hosted this event in connection with a “corporate officers” meeting it was holding in Austin. When preparing the invitations HNTB, already selected as CTRMA’s General Engineering Consultant (GEC), added CTRMA’s name as a co-host.

CTRMA did not pay for this event. The TCPA’s report, citing a conversation with the Texas Ethics Commission, alleges that the hosting of this event and presumably the presence of CTRMA’s name on the invitation somehow constituted an impermissible “gift” under Section 370.252. However, HNTB had already been selected as CTRMA’s GEC, so it is difficult to see what, who, or how, this “gift” was intended to influence. Likewise, to the extent the “gift” is the food and drinks a director received at the event, such items are specifically excluded under the Texas Penal Code as cited previously. In short, there is nothing to support the supposition that this event constituted a “gift” to any director or employee that was intended to influence their decision-making.

Dinner at Sullivan’s

A similar conclusion is advanced by the TCPA report regarding a dinner hosted by HNTB at Sullivan’s Restaurant for representatives of Cameron County. The County was considering forming an RMA. The purpose of the dinner was to allow local officials, including CTRMA directors, to share their thoughts with Cameron County representatives regarding the formation and operation of an RMA. Such

dialogue should, it would seem, actually further the public interest.

Similar to the preceding event, it is difficult to see how this falls within the provisions of Section 370.252. Presumably it is due to the fact that any CTRMA directors who may have attended were the recipients of a “gift” in the form of a meal. There is no suggestion, or even implication, that the meal was intended or might have reasonably influenced a director or employee’s official conduct. This does not violate any provision regulating receipt of gifts.

Qualified Contractors Utilized

As General Engineering Consultant to CTRMA, HNTB Corporation has provided numerous highly qualified subconsultants to CTRMA program. While the TCPA report accuses CTRMA of lax oversight and favoritism in regard to these subcontractors, there is no question that the contractors were highly qualified and successfully performed the work assigned. Instead the TCPA attempts to disparage these consultants by inferring they were hired for reasons other than their qualifications. The report then goes on to mention four specific instances, although the particular relevance of each is unclear.

Grier-Bankett

The TCPA report references a situation with Grier-Bankett Consulting, Inc. (“GBC”) that was widely reported

previously. The allegations involved a connection between GBC, which employs Stacy Dukes-Rhone, and State Representative Dawnna Dukes, Ms. Dukes-Rhone’s sister, a CAMPO Board member. The allegation was that there existed, in some manner, a conflict of interest on the part of Representative Dukes. The report also criticizes the timing of execution of the GBC contract with HNTB.

As to the first issue, neither Rep. Dukes nor CTRMA did anything wrong. There is no, and never has been, any allegation that Rep. Dukes personally profited from HNTB’s hiring of GBC or influenced the hiring process. The relationship between the parties involved is also far removed from any possible conflict provision, including those contained in Art. III, Section 18 of the Texas Constitution (applying to state legislators); Chapter 572 of the Texas Government Code (applicable to state officers), or even Chapter 171 of the Texas Local Government Code (possibly applicable to CAMPO Board members). There is no reference in the report to applicable law or regulation regarding this issue. And that reason is obvious; there is no law or regulation which would result in the relationships described as causing any sort of conflict of interest.

The second issue refers to the timing of the execution of the contract. The circumstances surrounding the contract execution date were explained fully and promptly in a letter dated Sept. 17, 2004 from Mike Heiligenstein to CAMPO Chair Senator Gonzalo Barrientos, and provided to CAMPO Board members.

A copy is included as Attachment 6. The report raises nothing new.

Pete Peters

There is a lengthy report on the involvement of Pete Peters, a consultant to HB Media, which in turn is a subconsultant to HNTB. Mr. Peters' work consisted primarily of organizing meetings and presentations, obtaining graphics, and other work related to education efforts concerning tolling and the Regional Implementation Program. The report notes that his resume was included in the GEC proposal of HNTB, so his involvement in CTRMA matters, through the GEC, was never hidden.

The TCPA's report references a past criminal history, and suggests that it was somehow improper for CTRMA, even indirectly (through its subcontracting arrangements) to have allowed somebody with a prior felony conviction to have worked on any CTRMA matter. The facts, however, are that (i) Mr. Peters provided valuable work; and (ii) was never a direct contractor to CTRMA. The report raises no questions concerning the services performed or the compensation paid to Mr. Peters. The report does indicate and allege inconsistency between information requested by the TCPA and provided to it by CTRMA staff and General Counsel. Specifically, a request was made as to whether any subcontractors to HNTB had also billed CTRMA directly for any work. CTRMA responded that the only situation it was aware of involved an inadvertent direct billing by Martin and Salinas, which was

corrected. The report notes an instance where Mr. Peters' company, The Communicators, billed CTRMA directly (in addition to its billings as a subcontractor to an HNTB subcontractor). However, none of those payments were for services performed by The Communicators or Mr. Peters; they were simply a pass-through of out-of-pocket expenses incurred by The Communicators on CTRMA's behalf – for such items as copies of maps, copies of newsletters, engraved nameplates for board meetings, etc. CTRMA interpreted the question posed by the TCPA as one regarding compensation for services. A chance to have reviewed the report and discuss these issues with TCPA staff would have avoided this confusion. At any rate, the inconsistency was inadvertent and immaterial.

Locke Liddell & Sapp, LLP

The report noted that CTRMA's General Counsel, Locke Liddell & Sapp, has been involved with CTRMA since its inception, and the firm was involved in the legislative process leading to the enactment of HB 3588. During the 78th Legislative Session, CTRMA was the only RMA in the state. That its legal counsel was involved in, and was asked for input on, RMA legislative issues is neither surprising nor improper.

What is surprising is the TCPA's apparent concern over the registration by Brian Cassidy, a firm attorney, as a lobbyist for CTRMA during the current legislative session. Texas Government

Ironically, the efforts of the CTRMA and their General Counsel to be fully compliant with ethics laws garner criticism from the TCPA.

Code, Section 305.003 requires lobby registration by anyone who: "...receives compensation or reimbursement... to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action." Cities, counties, other toll authorities and a variety of other political subdivisions retain lobbyists. Given the breadth and scope of HB 3588 (as it relates to RMAs), the tension and controversy that has surrounded tolling throughout the state, and the need for "clean up" and clarification, it is unquestionable that HB 3588 provisions will be revisited by the legislature. While Mr. Cassidy will not act as a traditional lobbyist, he will likely be asked for input on RMA-related bills and CTRMA will seek to impact legislation that could negatively effect its operations. Because of this expected activity, and in order to comply with ethics laws, Mr. Cassidy registered on behalf of CTRMA as a lobbyist (with CTRMA's consent). Ironically, it is the efforts of the CTRMA and their General Counsel to be fully compliant with ethics laws which garner attention and apparent concern from the TCPA.

will have any involvement in CTRMA procurements or the selection of service providers. Not only is there no present conflict of interest, there never has been one. Moreover, the TCPA has acknowledged that CTRMA has procedures in place through existing conflict of interest disclosure policies, to prevent conflicts in the future.

Informative Efforts

The report subsequently makes reference to the work of Informative Efforts as a subcontractor to a subcontractor of HNTB and notes the fact that a principle in Informative Efforts is the lobbyist for a firm that is in the transportation industry. Neither Informative Efforts nor any of its principals have had nor

SECTION 4 | Money Well Spent

The TCPA report recognizes that CTRMA has an extensive process for reviewing invoices and monitoring expenses. While the report headline infers that the Authority has lax expenditure controls, the report actually found otherwise. After a thorough review of the Authority's expenses covering millions of dollars in reimbursements, the TCPA could only find a couple of isolated instances of reimbursement mistakes. Most of the criticism leveled by the TCPA was for reimbursements that were legal, but according to the TCPA have the appearance of being inappropriate.

Reimbursement Policies Comply with State Law

Section 370.255 of the Transportation Code provides that "each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties." Section 9 of CTRMA's bylaws reflects a similar standard. Additionally, CTRMA has adopted a Reimbursement and Travel Expense Policy concerning the reimbursement of hotel accommodations, airfare, meals, rental vehicles, mileage, incidentals, and food service at local meetings. This policy applies to board members as well as staff.

Reimbursement of Expenses Incurred by Chairman Tesch

The TCPA's report alleges that CTRMA impermissibly reimbursed Chairman Tesch for administrative work performed by the staff of his own company between August 2003 and December 2004. The report suggests that the reimbursement of those administrative expenses created a contractual relationship in violation of Chapter 370 of the Transportation Code.

Section 370.255 of the Transportation Code allows for the reimbursement of administrative work performed by Chairman Tesch's staff. Such work constitutes an "actual expense necessarily incurred in the performance of the director's duties" within the meaning of Section 370.255. At the time that the administrative expenses were incurred, CTRMA lacked sufficient staff to assist Chairman Tesch with the essential and often laborious functions associated with serving as the chairman of CTRMA Board. This was complicated by the start-up nature of the Authority and many organizational, administrative and other tasks Chairman Tesch performed as CTRMA became a viable entity in the region. Consequently, Chairman Tesch was required to perform administrative tasks in his own office with the assistance of his own staff. Reimbursing the Chairman for the use of his own administrative staff was tantamount to reimbursing the Chairman for the use of his own

postage or long-distance telephone service in connection with CTRMA business. The administrative work performed by the Chairman's staff in no way created a contractual relationship between any members of the staff and CTRMA.

Reimbursement for Round-trip Airfare

The TCPA's report asserts that CTRMA reimbursed a Board member for round-trip airfare from New York City to Austin because the Board member was in New York on business and would have missed the monthly Board meeting had additional flight arrangements not been made. Board member Johanna Zmud, Ph.D., was reimbursed for her travel from New York to Austin when an important Board meeting had to be rescheduled. This particular meeting related to the selection and hiring of the Executive Director, and it was important for the Authority to have maximum board attendance. The meeting had been rescheduled, and unfortunately the rescheduled meeting conflicted with Dr. Zmud's business commitments elsewhere. While it is not common practice for CTRMA to reimburse Board members for such travel, the Executive Committee determined that reimbursement was appropriate in this instance, given the importance of the meeting and the unanticipated change in the schedule. Under the circumstances, this reimbursement complies with the statutory and bylaw provisions referenced above.

