

THE STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND               §

SECOND INTERLOCAL PROJECT AGREEMENT  
FOR TRANSPORTATION FACILITIES BY AND BETWEEN  
FORT BEND COUNTY, TEXAS AND  
SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 5

This SECOND INTERLOCAL PROJECT AGREEMENT FOR TRANSPORTATION FACILITIES (the “Agreement”) is entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court (the “County”) and Sienna Plantation Municipal Utility District No. 5 (the “District”), a political subdivision of the State of Texas (the County and District collectively referred to as the “Parties”).

**RECITALS**

WHEREAS, the District is one of several conservation and reclamation districts that have been created and organized to provide water, sewage, drainage, detention, park, and other facilities and services to an area within Fort Bend County, in the extraterritorial jurisdiction of the City of Missouri City (the “City”) in the area immediately south of and adjacent to the existing Sienna development, informally known as Sienna Toll-GTIS (the “Development”);

WHEREAS, pursuant to Chapter 8321, Texas Special District Local Laws Code, the District is also essential to accomplish the purposes of Section 52, Article III, Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads;

WHEREAS, pursuant to Section 791.028 of the Texas Government Code, the Parties are authorized to contract with each other to pay jointly all or part of the costs of acquisition, design, construction, improvement, or beautification of a state or local highway, turnpike, or road project;

WHEREAS, the Parties have determined that it is necessary and prudent to have improved access to the Development and improved mobility within the County along FM 521 and such access and mobility necessitates the widening and improvement of approximately 4.83 miles of FM 521 from State Highway 6 to the Fort Bend/Brazoria County Line (the “Road Project”) as shown on the map attached hereto as **Exhibit “A”**; and

WHEREAS, the County and the Texas Department of Transportation (“TxDOT”) intend to enter into an advance funding agreement whereby the County will fund the engineering costs for the Road Project (including surveying, environmental work and drawings) and TxDOT will construct the Road Project; and

WHEREAS, the District and County desire to enter into this Agreement to provide the terms and conditions whereby the District will reimburse the County a portion of the engineering costs for the Road Project;

WHEREAS, the District and County have entered into a Primary Interlocal Agreement;  
and

WHEREAS, the Commissioners Court of the County finds that the Road Project contemplated in this Agreement serves a County purpose; and

WHEREAS, the Board of Directors of the District finds that the Road Project contemplated in this Agreement serves a District purpose; and

WHEREAS, the governing bodies of the County and the District have authorized this Agreement.

## **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the District and the County contract and agree as follows:

### **I.** **INCORPORATION OF RECITALS**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

### **II.** **GENERAL DESCRIPTION OF THE ROAD PROJECT**

- A. General. The Parties agree that the widening and improving of FM 521 from State Highway 6 to Brazoria County (Sta. 281+77 to STA 537+01) totaling 4.83 miles, shall be the Road Project that is the subject of this Agreement, as described on **Exhibit “A”**, which is incorporated herein for all purposes. The County approved an Advanced Funding Agreement with TxDOT (the “AFA”) on April 7, 2020 whereby the County will perform and fund all engineering and construction related services associated with the Road Project (the “County Contribution”) as shown on the attached **Exhibit “B”**. The engineering services’ costs associated with the Road Project, include all associated engineering fees (including design, environmental reports, surveying, geotechnical services and drainage impact studies)(the “Engineering Costs”). The construction related services include surveying for right of way acquisition, environmental remediation, utility relocation and construction management services (“Construction Services”). The Engineering Costs and the Construction Services Costs are collectively defined herein as the County Contribution. As the Road Project will contribute to improved access to the Development, the District intends to reimburse the County a portion of the Engineering Costs pursuant to the terms of this Agreement.
- B. Design, Environmental Studies/Permits, and Right of Way Acquisition.
1. The County will prepare the plans and specifications for the construction of the Road Project and will design such Road Project in accordance with good engineering standards and in accordance with all applicable rules, regulations, and

requirements of all governmental entities having jurisdiction over the Road Project, including TxDOT. It is anticipated that the County will begin design of the Road Project by July 10, 2020.

2. The County or TxDOT will be responsible for providing all environmental studies and obtaining any required environmental permits, including mitigation permits.
3. The County or TxDOT will be responsible for acquiring and funding all necessary right of way from the private landowners for the construction, operation and maintenance of the Road Project.

- C. Construction of the Road Project. TxDOT and the County intend to enter into an AFA whereby TxDOT will construct the Road Project upon the County performing its County Contribution as described herein. It is anticipated that construction of the Road Project will begin in Fiscal Year 2026. A form (or copy) of the AFA is attached hereto as **Exhibit “C”**.

