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November 30, 2016

Mr. Ken Levine  
Director  
Sunset Advisory Commission  
P.O. Box 13066  
Austin, Texas 78711-3066

Dear Mr. Levine:

As a long-time employee of the Texas Department of Transportation (TxDOT), I have had the opportunity to see first-hand the challenges faced by the Department and the ways in which the Department delivers excellent customer service on many levels all across the state. During my almost eleven months as Executive Director, I have asked our employees to be open to questions and comments from both internal and external parties on how we can better do our job and to look for ways for us to receive more feedback and constructive criticism from stakeholders and end users of our transportation system. We constantly look for ways to positively respond to those questions, suggestions and complaints.

This review by the Sunset Staff has given us that opportunity, and I look forward to future conversations with them, Sunset Advisory Commission members, and the Legislature.

I am proud of the improvements we have made in recent years and think there is momentum around the improvements that are underway and on the right course. Our employees have demonstrated for nearly 100 years that they are men and women dedicated to public service and willing to do what it takes to build and maintain a safe transportation network. One of the encouraging key findings in the report is the improved relationships the Department has achieved with lawmakers and transportation stakeholders. I am happy to see that and committed to keep the momentum from that progress moving forward.

In August 2016, the Texas Transportation Commission (TTC) took action to double the projected available funding in the ten-year Unified Transportation Program (UTP), with much of this increase based upon forecasts that added new funding sources approved by the last two Legislatures and the voters of Texas.

Using this as background, the Sunset Advisory Commission Staff Report (the report) begins by stating that the central question to the review is: "Is TxDOT ready?"

The report does not provide a definitive answer, instead using qualified phrases, such as "work in progress," "tentatively on the right track," "half-finished tasks," and "far from

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complete." In broad terms, the report questions the Department's readiness for future funding, arguing that the refinement of the planning and project selection process has not been completed and that delays in project completion are evidence of a project development process not meeting expectations, a lack of contracting oversight tools, and districts are not receiving adequate oversight and support.

In contrast, we have no hesitation in answering, without qualification, that we are ready, and will continue to improve our readiness, to transparently, effectively, and efficiently use the taxpayer's money to deliver important transportation projects. We have a proven ability to plan for and develop projects for the projected levels of funding in the UTP, and we are in better shape to do so than we have been in the recent past. Our structural reorganization, earlier this year, achieved better functional alignment, with the Chief Engineer overseeing all project delivery functions, setting priorities and allocating resources to fully align engineering division support with district efforts. In planning, we continue to add capabilities in our work toward a more transparent, performance-based portfolio management and planning process. In development, with continued refinement of processes, our districts conduct effective and efficient project development, fully supported by the engineering divisions. In construction, we selectively use contracting tools to manage contractor performance with a balance between keeping projects on track and minimizing additional costs to the program. And, throughout, the Chief Engineer, through his directors, leads and oversees the districts, while ensuring they receive coordinated support from the engineering divisions.

Additionally, for our business opportunity programs, we want to move from being merely compliant to being strategically focused on offering businesses more opportunity to compete, win contracts, grow, and, as applicable, graduate out of the federal program. From our process improvement initiatives, we have gained great value as in the last few years, and we will centralize oversight of these past, and any future initiatives, under the Director of Strategy and Innovation. And, on the state's aircraft fleet, we look forward to working with the Legislature to best meet the state's needs.

I would like to thank the Sunset Advisory Commission Staff. For the past nine months they have worked extensively with staff throughout TxDOT. They have been professional, inquisitive, and thorough, and their report reflects those qualities. We greatly appreciate their observations and insights, especially in those areas where they offered a new perspective. We also appreciate that their approach was collaborative rather than adversarial.

Much of the report validates what we know or suspect about ourselves, which has been especially valuable with regard to the first four issues of the report. For many of the areas of needed improvement identified in the report, we have on-going corrective plans. The report both validated those plans and provided critiques and insights that will allow us to refine these plans as we move forward.



