

STATE OF TEXAS §

COUNTY OF TRAVIS §

**PASS-THROUGH AGREEMENT FOR PAYMENT
OF PASS-THROUGH TOLLS BY THE DEPARTMENT**

THIS AGREEMENT is entered between the State of Texas and the Developer under Transportation Code, §222.104.

Contracting Parties:

The Department: The Texas Department of Transportation
The Developer: Fort Bend County

BACKGROUND

Texas Transportation Code, §201.103, authorizes the Department to plan and to make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §222.104, authorizes the Department to enter into pass-through agreements for the purpose of improving the state highway system. The Texas Transportation Commission has implemented this provision by enacting rules to be found at 43 TAC Chapter 5, Subchapter E. On September 24, 2009, the Texas Transportation Commission passed Minute Order 111977, authorizing the construction of a pair of one-way frontage roads and extension of the toll road on FM 1093, from SH 99 to the east city limits of Fulshear, and the reconstruction of FM 1093, from the east city limits of Fulshear to west of FM 359, to a four lane divided urban roadway (the Project), the location of which is shown on **Attachment A**, which is attached to and incorporated by reference in this agreement. On October 29, 2009, the Texas Transportation Commission passed Minute Order 112016, authorizing the Department to enter a pass-through agreement with the Developer in furtherance of the Project. The governing body of the Developer has authorized entering into this agreement by resolution or ordinance dated March 23, 2010, which is attached to and incorporated by reference in this agreement as **Attachment G**. In consideration of the mutual promises contained in this agreement, the Department and the Developer now agree as follows.

AGREEMENT

1. Effective Date

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

2. Amendments

Amendments to this agreement must be in writing and executed by both parties.

3. Scope of Work

The scope of work for the Project as approved by the Texas Transportation Commission, consists of construction of a pair of one-way frontage roads and extending the toll road on FM 1093, from SH 99 to the east city limits of Fulshear, and reconstructing FM 1093, from the east city limits of Fulshear to west of FM 359, to a four lane divided urban roadway.

The scope of work is described in more detail in **Attachment B**, which is attached to and

incorporated by reference in this agreement. A Typical Section Layout and Project Schedule are contained in **Attachments E** and **F**, respectively, which are attached to and incorporated by reference in this agreement.

4. Sources and Uses of Funds

- a. The total estimated cost of the Project is shown in **Attachment C**, which is attached to and incorporated by reference in this agreement. **Attachment C** includes expected cash contributions from each source of funding. The Department will pay for only those Project costs that have been approved by the Texas Transportation Commission. If the Developer will perform any work under this agreement for which reimbursement will be provided by or through the Department, the Developer must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Developer shall provide the certificate of qualification to the Department. The individual who receives the training certificate may be an employee of the Developer or an employee of a firm that has been contracted by the Developer to perform oversight of the Project. The Department in its discretion may deny reimbursement if the Developer has not designated a qualified individual to oversee the Project.
- b. The Department is responsible only for securing the funding specifically identified as the responsibility of the Department and for making that funding available to the Developer as set forth on **Attachment C**.
 - (i) The Department will reimburse the Developer with pass-through payments in the percentages and resulting amounts (the Department's Proportional Share) identified on **Attachment C** for the actual costs of labor and materials incurred in construction of the Project as determined by the low bid award of the construction contract (Actual Cost of Construction). The amount of the low bid award will be certified by the Developer in accordance with Paragraph 10. For purposes of reimbursement under this agreement, construction engineering costs are not eligible construction costs.
 - (ii) Unless and to the extent that this agreement is amended, the Department will not be responsible for funding in excess of the Maximum Pass-Through Reimbursement to Developer identified on **Attachment C**. The Developer shall be responsible for all costs associated with the Project that are not shown as the responsibility of the Department.
- c. The Department's obligation to reimburse its Proportional Share of the Actual Cost of Construction is subject to the following two exceptions.
 - (i) The Department will reimburse its Proportional Share of the amount by which the Actual Cost of Construction exceeds the Estimated Total Construction Cost identified on **Attachment C** (cost overrun). The Department's total payment obligation for the Project, however, will not exceed the Maximum Pass-Through Reimbursement amount identified on **Attachment C** (110% of Allowable Construction Costs).
 - (ii) The Department will reimburse to the Developer the amount by which the Actual Cost of Construction is less than the Estimated Total Construction Cost identified on **Attachment C** (cost underrun), up to a maximum of 10 percent of the Estimated Total Construction Cost, only if all of the following conditions are met:

- (A) the total of actual cost and underrun reimbursements by the Department may not exceed the Department's Allowable Construction Costs identified on **Attachment C**;
- (B) the amount of cost underrun received by the Developer must either be expended on the Project, or on other mutually acceptable state highway projects located in the Developer's jurisdiction;
- (C) the amount of cost underrun received by the Developer may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
- (D) the Developer receives the Department's prior written consent for the expenditures.

If the above conditions are not met, there will be no reimbursement for a cost underrun.

5. Project Implementation

- a. Unless otherwise specified in this agreement, all actions required of the Developer shall be taken by the Developer's Program Manager, who shall be an individual designated by name by the Developer. The Developer's Program Manager shall be authorized by the Developer to perform all or specified aspects of the Project development and implementation. Evidence of authorization shall be submitted to the Department immediately after the effective date of this agreement. The Developer's Program Manager may delegate responsibility to another person in a writing provided to the Department. The Developer must notify the Department in writing as soon as possible, but no later than three (3) business days after authorizing a change in Program Managers.
- b. Unless otherwise specified in this agreement, all actions required of the Department shall be taken by the Department's district engineer for the Houston District. The district engineer will designate an engineer (the TxDOT Engineer), who will be assisted by other Department personnel, to oversee and monitor compliance with all responsibilities under this agreement including all phases of project development. The district engineer may delegate responsibility to the TxDOT Engineer or another person in a writing provided to the Developer. Whenever this agreement requires an action to be taken by the Department's executive director, that responsibility may be delegated to another Department employee who is not below the level of district engineer. On request, the Department will provide the Developer with a copy of the executive director's delegation of authority.
- c. The roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project are defined in **Attachment D**, which is attached to and incorporated by reference in this agreement.

6. Environmental Assessment and Mitigation

Development of the Project shall comply with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, 43 TAC §2.50, and Natural Resources Code, Chapter 191.

- a. The Developer is responsible for the identification and assessment of any environmental problems associated with the development of the Project, to the extent permitted by law.
- b. The Developer is responsible for the cost of all environmental permitting, mitigation, remediation, and compliance.
- c. The Developer is responsible for preparing for and providing all public meetings or public hearings required for development of the environmental decision and for summary and analysis of all public meetings or public hearings. When applicable, the Developer is also responsible for certifying that a public hearing has been held in accordance with applicable rules, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. Public hearings may not be held before environmental documents are approved for further processing and may not be held before approval of all highway schematics for the particular project.
- d. The Developer is responsible for the preparation of all documents required for the environmental clearance of the Project.
- e. The Developer shall submit all requests for permits, all reports, and all findings relating to the Natural Resources Code, Chapter 191, through the Department. The Developer shall provide the Department with final drafts of all necessary requests for permits, reports, and findings required by law. The Department is responsible for all coordination under those acts and for making all necessary filings with the appropriate agencies, and the Department will provide copies of those filings to the Developer. The Developer is responsible for obtaining all other permits and is responsible for obtaining all permits and approvals resulting from changes that occur after environmental approval is first obtained, except as otherwise required by law or by agreement between the Department and a state or federal agency.
- f. Before construction is begun, the Developer shall provide the Department with written certification that all required permits and commitments are complete. The Developer shall provide the Department with copies of all permit applications and approvals from each regulatory agency with environmental jurisdiction over the Project.
- g. All environmental reports and findings shall comply with the latest version of the Department's manuals. The Developer shall provide the Department with physical and electronic copies of all environmental documentation in a format approved by the Department.

7. Right of Way and Real Property

- a. The Developer is responsible for the provision and acquisition of all real property needed for the Project, including easements. All property interests shall be acquired in the State's name. The Developer may not acquire right of way until all environmental clearance procedures have been completed and either (1) right of way maps and property descriptions (field notes and plats) have been prepared or (2) a segment of the right of way map (consisting of one or more contiguous parcels) and the field notes and plat maps for such parcel(s) have been prepared and certified to fall within the right of way limits of the approved schematic; provided however, that the Developer may use early acquisition for a particular parcel or limited number of parcels with title to the property initially acquired in the Developer's name if the early acquisition does not influence the environmental assessment for the project and advance approval is obtained from the Department. The Developer must comply with all applicable state and federal laws, regulations, policies, and procedures, including the requirements of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, 42 U.S.C. §4601 et seq. Documentation to support compliance must be maintained by the Developer. The Developer must obtain advance approval from the Department for any variance in established procedures. The Department's executive director may exercise discretion in authorizing an alternative procedure if it is sufficient to discharge the Department's responsibilities for acquiring real property. The Department may monitor and audit the Developer's acquisition of right of way on the Project at any time. On request, the Developer shall furnish the Department with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If the Department determines that right of way maps, field notes, parcel plats, appraisals, access designations, acquisition documentation, relocation assistance benefits, or any other acquisition requirement is not in compliance with this agreement, the Developer shall take all necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Developer.

- b. The Developer is responsible for any required relocation assistance along the route of the right of way as may be determined to be eligible under the relocation assistance program. The relocation assistance plan must provide reasonable time frames for orderly relocation of residents and businesses on the Project. All costs associated with the relocation assistance, including payments to residents and businesses, will be assumed by the Developer.