### **III. DISTRICT CONTRIBUTION TO ROAD PROJECT**

- A. District Contribution. The District has determined that the District may contribute to the Engineering Costs as the Road Project will benefit mobility within and access to the Development and the District. The District will reimburse the County an amount of \$487,401 which is related to the portion of the Engineering Costs associated with the western segment of FM521 fronting the Development, STA 355+50 to STA 395+50 as described on **Exhibit “B”** attached hereto. For purposes of the District Contribution, the Engineering Costs do not include construction services including surveying for right of way acquisition, environmental remediation, utility relocation or construction management services.
- B. District Obligation: Reimbursement to County. The District agrees to reimburse the County the amount of the District Contribution by the issuance of District road bonds as authorized by the Act and pursuant to this Section. The District agrees to include in a road bond issue or issues the District Contribution, plus interest at the rate of interest of the District’s bonds; however, in the event the County must borrow to pay its Engineering Costs, the District will reimburse the County its interest costs at the interest rate of the County’s bonds. The District will comply with all regulatory requirements and will issue its road bonds at the earliest possible time when deemed economically feasible by the District’s financial advisor, but in no event (1) earlier than six months after satisfaction of the Conditions to Reimbursement in Section C below or (2) later than twenty-four months after satisfaction of the Conditions to Reimbursement in Section C below. The County agrees to provide to the District any information or certifications required by regulatory authorities in order for the District to issue its road bonds and comply with its reimbursement obligation under this Agreement.
- C. Conditions to Reimbursement. The District will reimburse the County its District Contribution upon the following conditions:

1. Execution by both the County and TxDOT of an AFA for the widening and improvement of FM 521 from State Highway 6 to the Fort Bend/Brazoria County Line, which copy will be provided to the District upon execution; and
2. Completion of all engineering services defined as the County Contribution described on **Exhibit "B"** (not just portion related to the District Contribution); and
3. Completion by TxDOT of the Road Project; and
4. An accounting provided to the District as described in Section D below.

In the event that the County does not fully complete its County Contribution by December 31, 2020, or TxDOT does not commence construction of the Road Project by September 30, 2026, then the District is not obligated to reimburse the County the sum of the District Contribution, and this Agreement shall be deemed null and void.

- D. Accounting. Upon completion of the engineering services defined as the County Contribution, but no later than ninety (90) days after such completion, the County will furnish the District with a full accounting of the funds expended on the County Contribution. The District's bookkeeper or auditor may review the County's records regarding this County Contribution at any time by providing at least twenty-four (24) hours written notice to the County.

#### **IV. LIABILITY**

The District and County are entitled to the immunities and defenses of the Texas Tort Claims Act.

#### **V. ASSIGNMENT**

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

#### **VI. THIRD PARTY BENEFICIARIES**

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

#### **VI. DEFAULT**

The breach of any representation, warranty, condition or covenants to performance under this Agreement or the failure to comply with the terms of this Agreement by any Party hereto shall constitute a default.

If a default occurs, the non-defaulting party must notify, or cause notification to be sent to the defaulting party, which defaulting party shall have sixty (60) days to cure any defect

complained of. If the defaulting party commences best efforts to cure the defect complained of, the other party may, but is not obligated to, extend the sixty (60) day cure period. If the default is a failure to timely deliver notice, documents, or information, the prompt delivery of the notice, documents, or information will be a cure of the default.

Should the party receiving the notice fail to correct the default within 60 days of receipt of the notice, the party giving notice of default may exercise all available remedies at law and in equity, including an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and injunctive relief.

Failure to meet conditions in Article III, Section C, shall not constitute an event of default under this Article VI. If the County fails to meet conditions in Article III, Section C, the Agreement shall be terminated, be declared null and void, with no party liable to the other party for other damages or remedies at law.

## **VII.** **NOTICES**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt request, or delivered to the following addresses:

If to Fort Bend County:

Fort Bend County  
Attn: County Judge  
401 Jackson  
Richmond, Texas 77469

With a copy to:

Fort Bend County Engineering  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

If to the District:

Sienna Plantation Municipal Utility District No. 5  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Stephen M. Robinson

**VIII.**  
**TERM.**

With the exception of termination of Agreement for failure to meet conditions under Article III, Section C, the term of this Agreement will be August 1, 2027 or until the County is reimbursed its District Contribution in full, whichever is earlier.