Where we have differences with the findings and recommendations in the report, it is in matters of degrees, or in the tone or characterization of certain items. For this reason, this response will not address each recommendation. Nearly all of the recommendations in the report are in line with our vision of where we are heading. We will leave it to the Sunset Advisory Commission and the Legislature to determine which recommendations are necessary for further action to continue the progress we are making.

Instead, this response will address those areas where questions have been raised about our readiness to transparently, effectively, and efficiently use the taxpayer's money to deliver important transportation projects by discussing the funding, our recent functional realignment, project planning, project development, contracting tools in project construction, and district operations. In addition, this response will discuss our business opportunity programs, our process improvement efforts, and the state's aircraft fleet.

### **Funding**

We have a proven ability to plan for and develop projects for the projected levels of funding in the UTP, and we are in better shape to do so than we have been in the recent past.

While the new funding approved over the last two years has added significant amounts to the UTP and we are very conscious of the need for us to execute with integrity, it is important to note that we have expended relatively similar amounts, we have already executed on some of the funding from new sources, and our project portfolio is developed to the point that we can bring projects forward to let in earlier years.

The current funding in the UTP is the highest it has ever been, but past project awards had funding levels within the same order of magnitude. As an example, in the ten years between FYs 2006 and 2015, we let nearly \$54B in highway improvement contracts.

In many ways, the planning and execution for that ten-year period was much more challenging than what we face over the next few years. In 2006, that amount of money was not in the UTP, as much of this money was added within the ten-year window through new or increased bond propositions and additional federal funding, including federal stimulus funding with short deadlines for obligating the funds making project planning and delivering projects with the most impact difficult. It was this sporadic approach to transportation funding that led to the "crisis mode mentality" referenced in the report. In contrast, the new funding the Legislature and voters have provided is sustained and brings a high degree of certainty that allows us and our planning partners to be proactive and appropriately plan for the funding years in advance of it actually becoming available. Additionally, as discussed below, our project planning process is more developed now, and we continue to make enhancements.

We have already been planning and executing on parts of the new funding. Proposition 1 has produced three annual deposits in the State Highway Fund and for this biennium the State Highway Fund not been used for appropriations to other agencies. Together,

Proposition 1 and the ending of so-called diversions have resulted in an additional \$4.6B available in the State Highway Fund over this and the last biennium.

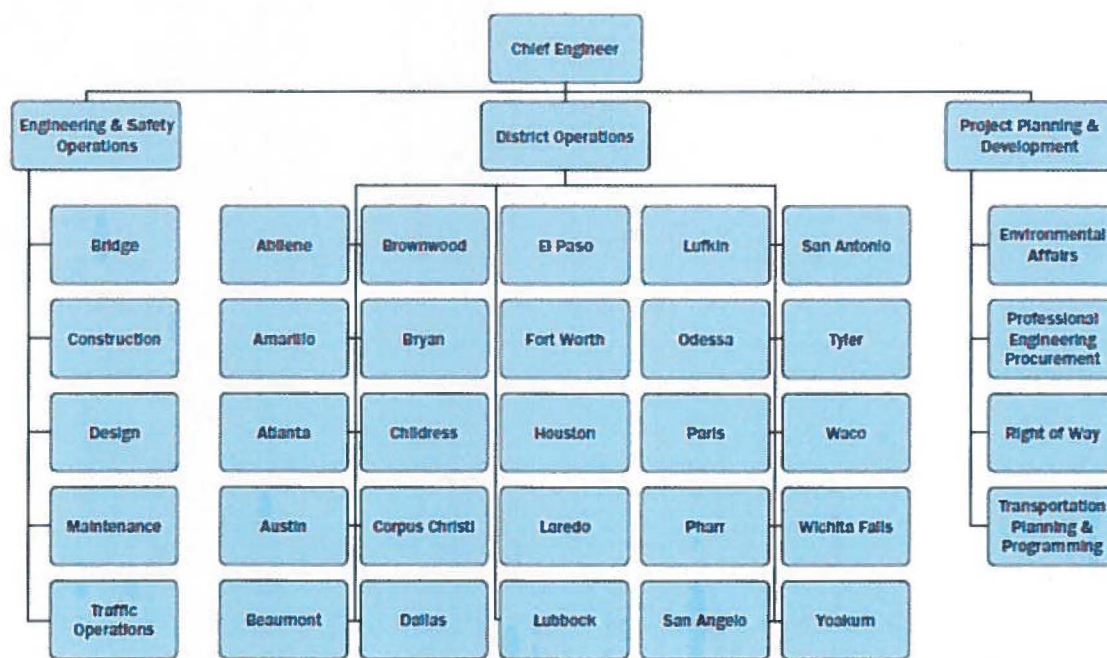
The practical effect of the new funding is increasing the flow of projects through the planning funnel, which is depicted on page 38 of report. This means that what we had originally planned to do over ten years, we will now be able to do in five or six years. This is accomplished in two ways, one is moving projects forward in time and the other is providing the opportunity to do larger projects. Often larger projects are done piecemeal as the costs can be too large for districts and Metropolitan Planning Organizations (MPOs) to absorb all at once when they have competing priorities with lower funding levels. Increased funding allows increasing the scope of some projects and the combining of projects to form bigger projects.