Contractors Comply with CTRMA Expense Policies

The TCPA report alleges that CTRMA has reimbursed contractors for travel expenses in excess of the state guidelines. The fact is the TCPA found just one instance where a \$677.31 one-way first class airline ticket was purchased by an HNTB employee and billed to the Authority. While HNTB should not have billed the Authority for first class travel (and has since reimbursed the expense), the circumstances surrounding the incident are hardly alarming.

In December 2003, HNTB employee was asked to travel to Austin from HNTB's Kansas City office to work on a computer network in the 183A project office. His work lasted longer than anticipated, requiring him to travel back to Kansas City on December 23, 2003. At that time the only available seat, given heavy holiday travel, was a first-class ticket, which he purchased and utilized so that he could be home with his family for Christmas. There has been no other instance of first-class air travel by a CTRMA employee or contractor engaged in CTRMA related business.

CTRMA Is Building an Experienced Management Team

According to the TCPA's report, CTRMA contracted with and paid a consultant \$4,000 to develop a job description for the position of chief financial officer (CFO) of the Authority. The consultant's work was

significantly more involved than the TCPA report implies. The consultant surveyed several individuals to determine what job functions needed to be fulfilled and engaged in a thorough analysis of the ideal job description and the characteristics of the ideal job candidate.

The hiring of the consultant was not, as the report implies, in violation of CTRMA Procurement Policies. Section 8.3 of the Procurement Policies explicitly provides that “the Executive Director may procure consulting services anticipated to cost no more than twenty-five thousand dollars (\$25,000.00) 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.” The fact that there are other human resource and employment consultants listed in the Austin phone directory does not discount the Executive Director’s determination that the consultant hired possessed unique competence, knowledge, or qualifications and brought a unique and beneficial approach to the job search and selection process.

CTRMA Does Not Pay for Alcohol

The TCPA report claims that “employees and contractors of CTRMA were often reimbursed for meals and beverages that

would be considered unjustified by both state and local government agencies.” Consistent with CTRMA’s Reimbursement and Travel Expense Policy, food and beverages expenses have been limited to reimbursement for meals consumed while on CTRMA-related travel and/or expenditures associated with in-town working meals.

Alcoholic Beverages

The TCPA report makes reference to reimbursement for alcoholic beverages. CTRMA’s Reimbursement and Travel Expense Policy explicitly prohibits reimbursement for alcoholic beverages. CTRMA has discovered two instances amounting to \$15.00, where purchases of alcohol were inadvertently reimbursed. The first occurrence related to the Executive Director’s attendance at a training course during the week of January 12, 2004. In processing his expenses for the trip, the outside accountants inadvertently failed to deduct \$12.00 for two drinks purchased at a restaurant from a travel expense reimbursement. The Executive Director has since reimbursed the Authority the full \$12.00.

In one other case, on June 2, 2004, HNTB employee submitted a \$17.21 bill for a meal at a restaurant called Pei Wei. The bill inadvertently contained a \$3.00 charge for a single beer. HNTB has since corrected the error and reimbursed CTRMA. Despite the headlines, these instances, amounting to \$15.00 inadvertently paid, constitute the entirety of purchases of alcohol.

Working Lunches

The TCPA's report also refers to expenditures for meals at in-town events, including a "CTRMA Kick-off" event on September 30, 2003, a CTRMA Planning Committee meeting on April 23, 2004, and lunches involving CTRMA Board members and contractors. These meetings constituted working lunches and were properly reimbursable under CTRMA's Reimbursement and Travel Expense Policy, which allows for expenditures related to local business meetings "required for the active conduct of CTRMA business."

More Guidelines, Employees Needed

GEC Profit Margin

According to the TCPA's report, CTRMA could have negotiated for a lower profit margin for GEC services. CTRMA negotiated a 15 percent profit margin under the GEC contract. However, HNTB's contract with the North Texas Tollway Authority provides for a 15% profit, and HNTB's contracts with TxDOT range from 12% to 15%. The TCPA's report also ignores the other provisions of the contract, such as HNTB's assumption of financial responsibility for any work not reimbursed from the TxDOT toll equity grant, or the ability to delay payments to the GEC for cash flow purposes. Also, HNTB's FAR rates are among the lowest in the industry, and when combined with

the agreed upon profit percentage still provides lower costs to CTRMA than other firms with higher FAR rates (even with a lower profit margin) Consultant negotiations and services contracts involve a wide variety of issues, and all should be considered before passing judgment on any isolated provision.

Additional Staff

The TCPA's report correctly notes that CTRMA could have benefited from additional staff during the Authority's start-up phase. The report is devoid, however, of any suggestion as to how those positions could have been funded. Since November 2004, and in anticipation of receiving bond proceeds to fund operations, CTRMA has hired three additional full-time staff members, including a Chief Financial Officer, a Director of Operations, and a Communications Director. CTRMA is currently in the process of hiring a Deputy Executive Director. As warranted, CTRMA will continue to add key staff members potentially including a contract manager, in-house legal counsel, and other positions that will assure the most economic use of the Authority's resources.

Open Communications A Top Priority

Public Outreach and Communications

The report raises questions about public relations and public outreach

CAMPO urged CTRMA to conduct extensive public outreach activities, and later two CAMPO members criticized CTRMA for doing so.

expenditures by CTRMA. The TCPA questions the amount, the timing and the scope of these activities. CTRMA did not execute a marketing contract until March 2, 2005, the date on which it received proceeds from the 183A bond sale. Marketing of toll tags and promoting the use of toll projects is not only statutorily authorized (Sec. 370.180) but it is also expected by the rating agencies and Wall Street investors who finance toll projects. It is particularly critical where tolling is new to an area, such as it is in Central Texas. Marketing is simply a requirement of doing business, and it would be imprudent not to engage in such activity.

The public outreach activity that has surrounded 183A and its other projects are likewise prudent and reasonable. The users of a toll project do not reside only within a few miles of a project, but rather may be dispersed throughout the region. The report suggests that TxDOT should have conducted the public outreach surrounding the plan since it will be constructing the additional projects. However, the CTRMA will likely be operating those projects and may well be the issuer of bonds related to those projects, which means the CTRMA has significant financial interest in outreach within the community. Furthermore, the report notes that CAMPO has already voted on the plan and suggests that the need for outreach has ended. This ignores the fact that members of CAMPO, including one who requested TCPA's review, encouraged the CTRMA to continue its outreach activities even *after* the vote. In fact, CTRMA was advised that: "...it

is critical that the CTRMA immediately begin a public education and outreach effort to unite the public behind this necessary plan for solving our traffic crisis." (See letter from Mayor Will Wynn and Councilmember Brewster McCracken, Attachment 7). This occurred two weeks after the CAMPO vote to approve the plan.

Political Advocacy

The TCPA's report alleges that CTRMA engaged in lobbying activities in violation of Sections 556.004 and 556.005 of the Texas Government Code. These provisions apply only to (1) state agencies, (2) regional planning commissions, COGs, or similar regional planning agencies created under Chapter 391 of the Local Government Code; (3) local workforce development boards created under Subchapter F, Chapter 2308 of the Local Government Code; or (4) community centers created under Subchapter A, Chapter 534 of the Health and Safety Code. Sections 556.004 and 556.005 are clearly not applicable to CTRMA or to RMA's in general, which are "political subdivisions," and not treated as the equivalent of a state agency for purposes of Chapter 556. In contrast to state agencies, it is quite typical and generally acceptable for cities, counties, and other political subdivisions of the state to hire lobbyists.

The only provision of Chapter 556 applicable to CTRMA as a "political subdivision" is Section 556.055. That

provision states that a political subdivision or private entity that receives state funds may not use the state funds to pay:

- (1) lobbying expenses incurred by the recipient of the funds
- (2) a person or entity that is required to register with the Texas Ethics Commission under Chapter 30
- (3) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (2)
- (4) a person or entity that has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

The only way in which CTRMA could possibly violate Section 556.0055 is by using state funds (such as the toll equity grant) to pay for lobbying expenses. As noted in an email to TCPA staff, CTRMA recognizes this restriction and had no intention of paying any lobbying activities with State funds. (See Attachment 8.)

The memorandum attached to the TCPA's report as Appendix 9 evidences that CTRMA recognized and honored the distinction between advocacy and education and the report acknowledges the Executive Director's insistence that this distinction be enforced. While the Comptroller may believe that there was room for confusion, the memorandum clearly states that privately funded advocacy efforts were "distinct and wholly separate from the educational work of TxDOT and CTRMA," and oversight of billings and payments

assured this to be true. Furthermore, in a letter responding to the memo included in the TCPA's report the Executive Director provided clear and unequivocal direction that the CTRMA would not engage in advocacy efforts and that "all public relations efforts on behalf of the CTRMA will be educational in nature". (See Attachment 9). Thus, not only was the distinction clearly recognized it was aggressively enforced.

Appendix A

TCPA'S Specific Recommendations and CTRMA'S Response

RECOMMENDATIONS	RESPONSE
1. To prevent double taxation, state law should be amended to prohibit the conversion to toll-road status of any road on which construction begins without tolls identified as a funding source.	Tolls are user fees, not a tax. The “double taxation” label is incorrect.
2. State law should be amended to prohibit the Texas Department of Transportation from making allocations from the Texas Mobility Fund contingent upon the inclusion of toll roads in regional road plans.	This is a legislative issue beyond the control of CTRMA.
3. State law should be amended to require commissioners court approval of any toll road project that will be built or operated by an RMA in the court's jurisdiction.	This is a legislative issue beyond the control of CTRMA.
4. State law should be amended to require the commissioners courts of each RMA's constituent counties to appoint <i>all</i> RMA board members, including the board's chair.	However, any changes which undermine the perceived stability of the board will have negative consequences on Wall Street. The appointment of the CTRMA Board Chair by the Governor brings a regional perspective to the transportation in the region.
5. State law should be amended to allow the commissioners courts of counties establishing RMAs to remove any board member, including the board's chair.	CTRMA does not disagree that counties should be able to remove directors “for cause”.
6. The Texas Constitution and the Transportation Code should be amended to require board members of regional mobility authorities (RMAs) to serve four-year terms.	A minimum of four year terms would provide the foundation necessary to produce a positive response from Wall Street. However, any changes which undermine the perceived stability of the board will have negative consequences on Wall Street.
7. CTRMA and other RMAs should employ a professional contract management officer to ensure that all of their contractors and subcontractors comply fully with the terms and conditions of their contracts and that they provide necessary, measurable products or services for which they receive public monies.	To date, these functions have been provided by the Executive Director, the Board of Directors, and the General Engineering Consultant. Lack of adequate funding previously precluded employment of an individual to perform this specific function. Consummation of a recent bond sale, which will provide operational funding, will permit CTRMA to a an employee to perform this function.