**IX.**  
**ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all parties hereto.

FORT BEND COUNTY, TEXAS

SIENNA PLANTATION MUNICIPAL  
UTILITY DISTRICT NO. 5

\_\_\_\_\_  
KP George, Fort Bend County Judge

\_\_\_\_\_  
*Merrill A. Lunning*

Date: \_\_\_\_\_

Date: 7 OCTOBER 2020

ATTEST:

ATTEST:

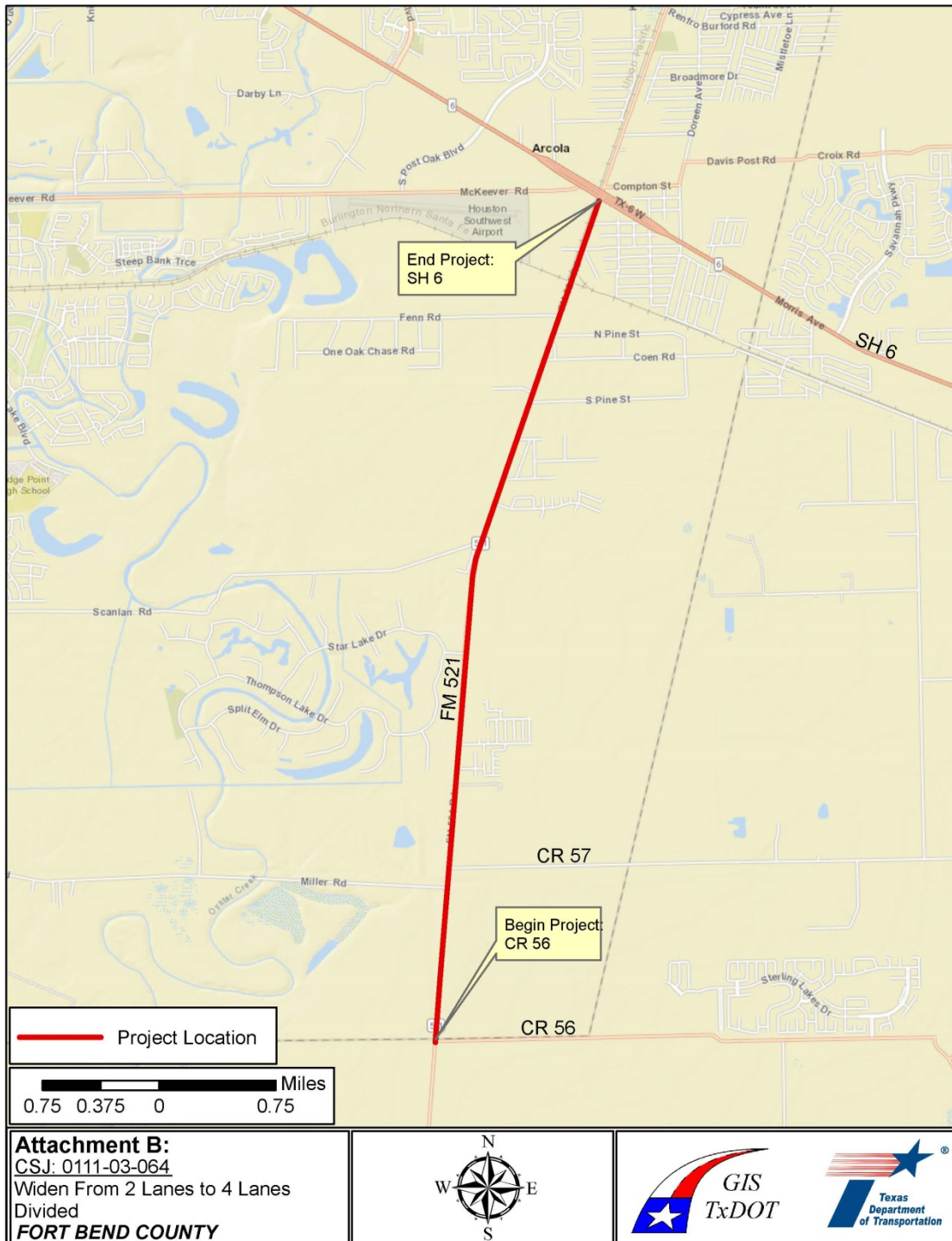
\_\_\_\_\_  
Laura Richard, Fort Bend County Clerk

\_\_\_\_\_  
*Douglas Earle*

**Exhibit "A": Description of Road Project**  
**Exhibit "B": Description of County Contribution**  
**Exhibit "C": Form of Advance Funding Agreement**