8. Utilities

If the Project requires the adjustment, removal, or relocation of existing utilities, the Developer shall be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments. Reimbursement for the adjustment, removal, or relocation of existing utilities will be in accordance with the provisions of Transportation Code, Section 203.092. The Developer shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including 43 TAC §21.31 et seq. (Utility Accommodation); and 23 CFR Chapter 1, Part 645. The Developer shall be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities. Before a construction contract for the Project is let, a utility certification must be made available to the Department stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

9. Architectural and Engineering Services

The Developer has responsibility for the performance of architectural and engineering services, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed in design of the Project and carried out during construction of the Project. The engineering plans shall be developed in accordance with the latest version of the Department's manuals. The Department's executive director may exercise discretion in authorizing alternative criteria or granting exceptions to this requirement on a case-by-case basis if a particular criterion could not reasonably be met because of physical, environmental, or other relevant factors and if the proposed design is a prudent engineering solution. The procurement of professional services must be competitive and shall comply with Government Code Chapter 2254, Subchapter A and all federal requirements including those described in 23 CFR Part 172 and those relating to participation by disadvantaged business enterprises

(DBEs), the Americans with Disabilities Act, and environmental matters. Access to the facility shall be in compliance with the Department's access management policy.

10. Construction Responsibilities

- a. The Developer shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering, material acceptance testing, and construction quality acceptance, and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary after the award of the construction contract. The bidding process must be competitive and must comply with all applicable federal and state laws. The Project and bidding process must be authorized by the Department and Federal Highway Administration before it is advertised for letting. Within ten (10) days after the award of the construction contract, the Developer shall provide to the Department a certified statement that describes the total amount of the award and identifies the bid amount for each of the major component parts.
- b. The Developer has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed, of assessing potential environmental effects of contract revisions, and of obtaining environmental permits, issues, coordination, mitigation, and commitments that may be required by contract revisions.
- c. Contract revisions including change orders shall comply with the latest version of all national and state administrative criteria and manuals. No contract revision may be made without the prior written approval of the Department's executive director if it would affect prior environmental approvals, significantly revise the scope of the Project or the geometric design, or change the cost to the Department. Procedures governing approval are contained in **Attachment D**.
- d. The Department may conduct any and all oversight activities it deems reasonably necessary or advisable to ensure compliance with this agreement and all state and federal requirements. The TxDOT Engineer or designee may attend the Developer's construction status meetings and long-term strategy meetings, and may visit the Project periodically and as reasonably necessary to comply with oversight requirements.
- e. When the Project is complete, the Developer shall issue and sign a "Notification of Completion" certifying that all work has been completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after receipt of this notification, the Department will perform a final inspection and provide the Developer a list of items, if any, to be completed prior to acceptance by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Acceptance" to the Developer. Within six months after the Department has issued the "Letter of Acceptance," the Developer shall file with the Department a set of as-built plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications.
- f. The Developer is responsible for providing adequate inspection to ensure its contractor's compliance with the provisions of this agreement. At any time the Department may audit the construction process to ensure the adequate inspection of construction and may conduct its own inspection of construction.

- g. The parties to this agreement shall comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form FHWA-1273 in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.
- h. The Developer shall be responsible for purchasing, installing and maintaining the traffic counter equipment for the term of the agreement at the specified Project count sites as shown in **Attachment A**, Location Map. The Developer shall provide permanent site traffic counter equipment in accordance with the Department specifications. The Developer shall provide installation, preventive and remedial maintenance, inspection, testing and repair of traffic data collection equipment including labor, equipment, materials and parts. The Developer shall provide the above described service including installation of new components and repairs at specified locations. The Department's local district office shall be responsible for collecting the traffic data and then providing this data to the Department's Transportation Planning and Programming Division (TPP) for verification. The number of vehicle miles travelled on the Project during a year will be based on an actual traffic data, to the extent the data is available, or the Department's traffic estimates, which shall be performed in good faith and shall be conclusive and not subject to litigation in any forum. For traffic counter equipment malfunctions or breakdowns, a three (3) month traffic data average will be used. The Developer shall confirm the traffic count provided by the Department, and upon agreement of the traffic count, shall give 60 days prior notification of payment, by letter or invoice, to the local district office. The local district office will then verify and approve the invoice and prepare a reimbursement pay form to be submitted to the Department, Finance Division, Accounting Management Section, at least thirty (30) days before the payment is due to the Developer.

11. Maintenance

The Department shall be responsible for maintenance of the Project after completion of the work.

12. Repayment

- a. For purposes of repayment under this agreement, "Substantial Completion" is defined as all travel lanes open to traffic as approved by the Department, and no further work is remaining that requires lane closures affecting the mobility of the traveling public.
- b. This subparagraph b. applies until the Project as a whole is substantially complete, as defined in this Article, and all highway improvements are open to the public. The Department will reimburse the Developer by paying an annual amount equal to \$0.08 for each vehicle-mile traveled on the highway improvements that were substantially complete and open to the public at any time during the previous year.
- c. This subparagraph c. applies after the Project as a whole is substantially complete and all highway improvements are open to the public.
 - (1). The Department will reimburse the Developer by paying an annual amount equal to \$ 0.08 for each vehicle-mile traveled on the Project during the previous year. Under no circumstances will the annual payment be less than \$ 1,980,000.
 - (2). When the Project is Substantially Complete, the Developer may issue and sign a "Notification of Substantial Completion" certifying that all work has been substantially completed in accordance with the requirements of this agreement,

all governmental approvals, and applicable law. Within thirty (30) days after receipt of this notification, the Department will perform an inspection and provide to the Developer a list of items, if any, to be completed prior to approval by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a Letter of Approval for Payment to the Developer. In lieu of a Notification of Substantial Completion, the Developer may proceed directly to a Notice of Completion in accordance with Paragraph 10.

- (3). The first payment shall be made within sixty (60) days after the first anniversary of the Project's Substantial Completion and the Department's issuance of a Letter of Approval for Payment, or in the event that a Letter of Approval for Payment was not issued, then within sixty (60) days after the first anniversary of the Project's completion and the Department's issuance of a Letter of Acceptance. Annual payments shall continue within sixty (60) days after each succeeding anniversary of the Letter of Approval for Payment or the Letter of Acceptance as applicable.
- d. The number of vehicle-miles traveled on the Project during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates in accordance with Paragraph 10.
- e. Under no circumstances will the annual reimbursement under this Paragraph 12. be more than \$3,960,000, and under no circumstances will the total cumulative reimbursement by the Department for FM 1093 (Phase I) will not exceed \$32,560,000, and for FM 1093 (Phase III) will not exceed \$11,000,000, nor will the total payment under this Paragraph during the course of this agreement exceed \$ 43,560,000 unless approved by the Texas Transportation Commission and formalized in an amendment to this agreement.
- f. The number of annual payments and the amount of the final payment will be consistent with payment of the total reimbursement amount determined in accordance with Paragraph 4. Payment under this agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds.

13. Mutual Cooperation

The Department and the Developer shall use all reasonable efforts to meet all deadlines specified in this agreement. The Department and the Developer shall use best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

14. Default

If either party fails to comply with its obligations under this agreement and such failure continues for a period of thirty (30) days or more after written notice of the breach from the other party, the party failing to comply will be in default and the other party may proceed with its remedies under Paragraphs 15 and 16.

15. Termination

This agreement terminates automatically when the Department has reimbursed the Developer fully. In addition, the agreement may be terminated

- a. in writing with the mutual consent of the parties;
- b. by either party because of a material breach by the other party; or

- c. by the Department if the Developer has not commenced construction of the Project (including each individual project if this agreement covers multiple projects) within three (3) years of the date of execution of this agreement.

16. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

17. Notices

All notices to either party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Developer:

Jesse Hegemier, P.E.
Fort Bend County Engineer
1124-52 Blume Road
Rosenberg, Texas 77471

Department:

Texas Department of Transportation
Attn: John A. Barton, P.E.
Assistant Executive Director for
Engineering Operations
125 East 11th Street
Austin, TX 78701-2483

All notices shall be deemed given on the date delivered in person or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

18. Development Contracts, Subcontracts, and Assignment

- a. Within ten (10) days after execution of this agreement, the Developer shall provide the Department with a fully executed copy of any agency contract or project development contract between the Developer and a private entity for the design, financing, maintenance, operation, or construction of the Project (a Development Contract). For a Development Contract between the Developer and a private entity entered into after execution of this agreement, the Developer shall provide to the Department an executed copy within fifteen (15) days after the Development Contract is executed. A Development Contract must be subject to all applicable terms and conditions of this agreement.
- b. A subcontract by Developer, its agent, or a subcontractor in excess of \$10,000 shall contain all applicable terms and conditions of this agreement and shall be submitted to the Department for review and approval prior to its execution.
- c. Except as otherwise provided by law or this Paragraph, neither party shall assign any interest in this agreement. In the event that the Developer pledges or assigns its right to receive any revenues derived from this agreement in connection with a loan or with the issuance of bonds, the pledge or assignment shall not operate as an assignment of an interest in this agreement. In that case the Developer shall provide the Department with copies of the loan or bond documentation no less than ten (10) days before the loan is executed or the bonds are issued. Under no circumstances will the Department be liable in any way for debt in any form incurred by the Developer, and any loan or bond documentation will state clearly that the department has no obligation of repayment.