Appendix A

TCPA'S Specific Recommendations and CTRMA'S Response

<p>8. State law should be amended to require the State Auditor's Office to conduct audits of RMAs within two years of their creation.</p>	<p>This is a legislative issue beyond the control of CTRMA. RMAs are, however, required to secure independent audits and are subject to audits and reviews by TxDOT.</p>
<p>9. CTRMA and other RMAs should ensure that their contractors' cost estimates employ the current federally audited overhead rate (the "FAR" rate) and contractually stipulated profit margins. To provide greater accountability over contractor expenditures, CTRMA and other RMAs should reconcile work authorization estimates and invoices monthly.</p>	<p>CTRMA agrees with these recommendations.</p>
<p>10. State law should be amended to require RMAs to follow the provisions of the <i>Statewide Contract Management Guide</i>.</p>	<p>This recommendation is under advisement by the CTRMA.</p>
<p>11. Prospective RMA board members should be required to disclose <i>all</i> real estate holdings, not simply those in the right of way of any planned mobility project.</p>	<p>CTRMA directors comply with applicable provisions of the Texas Transportation Code, TxDOT's RMA rules, and, through voluntary action, with Chapter 171 of the Texas Local Government Code.</p>
<p>12. CTRMA Board Chairman Tesch should resign from the board immediately, due to the potential for self-enrichment.</p>	<p>The call for Chairman Tesch to resign was unwarranted. Chairman Tesch does not have a conflict of interest related to his land holdings, a fact which was confirmed by the DA.</p>
<p>13. CTRMA Board member Zmud should resign from the board immediately, as her membership on CTRMA board violates provisions of the Texas Transportation Code.</p>	<p>The call for Dr. Zmud's resignation is based on an erroneous interpretation of TxDOT's rules. There is no violation of the Texas Transportation Code. TxDOT has confirmed that Dr. Zmud's business interest does not preclude her from serving on CTRMA board.</p>
<p>14. CTRMA and other RMAs should ensure that none of its board members or employees accepts gifts, favors or services that could be construed as being made to influence them.</p>	<p>CTRMA abides by statutes, rules, and procurement policies that prohibit the acceptance of gifts by directors and employees which are intended to influence them.</p>

Appendix A

TCPA'S Specific Recommendations and CTRMA'S Response

<p>14. CTRMA and other RMAs should ensure that none of its board members or employees accepts gifts, favors or services that could be construed as being made to influence them.</p>	<p>CTRMA abides by statutes, rules, and procurement policies that prohibit the acceptance of gifts by directors and employees which are intended to influence them.</p>
<p>15. CTRMA should immediately withdraw from Team Texas. Mike Heiligenstein should vacate his position as treasurer of Team Texas.</p>	<p>This recommendation is based on the erroneous conclusion that Team Texas is a "trade association." It is not. The interaction between operating toll authorities through Team Texas benefits the public; and CTRMA's participation in Team Texas (and Mr. Heiligenstein's position as an officer) are beneficial, to the Authority and its customers.</p>
<p>16. CTRMA and other RMAs should adopt contract procedures to ensure that its contractors and subcontractors receive contracts based entirely on published specifications, regardless of whether they contract directly with the RMA or its contractors.</p>	<p>CTRMA agrees that contractors should be hired based on published criteria. We are studying whether it is feasible to do so subcontractors.</p>
<p>17. State law should be amended to require RMAs to use their Web sites to publish information documenting all contracts, including the name of the contractor, key personnel, the costs and term of the contract, a description of goods and services to be provided by the contractor, and a justification for the necessity of the contract.</p>	<p>CTRMA does publish its RFQs, RFPs, and all related addenda and clarifications on its website.</p>
<p>18. State law should be amended to require RMAs and their contractors to perform criminal background checks for contractors and subcontractors, and RMAs should not hire or contract with anyone previously convicted of a felony.</p>	<p>CTRMA agrees criminal background checks are appropriate.</p>
<p>19. RMAs should not allow employees, contractors, or subcontractors to lobby on their behalf.</p>	<p>Given the dynamic nature of transportation legislation and funding options, RMAs should have the same flexibility to employ lobbyists as cities, counties, and other political subdivisions.</p>

Appendix A

TCPA'S Specific Recommendations and CTRMA'S Response

<p>20. State law should be amended to require RMAs to follow the restrictions detailed in Article IX of the state General Appropriations Act concerning the reimbursement of staff and board member expenses. State law should be amended to allow RMAs to participate in the State Travel Management Program (STMP).</p>	<p>These are legislative recommendations beyond the control of CTRMA. Current practice is to adhere to the provisions of the Texas Transportation Code and CTRMA's bylaws concerning reimbursement of staff and board member expenses. CTRMA would participate in the STMP if it were legally permissible to do so, and would support efforts to allow such inclusion.</p>
<p>21. CTRMA should seek a refund of all sales and use taxes charged to it for purchases it has made.</p>	<p>CTRMA is assessing this recommendation.</p>
<p>22. CTRMA and other RMAs should assume responsibility and be held accountable for ensuring that all expenses submitted for reimbursement are appropriate.</p>	<p>Agreed, and CTRMA does so.</p>
<p>23. CTRMA and other RMAs should employ an in-house general counsel to ensure that the taxpayers' best interests are protected.</p>	<p>CTRMA agrees that with adequate funding and sufficient operating assets, in-house legal counsel would be beneficial. The specific timing of such a hire would depend on the demand for legal work and budgetary constraints.</p>
<p>24. CTRMA should not reimburse contractors for food, entertainment, meetings or social functions without previous approval by the CTRMA executive director, who must justify the cost of the event.</p>	<p>Agreed, and CTRMA outside accountants reviews all invoices prior to payment, including those seeking reimbursement of work-related food and travel. Reimbursement of contractors for "entertainment" or "social functions" is not allowed.</p>
<p>25. CTRMA and other RMAs should limit public relations and public information contracts to projects directly under their authority.</p>	<p>CTRMA may work with TxDOT and local governments to study the feasibility of candidate projects. Public information is a vital component of that process.</p>
<p>26. Shortly after their formation, RMAs should employ public</p>	<p>With adequate funding, CTRMAs should directly hire a Public Information Officer.</p>



CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

Board of Directors

Dr. John Doerfler
Williamson County
710 Main Street, 2nd Floor
Georgetown, TX 78626
512.863.4837

July 15, 2003

Via US Mail and Facsimile to 854-9535

Hon. Judge Sam Biscoe
Travis County
314 W. 11th Street
Austin, TX 78701

Via US Mail and Facsimile to 943-1662

Hon. Judge John Doerfler
Williamson County
710 Main Street, 2nd Floor
Georgetown, TX 78626

Re: Central Texas Regional Mobility Authority; Future Funding Needs

Dear Judge Biscoe and Judge Doerfler:

The CTRMA, which was created by virtue of the joint request submitted by your counties, has been engaged in a detailed budgeting process intended to identify our operational expenses and available sources of revenue to cover those expenses. Through that process it has become abundantly clear that we will need to find additional sources of funding for our general operational needs, particularly between now and the time of our first sale of project-related revenue bonds (likely to be in early 2005). While we have received a toll equity grant from TxDOT for US 183-A, we expect that money to be restricted to expenses directly related or otherwise fairly attributable to that project. That means we will not have that money available to study other projects and pay for other facets of the authority's operations.

We anticipate discussing this issue with TxDOT to determine whether the department will make any funds available to RMAs for expenses which are not project-specific. It seems logical that TxDOT, which has strongly encouraged the formation of RMAs, would recognize that there will be a period of time, prior to an initial bond sale, when an RMA will need some type of financial assistance for operational and other expenses. However, we have no assurance that funds of this type will be made available, so we have begun considering other potential sources.

AUSTIN:05307100003:278091v1

100 Congress Ave., Suite 300 ~ Austin, Texas 78701 ~ 512.508.4837

Attachment 1: July 2003 Letter to Travis and Williamson Counties

One of those sources is a possible advance of additional funds from each of your counties. During the course of our discussion with Travis County concerning its initial commitment of \$250,000, the county requested (in the interlocal agreement) that if the RMA were going to seek additional funding a request and a budget be received by July 15th so that it could be considered within the county's budgeting process. Although we do not know for sure that we will need access to additional money from the counties, we nevertheless wanted to submit the request so that it can be considered during your respective budgeting processes. Therefore, we respectfully ask that each of Travis and Williamson Counties consider advancing the RMA \$300,000 beginning within the next two to four months. Enclosed is working draft of the CTRMA budget which we anticipate finalizing within 30 days. As you can see, we may accumulate a deficit of up to \$700,000 if we are not able to access other sources of funding within the near future.

Thank you for your continued support of the CTRMA. Please call if you have any questions.

