

FINANCIAL ASSISTANCE AGREEMENT

This Agreement is made by and between the Texas Department of Transportation, an agency of the State of Texas ("TxDOT"), and Fort Bend County, a political subdivision of the State of Texas (the "County"), for the purpose of providing financial assistance in connection with the development and construction of an extension of the Westpark Tollway facility in the County, including frontage roads, from the Grand Parkway (SH 99) to FM 1463 (the "Project").

RECITALS

The parties acknowledge the following:

A. The County is a political subdivision of the State of Texas, operating pursuant to Chapter 284 of the Texas Transportation Code (the "County Toll Road Laws").

B. The Fort Bend County Toll Road Authority ("FBCTRA") and the Fort Bend Grand Parkway Toll Road Authority ("FBGPTRA") are local government corporations created pursuant to Chapter 431 of the Texas Transportation Code (the "LGC Laws"), and operate pursuant to the County Toll Road Laws and the LGC Laws. The County, FBCTRA, and FBGPTRA are collectively referred to as the "Local Governments".

C. The County's goals include improving mobility within Fort Bend County. To further that goal, the Local Governments have proposed the development and construction of the Project, which includes the extension of the Westpark Tollway facility, including frontage roads, from the existing western terminus at SH 99, west to east of FM 1463/FM359 for a total length of 4.2 miles. The tolled mainlanes, consisting of four lanes, will extend a total length of 3.0 miles and will include grade separations over Katy-Gaston Road and FM 723/Spring Green Drive. The mainlanes will transition to frontage roads approximately 0.5 miles west of FM 723/Spring Green Drive. The frontage roads, consisting of two lanes each direction, will continue west and transition into the existing 2-lane pavement section of FM 1093 immediately east of the FM 1463/FM359 intersection. In addition to the Project, the FBGPTRA will construct a direct connector from the eastbound Westpark Tollway mainlanes to the northbound mainlanes of SH 99 with construction beginning within two years of receipt of environmental clearance and acquisition of right of way, if required.

D. The County, pursuant to Section 228.011 of the Texas Transportation Code, is the entity with the primary responsibility for the financing, construction, maintenance, and operation of the Project. Pursuant to Section 228.011, and consistent with federal law, TxDOT shall assist the County in the financing, construction, maintenance, and operation of the Project by allowing the County to use state highway right-of-way owned by TxDOT and to access the state highway system.

E. TxDOT, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code, is authorized to participate, through the expenditure of money from any source, in the acquisition, construction, maintenance, or operation of a toll facility of a public entity. Section 284.008 of the Texas Transportation Code

authorizes the Texas Transportation Commission (the "Commission") to provide for and contribute toward the acquisition, construction, improvement, operation, maintenance, or pooling of a project of a county under that chapter and under terms agreed to by the Commission and the county.

F. TxDOT has adopted rules at 43 TEX. ADMIN. CODE § 27.50 *et seq.* (the "Toll Equity Rules") setting forth the policies and procedures by which it will participate in the financing of a toll facility which is not under its jurisdiction.

G. On or about July 1, 2011, the County submitted a request, pursuant to the Toll Equity Rules, for financial assistance in the amount of \$40 million to fund the costs of constructing the Project.

H. On July 28, 2011, and August 25, 2011, the Commission, pursuant to its constitutional and statutory authority and the Toll Equity Rules, gave preliminary and final approval of financial assistance in the amount of \$4 million per year for ten years, to be used for the purposes identified in the preceding paragraph, with final approval conditioned on the Project receiving the necessary environmental approvals, and subject to certain conditions relating to the timing for the transfer of funds and the repayment of the financial assistance. In Minute Order No. 112793, approved on August 25, 2011, the Commission authorized the Executive Director of TxDOT to enter into a financial assistance agreement (the "Agreement") with the County.

I. On November 22, 2011, the Fort Bend County Commissioners Court accepted the financial assistance, including the conditions on that assistance, and, by resolution, authorized the County Judge of Fort Bend County to enter into a financial assistance agreement with TxDOT.

AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

1. TxDOT will provide financial assistance to the County in the aggregate amount of \$40 million, to be disbursed in the amount of \$4 million per year for ten years, and to be used to pay for or reimburse the costs of the development and construction of the Project, including without limitation the costs of right-of-way acquired after the effective date of this Agreement and utility relocation. The financial assistance is conditioned on the Project receiving the necessary environmental approvals. Funding from the financial assistance will not be made available to the County until substantial completion of the project and opening of the roadway to traffic.

Subject to the satisfaction of the foregoing conditions, this funding is committed by TxDOT and is not subject to future discretionary actions of TxDOT or the Commission. The parties recognize that this funding commitment is an integral part of the overall plan of finance for the Project. The parties further recognize and acknowledge that the funds committed herein may be applied to pay for or reimburse costs incurred in connection with the development and construction of the Project, including surveying and right-of-way acquisition, and including costs incurred prior to the receipt of those funds, but only those costs incurred after the effective date

of this Agreement and any required project authorization from the Federal Highway Administration.

2. Funds to be made available pursuant to this Agreement shall be disbursed over a period of ten years beginning upon substantial completion of the Project. Subject to the foregoing, and provided that the County is in compliance with the terms of this Agreement, funds shall be disbursed in annual disbursements of equal amounts. The parties shall agree on annual disbursement dates following substantial completion of the Project. In this Agreement, "substantial completion" means that all travel lanes are open to traffic as approved by TxDOT, and no further work is remaining that requires lane closures affecting the mobility of the traveling public.