- d. No Development Contract, subcontract, or assignment will relieve the Developer of its responsibility under this agreement.

19. Ownership of Property

After completion or termination of this agreement, all documents prepared by the Department shall remain the property of the Department. All data prepared under this agreement shall be made available to the Department without restriction or limitation on further use. All documents produced or approved or otherwise created by the Developer shall be transmitted to the Department in the form of photocopy reproduction on a monthly basis as required by the Department. The originals shall remain the property of the Developer. The Developer shall grant the Department an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this contract.

20. Developer Resources

All employees of the Developer shall have adequate knowledge and experience to enable them to perform the duties to which they are assigned. The Developer certifies that it currently has adequate qualified personnel in its employment to perform the work required under this agreement or will be able to obtain adequate qualified personnel from sources other than the Department. On receipt of written notice from the Department detailing supporting factors and evidence, the Developer shall remove from the Project any employee of the Developer who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Developer shall furnish all equipment, materials, supplies, and other resources required to perform the work.

21. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

22. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Developer shall furnish the Department with satisfactory proof of this compliance. The Developer shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

23. Legal Construction

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

24. Insurance

To the extent that this agreement authorizes the Developer or its contractor to perform any work on Department right of way, before beginning work the entity performing the work shall provide the Department with a fully executed copy of the Department's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on

Department right of way. This coverage shall be maintained until all work on the Department right of way is complete. If coverage is not maintained, all work on Department right of way shall cease immediately, and the Department may recover damages and all costs of completing the work.

25. Hold Harmless

To the extent permitted by law, the Developer shall save harmless the Department and its officers and employees from all claims and liability due to materials used or supplied by the Developer or activities of the Developer, its agents, or employees, performed under this agreement, and that are caused by or result from error, omission, or negligent act of the Developer or of any person employed by the Developer. To the extent permitted by law, the Developer shall also indemnify and save harmless the Department from any and all expense, including but not limited to attorney fees that may be incurred by the Department in litigation or otherwise resisting the claim or liabilities that may be imposed on the Department as a result of such activities by the Developer, its agents, or employees.

26. Sole Agreement

This agreement constitutes the only agreement between the parties and supersedes any prior understandings or written or oral agreements concerning the agreement's subject matter.

27. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

28. Gratuities

Any person who is doing business with or who may do business with the Department under this agreement may not make any offer of benefits, gifts, or favors to employees of the Department. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's executive director.

29. Conflict of Interest

The Developer shall not assign an employee to the Project if the employee:

- a. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the Department relating to the Project;
- b. has a direct or indirect financial interest in the outcome of the Project;
- c. has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with the Department; or
- d. is a current part-time or full-time employee of the Department.

30. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

31. Cost Principles

The parties shall comply with the cost principles established in OMB Circular A-87.

32. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

33. Audit

- a. The Department may audit the project at any time. Upon completion of the Project, the Department or an independent auditor approved by the Department, at the Department's option, may perform an audit of the Project costs. Any funds due to the Developer, the Department, or others shall be paid by the owing party within thirty (30) days after notification that funds are due.
- b. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the agreement or indirectly through a subcontract under the agreement. Acceptance of funds directly under the agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

34. Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this agreement and shall make those materials available to the Department, the Developer, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending claims are resolved. Additionally, the Department, the Developer, and the FHWA shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions, including records in the possession of the Developer's agents to the extent that they relate to expenditures for which reimbursement is requested. At the request of the Department, the Developer shall submit any information required by the Department in the format directed by the Department.

35. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

36. Civil Rights Compliance

The Developer shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

37. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26. The Developer's program and goals are subject to approval by the Department.

38. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Developer certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the Department, to furnish a copy of the certification.

39. Lobbying Certification

In executing this agreement, each signatory certifies that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this agreement.

Texas Department Of Transportation

Department's Name

Fort Bend County

Developer's Name

Authorized Signature

Amadeo Saenz, Jr., P.E.
Executive Director
Texas Department of Transportation

Type Or Printed Name And Title

Authorized Signature

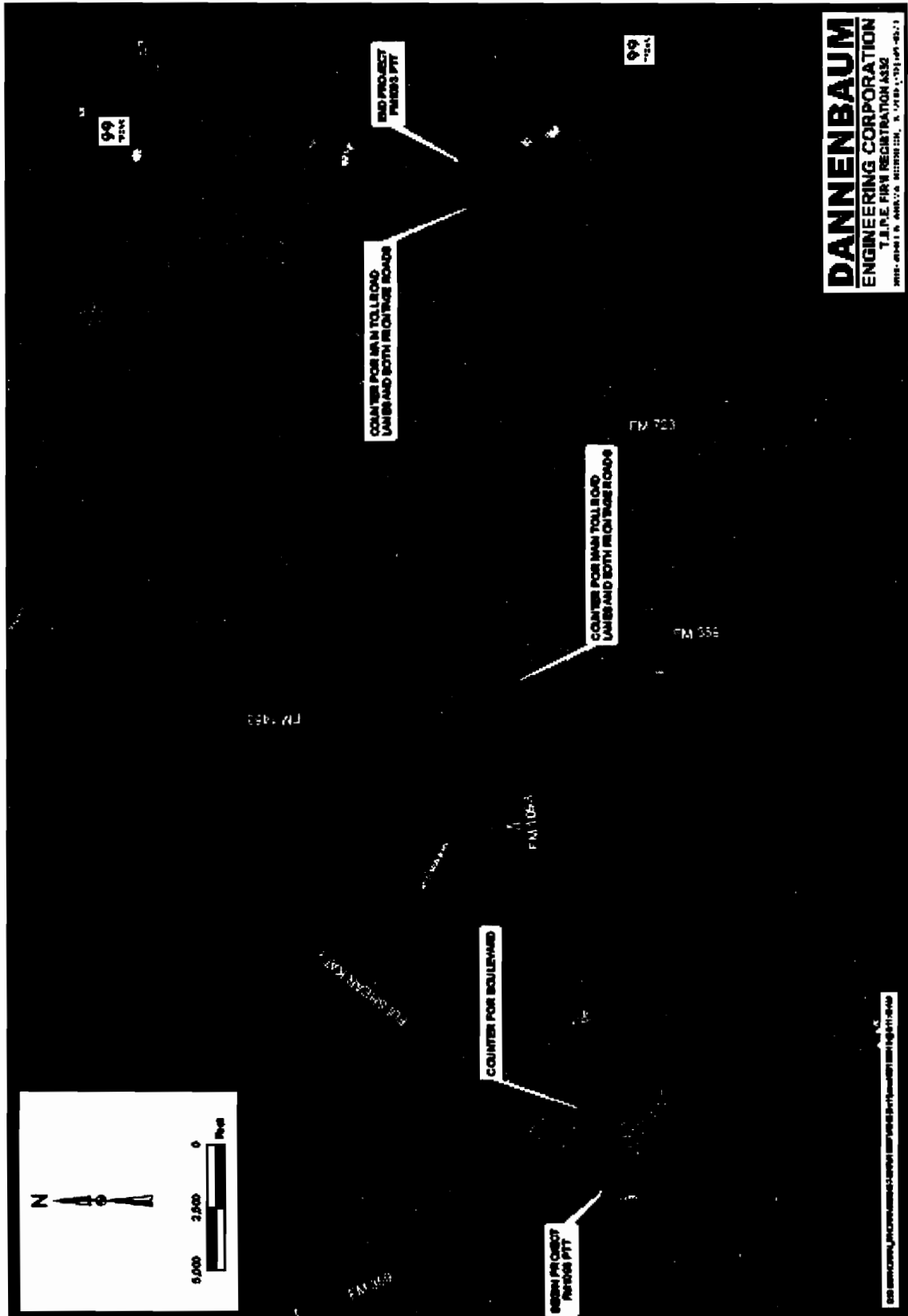
Robert E. Hebert
County Judge

Type Or Printed Name And Title

Date:

Date:

ATTACHMENT A Location Map of Project



ATTACHMENT B

Scope of Work

For this agreement, substantial completion is defined as all travel lanes open the public as approved by the Department and no further work remaining that requires lane closures affecting the mobility of the travelling public.

FM 1093: From East City Limits of Fulshear to SH 99 (Phase I)

CSJ: 0543-02-063 & 1258-03-042

The existing roadway section on FM 1093, from West of FM 1463 to SH 99, is currently a two-lane undivided asphalt roadway with a rural type cross-section, within an existing 100' right of way.

The proposed construction will provide for a two lane one way urban (curbed) frontage road with open ditches in each direction, in advance of the extension of the Westpark Toll Road, within a proposed 240' right of way. A bridge over Flewellen Creek will be required. The purchase of right of way and utility adjustments will be required. The length of the project improvement is 6.16 miles.

FM 1093: From East City Limits of Fulshear to SH 99 (Phase II)

CSJ: 0543-02-064 & 1258-03-043

The existing roadway section on FM 1093, from West of FM 1463 to SH 99, is currently a two-lane undivided asphalt roadway with a rural type cross-section, within an existing 100' right of way.

The proposed construction will provide for a four lane freeway section with a 4' inside shoulder and 10' outside shoulder, within the Phase I project limits. Bridges over Trendmaker Drive, Flewellen Creek, FM 1463/FM 359, Spring Green/FM 723, and Katy Gaston will be required. The length of the project improvement is 5.80 miles. Fort Bend County Toll Road Authority will fund all stages of development.

