

**FORT BEND COUNTY    FY 2010**  
**COMMISSIONERS COURT AGENDA REQUEST FORM**  
Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 02/25/2010

Submitted By: P. Batts

Department: Engineering

Court Agenda Date: 03/02/2010

Phone Number: 281 633 7507

**SUMMARY OF ITEM:** Take all appropriate action on request from Texas Department of Transportation (TXDOT) to pay the County's portion in the amount not to exceed \$92,028.87 regarding Local Transportation Project Advance Funding Agreement for a Surface Transportation Program for the FM1464 (from 200 feet north of FM1093 to 1,000 feet south of Fort Bend Westpark Tollway) Mobility Bond Project #59, Precinct 3. (Fund: 2000 Mobility Bonds)  
Note: (please refer to attached original agreement and court minutes)

RENEWAL AGREEMENT/APPOINTMENT                      YES ☐                      NO ☐  
REVIEWED BY COUNTY ATTORNEY'S OFFICE:        YES ☐                      NO ☐

List Supporting Documents Attached:

**Instructions to submit Agenda Request Form:**

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

**DISTRIBUTION:**

**Original Form** Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to [ospindon@co.fort-bend.tx.us](mailto:ospindon@co.fort-bend.tx.us)

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/> Auditor (281-341-3774)	<input type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input type="checkbox"/> Budget Officer (281-344-3954)	<input type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Information Technology (281-341-4526)	<input type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Other:	<input type="checkbox"/> County Atty (281-341-4557)

**RECOMMENDATION / ACTION REQUESTED:**

Special Handling Requested (specify):

June 26, 2008

BY CERTIFIED MAIL 7004 2510 0004 3970 0534

CONTACT: DOC

STP 2004(800)  
1415-02-035  
FM 1464  
Fort Bend County

Mr. D. Jesse Hegemeir, P.E.  
County Engineer  
Fort Bend County Engineering Dept.  
1124 Blume Road  
Rosenberg, Texas 77471-1449

Dear Mr. Hegemeir:

In accordance with an agreement negotiated with the Texas Department of Transportation, Fort Bend County placed a total of \$725,000.00 in escrow to be used for paying their share of construction on the above referenced project. Attached is a copy of the "Statement of Cost" indicating that Fort Bend County's portion of the final construction cost on this contract amounts to \$817,028.87. We concur with the charges contained therein and the additional funds needed from Fort Bend County.

In accordance with the terms of the agreement between Fort Bend County and the State, please forward to this office a warrant for the amount due (\$92,028.87) made payable to the State Treasurer.

Your assistance will be appreciated. If any additional information is needed, please contact Mr. William Repschleger of the District Construction Office at (713) 802-5492.

Sincerely,

Gary K. Trietsch, P.E.  
District Engineer  
Houston District

Attachment


**STATEMENT OF COST**  
**Fort Bend County**

PROJECT	PRELIMINARY ENGINEERING	CONSTRUCTION	CONSTRUCTION ENGINEERING	TOTAL
STP 2004(800) 1415-02-035	\$47,343.70	\$1,549,116.48	\$84,941.26	\$1,681,401.44
	<u>\$47,343.70</u>	<u>\$1,549,116.48</u>	<u>\$84,941.26</u>	<u>\$1,681,401.44</u>

	% Participation	
Entity Share Of Preliminary Engineering	0.00%	\$0.00
Construction Portion Funded by Entity	50.00%	\$774,558.24
Entity Share of Construction Management Cost	50.00%	\$42,470.63
Total Amount Chargeable To Entity		<u>\$817,028.87</u>

Advanced Cash Payments	\$725,000.00
Less: Amount Chargeable	<u>\$817,028.87</u>
Total Amount Due From Local Entity	<u>\$92,028.87</u>

Certified Correct:

  
\_\_\_\_\_  
Charles E. Gaskin, Jr., P.E.  
Director of Construction

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

**MR. JESSE HEGERER, JR.  
COUNTY ENGINEER  
FORT BEND COUNTY  
ENGINEERING DEPT.  
1124 BLUME ROAD  
ROSENBERG, TX 77471-1449**