Sincerely,



Robert E. Tesch
Chairman

Enclosure

cc: CTRMA Board Members
Michael J. Weaver
Brian Cassidy
Mike Swayze
Travis County Commissioners
Williamson County Commissioner

AUSTIN:053071/00003:278091v1

Attachment 1: July 2003 Letter to Travis and Williamson Counties

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY													
JULY 1, 2003 - JUNE 30, 2004 BUDGET													
	July	August	September	October	November	December	January	February	March	April	May	June	Totals
2003													
Beginning of period cash	\$ 103,970	\$ 82,810	\$ 61,770	\$ 703	\$ (80,364)	\$ (122,800)	\$ (168,237)	\$ (258,457)	\$ (328,579)	\$ (395,899)	\$ (468,119)	\$ (539,235)	\$ (606,595)
Revenues -													
Williamson County Contributions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Travis County Contributions													
Proposal Filing Fees													
Overhead Reimbursement - Project 183A	60,400	60,400	220,267	220,267	225,747	225,747	231,547	231,547	231,547	231,547	231,547	231,547	2,402,107
Undersubscribed Cash Receipts													
Total Revenues	60,400	60,400	220,267	220,267	225,747	225,747	231,547	231,547	231,547	231,547	231,547	231,547	2,402,107
Expenses -													
Accounting	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	40
Office Expense	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	68,333
Meeting Facilities	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Payroll/Benefits	17,850	17,850	17,850	17,850	17,850	17,850	17,850	17,850	17,850	17,850	17,850	17,850	142,800
Rent	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	30,000
Travel	1,000	1,000	1,000	1,000	1,000	1,000	7,333	7,333	7,333	7,333	7,333	7,333	49,998
Website Development/Advertising	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Consulting - Administrative Services	22,000	22,000	22,000	22,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	175,000
General Engineering Consultant	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	1,500,000
GEC - Overhead	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	300,000
Public Involvement/Marketing	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000
Legal	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	600,000
Financial Advisor							7,250	7,250	7,250	7,250	7,250	7,250	43,500
Total Expenses	81,500	81,500	281,333	281,333	288,183	288,183	301,766	301,766	301,766	301,766	301,766	301,766	3,112,531
Excess of Revenues over (Expenses)	(21,100)	(21,100)	(61,067)	(61,067)	(62,437)	(62,437)	(70,220)	(70,220)	(70,220)	(70,220)	(70,220)	(70,220)	(710,525)
End of Period Cash	\$ 82,870	\$ 61,770	\$ 703	\$ (60,364)	\$ (122,800)	\$ (185,237)	\$ (255,457)	\$ (325,676)	\$ (395,896)	\$ (468,116)	\$ (539,335)	\$ (606,555)	\$ (606,555)
Overhead Reimbursement - 183A													
Accounting	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	34,400
Office Expense			5,467	5,467	5,467	5,467	5,467	5,467	5,467	5,467	5,467	5,467	54,667
Meeting Facilities													
Payroll/Benefits					2,400		2,400		2,400		2,400		24,000
Rent													
Travel													
Website Development/Advertising													
Consulting - Administrative Services	17,800	17,800	17,800	17,800	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	140,600
General Engineering Consultant			120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	1,200,000
GEC - Overhead			24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	24,000	240,000
Public Involvement/Marketing			8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	60,000
Legal	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	480,000
Financial Advisor							5,800	5,800	5,800	5,800	5,800	5,800	34,800
Total Reimbursement - 183A	\$ 60,400	\$ 60,400	\$ 220,267	\$ 220,267	\$ 225,747	\$ 225,747	\$ 231,547	\$ 231,547	\$ 231,547	\$ 231,547	\$ 231,547	\$ 231,547	\$ 2,402,107
* Adjusted for Accounts Payable at June 30, 2003 of \$125,000													

DRAFT
FOR DISCUSSION
PURPOSES ONLY

c:\Documents\Central Texas Regional Mobility Authority\CTRNA Budget file 8/30/04.v2

07/14/03

Attachment 2: Mike Heiligenstein Executive Director Letter



CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

July 25, 2003

Mike Heiligenstein
502 Oakland
Round Rock, Texas 78681

Re: CTRMA Executive Director Search

Dear Mr. Heiligenstein:

As you may know, the Central Texas Regional Mobility Authority ("CTRMA") is currently looking for a qualified individual to serve as its Executive Director. A copy of the job posting for the position is enclosed.

The CTRMA Board of Directors would like to make its selection from as broad a pool of qualified candidates as possible. You have been identified as someone who may possess the requisite qualifications and experience for the position. Therefore, I would like to encourage you to consider submitting a response to the job posting.

Please note that by encouraging you to submit an application, neither I nor the CTRMA can assure that you will be interviewed for, or offered, the position. The CTRMA Board of Directors has simply directed its staff to encourage as many potentially qualified candidates to respond the posting as possible.

Please feel free to call if you have any questions.

Sincerely

Michael J. Weaver
Interim Executive Director

cc: CTRMA Board of Directors
C. Brian Cassidy, Locke, Liddell & Sapp

Listing notice_let.doc

Attachment 3: District Attorney's Letter



OFFICE OF THE DISTRICT ATTORNEY

P.O. Box 1748, Austin, TX 78767

Telephone (512) 854-3400

Telex (512) 854-4812

RONALD EARLE
DISTRICT ATTORNEY

ROSEMARY LEHMBERG
FIRST ASSISTANT

March 24, 2005

C. Brian Cassidy
Locke, Liddell & Sapp, LLP
100 Congress, Suite 300
Austin, Texas 78701

Dear Mr. Cassidy:

This letter is to advise you of the current status of the investigation into allegations of criminal conduct related to your client, the Central Texas Regional Mobility Authority (CTRMA), and any of its officials and employees that is being handled by the Public Integrity Unit of this office.

The Public Integrity Unit has concluded the review of allegations of criminal conduct in connection with possible conflicts of interest due to land holdings or real estate transactions by CTRMA Chairman Robert Tesch and other CTRMA board members. We have found no evidence of criminal conduct relating to this particular issue.

As you are aware, the Public Integrity Unit has received several different complaints related to the CTRMA. Some of those matters remain under review and no conclusions have been reached with respect to those remaining issues. We will be unable to comment any further on those points at this time.

We would like to thank you for your cooperation and the cooperation of your client's staff during this process, and we hope that we can continue to maintain an open line of communication in the spirit of a thorough and efficient investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Earle", written over a horizontal line.

Ronald Earle

Attachment 4: TxDOT Letter



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-6565

March 23, 2005

The Honorable Gonzalo Barrientos
State Senate
Capitol Station
P.O. Box 12068
Austin, Texas 78711-2068

Dear Senator Barrientos:

On behalf of the Texas Department of Transportation (TxDOT), I am pleased to respond to your letter of March 18, 2005 (copy enclosed). You have inquired as to whether 43 TAC § 26.51(b)(1)(A) excludes Johanna Zmud from serving on the Board of the Central Texas Regional Mobility Authority (CTRMA). The answer is: No.

The Rule in question excludes one who:

"(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;"

See, 43 TAC § 26.51(b)(1)(A).

The intent of the Rule is to exclude an entity that in fact "is regulated by or receives money from the department (emphasis added)." The TxDOT Office of General Counsel has interpreted this to mean entities that contract with the department. The provision does not apply to subcontractors. Therefore, the provisions of 43 TAC § 26.51(b)(1)(A) do not exclude Ms. Zmud from serving on the Board of the CTRMA.

Thank you for allowing TxDOT to make its position clear. If you or your staff need anything further on this matter, please let me know.

Sincerely,

Richard D. Monroe
General Counsel

RDM:ks

cc: Texas Transportation Commission
Administration, TxDOT
Phil Russell, P.E., Director, Texas Turnpike Authority Division, TxDOT

TYLEGALATTORNEYS\RDM\SEN BARRIENTOS RE ZMUD - CTRMA BOARD.DOC

An Equal Opportunity Employer

Attachment 5: Zmud Email

Cassidy, C. Brian

From: Cassidy, C. Brian
Sent: Friday, February 04, 2005 6:35 PM
To: Laure McLaughlin (E-mail)
Cc: Mike Heiligenstein (E-mail)
Subject: Question Regarding NuStats

Hi Laure-

In response to your previous question, I have visited with Dr. Zmud concerning whether her company (NuStats) is serving as a prime contractor to TxDOT on any work. NuStats is not doing so, and has not done so during her tenure on the CTRMA board of directors. Dr. Zmud anticipates that TxDOT could be issuing RFPs for work her firm would compete for within the next year, and if TxDOT does so (and NuStats decides to compete for the work as a prime contractor) she is prepared to resign her position from the board in light of the statutory restrictions set forth in Sec. 370.252 of the Transportation Code and Sec. 26.51 of the RMA rules (46 Tex. Admin. Code Sec. 26.51). NuStats is currently serving as a subconsultant on 2 teams performing work for TxDOT. The NuStats work is ancillary to the main purpose of those TxDOT jobs, and a subconsultant role is typical for the type of work (i.e., it was not structured as such to avoid the RMA issues). Please note that Dr. Zmud was very diligent about conferring with me and with the CTRMA's Executive Director prior to engaging in, or even pursuing, any TxDOT work.

Call if you have any other questions.

Brian

C. Brian Cassidy
Locke Liddell & Sapp LLP
100 Congress Ave. Ste 300
Austin, TX 78701
Phone: (512) 305-4855
Fax: (512) 391-4855
Mobile: (512) 848-4181

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos



September 17, 2004

Senator Gonzalo Barrientos
Chair – Transportation Policy Board
Capital Area Metropolitan Planning Organization
1011 San Jacinto Blvd., 2nd Floor
Austin, TX 78701

13640 Briarwick Drive
Suite 200
Austin, Texas 78729-1706
Phone: (512) 996-9778
Fax: (512) 996-9784
<http://www.ctrma.org>

Executive Director:
Mike Heiligenstein

Board of Directors:

Robert E. Tesch
Chairman

Lowell Lebermaran
Vice-Chairman

Robert L. Bennett
Treasurer

Henry H. Gilmore

James H. Mills

David Singleton

Johanna Zmud, Ph.D.

Re: Conflict of Interest Allegations

Dear Senator Barrientos:

At Monday night's CAMPO Board meeting, questions were raised concerning the relationship between a sub-consultant to the CTRMA's General Engineering Consultant ("GEC") and a CAMPO Board member. Specifically, questions were asked about work performed by Stacy Dukes-Rhone, the sister of State Representative Dawwna Dukes. I would like to take this opportunity to fully explain the work performed by Ms. Dukes-Rhone.

