

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the Fort Bend County Toll Road Authority, a transportation corporation organized and operating under the laws of the State of Texas, hereinafter called the "FBTRA" and Costello, Inc., hereinafter called "Engineer."

WITNESSETH

WHEREAS, the FBTRA is evaluating the extension of the Fort Bend Parkway Toll Road from Sienna Parkway to Sienna Ranch Road in Fort Bend County, called Fort Bend Parkway Toll Road Segment B-2 ("the Project");

WHEREAS, the FBTRA desires to enter into an agreement for the performance by Engineer of services relating to the Project, and which are within the "Scope of Services" as defined in paragraph 2 below;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

1. General

The Engineer shall render professional services to FBTRA related to the Project as defined in the Scope of Services in Attachment A.

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality.

2. Compensation and Payment

- a. The Maximum Compensation under this contract is \$75,000.00. The amount paid under this Agreement may not exceed the Maximum Compensation without an approved change order.

Compensation for the performance of services within the Scope of Services described in Attachment A will be paid as a lump sum amount not to exceed \$75,000.00, as shown in Attachment A. Progress payments for work detailed in Attachment A will be made when the Engineer has attained a level of completion equal to or greater than agreed upon milestones of completion in the reasonable opinion of FBTRA.

- b. All performance of the Scope of Services and any Additional Services including changes in the contractual scope of work and revision of work satisfactorily performed, will be performed only when approved in advance and authorized by the FBTRA, and Additional Services will be reimbursed based on the billing rates

in effect at that time, to the extent that such labor costs, and subcontracts are reasonable and necessary for the performance of such services. Out-of-pocket expense costs may be reimbursed only when approved in advance and authorized by the FBTRA. Payment will be made on the basis of project completion certificate and, for Additional Services, time and expense records and in accordance with those payment procedures set forth in subparagraph d. below. Billing rates will be inclusive of all direct labor, fringe benefits, general overhead, and profit.

- c. Where subcontractors are employed by the Engineer to perform additional services not within the original Scope of Services, the Engineer will be reimbursed for subcontractors' actual salaries and hourly rates, including overtime rates. Reimbursement to the Subcontractor for non-salary costs incurred by subcontractor will be on the same basis as if the cost was incurred by the Engineer. For subcontractors employed for the convenience of the FBTRA, the Engineer will be paid a subcontract administrative fee equal to ten percent (10%) of all subcontractor invoiced amounts.
- d. It is understood and agreed that monthly payments will be made to the Engineer by the FBTRA based on the following procedures: On or about the fifteenth day of each month during the performance of services hereunder and on or about the fifteenth day of the month following completion of all services hereunder, the Engineer shall submit to the FBTRA two (2) copies of invoices showing the amounts due for services performed during the previous month, set forth separately for work under this Agreement and for additional services (accompanied by supporting certified time and expense records of such charges in a form acceptable to the FBTRA.) It is specifically understood that any requests for travel reimbursements shall comply with those procedures for travel reimbursement to Fort Bend County employees established by the Fort Bend County Auditor. The FBTRA shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor. The County shall pay each such invoice as approved by the FBTRA within thirty (30) calendar days after the FBTRA's approval of same.

3. Time of Performance

It is understood and agreed that the time for performance of the Engineer's services under this Agreement shall begin with receipt of the Notice to Proceed and end 180 calendar days from that date.

4. The FBTRA's Option to Terminate

- a. The FBTRA has the right to terminate this Agreement at its sole option at any time, with or without cause, by providing 30 days written notice of such intentions to terminate and by stating in said notice the "Termination Date" which shall be less than 30 days later than the actual receipt of such written notice by the

Engineer. Upon such termination, the FBTRA shall compensate the Engineer in accordance with paragraph 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to the FBTRA. The Engineer's final invoice for said services will be presented to and paid by the FBTRA in the same manner set forth in paragraph 3(b), above.