In summary, the new sustained funding and the certainty it brings have put us in a better position to plan and execute than we have experienced in at least this century.

### Functional Realignment

As part of our functional realignment, the Chief Engineer oversees all project delivery functions, setting priorities and allocating resources to fully align engineering division support with district efforts during planning, development, and construction of projects.

I became the Executive Director in January 2016, and in February, we changed our organizational structure to functionally realign the Department, with the primary purpose to place under the Chief Engineer all districts and engineering divisions involved in project delivery, as seen in the Chief Engineer organization chart below.



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It is the districts that deliver projects, and operate and maintain the transportation system. It is the divisions that support the districts, with engineering divisions providing programs, policies, procedures, and guidelines, and with non-engineering divisions providing functional expertise that allows the districts and the engineering divisions to focus on project delivery, operations, and maintenance. With a statewide view, the engineering divisions can play a strong role in monitoring, reporting, and diagnosing trends and issues, while providing advice and sharing of lessons learned. Their efforts can help us avoid problems before they occur.

Prior to this functional realignment, we had two concerns with how we were organized. One was that the engineering divisions were assigned amongst three different department-level chiefs. The other was that the districts were assigned to one chief and a strategic projects division, which delivered larger projects, was assigned to a different chief. These two issues created conflicts in priorities and resource allocation and made the potential to share lessons learned and best practices more challenging.

Under our new alignment, the Chief Engineer executes his leadership and oversight of the districts and divisions through his three directors: district operations; project planning and development; and engineering and safety operations. These directors directly oversee the districts and engineering divisions.

The Chief Engineer ensures the sharing of information across the districts and engineering divisions, through three primary vehicles. Quarterly Engineering Operations Meetings are attended by all district engineers and engineering division directors. Peer reviews are conducted of each district by a team of district engineers and engineering division directors to evaluate each district's operations and maintenance conditions, identify relative deficiencies, and share best practices and information. Statewide Quarterly Portfolio Reviews, a relatively new practice, look at each district's project and portfolio development with district engineers and engineering division directors to review resource allocations for major projects, district and engineering division dashboards, and division "playbooks" documenting policies, procedures, services offered and best practices to support project delivery in the districts.

In summary, our recent functional realignment has provided unity of effort in our project delivery functions.

### **Project Planning**

In planning, we continue to add capabilities in our work toward a more transparent, performance-based portfolio management and planning process.

We have taken meaningful and significant steps as we work toward the ultimate goal of a modernized portfolio management and planning process. We have already incorporated performance-based decisions in setting category funding allocations, in line with the objectives of HB 20 and our strategic goals.

In the development of the 2017 UTP, the TTC used estimated system performance results to evaluate the effect of funding allocations on desired strategic outcomes. The data included information on anticipated performance results for system safety, preservation, and congestion, along with consideration of total travel demand in urban and rural areas of the state. In consideration of the strategic priorities, targeted performance outcomes, and available funding, the TTC allocated \$38.3 billion of additional funding to strategic program areas and objectives that in-turn established the category funding levels in the ten years of the 2017 UTP.

