



**Texas Turnpike Authority Division**

# **Public-Private Partnerships & Delivering Right of Way**

**2011 Joint AASHTO Subcommittee Conference  
Right of Way & Utilities, and Design**

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# Challenges Facing Texans

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## 1. Population and Job Growth

- 15 million new Texans expected to arrive over the next 25 years.
- More congestion to urban areas

## 2. Freight Traffic

- Expected to grow twice the rate of passenger vehicle traffic over the next 25 years.



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# Challenges Facing Texans

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## *Defining the Problem...*

1. Greater demand on highways to support freight movement and travel connections between farms, ranches, homes, jobs, and markets.
2. Reduced revenue from the motor fuel tax

# Estimated Funding Needs

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**1. Urban Mobility Needs: \$243 billion**

**2. Rural Mobility Needs: \$127 billion**

*(pavement, bridge, safety and connectivity needs)*

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Provided to you by the House Committee on Transportation, with information from the Texas Transportation Institute.

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# State & Federal Fuel Tax Rates

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Income from traditional transportation funding sources (taxes and fees) no longer sufficient to keep pace with current and projected highway construction and maintenance cost increases.

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# Three Major Revenue Sources

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1. State Fuel Tax: 20 cents p/gallon for gasoline
2. Federal Fuel Tax: 18.4 cents p/gallon for gasoline  
24.4 cents p/gallon for diesel
3. Vehicle Registration: \$50.75 – Personal Car  
\$54.00 - \$840.00 – Commercial Vehicles

# Public-Private Partnerships

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1. TxDOT has successfully partnered with private sector firms for the planning and implementation of transportation projects using Comprehensive Development Agreements (CDA).
2. The CDA Program has opened the door to accelerated financing, design, construction, operation and/or maintenance of a project.

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# Comprehensive Development Agreements

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Contracting tool allowing for private sector investment in the Texas Transportation System.

1. Design-Bid-Build
2. Concession
3. Pass-Through Toll Financing
4. Master Planning and Development

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# Statutory Authority

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1. Texas Transportation Code
  - Chapters 223 and 227
2. US Code of Federal Regulations
  - Title 23 and SEP-15 Rules
3. Texas Administrative Code
  - Title 23, Sections 27.1-27.5
4. Texas Transportation Commission
  - Project-specific Minute Orders
5. HB 2702

# Currently Executed CDAs

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- |    |                 |                |                             |
|----|-----------------|----------------|-----------------------------|
| 1. | SH 130 Seg 1-4  | 2002           | D/B w/ Maintenance Option   |
| 2. | I-35 TTC        | 2005           | Master Planning Development |
| 3. | SH 130 Seg 5-6  | 2006           | Concession                  |
| 4. | NTE (Phase 1)   | 2009 (June)    | Concession                  |
| 5. | NTE (Phase 2)   | 2009 (June)    | Master Planning Development |
| 6. | I-635 / LBJ Fwy | 2009 (Sept)    | Concession                  |
| 7. | DFW Connector   | 2009 (October) | D/B w/ Maintenance Option   |
| 8. | Toll Integrator | 2004           | D/B Raytheon                |

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# CDA Procurement Efforts

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## 1. Best Value Selection

- Greater efficiency and consistency in procurement

## 2. Reduce developer bid costs and due diligence requirements

- Streamlined procurement process
- More standardized terms and associated contract documents

## 3. Incorporate Lessons Learned

# TxDOT's CDA Program

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1. Utilize innovative financing tools to add capacity and the reconstruction of heavily traveled highways.
2. Address local concerns when developing statewide & regional plans.
3. Engage the public throughout the planning process
  - Definition of the local, regional, and state problems
  - Identification of needs and solutions
4. Grass roots input and support are necessary
  - Bottom – Up approach to planning

# Benefits of the CDA Program

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1. Accelerates project delivery (concurrent activities performed simultaneously)
2. Fixes price early in design phase
3. Guarantees completion date
4. Designates single point of responsibility
5. Allocates project risks among parties

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# Benefits of the CDA Program (cont.)