Grier-Bankett Consulting, Inc. ("GBC"), the consulting firm that employs Ms. Dukes-Rhone, was hired by the CTRMA's GEC in February 2004. That firm, and Ms. Dukes-Rhone in particular, were hired to provide services related to public outreach in connection with the CTRMA/TxDOT Regional Implementation Program. Ms. Dukes-Rhone is well respected in the community and helped to coordinate extensive outreach efforts to reach and provide information to all areas of the community concerning the toll road program. Extensive public outreach was encouraged by the CAMPO Board as a means of educating the community about the Regional Implementation Program.

While the CTRMA is not involved in the administration of its GEC's contracts with sub-consultants, the CTRMA does have the right to approve the retention of sub-consultants. I specifically authorized and approved the GEC's retention of GBC as part of the GEC public outreach team in February of 2004. Any further formalities concerning the retention of GBC's services were a matter between the GEC and the company. Set forth below is a chronology of events since the inception of GBC's work as a sub-consultant of the GEC through the present:

- | | |
|------------|--|
| 2/1/04: | Effective date of Work Authorization No. 1 between the GEC and GBC. |
| Feb. 2004: | GEC requests consent to add GBC and Stacy Dukes-Rhone as sub-consultant. |
| 2/18/04: | GBC commences work. |

Enhancing Mobility and Opportunity in Central Texas

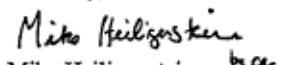
Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

- 3/31/04: Effective date of Work Authorization No. 2 between the GEC and GBC.
- 4/13/04: First invoice for services rendered by GBC (covering period from 2/18/04 – 4/13/04).
Amount: \$6,037.00.
- 6/28/04: Second invoice for services by GBC (covering period from 4/14/04 – 4/29/04).
Amount: \$3,700.00.
- Third invoice for services by GBC (covering period from 5/3/04 – 5/25/04).
Amount: \$10,627.50.
- 7/13/04: Date of execution of Master Agreement between the GEC and GBC (effective date 2/01/04); date of execution of Work Authorization No. 1 (effective date 2/01/04); and date of execution of Work Authorization No. 2 (effective date 3/31/04).
- 8/12/04: Fourth invoice for services by GBC (covering period from 6/3/04 – 6/29/04).
Amount: \$6,497.50.
- 8/24/04: Fifth invoice for services by GBC (covering period from 7/02/04 – 7/26/04).
Amount: \$5,254.00.

I can unequivocally represent that Ms. Dukes-Rhone's services were retained (through GBC) by the GEC, with my consent, solely due to the skills and expertise she was able to provide to the CTRMA. Ms. Dukes-Rhone is an experienced public relations professional whose work for the GEC was concentrated on including and educating the public on transportation solutions. Her services were in no way related to the position of her sister as a CAMPO Board member, and at no time was there ever any expectation or request that Ms. Dukes-Rhone would contact her sister, much less advocate a position, on behalf of the CTRMA.

Copies of the GBC/GEC Master Agreement, Work Authorizations, and invoices are enclosed. I hope this will fully present all information that could reasonably be requested in connection with this matter. Please contact me if you have further questions.

Sincerely,


Mike Heiligenstein *by cc*
Executive Director

cc: CTRMA Board of Directors
CAMPO Transportation Policy Board
Michael Aulick, Executive Director - CAMPO

AUSTIN:053071/00003:303645v1

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

MASTER AGREEMENT BETWEEN GEC AND CONSULTANT

THIS AGREEMENT is entered into between HNTB Corporation (GEC) and Grier-Bankett Consulting, Inc. (Consultant), for the following reasons:

1. GEC has entered into an agreement dated September 1, 2003 (Prime Agreement), with the Central Texas Regional Mobility Authority (Authority), to perform or provide general consulting civil engineering services as the General Engineering Consultant for the Central Texas Regional Mobility Authority identified as GEC's Project Number 38773 (the Project); and,
2. GEC requires certain services in connection with the Project (the Services); and,
3. Consultant is prepared to provide the Services.

In consideration of the promises contained in this Agreement, GEC and Consultant agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be February 1, 2004.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State set forth in the Prime Agreement.

ARTICLE 3 - WORK AUTHORIZATIONS

Work Authorizations shall be used to describe the parties' mutual agreement on the scope of the Services, schedule, compensation and other particulars as stated therein. Work Authorizations shall be in the general form shown in attached Attachment A. Work Authorizations are binding only after acceptance and execution by duly authorized representatives of both parties. Each Work Authorization shall govern the parties' rights and obligations with respect to each assignment, but all within the framework of this Agreement.

ARTICLE 4 - SCOPE OF SERVICES

Consultant shall provide the Services described in Section A (Scope of Services) of each Work Authorization. GEC shall be the general administrator and coordinator of Consultants' services and shall facilitate the exchange of information among the other independent consultants (if any) engaged by GEC as necessary for the coordination of their services. All Project communications shall be made through or with the prior written approval of GEC. Authority and GEC shall have the right to observe performance of the Services and to review Consultant's files and records relating to the Project.

ARTICLE 5 - SCHEDULE

Consultant shall perform the Services pursuant to the time frame set forth in Section B (Schedule) of each Work Authorization. Consultant recognizes that the services of GEC and others involved in the Project are dependent upon the complete, accurate and timely performance of Consultant's Services. Unless otherwise provided in this Agreement, Consultant shall perform such Services in the same

character, timing, and sequence as GEC is required to perform the services under the Prime Agreement. Consultant's failure to so perform shall be considered a material breach of this Agreement.

ARTICLE 6 - COMPENSATION

GEC shall pay Consultant in accordance with Section C (Compensation) of each Work Authorization.

Consultant shall submit periodic statements for Services rendered. An Invoicing Schedule will be provided by the GEC. If GEC objects to any statement submitted by Consultant, GEC shall so advise Consultant in writing giving reasons therefor within fourteen days of receipt of such statement. If no such objection is made, the statement will be considered acceptable to GEC.

GEC shall invoice Authority on account of Consultant's Services and shall pay Consultant within fourteen days of the time GEC receives payment from Authority on account thereof. It is a condition precedent to GEC's payment to Consultant that GEC have received corresponding payment from Authority. Payments to Consultant will be reduced by any amounts withheld by Authority. Upon the release to GEC of any amount which includes payments due Consultant, GEC will forward to Consultant its portion of such payment.

ARTICLE 7 - PRIME AGREEMENT

A copy of the Prime Agreement is attached as Attachment B (Prime Agreement). All portions thereof pertinent to Consultant's responsibilities, compensation, and timing of Services and not in conflict with any provision of this Agreement are incorporated herein and made binding on Consultant. In the event of a conflict between the terms and conditions of this Agreement and those of the Prime Agreement, the terms and conditions of this Agreement shall prevail.

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

ARTICLE 8 - INDEMNIFICATION

Consultant shall indemnify and hold harmless GEC and Authority from and against all judgments, losses, damages, and expenses (including attorney fees and defense costs) to the extent such judgments, losses, damages, or expenses are caused by any negligent act, error, or omission of Consultant or any person or organization for whom Consultant is legally liable.

HNTB shall indemnify and hold harmless Consultant from and against all judgments, losses, damages, and expenses (including attorney fees and defense costs) to the extent such judgments, losses, damages, or expenses are caused by any negligent act, error, or omission of HNTB or any person or organization for whom HNTB is legally liable excluding any negligent act, error, or omission of Consultant.

Without limiting the generality of the foregoing, this indemnification obligation shall extend to and include any actions brought by, or in the name of, any employee of Consultant or others for whom the Consultant is legally liable.

The terms and conditions of this Article shall survive completion of all Services, obligations, and duties provided for in this Agreement, or the termination of this Agreement for any reason.

ARTICLE 9 - INSURANCE

During the performance of the Services under this Agreement, Consultant shall maintain the following insurance, with carriers having a Best's rating of at least B+ and authorized to do business in the state in which the Services are being performed:

- (a) General Liability Insurance on a coverage form equal to ISO CG 00 01, on an occurrence basis, with a limit of not less than \$1,000,000 per occurrence and \$1,000,000 general aggregate, including a per-project endorsement.
- (b) Automobile Liability Insurance to include coverage for all hired, owned and non-owned vehicles, with a combined single limit of not less than \$1,000,000.

At least thirty (30) days' advance written notice shall be given to GEC prior to cancellation or non-renewal of the above policies. GEC, its parent company, affiliated and subsidiary entities, directors, officers and employees and the Authority shall be added as additional insureds under (a) and (b) above. Such policies shall provide that the Consultant's insurance shall be primary and any insurance maintained by GEC shall be excess and not contribute with it. Consultant and its insurer(s) waive their right of subrogation on all coverages listed above.

Consultant shall furnish GEC certificates of

insurance which evidence the requirements of this Article prior to performing any Services under this Agreement. Consultant further agrees to file new certificates showing renewal of coverage and limit at least thirty (30) days prior to the expiration of the current policies. Certificates shall include reference to GEC's Project Number as first stated above.

ARTICLE 10 - INDEPENDENT CONTRACTOR

Consultant undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. Consultant has complete and sole responsibility for its employees, agents, subcontractors or any other persons or entity that Consultant hires to perform or assist in performing the Services hereunder. Consultant is solely responsible for (a) payment of wages, benefits, and other compensation to or for its employees, (b) payment of applicable payroll, unemployment, and other taxes and withholding of applicable social security (FICA) and income taxes with respect to its employees, and (c) compliance with applicable Workers' Compensation laws with respect to maintenance of worker's compensation and employer's liability insurance coverages.

ARTICLE 11 - COMPLIANCE WITH LAWS

In performance of the Services, Consultant shall comply with applicable regulatory requirements including federal, state, and local laws, rules, regulations, orders, codes, criteria, and standards. Consultant shall procure the permits, certificates, and licenses necessary to allow Consultant to perform the Services. Consultant shall not be responsible for procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Consultant in a Work Authorization.