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District #	12 - Houston
Code Chart 64 #	50080
Project Name	FM 521, from CR 56 to SH 6, Design

## EXHIBIT A LOCATION MAP SHOWING PROJECT



## Exhibit B

	Total Cost	North of Sienna Sta 283+00 to Sta 355+50	Sienna Frontage Sta 355+50 to Sta 395+50	South of Sienna Sta 395+50 to Sta 537+00
<b>Design Services</b>				
Preliminary Engineering				
Schematic	\$ 1,000,000.00	\$ 285,433.07	\$ 157,480.31	\$ 557,086.61
Environmental Report (CE)	\$ 190,000.00	\$ 54,232.28	\$ 29,921.26	\$ 105,846.46
Survey	\$ 225,000.00	\$ 64,222.44	\$ 35,433.07	\$ 125,344.49
Geotechnical Services	\$ 250,000.00	\$ 71,358.27	\$ 39,370.08	\$ 139,271.65
Drainage Impact Study	\$ 400,000.00	\$ 114,173.23	\$ 62,992.13	\$ 222,834.65
Final Design (PS&E)		\$ -	\$ -	\$ -
PS&E Design	\$ 3,900,000.00	\$ 1,113,188.98	\$ 614,173.23	\$ 2,172,637.80
SUE	\$ 225,000.00	\$ 64,222.44	\$ 35,433.07	\$ 125,344.49
<b>Design Services Subtotal</b>	<b>\$ 6,190,000.00</b>	<b>\$ 1,766,830.71</b>	<b>\$ 974,803.15</b>	<b>\$ 3,448,366.14</b>
<b>Construction Services</b>				
ROW Acquisition	\$ 1,000,000.00	\$ 285,433.07	\$ 157,480.31	\$ 557,086.61
Environmental Remediation	\$ 200,000.00	\$ 57,086.61	\$ 31,496.06	\$ 111,417.32
Utility Relocation	\$ 700,000.00	\$ 199,803.15	\$ 110,236.22	\$ 389,960.63
Construction Cost (10% Contingency) (TxDOT)	\$ 49,100,000.00	\$ 14,014,763.78	\$ 7,732,283.46	\$ 27,352,952.76
Construction Management/Lab testing (TxDOT)	\$ -	\$ -	\$ -	\$ -
<b>Construction Services Subtotal</b>	<b>\$ 51,000,000.00</b>	<b>\$ 14,557,086.61</b>	<b>\$ 8,031,496.06</b>	<b>\$ 28,411,417.32</b>
<b>Total</b>	<b>\$ 57,190,000.00</b>	<b>\$ 16,323,917.32</b>	<b>\$ 9,006,299.21</b>	<b>\$ 31,859,783.46</b>



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STATE OF TEXAS       §

COUNTY OF TRAVIS   §

**ADVANCE FUNDING AGREEMENT**  
**For**  
**A Local Project to Design FM 521, from CR 56 to SH 6**  
**On-System**

**THIS AGREEMENT** (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the "State", and **Fort Bend County**, acting by and through its duly authorized officials, called the "Local Government". The State and Local Government shall be collectively referred to as "the parties" hereinafter.

**WITNESSETH**

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

**WHEREAS**, the State and Local Government do not anticipate that federal funds will be used for the Project governed by this Agreement; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **115550** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **the widening of FM 521, from CR 56 to SH 6, from two to four lanes divided**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

**WHEREAS**, the Texas Transportation Commission has not authorized funding for the construction of the highway improvement or other transportation project and the project is not currently listed and approved for construction in the Unified Transportation Program (UTP) or Statewide Transportation Improvement Program (STIP). This Agreement does not represent a commitment to future project funding for any project elements, including construction, not specifically outlined in the Agreement.

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Costs not specifically identified as reimbursable under this Agreement will not be requested or reimbursed.

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated \_\_\_\_\_, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order. A map showing the Project location appears in Attachment B, Location Map Showing Project, (Attachment B) which is attached to and made a part of this Agreement.

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

### **AGREEMENT**

**1. Responsible Parties:**

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	<b>N/A</b>	Utilities	Article 8
2.	<b>Local Government</b>	Environmental Assessment and Mitigation	Article 9
3.	<b>Local Government</b>	Architectural and Engineering Services	Article 12
4.	<b>N/A</b>	Construction Responsibilities	Article 13
5.	<b>N/A</b>	Right of Way and Real Property	Article 15

**2. 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 until the Project is completed or unless terminated as provided below.