Through numerous internal and stakeholder meetings, and TTC Workshops, the TTC listened to a variety of opinions and concerns. Final approval was sought at the August 2016 TTC Meeting. All public comments on the UTP at the meeting were positive, including ones from those who had previously expressed concerns, and the TTC unanimously approved the UTP.

Our process has become more transparent and collaborative, but this requires the time necessary to effectively listen to and include our stakeholders in discussions as we develop a UTP. The issues are complex, as we and our planning partners collaborate on very important decisions about how to balance the many competing needs to maximize the performance of the entire system. Focused debates that balance different perspectives of the stakeholders who rely on our transportation system are part of the process for seeking the best solution for the people of Texas.

As a starting point, we have a proven project planning process, with a record of durability and flexibility as levels of funding have varied over the years, including handling unanticipated spikes from quick infusions of funding.

We have two tools that will provide additional transparency and improve timely and accurate decisions. The portfolio tool provides each district greater visibility on their project portfolio health and resource requirements. The project prioritization decision tool provides department-level visibility of the readiness status and prioritization across the statewide portfolio. Once fully deployed, these tools will also provide visibility to project and portfolio information to our planning partners and the public.

The real power will come when we acquire a modern, integrated, web-based, information system, known by the project name of Modernize Portfolio and Project Management (MPPM). The product from this effort will bring together in one system all aspects of project delivery, replacing the patchwork of a 1980s-era mainframe system and a variety of ad-hoc databases and spreadsheets.

Using near real-time data from the portfolio and decision tools, the information system will run scenarios to generate estimated performance outcomes, which will then be evaluated against the TTC's strategic objectives to provide performance-based decision making for funding allocations, project selections and prioritization.



Of note on the MPPM project, we are realizing increased potential for this information system than what we had originally envisioned. Getting this right from the start is extremely important and we are including our districts, the MPOs and other stakeholders in this continuing effort, while providing oversight and necessary resources to successfully complete this project.

### **Project Development**

In project development, with continued refinement of processes, our districts conduct effective and efficient project development, fully supported by the engineering divisions.

Project development is driven by the district owning the project and being supported by engineering divisions. Successful project delivery requires the efforts of the engineering divisions, which oversee programs across the Department, being aligned in support of the efforts of the districts. Our functional realignment discussed above, has provided us the framework for aligning the engineering divisions to support the districts.

The value of alignment can be seen in our resolution of persistent construction start delays, which are cited in the report.

In 2014 and 2015, we noticed a trend of construction delays resulting in projects not being completed on time. Research identified that a contributing factor was delays in the start of construction when projects had been let, but some condition had not been met to allow construction to start; among these conditions was parcels of right of way not being acquired or utilities needing to be relocated as they interfered with construction.

We immediately instituted a policy requiring projects to be ready for construction prior to letting. Exceptions can be approved by the Chief Engineer when there are no potential negative effects on the ability of the contractor to construct the project; of note, some projects are let with known delays due to material ordering lead times.

Also during this period, as part of the functional realignment, the Right of Way Division staff who worked in the five metro districts was transferred to report to those districts, to provide more responsive support to project development needs.

As a result of these efforts, for low-bid highway construction projects during calendar year 2016 (including those projects to be let in December), almost 93% were let with possession of all right of way and over 81% had possession of all right of way and no pending utility work; this compared with the report that noted in the previous fiscal year, FY 2015, only about 70% of the projects we let had possession of all right of way.

In summary, continued refinement has resulted in a successful project development process executed by the districts and supported by the engineering divisions.

**Contracting Tools in Project Construction**

During construction, we selectively use contracting tools to manage contractor performance with a balance between keeping projects on track and minimizing additional costs to the program.

TxDOT does use all the contract tools mentioned in the report, but we use them selectively as tools for shortening the duration of projects that have the potential to have the greatest impact to the traveling public. We use standard criteria and guidelines for deciding appropriate contract incentive provisions to include on projects to ensure that they are completed on time, including accelerated construction strategies. The Chief Engineer updates me monthly on the status of projects being assessed liquidated damages.

We certainly understand that extending the duration of the construction phase of a project is frustrating to the traveling public and has a negative economic impact on businesses.