**FM 359: From FM 1093/FM 359 to East City Limits of Fulshear
(Phase III)
CSJ: 0543-02-065**

The existing roadway section on FM 359, from FM 1093 to West of FM 1463, is currently a two-lane undivided asphalt roadway with a rural type cross-section, within an existing 116' right of way.

The proposed construction will provide for a four lane urban roadway with a 30' raised median. The purchase of 50' additional right of way, from METRO, and utility adjustments will be required. The length of the proposed highway improvement is 1.40 miles.

**FM 1093: From James Lane to FM 359/FM 1093
(Phase III)
CSJ: 1258-02-034**

The existing roadway section on FM 1093, from James Lane to FM 359, is currently a two-lane undivided asphalt roadway with a rural type cross-section, within an existing 60' right of way.

The proposed construction will provide for a four lane urban roadway with a 16' raised median. The purchase of 50' additional right of way, from METRO, and utility adjustments will be required. The length of the proposed highway improvement is 0.46 miles.

ATTACHMENT C

TOTAL ESTIMATED COSTS AND SOURCES OF FUNDING

Project Highway Improvement	Estimated Total Project Cost	Estimated Total Construction Cost	Allowable Construction Costs for Payment of Pass-Through Tolls and Percentage of Total Construction Cost (Department's Proportional Share)	Department's Maximum Pass-Through Reimbursement to Developer (110% of Allowable Construction Costs)	Developer Funding	Other Funding Sources
FM 1093 Phase I 0543-02-063 1258-03-042	\$ 52,508,720	\$ 27,400,000	108.029% = \$ 29,600,000	\$ 32,560,000	\$ 52,508,720	\$ 0
FM 1093 Phase II 0543-02-064 1258-03-043	\$ 47,450,000	\$ 38,900,000	\$ 0	\$ 0	\$ 47,450,000	\$ 0
FM 1093 Phase III 0543-02-065 1258-02-034	\$ 17,051,000	\$ 9,200,000	108.696% = \$ 10,000,000	\$ 11,000,000	\$ 17,051,000	\$ 0
Total	\$ 117,009,720	\$ 75,500,000	\$ 39,600,000	\$ 43,560,000	\$ 117,009,720	\$ 0

ATTACHMENT D

Project Implementation

Overview

This Attachment defines the roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project.

1. Environmental Studies and Mitigation

- 1.1.** The Developer shall complete all environmental studies and documents required to secure environmental approval, including each of the following items.
 - 1.1.1.** Preparation and completion of environmental studies, including obtaining right of entry to perform such studies. All environmental studies will be performed by environmental specialists who meet the requirements to perform those studies.
 - 1.1.2.** Submission of appropriate documentation (categorical exclusion, environmental assessment, and environmental impact statement, including reevaluation, and supplemental documentation) for Department review and approval. Department review is detailed in section 1.2 below.
 - 1.1.3.** Preparation of any document revisions.
 - 1.1.4.** Submission to the Department of copies of the environmental studies and documentation adequate for distribution.
 - 1.1.5.** Preparation of legal and public notices in accordance with 43 TAC §2.43 for Department review and use.
 - 1.1.6.** Arrangements for appropriate public involvement, including court reporters and accommodations for persons with special communication or physical needs related to the public hearing, if requested. The Department will serve as the Hearing Official at any public hearing with the assistance of the Developer.
 - 1.1.7.** Preparation of public meeting and hearing materials.
 - 1.1.8.** Preparation of any necessary responses to comments.
 - 1.1.9.** Preparation of the public meeting and public hearing summary and analysis, and the comment and response reports.
 - 1.1.10.** Submission to the Department of a verbatim transcript of any public hearing and the original certification of the public involvement process as described in 43 TAC § 2.43.
 - 1.1.11.** Preparation of required US Army Corps of Engineers permit applications and associated drawings for impacts to jurisdictional waters, including mitigation requirements. The Developer will be responsible wholly for any and all mitigation that would be required.

- 1.1.12.** The Developer is responsible for all Project-related environmental permits, issues, and commitments, including any mitigation or remediation that may be required under any law or regulation.
- 1.1.13.** Submission to the department of documentation showing that all environmental permits, issues, and commitments have been or will be completed, including copies of permits or other approvals required prior to construction in accordance with 23 CFR §771.109.
- 1.2.** As set forth in Exhibit 1, Roles and Responsibilities, the Department will conduct environmental reviews throughout the clearance process in an attempt to receive the environmental approval of the Project.
 - 1.2.1.** Except as otherwise required by law or by agreement between the Department and a state or federal agency, the Developer is responsible for coordinating with local governmental entities and applicable agencies throughout the Project planning process to assure compliance with applicable laws. The Developer and Department will make every reasonable effort to resolve disagreements with local governments and with state or federal agencies as they relate to environmental approval of the Project.
 - 1.2.2.** The Developer will coordinate the submission of documents for Agency review with the Department.
 - 1.2.3.** The Department is responsible for coordinating all review activities listed in the review schedule defined in Exhibit 2, General Review Schedule. The Department is responsible for working with the lead agency, the cooperating agencies and any affected entities to ensure a timely and thorough coordination process through a specified staff working group. The Developer will be an integral participant throughout the review process to rapidly address comments and concerns necessary to secure clearance within the review schedule.

2. Right-of-Way Acquisition

- 2.1.** As provided in Paragraph 7 of this agreement, the Developer is responsible for the acquisition and provision of any right of way or real property needed for the Project (New Right of Way).
- 2.2.** The Developer will establish and maintain a project tracking system that is acceptable to the Department and that shows the right of way surveying and mapping, appraisal, acquisition, and relocation status of each parcel.
- 2.3.** The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required conveyance documents and other right of way related deliverables required by the Department for their permanent files.
 - 2.3.1.** Within ten (10) days after commencement of work on each individual highway improvement, the Developer will confirm in writing to the Department all agreed-upon terms relating to the acquisition of right of way.

- 2.3.2.** The Developer will provide the Department with a certification that it has received the Department's Right of Way Manual Collection and that it will comply with the procedures in that collection.
 - 2.3.3.** The Developer shall execute the Certificate of Compliance appended to **Attachment H** "Programmatic Procedures for Right of Way Oversight of Pass-Through Toll Projects" as Exhibit "A" and, for each parcel to be acquired, the Developer will use checklists attached as Exhibit "B" to the **Attachment H** "Programmatic Procedures".
- 2.4.** The Developer will prepare right of way maps, property descriptions (field notes and parcel plats), and other data as needed to describe the right of way and access rights necessary for the Project.
 - 2.4.1.** The field notes and parcel plats will be signed and sealed by a Registered Professional Land Surveyor currently licensed by the "Texas Board of Professional Land Surveying."
 - 2.4.2.** Copies of this data will be delivered to the Department for review at least three weeks before beginning the standard process for acquisition of right of way for each individual highway improvement.
- 2.5.** The Developer will acquire fee simple title, any required drainage channel easements, and any required access rights, free and clear of all liens and encumbrances for all land to be used as right of way for the Project. Title to all real property rights will be acquired in the name of the State of Texas.
 - 2.5.1.** Title to New Right of Way will exclude oil, gas, and sulfur from the deed without any right in the owners to ingress or egress to or from the surface of the land for the purpose of exploring, developing, drilling, or mining.
 - 2.5.2.** The Developer will also provide the Department with title insurance for each individual parcel of New Right of Way in the name of the State of Texas as the insured owner.
- 2.6.** The Developer is responsible for the negotiation of access points at the time of acquisition based on Department's Roadway Design Manual, the Department's Access Management Manual, and the preferred access points shown on the schematic for the highway improvement.
 - 2.6.1.** The access points for each highway improvement and the access denial line as depicted on the approved schematic will be incorporated into the deed when the property is acquired. Any proposed changes to the access denial line shall be submitted to the Department for review and approval.
 - 2.6.2.** The Developer shall develop driveway permits and associated exhibits acceptable to the Department for each access point and obtain, at a minimum, three original signed copies from the respective property owners.
- 2.7.** The Developer will ensure that all right of way used in constructing the Project will be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Developer. The Developer shall provide

written documentation from appropriate regulatory agencies that all known hazardous materials and contaminants in the right of way have been adequately mitigated or that the Developer otherwise meets the requirements for regulatory closure.

- 2.8. The Developer will provide tracings and electronic files of right of way maps and property descriptions to the Department and will also provide the Department a final map (digital and hard copy in a format approved by the Department) showing the final location of all utility lines that were adjusted or remained in place and joint use numbers assigned to those utilities.

3. Utilities

- 3.1. The Developer is responsible for determining the scope of utility work if the Project requires the adjustment, removal, or relocation of a utility facility. Utilities will not be adjusted, removed, or relocated before environmental approval is secured.
- 3.2. The Developer is responsible for notifying the appropriate utility company to schedule adjustments.
- 3.3. The Department will grant the Developer or its authorized representative site access to State right of way where required to execute the work and will issue right of entry for the performance of utility relocation.
- 3.4. The Developer is responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities.
- 3.5. The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required utility agreements, including joint use acknowledgments.

4. Engineering Services

- 4.1. The Developer will remain the single point of contact for engineering and design issues. All correspondence and instruction to the design consultants will be the sole responsibility of the Developer.
- 4.2. At the commencement of an individual highway improvement, the Developer will coordinate a Design Concept Conference with the Department to establish the performance parameters and design requirements for the highway improvement, including the Pavement Design, Hydraulic Design, Design Concept Conference Forms and Typical Sections, which will remain in place throughout the implementation of the highway improvement.
- 4.3. All plans, specifications, and estimates developed by or on behalf of the Developer shall conform to the latest version of the Department's Standard Specifications for Construction and Maintenance of Highways, Streets, and

Bridges, and the special specifications and special provisions related thereto, and shall conform to the latest edition and revisions of the State's Roadway Design Manual. The construction plans furnished to the Department shall be reproducible tracings on mylar or equivalent.