- b. Termination of this Agreement and payment as described in subparagraph (a) of this Paragraph shall extinguish all rights, duties, obligations, and liabilities of the FBTRA and the Engineer under this Agreement and this Agreement shall be of no further force and effect, provided, however, such termination shall not act to release the Engineer from liability for any previous default either under this Agreement or under any standard of conduct set by common law or statute. The obligations in Paragraph 6 shall survive the termination of this Agreement.
- c. If the FBTRA terminates this Agreement as provided in this paragraph, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to the Engineer.
- d. The FBTRA's rights and options to terminate this Agreement, as provided in any provision of this Agreement shall be in addition to, and not in lieu of, any and all rights, actions and privileges otherwise available under law or equity to the FBTRA by virtue of this Agreement or otherwise. Failure of the FBTRA to exercise any of its said rights, actions, options or privileges to terminate this Agreement as provided in any provision of this Agreement shall not be deemed a waiver of any rights, actions or privileges otherwise available under the law or equity with respect to any continuing or subsequent breaches of this Agreement or of any other standard of conduct set by common law or statute.
- e. Copies of all completed and partially completed documents prepared under this Agreement shall be delivered to the FBTRA within 30 days or upon Engineer's receipt of termination payment, whichever is sooner, when and if this Agreement is terminated.

5. Inspection of the Engineer's Books and Records

The Engineer will permit the FBTRA, or any duly authorized agent of the FBTRA, to inspect and examine the books and records of the Engineer for the purpose of verifying the amount of work performed on the Project. FBTRA's right to inspect survives the termination of this Agreement for a period of four years.

6. Ownership and Reuse of Documents

All documents, including original drawings, estimates, specifications, field notes, and data created, produced, developed or prepared by Engineer or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of the FBTRA subject to all of the following terms and conditions; provided, however, FBTRA shall not own and shall have no right to receive any documents not deemed

“final” by the Engineer until termination of this Agreement. Engineer will deliver the Documents to FBTRA within 30 days of the termination of this agreement and may retain a set of reproducible record copies of the Documents, provided that the Engineer has received full compensation due pursuant to the terms of this Agreement. It is mutually agreed that FBTRA will use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of the Engineer, which consent will not be unreasonably withheld. Any use of the Documents without the express written consent of the Engineer will be at District’s sole risk and without liability or legal exposure to Engineer.

FBTRA shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. It is the intention of Engineer and FBTRA that the services provided are a “work for hire” as the term is used in the federal Copyright Act. Moreover, Engineer hereby agrees to assign, and by these presents, does assign to FBTRA all of Engineer worldwide right, title and interest in and to such work product and all rights of copyright therein.

Engineer agrees that all trademarks, trade names, service marks, logos, or copyrighted materials of FBTRA that Engineer is permitted to use in connection with the services will not be used without FBTRA’s consent and shall remain in the sole and exclusive properties of FBTRA and this Agreement does not confer upon Engineer any right or interest therein or in the use thereof.

7. Personnel, Equipment, and Material

- a. The Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that the Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the opinion of the FBTRA, to perform the Scope of Services when and as required and without delays. It is understood that the FBTRA will approve assignment and release of all key Engineer personnel and that the Engineer shall submit written notification of all key Engineer personnel changes for the FBTRA’s approval prior to the implementation of such changes. For the purpose of this agreement, key Engineer personnel are defined as: Project Manager. Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.
- b. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Engineer who, in the opinion of the FBTRA, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the FBTRA, immediately be removed from association with the Project.
- c. Except as otherwise specified, the Engineer shall furnish all equipment, transportation, supplies, and materials required for its operation under this Agreement.

8. Items to be furnished to Engineer by the FBTRA

The following items will be supplied to the Engineer:

- a. Copies of preliminary studies by others.
- b. Assistance in coordination with all utility companies.
- c. Assistance in coordination with all public and governmental entities.

9. Subletting

The Engineer shall not sublet, assign, or transfer any part of its rights or obligations in this Agreement without the prior written approval of the FBTRA. Responsibility to the FBTRA for sublet work shall remain with the Engineer.