While every project that is delayed is a concern, only a small percentage of projects have significant delays. The report states that in FY 2015 17 projects had delays of 100 or more days, but to put these in perspective, they represent less than three percent of the projects completed that year. Of note, is that they are relatively small projects and most had low traffic volumes. For that same year, more than 91% of all projects were completed either on time or no more than one month beyond their scheduled completion date, and over 95% were completed within two months.

We will always push for 100% on-time delivery, and when we have potential delays, we will work with the contractor to get them completed and open to the traveling public as quickly as possible.

By putting these project delays in perspective, we can look at the tradeoffs in using contracting tools, and their potential to increase the cost of projects. While it is obvious that incentives to complete work faster will add costs to the project, as any bonus would be on top of the cost to construct the project, disincentives, such as inclusion of costs for travel delays in liquidated damages, also have the potential to increase costs as they create greater financial risks to contractors which they then reflect in their bidding philosophy.

The real key is early identification of potential delays on a project. Districts are responsible for project management and regularly meet with contractors to discuss schedules and issues for resolution. It is in these numerous meetings and discussions where issues are identified, assignments made for resolution, and adjustments incorporated into the plans to allow the project to proceed. Open and honest communication by all parties is critical for a successful project.

There are other tools we use to work with contractors when a project is behind schedule. We use informal partnering on all projects and formal partnering on specific high-risk projects. Informal and formal partnering encourages our staff and the contractors' staff



work to resolve issues at the most appropriate level, and, if they cannot, escalate the issue to the next level. In addition, when needed, at the district level, we use dispute resolution, and, at the department level, contractors can file claims for damages.

To demonstrate that contracting tools are not the sole answer to keeping projects on schedule, we can look at the example from the report of a single contractor with six projects on I-35 in the Waco District. The delays on one of the projects have affected the Village of Salado, as well as drivers along I-35. However, in these projects we employed all appropriate tools, including milestone incentives. The assessed liquidated damages, which include administrative costs and damages for travel delays, has run into millions of dollars, with the damages for travel delays being more than those for administrative costs.

In summary, we have available all necessary contract oversight tools, selectively using those appropriate for the project and conditions.

### **District Operations**

The Chief Engineer, through his directors, leads and oversees the districts, while ensuring they receive coordinated support from the engineering divisions.

The Department has a long history of decentralized operations due to the size, diversity, and complexity of the state and the state's transportation system. District engineers (DE) must be not only first class engineers, but need to be strong leaders, able to represent the Department in their local area and operate on their own with little daily supervision. With the tremendous responsibility that comes with being a DE, they are afforded tremendous autonomy. Cultivating a culture of decentralization, as well as leaders who can thrive in such an environment, has brought challenges in consistency and efficiency, as it does in any organization with decentralized execution, but it has also served the Department well. Having this autonomy at the local level ensures the best planning and local decisions are made in concert with local stakeholders.

Despite the decentralized nature of operations, DEs still require guidance, supervision, and oversight; as well as someone to coordinate their efforts. For this reason, in recent years, the Department established the position of director of district operations, which is held by an experienced former DE. Providing leadership and oversight of DEs requires great balance in encouraging their independence while holding them accountable for everything that happens in their district.

The support of the districts by the engineering divisions during project development was discussed above, and the support by these divisions continues throughout project delivery, and into operations and maintenance of the transportation system.

In summary, the proper organizational structure is in place to provide oversight of the districts and ensure that they receive coordinated support from the engineering divisions.

**Business Opportunity Programs**

We want to move our business opportunity programs from being merely compliant to being strategically focused on offering businesses more opportunity to compete, win contracts, grow, and, as applicable, graduate out of the federal program.

As detailed in the report, our business opportunity programs consist of three distinct but overlapping programs, the federal Disadvantaged Business Enterprise (DBE) Program, the state Historically Underutilized Business (HUB) Program, and our Small Business Enterprise (SBE) Program. Although each of our programs meets the requirements of applicable state and federal law, we believe that additional focus and investments in these programs will improve the opportunities of the businesses they are designed to assist.