**3. Scope of Work**

The scope of work for this Project consists of the design and environmental of the widening of FM 521 from two to four lanes, from CR 56 to SH 6 in Fort Bend County as shown on Attachment B. The Local Government will provide the schematic and design, identify any utility conflicts, provide the environmental assessment and mitigation, and prepare any right of way maps. The State will review the Local Government's work.

**4. Project Sources and Uses of Funds**

The total estimated cost of the Project is shown in Attachment C, Project Budget, (Attachment C) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. Training is complete when at least one individual who is working

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actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the State, the Local Government, or other parties are shown in Attachment C. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission.
- C. Attachment C shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- F. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding or the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.

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- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the local Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred the State may refuse to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government or the State for these work items will be promptly paid by the owing party.
- Q. 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.

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- R. Payment 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 shall be terminated immediately with no liability to either party.

## **5. 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 by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against state funds, in which case the State may in its discretion terminate this Agreement.

## **6. Amendments**

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

## **7. 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.

## **8. Utilities**

The party named in article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's

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request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

**9. Environmental Assessment and Mitigation**

Development of a transportation project must comply with applicable environmental laws. The party named in article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**10. Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**11. Procurement Standards**

For projects being managed by the Local Government and on the State highway system or that include state funding, the Local Government must obtain approval from the State for its proposed procurement procedure for the selection of a professional services provider, a contractor for a construction or maintenance project, or a materials provider.

**12. Architectural and Engineering Services**

The party named in Article 1, Responsible Parties, under AGREEMENT 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* and the special specifications and special provisions related to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

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In procuring professional services, the parties to this Agreement must comply with Texas Government Code 2254, Subchapter A. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional service contracts must be reviewed and approved by the State prior to execution by the Local Government.

**13. Construction Responsibilities**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. 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 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. Projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

**14. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

**15. Right of Way and Real Property**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

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

**17. Notices**

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

<b>Local Government:</b>	<b>State:</b>
Fort Bend County ATTN: County Judge 401 Jackson Street Richmond, Texas 77469  With a copy to: Fort Bend County ATTN: County Engineer 301 Jackson Street Richmond, Texas 77469	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**18. Legal Construction**

If 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.

**19. 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.



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**20. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, of photocopy reproduction on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

**21. Compliance with Laws**

The parties 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 manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**22. 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.

**23. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement and property management standards established in the Texas Uniform Grant Management Standards.

**24. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State and the Local Government, or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of completion of work defined under this Agreement or until any impending litigation, or claims are resolved. Additionally, the State and the Local Government and their duly authorized representatives 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.

**25. Audit**

Pursuant to Texas Government Code § 2262.154, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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

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investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**26. Historically Underutilized Business (HUB) and Small Business Enterprise (SBE) Requirements**

For projects with State funds and no federal funds, the Local Government will be required to follow the provisions of Texas Transportation Code §201.702 and 43 TAC §§9.354-9.355 (HUB) and §§9.314-9.315 (SBE). The Local Government must incorporate project goals approved by TxDOT into project documents before advertising for receipt of bids. Contractors must select HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government will provide monthly updates of HUB/SBE (as appropriate) participation and report final accomplishments to TxDOT for credit to overall program goals.

For projects with no state or federal funds that are not on the state or federal highway systems, the Local Government should follow its own local or specific ordinances and procedures. Local Governments are encouraged to use HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government must also report final HUB accomplishments to TxDOT for credit to overall program goals.

**27. Debarment Certifications**

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

**28. Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).

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- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

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**29. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated under that party's signature.