- 4.4.** If the Department determines that the complete plans, specifications, and estimates are unacceptable, the Developer shall correct the design documents to the Department's satisfaction. Should additional specifications or data be required by the Department, the Developer shall redesign the plans and specifications to the Department's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Developer.
- 4.5.** If exceptions to the Department's design criteria are required as specified in the Department Roadway Design Manual, a request for exceptions shall follow the procedure set forth in that manual.
 - 4.5.1.** If it becomes necessary to change a design after it has been approved by the Department, and if that change does not require the adoption of alternative design criteria or an exception to the Department's design criteria, the Developer will coordinate with the Department and FHWA for approval of the change.
 - 4.5.2.** The Department shall have no more than 10 business days either (1) to approve the design change as proposed by the Developer or (2) to respond with a Department-recommended alternative to the design change.
 - 4.5.3.** If the Department responds with an alternative to the design change, the Developer and the Department shall work diligently to develop a mutually agreeable design solution.
 - 4.5.4.** The Department is responsible for obtaining any necessary approval from FHWA.
- 4.6. Reviews**
 - 4.6.1.** When the design is approximately 30 percent complete, the Developer shall submit a completed pavement design to the Department. The Department may request additional information related to the pavement design, and the Developer shall provide that information promptly. The pavement design must be approved by the Department before letting. After the pavement design has been approved by the Department, it may not be changed by either party without the written consent of the other.
 - 4.6.2.** When design is 30% complete, the Developer will coordinate the submission of the following design information for a joint review session between the Developer and the Department to allow comments and concerns to be addressed by the Developer within the expedited review schedule defined in Exhibit 2, General Review Schedule.
 - 4.6.3.** The following will be reviewed as set forth in Exhibit 1, Roles and Responsibilities.
 - 1) Preliminary cross sections showing existing utility lines, R.O.W.

- 2) Plan and profile sheet showing existing and proposed:
 - a) R.O.W. lines
 - b) Roadway alignments and profiles
 - c) Intersecting streets
 - d) Curb and lane lines
 - e) Existing Utilities
 - 3) Existing and proposed typical sections including pavement section
 - 4) Preliminary title and index sheets.
 - 5) Preliminary drainage area map, discharge relationships and drainage calculations.
 - 6) Storm drainage master plan.
 - 7) Preliminary culvert layouts.
 - 8) Preliminary bridge and bridge classification culvert layouts, including test hole information.
 - 9) Preliminary retaining wall layout, including test hole information.
 - 10) Sequence of work outline for traffic control.
 - 11) Preliminary traffic control typical sections and layouts.
 - 12) Preliminary intersection layouts.
 - 13) Preliminary utility layouts - identify potential conflicts and exchange of information with existing utilities.
 - 14) Update estimates and prepare preliminary roadway and drainage quantity summary sheets.
 - 15) Updated design contract schedule.
 - 16) Facility typical sections and pavement design.
- 4.6.4.** When the Project design is final, the Developer will coordinate the submission of the following information to the Department for review to allow comments and concerns to be addressed by the Developer to secure approval of the Department and FHWA within the expedited review schedule defined in Exhibit 2, General Review Schedule.
- 1) Seven (7) copies of final plans, specifications, and engineer's estimate.
 - 2) Revisions to the preliminary design submittal.
 - 3) Proposal to award construction contract in compliance with applicable state and federal requirements.
 - 4) Proposed contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals.
 - 5) Documentation of all environmental permits, issues, and commitments that will be addressed in construction.
- 4.6.5.** Approval by the Department of this final design submittal will constitute authorization for the Developer to advertise for construction bids.
- 4.6.6.** For any individual highway improvement with a construction cost over \$25 million, the Developer shall conduct a value engineering workshop. Proposed changes to the design shall be submitted to the Department for review and approval.

5. Construction Responsibilities

- 5.1.** The Developer will supervise and inspect all work performed during construction and provide engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications.
 - 5.1.1.** Unless the parties enter a separate agreement to the contrary, all correspondence and instruction to the contractor performing the work will be the sole responsibility of the Developer.
 - 5.1.2.** All work will be performed, unless otherwise specifically stated in the contract documents for the Project, in accordance with the latest edition of the Department's Guide Schedule for Sampling and Testing, the Quality Assurance Program Manual, the Construction Contract Administration Manual, and the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges or special specifications or provisions approved by the Department.
- 5.2.** The Department will grant the Developer or its authorized representative access to State right of way to perform any activities required to execute the work and issue a right of entry for the performance of all construction activity.
- 5.3.** Subject to Paragraph 10 of the agreement, the Developer will negotiate and approve all change orders and other contract revisions that the Developer finds necessary or convenient to accomplish the construction activities for the Project. For change orders and other contract revisions that affect prior environmental approvals or result in non-conformity with the specifications and standards agreed upon for the Project, the Developer must assess any potential environmental effects and any additional or revised environmental permits, issues, coordination, mitigation, and commitments required as a result of the contract revisions.
 - 5.3.1.** The Developer will document any such changes, including a proposed course of action.
 - 5.3.2.** The Developer will notify the Department of the need for such changes and submit the appropriate documentation.
 - 5.3.3.** The Department shall have no more than ten (10) business days after the Developer's submission either to approve the changes as submitted by the Developer or to respond with the Department's proposed revisions.
 - 5.3.4.** If the Department responds with revisions, the Developer and the Department will work diligently and in good faith to develop mutually agreeable changes that shall then be implemented by the Developer.
 - 5.3.5.** The Developer shall be responsible for obtaining any required approvals from federal, state, or local governmental authorities, with the exception of the Department and FHWA, and except as otherwise specified in this agreement.
 - 5.3.6.** To the extent that a change orders requires the adoption of alternative design criteria, an exception to the Department's design criteria, or a change in the approved design, the design must be approved as set forth in Sections 4.3, 4.4, or 4.5, as applicable.

- 5.4. The Developer will comply with applicable Federal requirements throughout the procurement and construction process in order to maintain the Department's eligibility for Federal reimbursement for Project costs. The Developer's compliance with requirements necessary to maintain eligibility for federal reimbursement is a condition precedent to performance by the Department.
- 5.5. Within six (6) months after issuance of the "Letter of Acceptance" for a highway improvement, the Developer will provide to the Department all documents and submittals identified in the Department's Construction Contract Administration Manual. This documentation includes:
 - 1) Record Drawings and Final Construction Records,
 - 2) Engineer Certification of Project Completion, and
 - 3) Right of Way Parcel Information (Exhibits, Descriptions, Right of Way Maps, Field Notes, etc.)

6. General

- 6.1. The Developer and the Department will agree on a transition plan at the time of or before completion of a highway improvement.
- 6.2. The Developer will schedule regular meetings with the Department to maintain the communication necessary to successfully implement the Project.
- 6.3. The Developer will prepare program organizational and management documents, including Program Management Plan and Quality Control/Quality Assurance Plan for all work products. The Developer will provide these documents to the Department for all contracted firms participating in the Project.
- 6.4. The Developer will maintain all documentation relative to implementation and completion of the Project, including without limitation documentation relating to environmental issues, acquisition of right of way, preliminary and final design, and bidding, award, and construction of the Project.

Exhibit 1: Roles and Responsibilities for Each Entity

	Responsible Party
Preliminary Engineering	
Retain Consultant	Developer
Develop Preliminary Design	Developer
Develop Preliminary Cost Estimate	Developer
Define Right of Way Requirements	Developer
TxDOT Review and Approval of Preliminary Engineering Report	Developer, Department
Environmental Review	
Retain Consultant	Developer
Draft Environmental Documents	Developer
Schedule & Conduct Public Meetings	Developer, Department
Review of Environmental Documentation	Developer, Department, FHWA
Notification and Documentation of Comments	Developer
Publish and Hold Public Hearings	Developer, Department
Analyze and Document Public Hearings	Developer
Final Review	Developer, Department, FHWA
Document Approval	Department, FHWA
Environmental Permits, Issues, and Commitments	Developer
Permitting	
Develop Required Permit Applications	Developer
Submit Required Permit Applications	Developer, Department
Right of Way Acquisition	
Develop Right of Way Budget	Developer
Retain Surveyor	Developer
Develop Right of Way Map	Developer
Retain Appraisers	Developer
Work with Owners on Donations, Access, Etc.	Developer
Purchase Parcels After NEPA Process	Developer
Eminent Domain Proceedings	Developer
Utility Identification and Relocation	Developer
Oversight and Audit of Right of Way Process	Department