Our Civil Rights Division Director has been in his position just over a year, and he leads our efforts to continue to move our programs forward. We have added the recommendations from the report as specific steps to the 2017 Civil Rights Division Strategic Plan. In December 2016, we will convene a forum with DBE Coordinators from all 25 Districts to obtain additional input and communicate further objectives in these areas. In addition, we implemented acquired an information system solution that is designed to automate an antiquated manual set of processes to assist in managing, monitoring and setting goals for contractors within these programs.

The report raised questions about the necessity of our SBE Program. In 2000, in response to a court order, we established the SBE Program for state-only funded highway construction and maintenance contracts, which do not fall under the Comptroller of Public Accounts' HUB Program as they are exempted by Government Code §2161.004. That court order stated that the court would administer the program through July 2001. Since that court administration ended, we have continued the program, as the issue is still relevant, and, without the program, we would be open to further lawsuits. In 2011, the federal Department of Transportation adopted 49 CFR §26.39 requiring each state to implement a small business component to their DBE program. To achieve this requirement TxDOT expanded our state SBE program to include federal projects for which we do not assess a DBE goal. We cannot discontinue the SBE program without federal approval of a new small business component to our DBE program.

**Process Improvement**

We have gained great value from the process improvement initiatives we have undergone in the last few years and will centralize oversight of these past, and any future initiatives, under the Director of Strategy and Innovation.

Over the past few years, the Department took on a number of increasingly large and complex process improvement projects in an effort to improve service and increase efficiency, much of it centered around the previous Sunset Advisory Commission review cycles.



Generally, large process improvement projects requiring collaboration across district or division lines of authority were supervised by an oversight board composed of senior managers and executive leadership. Most frequently, the Department engaged consultants or business services providers for these large or complex projects. Consultant agreements are used to study and advise the Department, while business service agreements are used to perform work or to create non-consulting deliverables. Once a process improvement project was completed, its oversight board was disbanded with project management records being retained by the group owning the result. With subsequent functional realignment, some of the reasons for and the results generated by consulting agreements or business services agreements have not always been actively tracked.

We will place oversight of process improvement initiatives under the Director of Strategy and Innovation, who will investigate and share best practices for process improvement.

### **Aircraft Fleet**

We look forward to working with the Legislature to best meet the state's needs for an aircraft fleet.

In our Self-Evaluation Report to Sunset Staff, we identified the need for a long-term plan to address the health of the state aircraft fleet as a major issue of concern. With all aircraft beyond their expected service life, the safety and maintenance of the state fleet is an issue that needs to be addressed. We look forward to working with the Legislature on such a plan.

Use of state aircraft is a tool that under certain conditions is a cost effective method of travel as it can significantly reduce travel time, eliminate the cost of food and lodging, and help to increase productivity. To ensure use of state aircraft is based on cost effectiveness, TxDOT staff uses a cost comparison worksheet when seeking approval to use state aircraft. The worksheet analyzes and compares the costs associated with various modes of travel available to staff. Approval of state plane use must be made at the "chief" or administrative-level. The cost comparison worksheet was put into action in late October 2016 and has already shown a reduction in plane use and subsequent costs.

We believe recommendation 7.2, which would "tighten statutory criteria for use of state aircraft to prioritize cost effectiveness and need over convenience," may be based on a misinterpretation of statute. Current statute does not list "convenience" as a provision that may be considered when determining whether or not to use state aircraft; but rather provides that "the time required to use a commercial carrier interferes with passenger obligations" may be considered.

### **In Conclusion**

We appreciate the fine work that went into the report. We look forward to working with the Sunset Advisory Committee and the 85th Texas Legislature to implement those measures necessary to successfully complete the Sunset Review Process. Ultimately, the Texas

Mr. Ken Levine

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November 30, 2016

Department of Transportation stands ready to transparently, effectively, and efficiently use the taxpayer's money to deliver important transportation projects.

Sincerely,

A handwritten signature in black ink, reading "James M. Bass". The signature is fluid and cursive, with the first name "James" and last name "Bass" being more prominent than the middle initial "M".

James M. Bass  
Executive Director

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