

CSJ Nos.: 0543-02-063, 0543-02-064,
0543-02-065 and 1258-02-034
District No.: 12 – Houston
Code Chart 64 No.: 50080
Project: FM 1093 (Westpark Tollway)
From James Lane to FM 1463/FM 359

STATE OF TEXAS §

COUNTY OF TRAVIS §

**FIRST AMENDMENT TO ADVANCE FUNDING AGREEMENT
FM 1093 (WESTPARK TOLLWAY) EXTENSION**

THIS FIRST AMENDMENT TO ADVANCE FUNDING AGREEMENT (this “Amendment”), by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission (the “State”), and **FORT BEND COUNTY**, a political subdivision of the State of Texas (the “Local Government”), is executed to be effective the ____ day of _____, 201__ (the “Effective Date”).

WITNESSETH

WHEREAS, the State and the Local Government are parties to that certain Advance Funding Agreement for the development and construction of an extension of the Westpark Tollway, consisting of four toll mainlanes, two 2-lane frontage roads, and four-lane divided roadway from James Lane to east of FM 1463/FM 359, including grade separations over FM 1463/FM 359 and over Cross Creek Ranch Drive (the “Project”), effective as of March 21, 2012 (the “Agreement”). The Project is comprised of Phase II-A, consisting of toll mainlanes and 2-lane frontage roads from west of Cross Creek Ranch Drive to east of FM 1463/FM 359, and Phase II-B, consisting of a four-lane divided roadway from James Lane to west of Cross Creek Ranch Drive. All capitalized terms not otherwise defined in this Amendment will have the same meaning as described in the Agreement; and

WHEREAS, the State and the Local Government desire to amend the Agreement to revise the project funding and work responsibilities of the State and the Local Government with respect to the Project; and

WHEREAS, the State has determined that such revisions, and the State’s participation in the construction of Phase II-B of the Project, is in the best interests of the citizens of the State of Texas; and

WHEREAS, Section 15 of the Agreement permits the Agreement to be amended prior to its expiration by mutual written consent of the parties.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government agree as follows:

1. **Amendment to Section 2.A.** Section 2.A. of the Agreement is hereby amended in its entirety to read as follows:

“A. The State will authorize the performance of only those Project items of work that are to be performed by the State, or which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities, which is attached to and made a part of this agreement. In addition to identifying those items of work paid for by the State or by payments to the State, Attachment A to this agreement also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.”

2. **Amendment to Section 2.B.** Section 2.B. of the Agreement is hereby amended in its entirety to read as follows:

“B. The Local Government, at least sixty (60) days prior to the date set for receipt of construction bids for the portion of the Project to be constructed by the Local Government (Phase II-A), shall remit its remaining financial share for the State’s estimated construction oversight and construction costs. The Local Government, at least one hundred fifty (150) days prior to the date set for receipt of construction bids for the portion of the Project to be constructed by TxDOT (Phase II-B), shall submit the plans, specifications, and estimate (PS&E) for that portion of the Project to TxDOT.”

3. **Amendment to Section 9.A.** Section 9.A. of the Agreement is hereby amended in its entirety to read as follows:

“A. In the event it is determined that the funding provided by the Local Government for work the Local Government is responsible for paying the costs of under this agreement will be insufficient to cover the State’s cost for performance of the work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within thirty (30) days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this agreement shall be mutually terminated in accordance with Section 11 of this agreement. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.”

4. **Amendment to Agreement.** The Agreement is hereby amended by adding the following new section at the end of the Agreement:

“19. Compliance with Laws

The parties shall comply with all applicable State 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.”

5. **Amendment to Section II.E of Attachment A, Payment Provision and Work Responsibilities.** Section II.E. of Attachment A to the Agreement is hereby amended in its entirety to read as follows:

“E. CONSTRUCTION

(1) Except as provided in this paragraph, the Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contracts for construction of the Project. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Phase II-B of the Project, the four-lane divided roadway from west of Cross Creek Ranch Drive to James Lane. Administration of a contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract.

(2) The Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting any construction contracts the Local Government is responsible for letting and awarding. The State will use its approved contract letting and award procedures to let and award the construction contracts the State is responsible for letting and awarding. The State must concur with the low bidder selection before the Local Government can enter into a construction contract.

(3) Prior to their execution, the State shall review change orders to contracts awarded by the Local Government that will result in design changes.

(4) The Local Government and the State will supervise and inspect all work performed by its construction contractor and will provide such engineering, inspection, and testing services as may be required to ensure that the construction of that portion of the Project each party is responsible for is accomplished in accordance with the PS&E.

(5) The State may conduct any oversight activities it deems reasonably necessary or advisable to ensure compliance with this agreement and all State requirements.

(6) 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 pre-construction meetings and construction status meetings held or attended by the Local Government.

(7) Upon completion of the portion of the Project that each is responsible for constructing, the State and the Local Government will issue and sign a "Notification of Completion" acknowledging completion of construction."