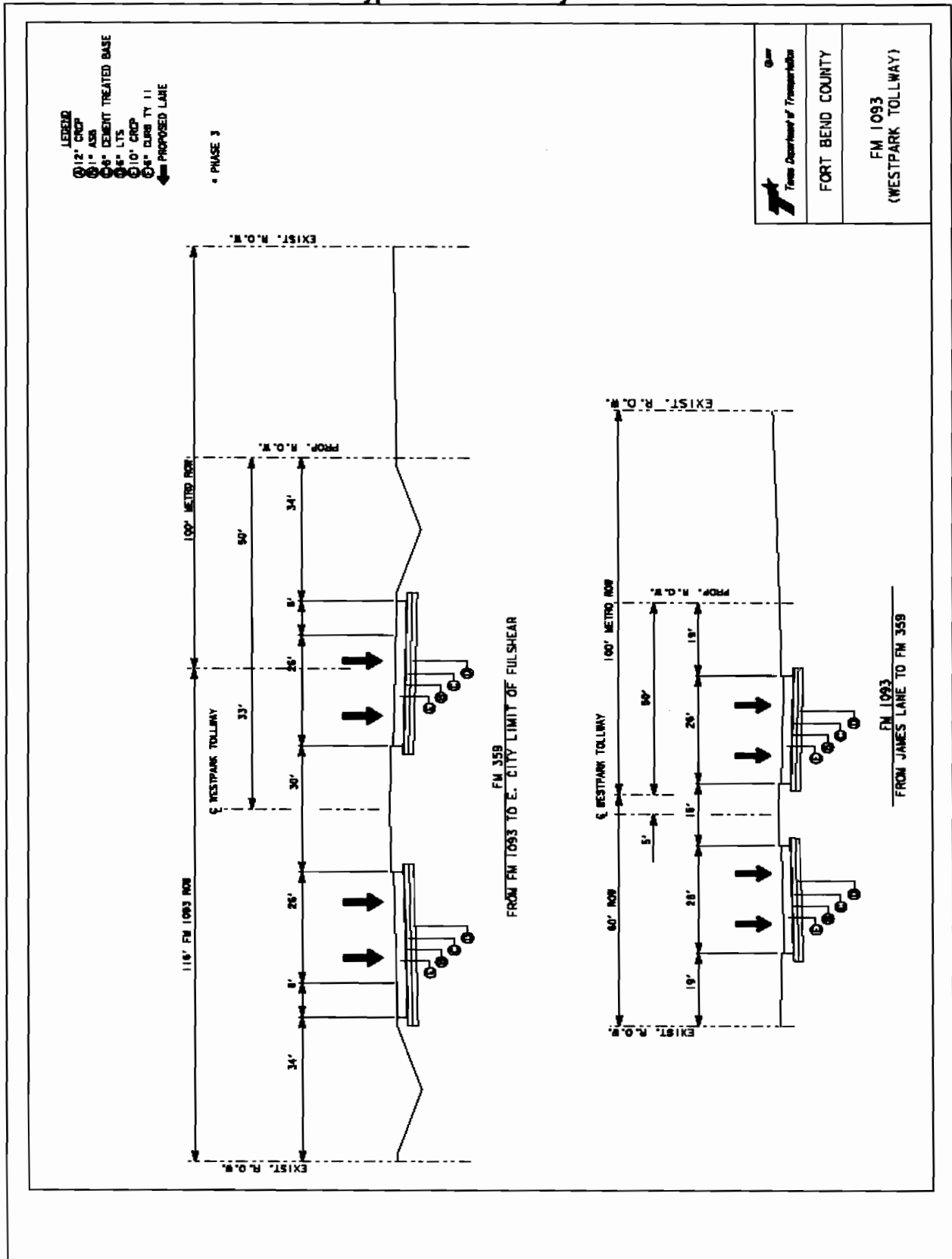
	Responsible Party
Design	
Retain Designer, Geotech, Surveyor, and other professional service providers	Developer
Develop 30% Submittal Package	Developer
30% Submittal for Department Review	Developer
Final Submittal for Department Review	Developer
Approval of Design	Department, FHWA
Bid for Construction	
Preparation of Bid Documents	Developer
Advertisement for Bids	Developer
Bid Opening, Evaluation, and Award	Developer
Certified Final Award	Developer
Construction	
Coordination with Utilities for Relocation	Developer
Issuance of Construction Notice To Proceed	Developer
Administration of Construction Contract	Developer
Inspection of Construction	Developer
Issuance of Notification of Substantial Completion	Developer
Issuance of Letter of Approval for Payment	Department
Issuance of Notification of Completion	Developer
Issuance of Letter of Acceptance	Department

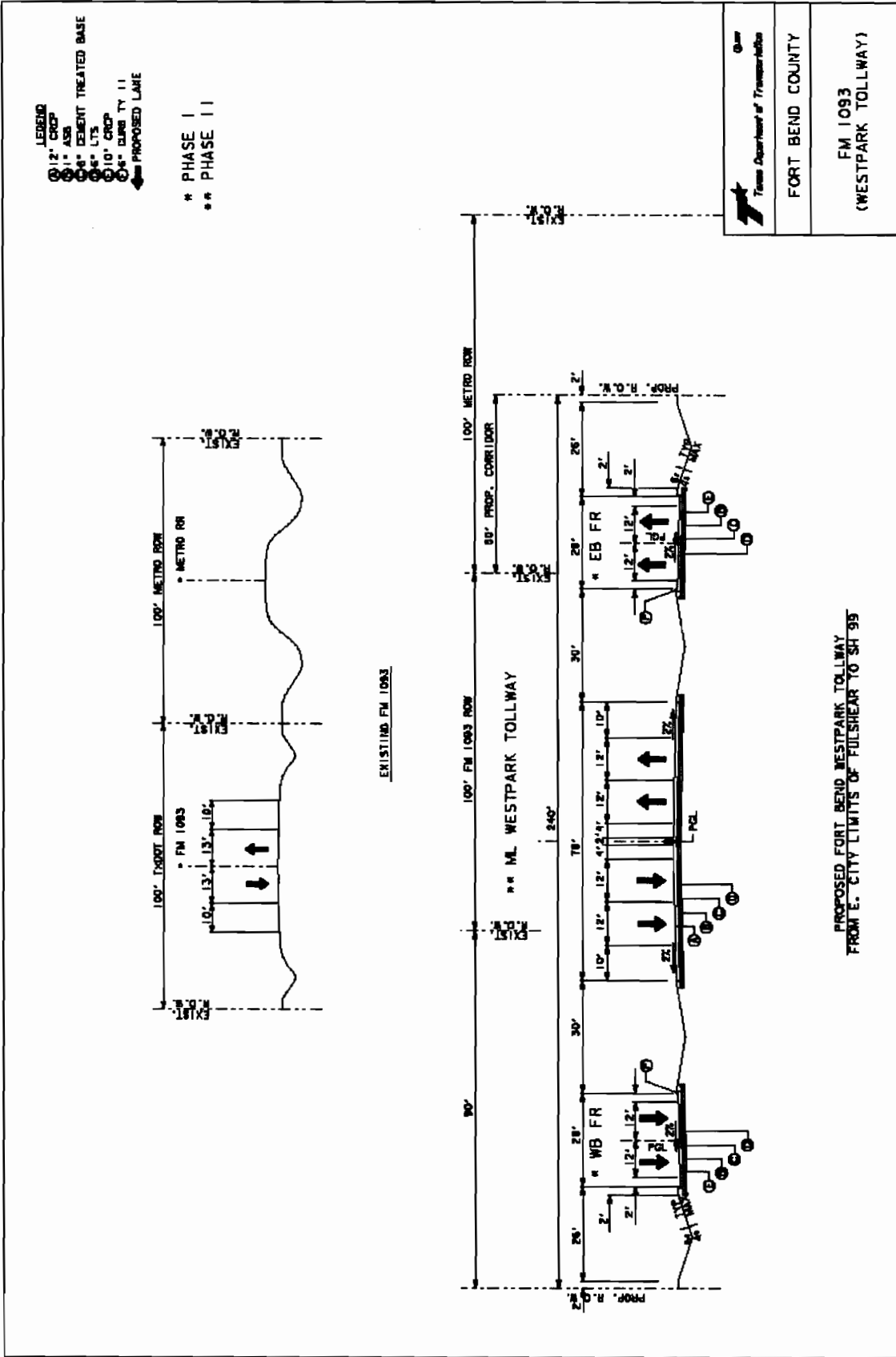
Exhibit 2: General Review Schedule
Specific timelines are incorporated into the timeline for each highway improvement.