ARTICLE 12 - GEC'S RESPONSIBILITIES

GEC shall be responsible for all matters described in Section D (GEC's Responsibilities), of each Work Authorization. In addition, GEC shall perform and provide the following in a timely manner so as not to delay the Services of Consultant:

- (a) Provide criteria and information pertinent to Consultant's Services as to Authority's and GEC's requirements for the Project, including design objectives and constraints, space, capacity, and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Authority and GEC will require to be included in the drawings and specifications to be furnished by Consultant under this Agreement, if any.
- (b) Make available to Consultant drawings, specifications, schedules, and other information, interpretations, and data which are prepared by GEC, or by others, which GEC knows are

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

- reasonably available to GEC, and which GEC and Consultant consider pertinent to Consultant's responsibilities hereunder.
- (c) Request Authority to arrange for access to and to make provisions for Consultant to enter upon public and private property as required for Consultant to perform the Services.
 - (d) Give prompt notice to Consultant whenever GEC observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's Services.

Unless otherwise provided in the Agreement, the information and services to be provided by GEC under this Article will be without cost to Consultant.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, computer software and other such instruments, computer software and other such instruments of service prepared by Consultant pursuant to this Agreement, whether completed or in progress, are the property of GEC. Ownership shall transfer to Authority if or as required by the Prime Agreement. Any use except for the specific purpose intended by this Agreement will be at the user's sole risk and without liability or legal exposure to Consultant.

ARTICLE 14 - TERMINATION AND SUSPENSION

This Agreement will terminate automatically upon termination of the Prime Agreement. GEC will promptly notify Consultant of such termination.

GEC may terminate or suspend performance of all or any part of this Agreement for GEC's convenience upon written notice to Consultant. Upon receipt of notice, Consultant shall terminate or suspend performance of the Services on a schedule acceptable to GEC. Consultant's sole remedy shall be payment for Services performed in accordance with this Agreement up to the effective date of termination or suspension.

GEC may terminate this Agreement upon written notice in the event of substantial failure by Consultant to perform in accordance with this Agreement; provided, however, the Consultant shall have 14 calendar days from receipt of the termination notice to cure or to submit a plan for cure reasonably acceptable to GEC. In the event of such termination, GEC may complete the Services as GEC deems appropriate, withholding any further payment to Consultant until the Services have been completed. If the unpaid balance of Consultant's compensation earned to the date of termination exceeds all costs, losses, and damages (direct, indirect, and consequential) sustained by GEC arising out of or resulting from Consultant's termination and GEC's completion of the Services, such excess will be paid to Consultant. If such costs, losses, and damages exceed such unpaid

balance, Consultant shall pay the difference to GEC. Any such costs, losses, and damages shall be reasonable and subject to review by the Consultant to determine reasonableness.

Consultant may terminate this Agreement upon written notice in the event of substantial failure by GEC to perform in accordance with this Agreement; provided, however, GEC shall have fourteen (14) calendar days from receipt of the termination notice to cure or to submit a plan for cure reasonably acceptable to Consultant. In the event of termination, GEC will pay Consultant for Services performed in accordance with this Agreement to the date of termination.

Throughout the term of this Agreement, Consultant shall maintain, in legible and organized form, all information, work papers, and design calculations relating to the Services. Upon termination of this Agreement for any reason, Consultant will promptly provide same to GEC, along with all documents or other instruments of service, whether completed or in progress, that have been prepared or furnished by Consultant in the performance of the Services hereunder, and will reasonably cooperate with GEC and/or any replacement consultant to facilitate transfer of Consultant's responsibilities.

The provisions of this Article shall also apply to each individual Work Authorization, separate and apart from any other Work Authorizations, and without terminating or otherwise affecting this Agreement as a whole.

ARTICLE 15 - PROPRIETARY INFORMATION

Consultant shall treat as proprietary all information provided by GEC and Authority and all drawings, reports, studies, design calculations, specifications, and other documents or information, in any form or media, resulting from the Consultant's performance of the Services. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of GEC.

The preceding restriction shall not apply to information which is in the public domain, was previously known to Consultant, was acquired by Consultant from others who have no confidential relationship to GEC with respect to same, or which, through no fault of Consultant, comes into the public domain. Consultant shall not be restricted from releasing information, including proprietary information, in response to a subpoena, court order, or other legal process. Consultant shall not be required to resist such legal process, but shall promptly notify GEC in writing of the demand for information before Consultant responds to such demand. GEC may, at its sole discretion, seek to quash such demand.

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

ARTICLE 16 - NOTICES

Any notices required by this Agreement shall be made in writing to the address specified below:

GEC:
HNTB Corporation
1701 Directors Boulevard, Suite 770
Austin, TX 78744
ATTN: Mr. Richard Ridings, P.E.

Consultant:
Grier-Bankett Consulting, Inc.
P.O. Box 16687
Austin, TX 78761
ATTN: Ms. Stacy Dukes-Rhone

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of GEC and Consultant.

ARTICLE 17 - DELAY IN PERFORMANCE

Neither GEC nor Consultant shall be considered in default of this Agreement or any Work Authorization for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state or federal agency for any of the supplies, materials, access, or services required to be provided by either GEC or Consultant under this Agreement.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party, describing the circumstances preventing continued performance and the efforts being made to resume performance.

ARTICLE 18 - DISPUTES

In the event of a dispute between GEC and Consultant arising out of or related to this Agreement or any Work Authorization, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution by arbitration in accordance with the Construction Industry Arbitration Rules of the American

Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 19 - RECORDS

Consultant's records pertaining to compensation and payments under this Agreement shall be kept in accordance with generally accepted accounting principles. Such records shall be subject to audit by GEC, during normal business hours at Consultant's place of business, or Consultant shall provide a copy of same to GEC at GEC's expense. Consultant shall not dispose of the originals or such records until after sixty (60) days prior written notice to GEC.

ARTICLE 20 - EQUAL EMPLOYMENT OPPORTUNITY

The Consultant hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable regulations.

Consultant affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is Consultant's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

Consultant further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-100 reports, and maintenance of a current Affirmative Action Plan if required by Federal regulations.

ARTICLE 21 - WAIVER

A waiver by either GEC or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 22 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

if it did not contain the particular portion or provision held to be void. GEC and Consultant further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 23 - INTEGRATION

This Agreement, including Attachments A, B and C (incorporated by this reference), and subsequently issued Work Authorizations (and their respective attachments, if any), represents the entire and integrated agreement between GEC and Consultant. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be amended only by a written instrument signed by both GEC and Consultant.

ARTICLE 24 - SUBCONTRACTING

Consultant shall not engage independent consultants, associates, or subcontractors to assist in the performance of Consultant's Services without the prior written consent of GEC.

ARTICLE 25 - SUCCESSORS AND ASSIGNS

GEC and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives, and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party, in respect to all provisions of this Agreement.

ARTICLE 26 - ASSIGNMENTS

Neither GEC nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Consultant may assign its rights to payment without GEC's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

ARTICLE 27 - THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of, and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Authority, GEC, and Consultant.

IN WITNESS WHEREOF, GEC and Consultant have executed this Agreement. The individuals signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement and bind the parties for whom they sign.

HNTB Corporation
(GEC)

Signature: *Richard L. Williams*
Name: RICHARD L. WILLIAMS
Title: VICE-PRESIDENT
Date: 7/13/04

Prior-Benbitt Consulting
(Consultant)
Signature: *Stacy Rhone*
Name: Stacy Rhone
Title: President
Date: 7/7/04
Fed. Tax I.D. No. 35-2158351

Attachment A - Sample Work Authorization
Attachment B - Prime Agreement

ATTACHMENT A
SAMPLE WORK AUTHORIZATION

WORK Authorization No. _____

This Work Authorization is made as of this _____ day of _____, under the terms and conditions established in the PRIME AGREEMENT BETWEEN GEC AND CONSULTANT, dated as of September 1, 2003 (the Agreement), between HNTB Corporation (GEC) and _____ (Consultant). This Work Authorization is made for the following purpose, consistent with the services defined in the Agreement:

[Brief description of the Project elements to which this Work Authorization applies]

Section A. - Scope of Services

A.1. Consultant shall perform the following Services:

[Enter description of the Scope of Services here for which this Work Authorization applies, or make reference to an attached Exhibit]

A.2. The following Services are not included in this Work Authorization, but shall be provided as Additional Services if authorized or confirmed in writing by the GEC.

A.3. In conjunction with the performance of the foregoing Services, Consultant shall provide the following submittals/deliverables (Documents) to the GEC:

Section B. - Schedule

Consultant shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Section C. - Compensation

C.1. In return for the performance of the foregoing obligations, the GEC shall pay to the Consultant the amount not to exceed \$ _____, based on the attached fee estimate. Compensation shall be in accordance with the Agreement.

C.2. Compensation for Additional Services (if any) shall be paid by the GEC to the Consultant according to the terms of a future Work Authorization.

Section D. - GEC's Responsibilities

The GEC shall perform and/or provide the following in a timely manner so as not to delay the Services of the Consultant. Unless otherwise provided in this Work Authorization, the GEC shall bear all costs incident to compliance with the following:

Section E. - Other Provisions

The parties agree to the following provisions with respect to this specific Work Authorization:

Except to the extent expressly modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

GEC: HNTB Corporation

Consultant:

By: _____

By: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Grier-Bankett Consulting Attachment A

Work Authorization No. 1

ATTACHMENT A WORK AUTHORIZATION

WORK Authorization No. 1

This Work Authorization is made as of this 1st day of February, 2004, under the terms and conditions established in the PRIME AGREEMENT BETWEEN GEC AND GRIER-BANKETT CONSULTING INC, dated as of February 1, 2004 (the Agreement), between HNTB Corporation (GEC) and Grier-Bankett Consulting, Inc. (Consultant). This Work Authorization is made for the following purpose, consistent with the services defined in the Agreement:

Public Involvement Services for US 183A

Section A. - Scope of Services

A.1. Consultant shall perform the following Services:

- Assist in communications with targeted stakeholder groups
- Assist with message development and media relations
- Assist in preparation of press releases and project fact sheets
- Attend meetings as required

A.2. The following Services are not included in this Work Authorization, but shall be provided as Additional Services if authorized or confirmed in writing by the GEC.

