

STATE OF TEXAS §
COUNTY OF TRAVIS §

**RIGHT OF USE AGREEMENT
FOR A LOCAL TOLL PROJECT ENTITY'S
USE OF STATE HIGHWAY RIGHT-OF-WAY**

THIS AGREEMENT (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State," and the Fort Bend County Toll Road Authority, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, the Local Government built and currently maintains the Fort Bend Parkway Toll Road between the Sam Houston Toll Road and State Highway 6 (the "Parkway"); and

WHEREAS, Texas Transportation Code, Section 228.011 (the "Act") provides that Fort Bend County has the primary responsibility to develop an extension of the Parkway from State Highway 6 to the Brazos River; and

WHEREAS, the Local Government intends to proceed with the extension of the Parkway from State Highway 6 to the Brazos River, including the construction of a below-grade underpass at the intersection of the Parkway and State Highway 6; and

WHEREAS, the underpass at the intersection of the Parkway and State Highway 6 shall hereinafter be referred to as "the Project", and

WHEREAS, pursuant to Section (b-1) of the Act, the State and the Texas Transportation Commission (the "Commission") are required to assist the Local Government in its development of the Parkway by allowing the Local Government to use state highway right-of-way and to access the state highway system as necessary to construct and operate the project; and

WHEREAS, the Act prohibits the State and the Commission from charging the Local Government for right-of-way or access, except to reimburse the State for actual costs incurred.

WHEREAS, Section (c) of the Act requires the Local Government to enter into an agreement with the State regarding a county toll project if the Local Government intends to use state highway right-of-way; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect unless terminated as provided in Section 7 of this Agreement.

2. Scope of Work

The Local Government shall fund and develop the Project which is shown on the Project Location map attached to and made a part of this Agreement as Attachment "B."

3. Right-of-Way

The Local Government may use any state highway right-of-way and may access the state highway system as necessary to develop, operate, and maintain the Project, subject to the terms of this Agreement. Any other right-of-way and real property acquisition shall be the responsibility of the Local Government.

4. Project Funding

The Local Government shall provide 100% (one hundred percent) of the necessary funds for development of the Project, including but not limited to: survey, right-of-way acquisition, required utility work, environmental assessment and remediation, preliminary and final design work; all letting to contract costs; all construction bid item costs; all construction contract management costs; all construction bid item change order costs, should they become necessary; and, all construction bid item material and equipment testing costs. The estimated cost of the Project is shown in Attachment "C."

5. Project Responsibilities

The Local Government is responsible for all aspects of the Project unless otherwise indicated in this Agreement.

A. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures.

The Local Government will 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:

1. Per agreement;
2. Per all applicable statutes or rules; or
3. As specified otherwise in a LPAFA.

B. Environmental Assessment and Mitigation

1. The Local Government must comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements.
2. The Local Government shall submit the environmental documents for review and comment by the State.

3. The Local Government is responsible for identification and assessment of any environmental problems associated with the Project, and for the cost of any environmental problem's mitigation and remediation.
4. The Local Government is responsible for providing any public meetings or public hearings, if required.
5. Upon request, the Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

C. Compliance with Texas Accessibility Standards and ADA

The Local Government shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

D. Preliminary Engineering

1. The Local Government will be responsible for the preparation of all the engineering contract documents required for the construction of the Project.
2. The Local Government has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges. For projects on the state highway system, the design shall, at a minimum, conform to applicable State manuals. The Local Government will minimize all traffic closures on State facilities. The State will provide interim review of the plans at 50 and 90 percent completion. The State will have 30 calendar days to review and provide the Local Government with such comments at each interim review stage. The State will provide a final review of the plans in Austin and will provide comments on the final review within six weeks.

E. Bidding

The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award a contract for construction of the Project in accordance with existing procedures and laws applicable to the Local Government.

F. Construction

1. The Local Government shall notify the State before actual construction work on State right-of-way begins. The Local Government or its engineer will supervise and inspect all work performed by the construction contractor and will provide such engineering, inspection, and testing services as may be required to ensure that the construction of the Project is accomplished in accordance with the plans, specifications, and estimates.
2. The State may periodically inspect the Project's signs, barricades, and traffic control plan to ensure compliance with the Texas Manual on Uniform Traffic Control Devices. The State may attend all pre-work and pre-construction meetings.

6. Project Maintenance

The Local Government shall be responsible for maintenance and operation of the Project.

7. Termination of this Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated because the Local Government has breached the contract and the Local Government has not cured the breach after receiving 30 days' written notice from the State;
- C. The provisions of Section 3 shall survive the termination of this Agreement.

8. Amendments

Amendments to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project must be enacted through a mutually agreed upon, written amendment.

9. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative. Notwithstanding any other provision in this Agreement, the State may, at the Local Government's expense, make repairs or take any other action necessary in the event of a breach of this Agreement by the Local Government and that breach adversely affects the safety of the traveling public.

10. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

Local Government:

Chairman
Fort Bend County Toll Road Authority
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

State:

Director of Contract Services
Texas Department of Transportation
125 East 11th
Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the regular mail, unless otherwise provided by this Agreement. 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 such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

11. 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, such 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.

12. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

13. Ownership of Documents

Upon completion or termination of this Agreement, all documents and data prepared by either party shall remain of the State or Local Government, provided all documents and data prepared under this Agreement shall be made available to the State or Local Government upon request.

14. Compliance with Laws

The parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

15. Sole Agreement

This Agreement constitutes the sole and only Agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter. Nothing in this Agreement is intended to nor shall be constructed to alter the Terms and Conditions or Waiver Agreement.