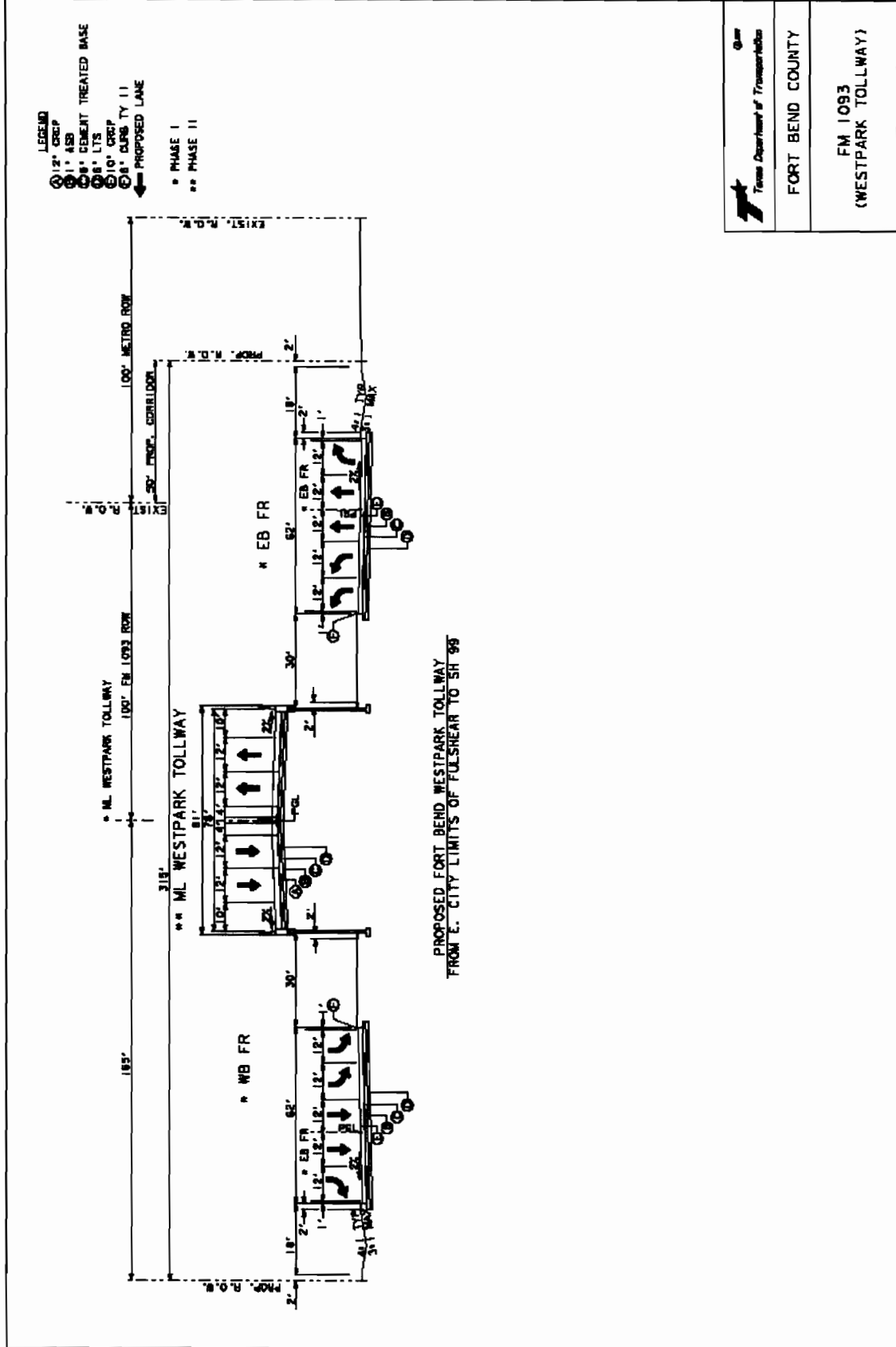
1	Preliminary/Schematic Layout Review		2 weeks
2	Environmental Review	Joint Environmental Review	To be determined
		Review (Department)	
		Review (Categorical Exclusion) (2 weeks district; 2 weeks ENV)	4 weeks
		Review (Environmental Assessment) (3 weeks district; 3 weeks ENV)	6 weeks
		Review (Environmental Impact Statement) (4 weeks district; 4 weeks ENV)	8 weeks
		Resource Agency Review	To be determined
		FHWA Review (draft document)	To be determined (minimum 4 weeks)
		Release by the Department to Public Hearing <ul style="list-style-type: none"> • Advertising for public hearing • Conducting Public Hearing • Receipt of written comments 	6 weeks plus 10 days for receipt of written comments
		Developer Addresses Comments from Public Hearing (note, 3 weeks is minimum for non-controversial projects, and is not realistic for a developer-type project)	6 weeks
		Department Review of Comments (2 weeks district; 2 weeks ENV)	4 weeks
		FHWA Review of Comments and issues determination document	To be determined (minimum 4 weeks)
3	Review of Plans, Specifications, and Estimates	30% Completion	2 weeks
		100% Completion	2 weeks
		Federal Approval of Letter of Authority	1 week

ATTACHMENT E

Typical Section Layout







ATTACHMENT F

Project Schedule

WESTPARK EXTENSION
 PASS-THROUGH TOLL PROJECT

PRELIMINARY SCHEDULE

DECEMBER 21, 2009

PROJECT MILESTONES	2010				2011				2012				2013				2014				2015				2016				2017				2018				
	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q					
<u>PHASE I</u>																																					
Schematic																																					
Environmental																																					
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Construction																																					
Open to Traffic																																					
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Environmental																																					
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Schematic																																					
Environmental																																					
Right-of-Way																																					
PS&E																																					
Construction																																					
Open to Traffic																																					

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

**RESOLUTION ACCEPTING TERMS OF MINUTE ORDER #111977
FM 1093/WESTPARK TOLL ROAD EXTENSION
PASS-THROUGH TOLL PROJECT**

WHEREAS, Fort Bend County Commissioners Court formally supports and endorses the FM 1093/Westpark Toll Road Extension Pass-Through Toll Project approved by the Texas Department of Transportation through the actions of the Texas Transportation Commission as detailed in Minute Order # 111977, dated September 24, 2009; and

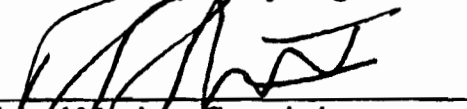
WHEREAS, the County finds that this resolution serves a public purpose.

NOW, THEREFORE BE IT RESOLVED that the Commissioners Court of Fort Bend County does hereby accept the terms set forth under the referenced order.


Passed and Approved this 23rd day of March, 2010.

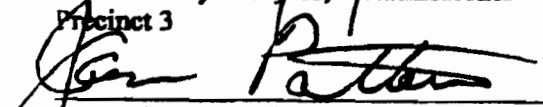
Fort Bend County Commissioners Court:


Robert E. Hebert, County Judge


Richard Morrison, Commissioner
Precinct 1


Grady Prestage, Commissioner
Precinct 2


W. A. "Andy" Meyers, Commissioner
Precinct 3


James Patterson, Commissioner
Precinct 4

ATTEST:


Dianne Wilson, County Clerk

(SEAL)

EXHIBIT A
PROJECTS APPROVED FOR NEGOTIATION
PASS-THROUGH TOLL PROGRAM CALL

	CSJ	DIST	Local Entity Name	Rebates, Value	Highway	Limits	Region
1	1258-02-002	HOU	FT. BEND CO.	\$24,700,000	FM 1900	SH 99 to WEST of FULSHEAR, etc.	EAST
2	2544-02-002, etc.	SAT	BREXAR CO.	\$80,000,000	SH 211/FM 1907	FM 1907 to FM 471, etc.	SOUTH
3	0203-01-042, etc.	PAR	SULPHUR RIVER PMA	\$23,000,000	US 89	BU 600 to FM 813	NORTH
4	0100-03-019, etc.	HOU	BRAZORIA CO.	\$23,000,000	SH 36	THRU CITIES of WEST COLUMBIA, BRAZORIA and FM 1496 GRADE SEPARATION	EAST
5	0216-07-019, etc.	SAT	CITY of BILVERDE	\$22,200,000	SH 45	OLD BOEYNE ROAD to RIVER WATERTAIL LAKE	SOUTH
6	0231-03-103, etc.	WAC	CITY of RALLIEN	\$19,200,000	US 190/FM 2416	EAST of FM 2470 to WEST of FM 2010, etc.	NORTH
7	0076-02-084, etc.	HOU	CITY of PEARLAND	\$24,000,000	FM 806	ALMEDA-GERNOA ROAD to FM 816, etc.	EAST
8	0113-09-002	AUS	CITY of AUSTIN	\$13,000,000	LOOP 1408 290	TWO DIRECT CONNECTORS	SOUTH
9	0000-04-061	FTW	HOOB CO.	\$31,200,000	US 377	SH 144 to OLD ACTON HIGHWAY	NORTH
10	0002-38-073, etc.	FTW	CITY of HUDSON OAKS	\$9,000,000	US 160W/ 20	BC of US 160, M 20 and LAKESHORE DRIVE, etc.	NORTH
TOTAL =				\$273,057,000			

11	0000-04-034, etc.	ATL	BOWNE CO.	\$27,227,000	US 82	FM 1900 to SH 99	NORTH
12	0200-02-003	DAL	CITY of BRIDGEMAN & BDA	\$11,000,000	US 87	US 87 at RAILPORT PARKWAY	NORTH
13	Not Available	DAL	CITY of BRIDGEMAN	\$2,800,000	FM 603	FM 603 OVERPASS WIDENING at US 297 RELIEF RT.	NORTH
14	2300-01-040, etc.	YRM	CITY of VICTORIA, VICTORIA Co. & BMO	\$11,700,000	LP 403	WEST of FM 1315 to EAST of FM 1318, etc.	SOUTH

* The Commission grants conditional authority to pursue negotiations with the sponsors of these projects in priority order for a total Pass-Through Toll program amount not to exceed \$300 million. If staff is unable to successfully negotiate any of the top 10 listed projects.

STATE OF TEXAS
COUNTY OF FORT BEND

I, Dianne Wilson, County Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true and correct copy as the same appears on file and recorded in the appropriate records. Note: A portion of a personal identifying number may have been redacted as allowed by law.