**THE STATE OF TEXAS**

**THE LOCAL GOVERNMENT**

Signature

Signature

**Kenneth Stewart**

**KP George**

Typed or Printed Name

Typed or Printed Name

**Director of Contract Services**

**County Judge**

Typed or Printed Title

Typed or Printed Title

Date

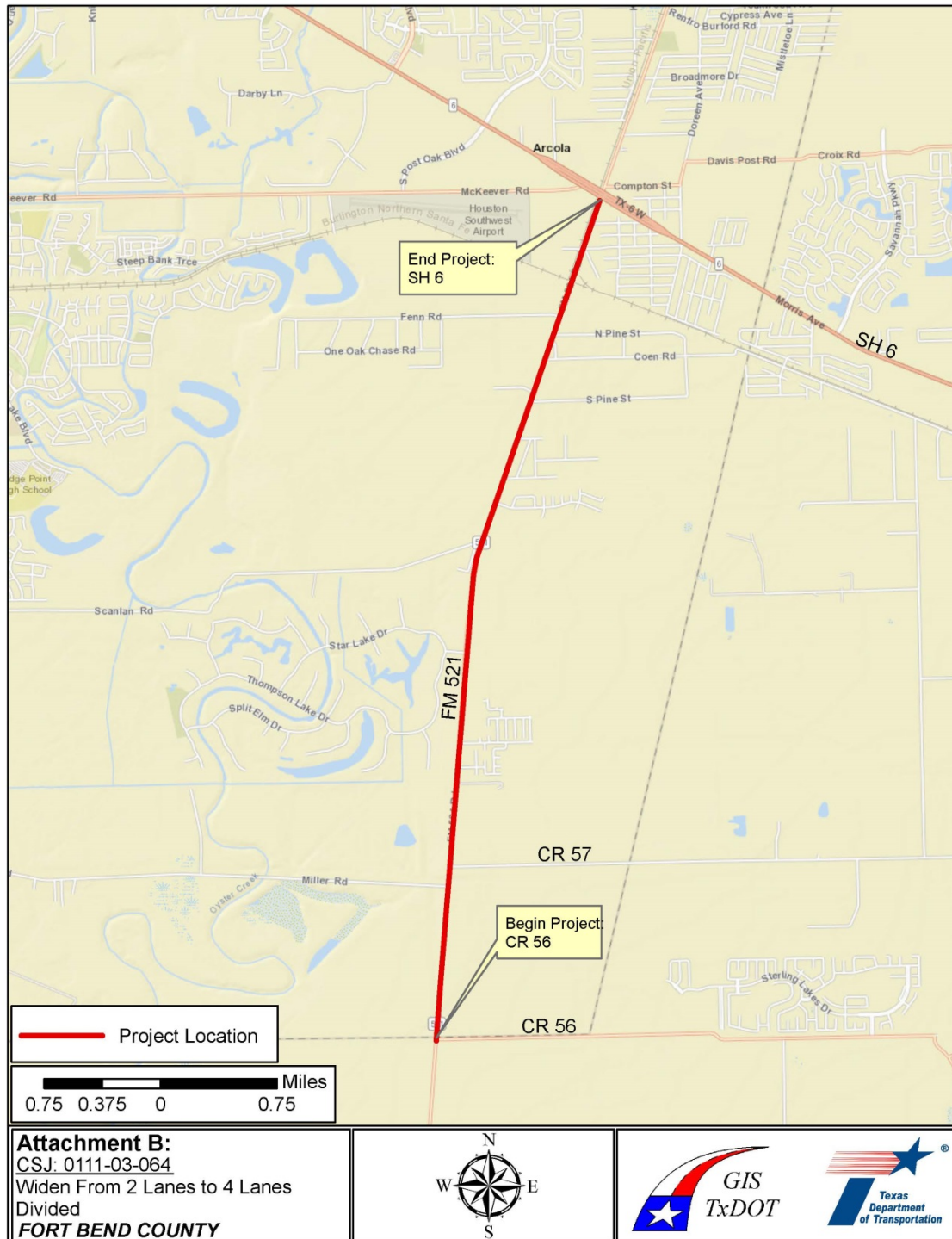
Date

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**ATTACHMENT A**  
**RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER**

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## ATTACHMENT B LOCATION MAP SHOWING PROJECT



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## ATTACHMENT C PROJECT BUDGET

The Local Government is responsible for 100% of the Engineering costs and Environmental costs, including overruns.

<b>Description</b>	<b>Total Estimated Cost</b>	<b>Federal Participation Cost</b>	<b>State Participation Cost</b>	<b>Local Participation Cost</b>
Engineering (by Local Government)	\$ 5,500,000	0%	\$ 0	0%
Environmental (by Local Government)	\$ 188,000	0%	\$ 0	0%
<b>Subtotal</b>	<b>\$ 5,688,000</b>		<b>\$ 0</b>	
Engineering Direct State Costs	\$ 40,000	0%	\$ 0	100%
Environmental Direct State Costs	\$ 1,000	0%	\$ 0	100%
Indirect State Costs	\$ 1,853	0%	\$ 0	100%
<b>TOTAL</b>	<b>\$ 5,730,853</b>		<b>\$ 0</b>	<b>\$ 42,853</b>

Initial payment by the Local Government to the State: \$0

Payment by the Local Government to the State before construction: \$0

Estimated total payment by the Local Government to the State: \$0

This is an estimate. The final amount of Local Government participation will be based on actual costs.