16. Retention of Records and Inspection

The Local Government shall keep a complete and accurate record to document the performance of the work and to expedite any audit that might be conducted. The Local Government shall maintain all books, documents, papers, accounting records, and other documentation relating to costs. Records shall include, but not be limited to, diaries, materials received (invoices), test reports, manufacturer's certificates, warranties, change orders, and time extensions. The Local Government shall make such materials available to the State, the Local Government, or their duly authorized representatives for verification, 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 contract or until any impending litigation, or claims are resolved.

17. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right-of-way before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State'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 State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right

CSJ: 3585-02-004
District No. 12 - Houston
Code Chart 64 No. 61024
Project: Fort Bend Parkway @ SH 6
CFDA: None
Not Research and Development

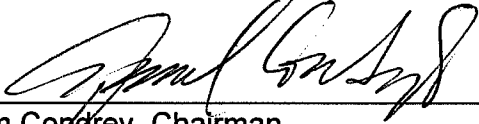
of way shall cease immediately, and the State may recover damages and all costs of completing the work.

18. Signatory Warranty

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

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT



Jim Condrey, Chairman
Fort Bend County Toll Road Authority

Date 1/18/12

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

**RESOLUTION AUTHORIZING THE CHAIRMAN TO EXECUTE
RIGHT OF USE AGREEMENT
FOR A LOCAL TOLL PROJECT ENTITY'S
USE OF STATE HIGHWAY RIGHT-OF-WAY**

WHEREAS, the Fort Bend County Toll Road Authority (the "Authority") is a local government corporation;

WHEREAS, the Authority is authorized to enter into the Right of Use Agreement for a Local Toll Project Entity's Use of State Highway Right-of-Way at the intersection of the Fort Bend Parkway and State Highway 6 (the "Agreement") with the Texas Department of Transportation ("TxDOT") related to toll projects for Fort Bend Parkway; and

WHEREAS, the Board of Directors of the Authority (the "Board") is of the opinion that administrative efficiency will be served by authorizing the Chairman and Secretary to execute the Agreement with TxDOT as approved by the Board; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT BEND COUNTY TOLL ROAD AUTHORITY THAT:

Section 1: The Board of Directors of the Authority hereby authorizes the Chairman and Secretary to execute the Agreement related to toll projects for Fort Bend Parkway.

Section 2: This Resolution is effective immediately upon passage.

PASSED AND APPROVED on December 21, 2011.

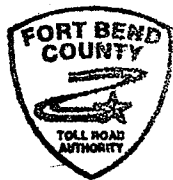


Chairman, Board of Directors

ATTEST: 

Secretary, Board of Directors

(SEAL)



CERTIFICATE FOR RESOLUTION

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

I, the undersigned officer of the Board of Directors of Fort Bend County Toll Road Authority, do hereby certify as follows:

1. The Board of Directors of Fort Bend County Toll Road Authority, convened in regular session on the 21st day of December, 2011, and the roll was called of the members of the Board:

Jim Condrey	Chairman
Bobbie A. Tallas	Vice Chairman
Charles Rencher	Secretary
Cliff Terrell	Treasurer
Melody Hess	Assistant Secretary

and all of said persons were present except Director(s) Hess, thus constituting a quorum. Whereupon, among other business, the following was transacted at the meeting; a written:

RESOLUTION AUTHORIZING THE CHAIRMAN TO EXECUTE
RIGHT OF USE AGREEMENT
FOR A LOCAL TOLL PROJECT ENTITY'S
USE OF STATE HIGHWAY RIGHT-OF-WAY

was introduced for the consideration of the Board. It was then duly moved and seconded that the resolution be adopted; and, after due discussion, the motion, carrying with it the adoption of the resolution, prevailed and carried unanimously.

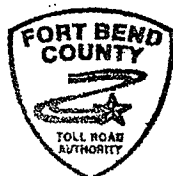
2. A true, full, and correct copy of the aforesaid resolution adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; the action approving the resolution has been duly recorded in the Board's minutes of the meeting; the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of the Board as indicated therein; each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the aforesaid meeting, and that the resolution would be introduced and considered for adoption at the meeting, and each of the officers and members consented, in advance, to the holding of the meeting for such purpose; the meeting was open to the public as required by law; and public notice of the time, place, and subject of the meeting was given as required by Chapter 551, Texas Government Code.

SIGNED AND SEALED the 21st day of December, 2011.


Secretary, Board of Directors

(SEAL)

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CSJ: 3585-02-004
 District No. 12 - Houston
 Code Chart 64 No. 61024
 Project: Fort Bend Parkway @ SH 6
 CFDA: None
 Not Research and Development

**ATTACHMENT C
 ESTIMATED PROJECT BUDGET**

Description	Total Program Cost	Federal Participation	State Participation	Local Participation
	@100%	@0%	@0%	@100%
Fort Bend Parkway Toll Road /SH 6 Underpass	\$19,425,000	\$ —	\$ —	\$19,425,000
<u>SUBTOTAL</u>	\$19,425,000			\$19,425,000
Direct State Costs (including plan review, inspection, and oversight)	\$ 35,000	\$ —	\$ —	\$ 35,000
<u>TOTAL INCURRED COST</u>	\$19,460,000	\$ —	\$ —	\$19,460,000
<u>TOTAL REIMBURSABLE COST</u>	\$ 0	\$ —	\$ —	\$ 0

This is an estimate only for the Underpass at State Highway 6. Final participation amounts, including Direct State Costs, will be based on actual charges to the project.