6. **Amendment to Section IV of Attachment A, Payment Provision and Work Responsibilities.** Section IV of Attachment A to the Agreement is hereby amended in its entirety to read as follows:

"IV. Actual Cost Agreement

(1) Except for the costs of construction of Phase II-B of the Project, the four-lane divided roadway from west of Cross Creek Ranch Drive to James Lane, the Local Government is responsible for 100% of the Project cost as shown in Attachment A. The State is responsible for paying the costs of construction and related construction inspection and management of Phase II-B. The Local Government is responsible for paying all other costs of Phase II-B, including the costs of preliminary engineering and design, environmental assessment and mitigation, acquisition of right of way, and utility relocation.

(2) The Project cost estimate in this Attachment A is based on estimates provided by the Local Government. The final amount of Local Government funding participation required in this Attachment A will be based on actual costs. The Project cost includes the expected cash contributions from the State, the Local Government, or other parties, and shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (a) costs of real property; (b) costs of utility work; (c) costs of environmental assessment and remediation; (d) cost of preliminary engineering and design; and (f) any other State or local project costs. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission.

(3) The State will be responsible for securing the State share of the funding required for the development and construction of the Project. The State and Local Government will each be responsible for all additional costs associated with the portion of the Project that party is responsible for paying the costs of, including any overruns in excess of the project budget unless otherwise provided in this agreement or otherwise approved in an amendment to this agreement.

(4) Payment by the State under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement may be terminated with no liability to either party.

(5) In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing.

The Local Government shall reimburse the State for perpetual use of the existing right of way for the Project at \$40.00 per acre.”

7. **Amendment to Attachment A, Payment Provision and Work Responsibilities.** The Project cost estimate in Attachment A to the Agreement is hereby amended in its entirety by adding the Project cost estimate which is attached and hereby made a part of this Amendment.

8. **Authorization.** Each party to this Amendment represents to the other that it is fully authorized to enter into this Amendment and to perform its obligations hereunder and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Amendment in accordance with its terms, other than those that have been obtained.

9. **Remainder of Agreement.** Except as amended hereby, the Agreement shall continue in full force and effect in the form that was effective immediately before the execution of this Amendment.

10. **Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, TxDOT and the County have executed this Amendment by multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

FORT BEND COUNTY

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____

Robert E. Hebert
County Judge

By: _____

[]
[]

Date: _____

Date: _____

ATTEST:

Laura Richard
County Clerk

Amendment to Attachment A, Payment Provision and Work Responsibilities

Project Cost Estimate

PHASE II-A Costs							
Description	Total Estimated Cost	Federal Participation Cost		State Participation Cost		Local Participation Cost	
Engineering (by Local Government)	\$ 2,081,143	0%	\$ -	0%	\$ -	100%	\$ 2,081,143
Environmental (by Local Government)	\$ 301,446	0%	\$ -	0%	\$ -	100%	\$ 301,446
Right of Way (by Local Government including ROW Reimbursement)	\$ 1,026,782	0%	\$ -	0%	\$ -	100%	\$ 1,026,782
Utility Adjustment (by Local Government)	\$ 4,051,161	0%	\$ -	0%	\$ -	100%	\$ 4,051,161
Construction Inspection (by Local Government)	\$ 1,386,935	0%	\$ -	0%	\$ -	100%	\$ 1,386,935
Construction (by Local Government)	\$ 22,970,197	0%	\$ -	0%	\$ -	100%	\$ 22,970,197
Subtotal	\$ 31,817,664		\$ -		\$ -		\$ 31,817,664
Environmental Direct State Costs	\$ 25,000	0%	\$ -	0%	\$ -	100%	\$ 25,000
Right of Way Direct State Costs	\$ 10,000	0%	\$ -	0%	\$ -	100%	\$ 10,000
Engineering Direct State Costs	\$ 30,000	0%	\$ -	0%	\$ -	100%	\$ 30,000
Utility Direct State Costs	\$ 5,000	0%	\$ -	0%	\$ -	100%	\$ 5,000
Construction Direct State Costs	\$ 101,845	0%	\$ -	0%	\$ -	100%	\$ 101,845
Indirect State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
TOTAL	\$ 31,989,509		\$ -		\$ -		\$ 31,989,509

PHASE II-B Costs							
Description	Total Estimated Cost	Federal Participation Cost		State Participation Cost		Local Participation Cost	
Engineering (by Local Government)	\$ 1,567,834	0%	\$ -	0%	\$ -	100%	\$ 1,567,834
Environmental (by Local Government)	\$ 1,354,798	0%	\$ -	0%	\$ -	100%	\$ 1,354,798
Right of Way (by Local Government including ROW Reimbursement)	\$ 5,526,414	0%	\$ -	0%	\$ -	100%	\$ 5,526,414
Utility Adjustment (by Local Government)	\$ 2,517,552	0%	\$ -	0%	\$ -	100%	\$ 2,517,552
Construction Inspection (by Local Government)	\$ 1,058,736	0%	\$ -	100%	\$ 1,058,736	0%	\$ -
Construction (by Local Government)	\$ 19,122,203	0%	\$ -	100%	\$19,122,203	0%	\$ -
Subtotal	\$ 31,147,537		\$ -		\$20,180,939		\$ 10,966,598
Environmental Direct State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
Right of Way Direct State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
Engineering Direct State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
Utility Direct State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
Construction Direct State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
Indirect State Costs	\$ -	0%	\$ -	0%	\$ -	0%	\$ -
TOTAL	\$ 31,147,537		\$ -		\$20,180,939		\$ 10,966,598