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6. Provides life cycle cost efficiency
7. Requires continuous constructability reviews
8. Streamlines project administration
9. Enhances cost control and risk management

# Different Project Delivery Types & Risk Sharing<sup>1</sup>

<b>Risk Type</b>	<b>Design Bid Build</b>	<b>Design Build</b>	<b>Availability Payment</b>	<b>Design Build Finance O/M (Pass-Through)</b>	<b>Concession Finance O/M 50 yrs</b>
Environmental Approval	Owner	Owner	Owner	Owner	Owner
Environmental Compliance	Owner	Shared	Developer	Developer	Developer
Financing	Owner	Owner	Developer	Developer	Developer
Design	Owner	Developer	Developer	Developer	Developer
ROW Acquisition	Owner	Shared	Developer <sup>2</sup>	Developer <sup>2</sup>	Developer <sup>2</sup>
Utility Delays	Owner	Shared	Developer	Developer	Developer
Construction	Shared	Shared	Developer	Developer	Developer
Schedule Delays	Shared	Developer	Developer	Developer	Developer
O & M	Owner	Owner	Shared	Developer	Developer
Traffic & Revenue	Owner	Owner	Owner	Shared	Developer

<sup>1</sup> Actual Risk Allocation may vary by specific project

<sup>2</sup> Eminent Domain risks and delays retained by the owner

# ... Shared Risk Allocation

Public

Risk Transfer by Model

Private



Design/  
Build

D/B/  
Finance

D/B/F Operate-  
Maintain

Build-Operate-  
Transfer/Concession

Regulatory
Approvals
Environmental
Customer Acceptance
Design
Traffic/Rev.
Finance
Technology
ROW / Utility
Construction
O&M

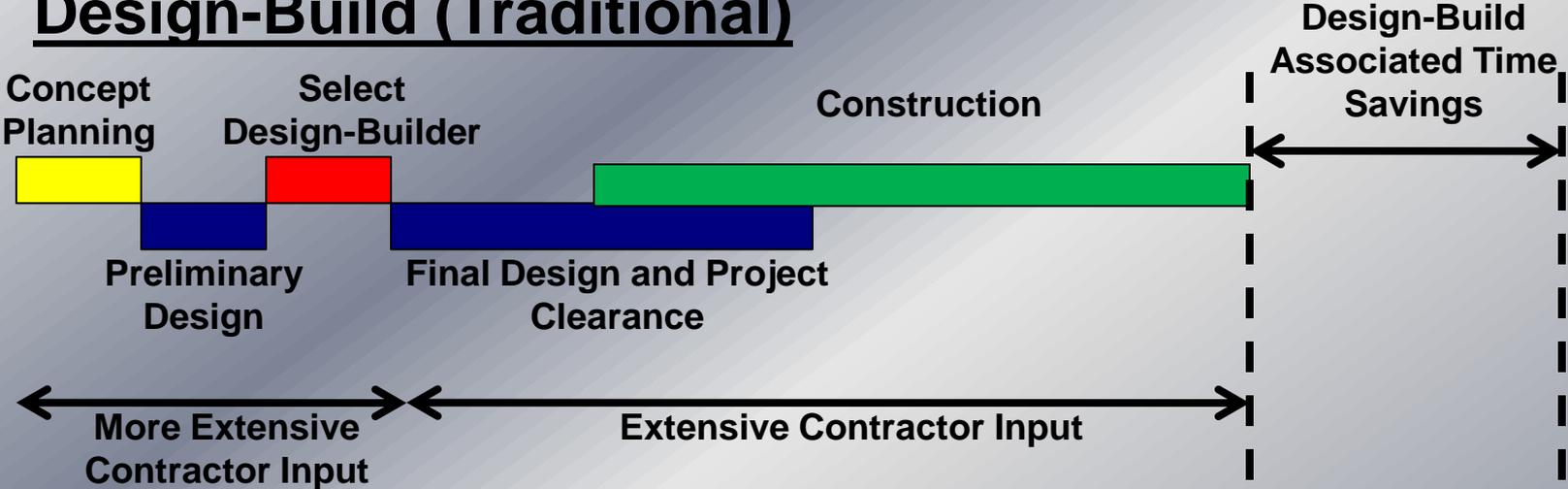
Regulatory
Approvals
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Customer Acceptance
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R-O-W / Utility
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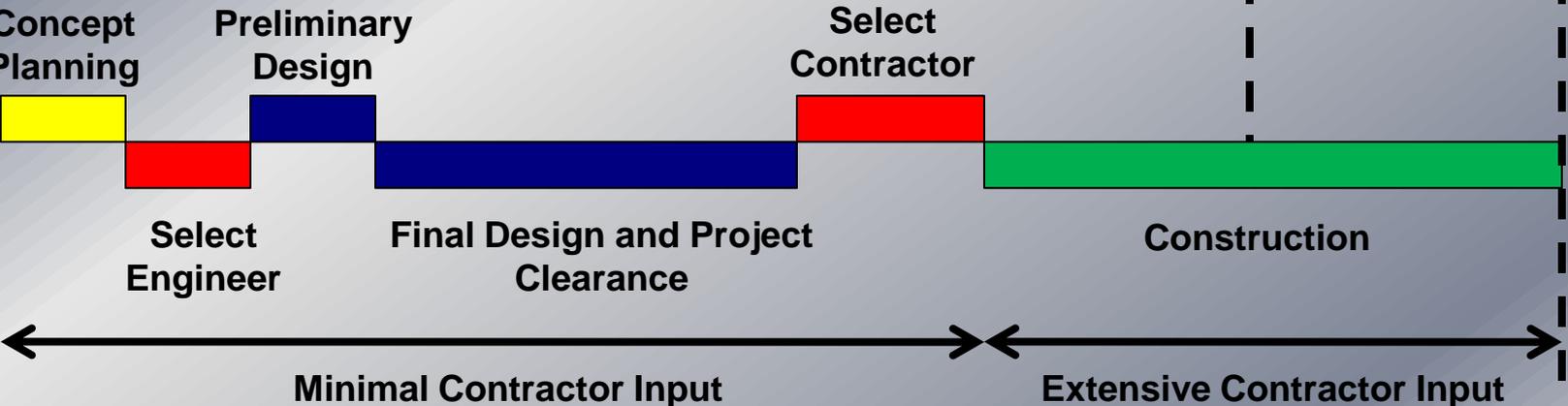
Regulatory
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R-O-W / Utility
Construction
O&M