N/A

A.3. In conjunction with the performance of the foregoing Services, Consultant shall provide the following submittals/deliverables (Documents) to the GEC:

N/A

Section B. - Schedule

Consultant shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Services under this Work Authorization shall be completed within approximately two (2) months from the date this Work Authorization becomes effective.

Section C. - Compensation

C.1. In return for the performance of the foregoing obligations, the GEC shall pay to the Consultant the amount not to exceed \$3,330, based on the hourly rates shown in Exhibit A. Compensation shall be in accordance with the Agreement.

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Grier-Bankett Consulting Attachment A

Work Authorization No. 1

C.2. Compensation for Additional Services (if any) shall be paid by the GEC to the Consultant according to the terms of a future Work Authorization.

Section D. - GEC's Responsibilities

The GEC shall perform and/or provide the following in a timely manner so as not to delay the Services of the Consultant. Unless otherwise provided in this Work Authorization, the GEC shall bear all costs incident to compliance with the following:

N/A

Section E. - Other Provisions

The parties agree to the following provisions with respect to this specific Work Authorization:

Except to the extent expressly modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

GEC: HNTB Corporation

Consultant: Grier-Bankett Consulting

By: Richard L. Richards

By: Stacy Rhone

Signature: [Signature]

Signature: [Signature]

Title: Vice President

Title: President

Date: 7/13/04

Date: 7/7/04

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Grier-Bankett Consulting Exhibit A

Work Authorization No. 1

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

EXHIBIT A

WORK AUTHORIZATION NO. 1

Grier-Bankett Consulting, Inc.

Compensation Fee Estimate

Compensation for Public Involvement services and related submittals/deliverables (Documents) associated with the development and implementation of the US-183A corridor will be paid as follows:

Public Affairs / Governmental Affairs / Media:

Principal	\$185.00 per hour
Sr. V. P. / Accounts	\$75.00 per hour
Account Executive	\$65.00 per hour
Account Services	\$50.00 per hour
Research, writing, etc.	\$50.00 per hour
Clerical	\$40.00 per hour

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Grier-Bankett Consulting Attachment A

Work Authorization No. 2

ATTACHMENT A

WORK AUTHORIZATION

WORK Authorization No. 2

This Work Authorization is made as of this 31st day of March, 2004, under the terms and conditions established in the PRIME AGREEMENT BETWEEN GEC AND GRIER-BANKETT CONSULTING INC, dated as of February 1, 2004 (the Agreement), between HNTB Corporation (GEC) and Grier-Bankett Consulting, Inc. (Consultant). This Work Authorization is made for the following purpose, consistent with the services defined in the Agreement:

Public Involvement Services for US 183A

Section A. - Scope of Services

A.1. Consultant shall perform the following Services:

- Assist in communications with targeted stakeholder groups
- Assist with message development and media relations
- Assist in preparation of press releases and project fact sheets
- Attend meetings as required

A.2. The following Services are not included in this Work Authorization, but shall be provided as Additional Services if authorized or confirmed in writing by the GEC.

N/A

A.3. In conjunction with the performance of the foregoing Services, Consultant shall provide the following submittals/deliverables (Documents) to the GEC:

N/A

Section B. - Schedule

Consultant shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Services under this Work Authorization shall be completed within approximately four (4) months from the date this Work Authorization becomes effective.

Section C. - Compensation

C.1. In return for the performance of the foregoing obligations, the GEC shall pay to the Consultant the amount not to exceed \$41,070, based on the hourly rates shown in Exhibit A. Compensation shall be in accordance with the Agreement.

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

Grier-Bankett Consulting Exhibit A

Work Authorization No. 2

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

EXHIBIT A

WORK AUTHORIZATION NO. 2

Grier-Bankett Consulting, Inc.

Compensation Fee Estimate

Compensation for Public Involvement services and related submittals/deliverables (Documents) associated with the development and implementation of the US-183A corridor will be paid as follows:

Public Affairs / Governmental Affairs / Media:

Principal	\$185.00 per hour
Sr. V. P. / Accounts	\$75.00 per hour
Account Executive	\$65.00 per hour
Account Services.....	\$50.00 per hour
Research, writing, etc.	\$50.00 per hour
Clerical.....	\$40.00 per hour

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos



RECEIVED
MAY 03 2004
CTRMA
AUSTIN, TEXAS

Grier-Bankett Consulting Inc.
P.O. Box 15687
Austin, Texas 78761

Bill To
CTRMA Attn: Mr. Mike Heiligenstein 13640 Brifarwick Drive #200 Austin, Texas 78729

Invoice

Date	Invoice #
4/13/2004	17PDS
Project Number	Project Name
Transpo/1	CTRMA

Task #	Date of Service	Description	Hours	Hourly Rate	Amount
Weekly team ...	2/18/2004	Weekly Team Meeting	3	185.00	555.00
Meetings/Con...	2/19/2004	VIP Meeting	2	185.00	370.00
Weekly team ...	2/25/2004	Weekly Team Meeting	2	185.00	370.00
Consulting	2/26/2004	Draft PR Plan & Identification of key Community Leaders	2	185.00	370.00
Weekly team ...	3/3/2004	Weekly Team Meeting	2	185.00	370.00
Meetings/Con...	3/9/2004	Strategy Meeting (Saldana & Heiligenstein)	2	185.00	370.00
Weekly team ...	3/10/2004	Weekly Team Meeting	2	185.00	370.00
Consulting	3/22/2004	Annual Report - PR Draft progress report	2.5	185.00	462.50
Weekly team ...	3/31/2004	Weekly Team Meeting	0.5	185.00	92.50
Consulting	4/6/2004	Calls to Neighborhood Assn - Circle C Assn, Oakhill, Montopolis, etc...	2	185.00	370.00
Weekly team ...	4/7/2004	Weekly Team Meeting	0.5	185.00	92.50
Meetings/Con...	4/8/2004	Draft Plan and Schedule & neighborhood letter	6	185.00	1,110.00
Consulting	4/9/2004	Distribution of press release to minority Media & calls	1.5	185.00	277.50
Meetings/Con...	4/12/2004	CTRMA Board Meeting	2	185.00	370.00
Consulting	4/13/2004	Calls to City Councilman and Commissioner, etc..	2	185.00	370.00
Direct Expense		Work expenses		117.00	117.00

OK [Signature]
Project Manager Approval
Date 5/11/04
Job # 38773 (see below)
(including Task #)
HNTB Invoice # 007.134

Paid

Date _____ Check # _____
Project # _____
Account # _____
Approved For Payment [Signature]

150 remit to above address
 O The charges from 2/18/04 to 4/13/04 (\$5,250.00)
 Bill to 38773/P/007/900/0001 Total \$6,037.00
 O The charges from 2/18/04 to 4/13/04 (\$2,707.00)
 Bill to 38773/P/007/900/0002

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos

FROM: GBC TEL: 5129903394 (0:9369784 P:4/5

GBC

Grier-Bankett Consulting, Inc.
 P.O. Box 15687
 Austin, Texas 78761
 (512) 826-0083

Bill To

CTRMA
 Attn: Mr. Mike Heiligenstein
 13640 Briarwick Drive #200
 Austin, Texas 78729

Invoice

Date	Invoice #
6/28/2004	19PDS
Project Number	Project Name
Transpo/I	CTRMA

Task #	Date of Service	Description	Hours	Hourly Rate	Amount
Meetings/Con...	4/14/2004	10am CTRMA Facilitation mtg - 2.3pm CM mtg	3	185.00	555.00
General Cons...	4/21/2004	10.3am Com Davis & L. Optm AA Chamber	3.5	185.00	647.50
Meetings/Con...	4/22/2004	Hispanic Chamber Luncheon	2.5	185.00	462.50
Meetings/Con...	4/26/2004	3.3pm Mtg - Community meeting planning	2	185.00	370.00
General Cons...	4/27/2004	8.3am Subconsulting - Community Mtg - PS&SH	2	185.00	370.00
General Cons...	4/28/2004	10.am Strategy Mtg - PS of:	2	185.00	370.00
General Cons...	4/29/2004	Task Work & Planning in office- Door-to-Door, etc...	5	185.00	925.00

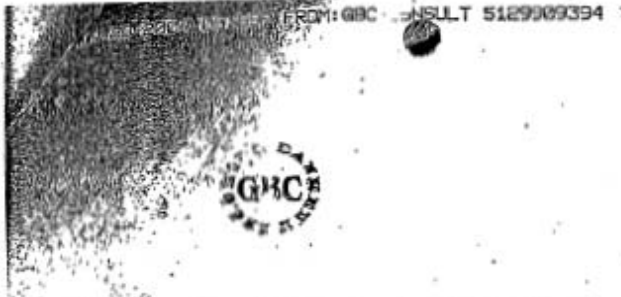
OK / 250
 Project Manager Approval
 Date 7/13/04
 Job # 32172 / PL 007 / 900 / 2002
 (Including Task #)
 HNTB Invoice #
 0216124

Please remit to above address.