10. Conference

At the request of the FBTRA, the Engineer shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of the FBTRA, or at the site of the Project, and shall permit inspections of its offices by the FBTRA, or others when requested by the FBTRA.

11. Appearance as Witness

If requested by the FBTRA, or on its behalf, the Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings and trials related to the Project and, further, it shall prepare for and appear at conferences at the office of the FBTRA's Executive Director and shall furnish competent expert engineering witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Project. Trial preparation and appearance by the Engineer in courts regarding litigation matters are Additional Services and compensation will be made in accordance with Paragraph 2.

12. Compliance with Laws

The Engineer shall comply with all 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 matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the Engineer shall furnish the FBTRA with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

13. Insurance

The Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth in Attachment B.

14. Indemnification

With respect to claims brought by third parties against either Engineer of the FBTRA relating to the property or facilities with respect to which this Agreement pertains, Engineer and the FBTRA agree as follows:

- a. **ENGINEER WILL INDEMNIFY AND HOLD HARMLESS THE FBTRA, ITS DIRECTORS, OFFICERS, AND EMPLOYEES AGAINST ANY CLAIMS, DEMANDS OR CAUSES OF ACTION; AND COSTS, LOSSES, LIABILITIES, EXPENSES AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS, BROUGHT BY ANY OF ENGINEER'S EMPLOYEES OR REPRESENTATIVES, OR BY ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RESULTING FROM OR ARISING OUT OF THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER; HOWEVER, ENGINEER'S CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE NEGLIGENCE OR OTHER FAULT OF THE FBTRA OR STRICT LIABILITY IMPOSED UPON THE FBTRA AS A MATTER OF LAW (INCLUDING STRICT LIABILITY IMPOSED UPON THE FBTRA AS A RESULT OF THE CONDITION OF THE PROPERTY OR FACILITIES WITH RESPECT TO WHICH THIS AGREEMENT PERTAINS).**
- b. In the event that both the FBTRA and Engineer are adjudicated negligent or otherwise at fault or strictly liable without fault with respect to damage or injuries sustained by the claimant, each shall be responsible for its own costs of litigation and pro rata share of damages as determined by the proceedings.

It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the party seeking indemnity shall provide written notice of a third party claim, demand or cause of action within 30 days after such third party claim, demand or cause of action is received by the party seeking indemnity. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall thereafter have the right to participate in the investigation, defense and resolution of such third party claim.

15. Dispute Resolution

Except as expressly provided in Section 4. Termination, if a dispute arises out of, or relates to, the breach thereof, and if the dispute cannot be settled through negotiation, then the FBTRA and the Engineer agree to submit the dispute to mediation. In the event the FBTRA or the Engineer desires to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation in accordance with the procedures and rules of the American Arbitration Association (or any successor organization) then in effect. The deadline for

submitting the dispute to mediation can be changed if the parties mutually agree in writing to extend the time between receipt of notice and submission to mediation. The expenses of the mediator shall be shared 50 percent by the FBTRA and 50 percent by the Engineer. This requirement to seek mediation shall be a condition required before filing an action at law or in equity.

16. Delivery of Notices, Etc.

- a. All written notices, demands, and other papers or documents to be delivered to the FBTRA under this Agreement shall be delivered to the Fort Bend Grand Parkway Toll Road Authority, P.O. Box 2789, Sugar Land, Texas 77487-9740, Attention: Bill Jameson, or at such other place or places as it may from time to time designate by written notice delivered to the Engineer. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County Clerk, 301 Jackson Street, Richmond, Texas 77469, Attention: County Judge.
- b. All written notices, demands, and other papers or documents to be delivered to the Engineer under this Agreement shall be delivered to Costello, Inc., 9990 Richmond Ave, Suite 450N, Houston, Texas 77042, Attention: Vernon Hegwood, or such other place or places as the Engineer may designate by written notice delivered to the FBTRA.

17. Reports of Accidents, Etc.

Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Agreement, the Engineer shall send a written report of such accident or other event to the FBTRA, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the FBTRA a copy of any summons, subpoena, notice, other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Agreement.