# Difference in Delivery Schedule

## 1.) Design-Build (Traditional)



## 2.) Design-Bid-Build (PPP)



# Comprehensive Development Agreements

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1. Current statutes limit TxDOT's use of the CDA methodology.
2. At this time, only specifically allowed projects can be delivered under the CDA Program.
3. Other agencies within the state, including Regional Mobility Authorities, have specific language in their governing statutes.
4. TxDOT is partnering with these agencies to help deliver needed improvements to the traveling public.

# CDA Right of Way Process

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1. ROW Survey / Mapping
1. Informational Notices to Property Owner
1. Pre-Appraisal Contact with Property Owners
1. Pre-Acquisition Relocation Survey

# CDA Right of Way Process

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5. Appraisal Process
6. Negotiations
7. Relocation Assistance (runs concurrently w/Negotiations)
6. Administrative Settlements

# CDA Right of Way Process

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## 9. Eminent Domain Activities

- a) Transportation Commission Minute Order
- b) Filing of Petition for Condemnation
- c) Appointment of Special Commissioners
- d) Special Commissioners' Award
- e) Agreed Judgment / Jury Trial
- f) Interrogatories
- g) Request For Production

# CDA Right of Way Process

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## 10. Jury Trial

- a) Jurisdictional and Good Faith Issues
- b) Property Value and remainder damages
- c) Selection of Jury
- d) Expert Witness Testimony
- e) Examination / Cross Examination of Expert Witness
- f) Verdict of Jury
- g) Rest / Appeal of Trial

# TxDOT's Turnpike ROW Program

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1. Review / Approval all acquisition and utility packages submitted by the Developer.
2. Review / Approval of all property owner offers and settlement opportunities.
3. Manage all eminent domain efforts; all real estate is acquired in the name of the State of Texas.
4. Provide Program Management Oversight, overseeing the Developers' effort through TxDOT's consultant management contracts.

# TxDOT's Turnpike ROW Program

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## *Other reasons why we are here:*

5. Delay Claims / Penalties per day
6. Compensable Events
7. Time Extensions
8. Audit Review and Compliance
9. Federal/State Rules Regulations
10. **Protect the Property Owner and Displacees**

# CDA Developer Responsibilities

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1. CDA Requirements & Deliverables
2. Compliance with State/Federal Rules & Regulations, as amended, including the Uniform Act.
3. Compliance to TxDOT Policies and Procedures.
4. Compensation to Property Owners for property acquired for the project.
5. Schedule, Schedule, Schedule

# CDA Facility Schedule and ROW Delivery

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1. CDA document indicates the **Date to Begin** acquisition of Facility ROW and the **Anticipated Completion Date** of acquisition activities for each parcel.
2. Developer is responsible for prioritizing parcels having significant impact to the Facility Schedule and/or affecting the Critical Path Schedule.
3. Incorporate adequate time periods
  - 10 Business Days
  - No. of Acquisition Packages Received for Review / Approval
  - Penalties associated with non-performance by Government

# CDA Success Factors

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1. Appropriate allocation of risk during contracting
2. Consistent business terms
3. Fair and equitable Quality Assurance Program for Design-Build projects
4. Understanding of project cost prior to procurement
5. Understand utility issues prior to procurement
6. Understand environmental issues prior to procurement

# Questions & Answers?!?

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