Total \$3,700.00

Pay this amount 7/13/04

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos



FROM: GBC NSLT 5129909394 TO: 9969784 P: 5/5
 Grier-Bankett Consulting, Inc.
 P.O. Box 15687
 Austin, Texas 78761
 (512) 826-0083

Bill To:
 CTRMA
 Attn: Mr. Mike Heiligenstein
 13640 Briarwick Drive #200
 Austin, Texas 78729

Invoice

Date	Invoice #
6/28/2004	20PDS
Project Number	Project Name
Transpo/1	CTRMA

Task#	Date of Service	Description	Hours	Hourly Rate	Amount
Meetings/Con...	5/3/2004	10:11T-Dr. Ervin & 1 PM Facilitation mtg	4	185.00	740.00
Consulting	5/4/2004	Contractors Mtg & Kiker Mtg	4.5	185.00	832.50
Consulting	5/5/2004	3:3pm Strategy Mtg	2.5	185.00	462.50
Consulting	5/6/2004	Contracts and Strategy	2.5	185.00	462.50
General Cons...	5/7/2004	Distribution of information & Strategy	7	185.00	1,295.00
Meetings/Con...	5/10/2004	Facilitation team mtg/ Public Hearing CAMPO	4.5	185.00	832.50
Meeting	5/11/2004	East Community Meetings	2	185.00	370.00
General Cons...	5/13/2004	Planning for HT Community Mtg - Linda Jackson	3	185.00	555.00
Meetings/Con...	5/17/2004	1 - 3:3pm Facilitation & team mtgs - Strategy	5	185.00	925.00
General Cons...	5/18/2004	2:3pm-5:45 CTRMA mtg ofc. - 6:4pm Community Mtg	7	185.00	1,295.00
General Cons...	5/18/2004	Admin - Mtg Planning	6	40.00	240.00
Meetings/Con...	5/19/2004	AAChamber Mtg & KAZI interview	4	185.00	740.00
Meetings/Con...	5/20/2004	11:3am BlackChamber - Anthony Brown - 4:pm Mtg RR	3.5	185.00	647.50
Meetings/Con...	5/24/2004	Facilitation team mtg	2	185.00	370.00
General Cons...	5/24/2004	Admin planning	3	40.00	120.00
General Cons...	5/25/2004	In office	4	185.00	740.00

Project Manager Approval
 Date 7/13/04
 Job # 200702001/900/0010
 (including Task #)
 HNTB Invoice #
 PRICE 134.

Total \$10,627.50

For this amount
 828 761

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos



RECEIVED

SEP 10 2004

CTRMA
AUSTIN, TEXAS

GRIER-BANKETT CONSULTING INC.

Invoice

Bill To
CTRMA Att: Mr. Mike Heiligenstein 13640 Briarwick Drive #200 Austin, Texas 78729

Date	Invoice #
8/12/2004	21PDS
Project Number	Project Name
	CTRMA

Task #	Date of Service	Description	Hours	Hourly Rate	Amount
Meetings/Con...	6/3/2004	Preparation and participation for Central Mtg	4	185.00	740.00
Consulting	6/4/2004	Union President - Metro Union - Information	2	185.00	370.00
Meetings/Con...	6/8/2004	Meeting Preparation	2	185.00	370.00
Meetings/Con...	6/14/2004	Team Meeting	2.5	185.00	462.50
Administrativ...	6/14/2004	Team Meeting (PG)	2	50.00	100.00
Meetings/Con...	6/16/2004	CCAACC - Luncheon	4	185.00	740.00
Consulting	6/17/2004	Team Meeting	2	185.00	370.00
Administrativ...	6/17/2004	Team Meeting (PG)	2	50.00	100.00
General Cons...	6/21/2004	Strategy, Meeting and Consulting	7	185.00	1,295.00
Administrativ...	6/21/2004	Minor Meeting	2	50.00	100.00
Meetings/Con...	6/22/2004	Minor Meeting	2	185.00	370.00
Meetings/Con...	6/23/2004	Strategy Meeting	1.5	185.00	277.50
Meetings/Con...	6/23/2004	NAACP - President	1.5	185.00	277.50
General Cons...	6/28/2004	Martin & Salinas Mtg	1	185.00	185.00
General Cons...	6/29/2004	Calls Councilman and Commissioner - Set up mtgs	2	185.00	370.00
Meetings/Con...	6/29/2004	Mtg	2	185.00	370.00
Total					\$6,497.50

Attachment 6: Mike Heiligenstein Letter to Senator Barrientos



RECEIVED

SEP 10 2004

CTRMA
AUSTIN, TEXAS

GRIER-BANKETT CONSULTING INC.

Invoice

Bill To
CTRMA Attn: Mr. Mike Heiligenstein 13640 Briarwick Drive #200 Austin, Texas 78729

Date	Invoice #
8/24/2004	24PDS
Project Number	Project Name
Transpo/1	CTRMA

Task #	Date of Service	Description	Hours	Hourly Rate	Amount
Meetings/Con...	7/2/2004	Meeting with CTRMA/Consultant/County Judge	3	185.00	555.00
General Cons...	7/6/2004	Preparation for meeting	4	185.00	740.00
Meetings/Con...	7/7/2004	Preparation for meeting/Community meeting	4	185.00	740.00
Meetings/Con...	7/8/2004	Provided presentation and research at Chamber Meeting	3.4	185.00	629.00
Meetings/Con...	7/9/2004	Attended Social Equity Meeting	3	185.00	555.00
Consulting	7/13/2004	Phone calls	2	185.00	370.00
Consulting	7/19/2004	Phone calls	2	185.00	370.00
General Cons...	7/20/2004	Redo of Truths info at CTRMA	2	185.00	370.00
Meetings/Con...	7/21/2004	Consultant meeting with BE&SH	2	185.00	370.00
Meetings/Con...	7/26/2004	Team Meeting	3	185.00	555.00
Total					\$5,254.00

Attachment 7: Letter from Austin Mayor and Councilmember



City of Austin

Founded by Congress, Republic of Texas, 1839
Municipal Building, Eighth at Colorado, P.O. Box 1088, Austin, Texas 78767 Telephone 512/499-2000

July 27, 2004

Dear Chairman Tesch and Board Members:

We greatly appreciate your service to our region and particularly your service in moving Austin out of last place in traffic congestion. Like yourselves, we are committed to relieving traffic congestion for Austin residents.

We voted for the toll road amendments to the CAMPO 2025 Transportation Plan because we believed this proposal offered the Austin region our best chance in a generation to relieve traffic congestion. **Fundamental to our vote in favor of the toll plan was the approval of the eight amendments to the plan. Fundamental to our ongoing support of the plan is the complete and immediate adoption of these amendments.** These amendments ensured free alternatives for every toll road and made other critical improvements to the plan. These amendments also reflect community values.

CAMPO has an important oversight role over the implementation of the 2025 Transportation Plan. In our oversight capacity, we as CAMPO board members need to ensure that the board's policies are being carried out consistent with the board's intent. At the CTRMA's meeting tomorrow, you will have the opportunity to adopt in full and without amendment all of the amendments that the CAMPO board overwhelmingly adopted to the toll plan. **To ensure support for and the success of the CAMPO plan, it is critical that you vote to implement each of these amendments without changes.** In particular, it is important that you begin implementation of the amendments' policies and programs prior to the opening of any toll road.

Finally, it is critical that the CTRMA immediately begin a public education and outreach effort to unite the public behind this necessary plan for solving our traffic crisis. Next April, the CAMPO board will vote on the 2030 Transportation Plan. At that time, we will have the opportunity to review the implementation of the toll plan (including whether the Austin region's plan is consistent with the plan in other Texas metropolitan areas), review whether other Texas cities also implemented similar toll plans and review the implementation of the CAMPO amendments to the plan.

We look forward to an excellent working relationship with the CTRMA as we pull together to solve the Austin region's traffic congestion crisis.

Regards,

Will Wynn
Austin Mayor

Brewster McCracken
Austin City Council Member

Attachment 8: Lobbying Expenses

Cassidy, C. Brian

From: Cassidy, C. Brian
Sent: Wednesday, February 16, 2005 2:55 PM
To: Diane Burnett Thomas (E-mail)
Cc: Mike Heiligenstein (E-mail); Mike Heiligenstein (E-mail 2); Bill Chapman (E-mail); Cindy Forkner (E-mail)
Subject: CTRMA/Lobbying

Hi Diane- Cindy from the CTRMA called and said you had a question about my lobby registration for the CTRMA and specifically how lobbying would be paid for. I registered in anticipation that bills might be filed that could affect the CTRMA and that I might end up testifying about, particularly if they were adverse to the authority. So far I have done no lobbying. If and when I do it will be paid for from CTRMA operating funds (e.g., bond proceeds and operating revenues), and not from any of the state funding provided to the CTRMA. I believe that there are restrictions on state dollars being used for lobbying expenses.

Hope this answers your question. Call if you need more information.

Thanks- Brian

C. Brian Cassidy
Locke Liddell & Sapp LLP
100 Congress Ave. Ste 300
Austin, TX 78701
Phone: (512) 305-4855
Fax: (512) 391-4855
Mobile: (512) 848-4181

Attachment 9: Mike Heiligenstein Letter to Don Martin



13640 Briarwick Drive
Suite 200
Austin, Texas 78729-1706
Phone: (512) 996-9778
Fax: (512) 996-9784
<http://www.ctrma.org>

Executive Director:
Mike Heiligenstein

Board of Directors:
Robert E. Teach
Chairman

Lowell Lebermann
Vice-Chairman

Robert L. Bennett
Treasurer

Henry H. Gilmore

James H. Mills

David Singleton

Johanna Zmud, Ph.D.

April 21, 2004

VIA FACSIMILE TO 854-4697

Mr. Don Martin
Martin & Salinas
3345 Bee Caves Rd.
Suite 212
Austin, Texas 78746

Dear Don:

Thank you for your memo of April 15, 2004 regarding educational and advocacy efforts related to the Regional Implementation Program. As you note in your memo, it is essential that any "advocacy" efforts be separate and distinct from the educational efforts which may be undertaken by the CTRMA.

The CTRMA cannot, and will not, engage in advocacy efforts. All public relations efforts on behalf of the CTRMA will be educational in nature. My preference is that any consultant or subconsultant working on the CTRMA's educational outreach have no involvement in the advocacy efforts undertaken by the private sector. If there is a circumstance where a consultant is engaged in both efforts I expect to be fully informed, and that consultant must clearly limit any billings to the CTRMA to educational efforts.

We appreciate the support of the private sector for the Regional Implementation Program. Thanks for your efforts and for your understanding of the restraints under which we operate with respect to public outreach.

Sincerely,


Mike Heiligenstein
Executive Director

MH/rbd

cc: CTRMA Board
C. Brian Cassidy
Richard L. Ridings
Robert B. Daigh, P.E.

Enhancing Mobility and Opportunity in Central Texas