18. The FBTRA's Acts

Anything to be done under this Agreement by the FBTRA may be done by such persons, corporations, or firms as the FBTRA may designate.

19. Limitations

Notwithstanding anything herein to the contrary, all covenants and obligations of the FBTRA under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating the FBTRA and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the

State of Texas, and no officer, director, or employee of the FBTRA shall have any personal obligation hereunder.

20. Captions Not a Part Hereof

The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.

21. Controlling Law, Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

22. Successors and Assigns

The FBTRA and the Engineer bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

23. Appendices

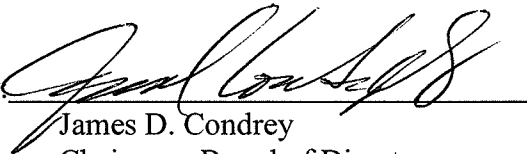
The Appendices attached to this Agreement, which consists of:

Attachment A Scope of Services

Attachment B Insurance Requirements

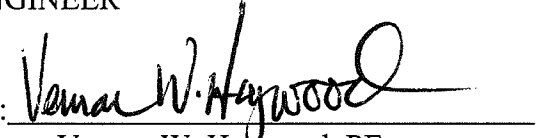
IN WITNESS WHEEOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 20th day of June, 2012.

FORT BEND COUNTY TOLL ROAD
AUTHORITY, a local government Texas
corporation

By: 
James D. Condrey
Chairman, Board of Directors

ATTEST: 
By _____
Secretary, Board of Directors

Costello, Inc.
ENGINEER

By: 
Name: Vernon W. Hegwood, PE
Title: Vice President - Transportation
Engineering Services

ATTACHMENT A



May 10, 2012

Fort Bend County Toll Road Authority
c/o Mr. Richard L. Muller, Jr.
Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, TX 77027

Re: Preliminary Engineering
Fort Bend Toll Road Extension - Segment B2
From Sienna Parkway to Sienna Ranch Road
Fort Bend County, TX
CI Job No. 2011048

Dear Rich:

Costello, Inc. (CI) is pleased to present this proposal for preliminary engineering of Segment B2 of the Fort Bend Toll Road. This effort complements the first phase construction of Segment B2 by the Sienna Plantation Management District. The first phase consists of construction of a two-lane, two-way road section that will connect Sienna Parkway and Sienna Ranch Road. This roadway will ultimately become the north frontage road in this area. The scope of work consists of assembly and review of available data, field observations, and an update of the preliminary schematic including the new frontage road. CI will also provide a letter report of findings to the Fort Bend Toll Road Authority.

CI proposes to provide this service for a lump sum fee of \$75,000 which should allow review and development of preliminary design information to confirm that the proposed frontage road concept will not have major impact to the mainlanes and ramps being considered.

We look forward to working with you on this valuable Fort Bend County project. Please contact me for any questions.

Sincerely,

A handwritten signature in black ink that reads "Vernon W. Hegwood". The signature is written in a cursive, flowing style.

Costello, Inc.

Vernon W. Hegwood, P.E.

Vice President

Transportation Engineering Services

Attachment B

The Engineer shall furnish certificates of insurance to the FBTRA evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of the Engineer, name of insurance company, policy number, term of coverage and limits of coverage. The Engineer shall cause its insurance companies to provide the FBTRA with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. The Engineer shall obtain such insurance from such companies having a Bests rating of B+/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- a. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state of hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.
- b. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000	general aggregate limit
\$1,000,000	each occurrence, combined single limit
\$1,000,000	aggregate Products, combined single limit
\$1,000,000	aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical
- c. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- d. Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$1,000,000 each occurrence combined single limit.
- e. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

The FBTRA and the FBTRA's Directors shall be named as additional insureds to all coverages required above, except for those requirements in paragraphs "a" and "e." All policies written on behalf of the Engineer shall contain a waiver of subrogation in favor of the FBTRA and the FBTRA's Directors, with the exception of insurance required under paragraph "e."