The County will maintain transaction level expenditure information relating to expenditures paid or reimbursed with funds provided under this Agreement, and will provide, on a quarterly basis, a written report prepared by its engineering consultant detailing the status of project construction and the specific use of the funds provided under this Agreement. Costs paid or reimbursed by the County using funds provided under this Agreement shall be paid or reimbursed in accordance with applicable policies of the County and other applicable state and federal laws, including the applicable requirements of OMB Circular A-87.

3. The County will deliver to TxDOT prior to each disbursement a certificate in which the County certifies that the disbursement, when added to the amount of all prior disbursements, will not exceed the aggregate amount of project construction costs. TxDOT shall have the right to request and the County shall provide written documentation, including copies of invoices, reports or notices, in support of the need for the disbursed funds and the use of those funds.

4. To the extent funds disbursed hereunder are utilized, consistent with the authorized purposes under this agreement, to procure tangible work product, TxDOT shall have the right to review such work product.

5. Subject to paragraph 6 below and this paragraph 5, amounts disbursed to, or on behalf of, the County pursuant to this Agreement shall not be subject to repayment to TxDOT, provided that the County fully funds with local funds an extension of the Westpark Tollway facility, consisting of an extension of the tolled mainlanes from west of FM 723/Spring Green Drive to west of FM 1463 and an extension of the frontage roads from FM 1463 to James Lane in the City of Fulshear, as soon as the necessary environmental approvals for the project are received. If the County fails to i) begin construction of the extension of the frontage roads within two years after all necessary environmental approvals are received, or ii) fails to begin construction of the toll main lanes within two years after all necessary environmental approvals are received and the toll main lanes are determined to be financially feasible (the "Default Date"), the County shall repay all amounts disbursed to, or on behalf of, the County under this agreement no later than ten years after the last disbursement date. Unpaid amounts shall bear interest from the Default Date to the date on which such amounts and the interest thereon are repaid at a rate per annum equal to the rate for funds on deposit in the state highway fund for that period.

6. In the event that development of the Project is terminated by the County prior to opening of the Project for revenue operation, then (i) all work product and right-of-way procured with funds provided under this Agreement shall, at TxDOT's request, be transferred to TxDOT, along with all right, title and interest in and to such work product or right-of-way; and (ii) TxDOT shall disburse to the County any undisbursed amounts of the financial assistance needed to pay or reimburse costs incurred by the County prior to such termination; provided that such disbursement shall not exceed the aggregate amount of project construction costs incurred prior to such termination. All unexpended funds provided to the County under this Agreement that are not needed to pay or reimburse costs incurred by the County prior to such termination shall be returned to TxDOT.

7. The parties acknowledge that TxDOT, pursuant to Section 228.011 of the Texas Transportation Code, shall assist the County by allowing the County to use state highway right-of-way and to access the state highway system. The County shall only be required to pay an amount to reimburse TxDOT for TxDOT's actual costs to acquire the right-of-way. The actual cost paid by TxDOT for existing right of way in the FM 1093 corridor cannot be determined due to lack of records, but based on the average historical acquisition values for right-of-way located in proximity to the Project on the date of the original acquisition of the right-of-way, the cost to be reimbursed to TxDOT for use of existing right-of-way for the Project will be \$40.00 per acre.

8. The County will comply with applicable state and federal law in the performance of its work under this Agreement and will comply with any other applicable provision of the Toll Equity Rules and the requirements of the project development agreement relating to the performance of work. The County shall not begin construction of the Project until a project development agreement for the Project is executed by TxDOT and the County. TxDOT shall be responsible for maintenance of the frontage roads of the Project and the County shall be responsible for the maintenance and operation of the tolled mainlanes of the Project and the Direct Connector.

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

10. The County will maintain its books and records relating to the Project, the financial assistance provided under this Agreement, and costs paid or reimbursed using funds provided under this Agreement in accordance with the requirements of the Toll Equity Rules, and will comply with the audit requirements and other requirements relating to project records in accordance with the Toll Equity Rules.

11. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this 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.

12. If either party defaults in the performance of any obligation described in this Agreement, the other party may exercise any rights and remedies granted by law or this Agreement.

13. The parties acknowledge and agree that the County must comply with all environmental permits, issues and commitments necessary for development and ultimate operation of the Project. The County is responsible for all environmental mitigation, remediation, and compliance identified in the environmental documents which shall be considered a Cost of the Project. The County shall provide TxDOT with written certification from appropriate regulatory agencies that identified environmental problems have been addressed in the environmental clearance documentation.

14. 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 County shall furnish TxDOT with satisfactory proof of this compliance. The County shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

15. This Agreement shall be effective from the date indicated below and shall continue in effect until the Project is completed and accepted by all parties and TxDOT has disbursed all of the funds required under this Agreement.

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

This Agreement shall be effective as of the 19th day of December, 2011.

TEXAS DEPARTMENT OF TRANSPORTATION

Phil Wilson

Phil Wilson, Executive Director

FORT BEND COUNTY

Robert E. Hebert

Robert E. Hebert, County Judge 11-22-2011

ATTEST:

Dianne Wilson

Dianne Wilson, County Clerk