3/29/10 Date
 Dianne Wilson
 Dianne Wilson, County Clerk
 Fort Bend County, Texas

ATTACHMENT H

PROGRAMMATIC PROCEDURE FOR RIGHT OF WAY OVERSIGHT OF PASS-THROUGH PROJECTS

For those Pass-Through projects where a Pass-Through Toll Agreement (Agreement) has been entered into by and between the Texas Department of Transportation (TxDOT) and a local public agency (county or municipality), and in conjunction with such Agreement the local public agency (LPA) has also executed a "Certification of Compliance" in the form as attached hereto as Exhibit "A", TxDOT shall provide right of way monitoring and audit of the acquisition of right of way in the following manner:

1. Following the execution by the LPA of the Certification of Compliance, schedule a meeting as soon as practical with the LPA officials who will be providing oversight and management of the Project for the LPA, and also with the project manager(s) of any engineering consultant hired by the LPA to directly manage the Project, to include those individuals both from the LPA and under contract with the engineering consultant to handle right of way acquisition.
 - A. At this meeting, discuss the need to establish separate right of way parcel files for each parcel of land or easement to be acquired for the Project, and to include and retain within each parcel file, documentation that establishes that all certifications contained in the "Certification of Compliance" have been met. Emphasize that a detailed written "negotiator's report" for all negotiation contacts must be included within each parcel file (as provided for in the on line Right of Way Manual Collection).
 - B. Provide a copy of the "Expanded Parcel Review Checklist" (a copy of which is attached hereto as Exhibit "B") which TxDOT will be utilizing when it monitors and audits a random selection of parcel files each month during the progress of the right of way acquisitions for the Project.
 - C. Provide a copy of the form for the conveyance instruments to be utilized for initial acquisition of right of way interests in accordance with the Agreement and also the form for the final conveyance of all right of way interests acquired from the LPA (Developer in the Agreement) to the State of Texas upon completion of each Project.
2. Beginning the month following the initiation of right of way acquisition by the LPA, TxDOT shall not less than once a month meet with the LPA and any consultants retained by the LPA that are handling right of way parcel acquisition and randomly select from those parcels for which acquisition has been completed or are in the process of being submitted for eminent domain proceedings during the prior month, either three of such parcels, or 10% of the total number of such

parcels reaching such status during the prior month (which ever is more), and audit such parcel files using the Expanded Parcel Review Checklist.

- A. For those parcels so audited which according to the audit and completion of the checklist appear to be in compliance with Title III guidelines, place one copy of the checklist within the parcel file, and retain an additional copy of the check list for TxDOT's monitoring and auditing file for this Project.
- B. For any parcel so audited for which one or more check list items indicate non-compliance with Title III guidelines, TxDOT shall provide written notice to the LPA containing detailed information about such non-compliance, together with recommended action to be taken by the LPA in order to remedy such non-compliance. An additional copy of such written notice shall be placed in the parcel file and a copy also retained by TxDOT for the Department's monitoring and auditing file for this Project.
- C. During any subsequent month's TxDOT review of parcel files as required under this paragraph 2. above, in addition to auditing the number of new parcel files required above, TxDOT shall specifically re-review any parcel files for which non-compliance notices were provided, and additional written documentation placed in such parcel file indicating the current status relating to the prior non-compliance, and if the non-compliance status still exists, provide an additional written notice of this to the LPA. If, after the third month's review of a parcel with a non-compliance notice, the non-compliance status remains, and it appears to the TxDOT personnel conducting the review that the LPA is not taking sufficient steps to remedy the non-compliance, the TxDOT Right of Way Division shall be provided a copy of all prior notices of non-compliance for review. If this review determines there is definitely continuing non-compliance without adequate basis or other justification, a letter will be issued from the Right of Way Division to the LPA, informing the LPA that acquisition of the parcel does not meet the requirements of the "Uniform Act" which could result in the Project being ineligible for State and Federal participation in reimbursement payments, and unless remedied, such could be considered a material breach of the Agreement. A copy of this letter will be provided to the local FHWA Realty office and also to TxDOT Office of General Counsel.

**ATTACHMENT H
EXHIBIT "A"**

CERTIFICATION OF COMPLIANCE

Fort Bend County, the Developer under a Pass-Through Toll Agreement with the Texas Department of Transportation (TxDOT) for the purpose of constructing and operating improvements to FM 1093, pursuant to Texas Transportation Commission Minute Order 112016 (the Project), hereby certifies that:

- (1) real property will be acquired for the Project right of way in compliance with all applicable State and Federal laws and requirements, including the policies and practices of the Right of Way Manual Collection of TxDOT's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq.;
- (2) it has received and has continuing access to the Online Right of Way Manual Collection; and
- (3) prior to the implementation of any procedures that are at variance with established TxDOT policies and practices for the acquisition of real property, Fort Bend County will submit such procedures in writing to TxDOT's District Engineer for the Houston District and the Executive Director's approval must be obtained.

For purposes of this Project, it is understood that references in the Right of Way Manual Collection to TxDOT personnel, District personnel, District, District Engineer, ROW Division, Director of the ROW Division, and other similar TxDOT employees or titles involved in the acquisition process shall be deemed to mean Fort Bend County and its authorized agents. It is the intent of this provision to allow Fort Bend County to acquire real property for the Project on behalf of the State without prior review and approval of TxDOT, subject to compliance with all applicable State and Federal laws and requirements as described above, the variance procedure, and TxDOT's audit and enforcement obligations.

Date: _____, 2010

Fort Bend COUNTY

By: _____

County Judge

ACCEPTED:

TEXAS DEPARTMENT
OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

By: _____
John A. Barton., P.E.
Assistant Executive Director
For Engineering Operations

By: _____
Printed Name: _____
Title: _____

TITLE III PARCEL REVIEW CHECKLIST FOR LPAs

County:
District:
ROW CSJ No.:
Parcel No.:
Acquiring Agency:

General

Was the informational notice given to owner? Yes ☐ No ☐

Date of the notice:

Was the "Landowner's Bill of Rights Statement" properly provided prior to initiation of negotiations? Yes ☐ No ☐

Date provided:

Appraisal

Was the real property appraised before the initiation of negotiations? Yes ☐ No ☐

Approval date of the appraisal:

Was the owner or his designated representative given the opportunity to accompany the appraiser during inspection of the property? Yes ☐ No ☐

Did the appraisal disregard any decrease or increase in value caused by the proposed facility? Yes ☐ No ☐

Did the written appraisal of the parcel conform to the established standards for appraisal? Yes ☐ No ☐

Does the acquiring agency require compliance with the Uniform Standards of Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) for appraisals? Yes ☐ No ☐

Were the appraiser and review appraiser qualified by the acquiring agency? Yes ☐ No ☐

Were there any apparent conflicts of interest on the project on behalf of the appraiser or review appraiser? Yes ☐ No ☐

Was a written appraisal review report prepared, and an executed certification provided by a qualified review appraiser? Yes ☐ No ☐

Were all items of real estate included in the appraisal? Yes ☐ No ☐

Were retention values for any improvements retained by the owner properly documented? Yes ☐ No ☐

Negotiation

Did the review appraiser negotiate for acquisition? Yes ☐ No ☐

Did the appraiser negotiate for any parcel for which the appraised just compensation was more than \$2,500? Yes ☐ No ☐

Were acquisition policies and procedures explained to the owner? Yes ☐ No ☐

Was prompt written offer made to acquire real property for the full amount of the approved appraisal of just compensation? Yes ☐ No ☐

Date of the first written offer:

The written offer included the following:

- ☐ statement of the full amount established as just compensation
- ☐ separate statement as to damages (if applicable)
- ☐ description and location identification of the ROW parcel, and of the interest in the real property to be acquired
- ☐ identification of the buildings, structures and other improvements considered to be real property for which the offer is made
- ☐ identification of separately owned interests (if applicable)
- ☐ a copy of the appraisal report delivered to the owner at the time the offer was made

Was the offer and its basis discussed with the owner? Yes ☐ No ☐

Was the owner given reasonable opportunity to consider the offer and to present material believed to be relevant to valuation of the property? Yes ☐ No ☐

Was any evidence discovered which suggests that coercive action was taken to compel agreement on price paid for the property? Yes ☐ No ☐

Was the owner required to surrender possession before payment was made or proper award deposited in court? Yes ☐ No ☐

If the property was donated, was the owner advised of his right to receive just compensation? Yes ☐ No ☐

Was every reasonable effort made to acquire the property expeditiously by negotiation? Yes ☐ No ☐

Was property acquired under Title VI requirements, without regard to race, color, age, religion, sex, national origin, or handicap? Yes ☐ No ☐

Relocation Assistance

The acquisition of this property resulted in the displacement of: (check all that apply)

None ☐ Residence ☐ Business ☐ Farm Operation ☐ Non-Profit Organization ☐ Personal Property Only ☐

If residential, was a replacement housing supplement computed utilizing comparable decent, safe, and sanitary replacement housing? Yes ☐ No ☐

Amount of the supplement: Date approved:

Amount of actual replacement housing payment: Date of payment:

If a non-residential displacement, list all payments made.

☐ Moving Payment - Business, Farm, or Non-Profit

Amount(s): Date(s):

☐ Moving Payment - Personal Property

Amount(s): Date(s):

☐ Reestablishment Payment

Amount(s): Date(s):

Were applicable Relocation Assistance Advisory Services offered to the displaced resident, business, or farm operation, or non-profit organization? Yes ☐ No ☐

Was a 90-Day Notice given to the displaced person? Yes ☐ No ☐

Date of notice:

Was a 30-Day Notice to Vacate given to the displaced person? Yes ☐ No ☐

Date of notice:

Were all relocation benefits calculated and paid in accordance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments thereto."? Yes ☐ No ☐

Based on review, is the acquiring agency complying with all *Title III* guidelines? Yes ☐ No ☐

Parcel Legal Description / Plat

Do the survey and mapping technical requirements comply with the technical requirements as set forth in applicable Department manuals? Yes ☐ No ☐

Does a broad review of the parcel legal description / plat and comparison to the right of way map indicate the presence of all component parts? Yes ☐ No ☐

Signature of TxDOT Review Agent

Date