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

X *[Signature]*

- ☒ Agent  
☐ Addressee

**B. Received by (Printed Name)**

**C. Date of Delivery**

7-1-08

- D. Is delivery address different from item 1?** ☐ Yes  
If YES, enter delivery address below: ☐ No

**3. Service Type**

- ☐ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

- ☐ Yes

**2. Article Number**

(Transfer from service label)

7004 2510 0004 3970 0534

PS Form 3811, February 2004

Domestic Return Receipt

1415-2-35

102585-02-M-1540

7004 2510 0004 3970 0534

U.S. Postal Service

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(Domestic Mail Only: No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

**Sent To**

**FORT BEND COUNTY**

Street, Apt. No.,  
or PO Box No.

**1124 BLUME ROAD**

City, State, ZIP+4

**ROSENBERG, TX 77471-1449**

PS Form 3800, June 2002

See Reverse for Instructions

June 26, 2008

BY CERTIFIED MAIL 7004 2510 0004 3970 0534

CONTACT: DOC

STP 2004(800)  
1415-02-035  
FM 1464  
Fort Bend County

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County Engineer  
Fort Bend County Engineering Dept.  
1124 Blume Road  
Rosenberg, Texas 77471-1449

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Your assistance will be appreciated. If any additional information is needed, please contact Mr. William Repschleger of the District Construction Office at (713) 802-5492.

Sincerely,

Gary K. Trietsch, P.E.  
District Engineer  
Houston District

Attachment

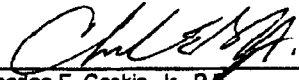
**STATEMENT OF COST**  
**Fort Bend County**

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Less: Amount Chargeable	<u>\$817,028.87</u>
Total Amount Due From Local Entity	<u>\$92,028.87</u>

Certified Correct:

  
\_\_\_\_\_  
Charles E. Gaskin, Jr., P.E.  
Director of Construction

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <u>[Signature]</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <b>MR. ROBERT HEGEMER, JR.</b> <b>COUNTY ENGINEER</b> <b>FORT BEND COUNTY</b> <b>ENGINEERING DEPT.</b> <b>1124 BLUME ROAD</b> <b>ROSENBERG, TX 77471-1449</b>		B. Received by (Printed Name)	C. Date of Delivery <u>7-1-08</u>
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		<u>7004 2510 0004 3970 0534</u>	
PS Form 3811, February 2004		Domestic Return Receipt <u>1415-2-35</u> 102595-02-M-1540	

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$ Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees \$	Postmark Here
Send To <b>FORT BEND COUNTY</b> Street Apt. No. or PO Box No. <b>1124 BLUME ROAD</b> City, State, ZIP+4® <b>ROSENBERG, TX 77471-1449</b>	
PS Form 3811, June 2002 See Reverse for Instructions	

25. **EMERGENCY MANAGEMENT:** Take all appropriate action on request to transfer the amount of \$3,474 from Contingency (045-0450-4040) into Emergency Management, Temporary-Part-time (046-0460-0200) \$3,200, Social Security (046-0460-0300) \$245, and Worker's Compensation/Unemployment (046-0460-0600) \$29 to allocate funds for temporary assistance while Administrative Coordinator is on medical leave.

Moved by Commissioner Patterson, Seconded by Commissioner Meyers, duly put and unanimously carried (4-0), it is ordered to approve request to transfer the amount of \$3,474 from Contingency (045-0450-4040) into Emergency Management, Temporary-Part-time (046-0460-0201) \$3,200, Social Security (046-0460-0300) \$245, and Worker's Compensation/Unemployment (046-0460-0600) \$29 to allocate funds for temporary assistance while Administrative Coordinator is on medical leave.

Judge Hebert	yes	Commissioner Meyers	yes
Commissioner Stavinoha	absent	Commissioner Patterson	yes
Commissioner Prestage	yes		

26. **ENGINEERING:**

- A. Take all appropriate action on the Agreement between Fort Bend County and Pate Engineers for Engineering Services in connection with revision of the Preliminary Engineering Report for Development of a New Park and Ride at State Highway 36 (Fairgrounds) in an amount not to exceed \$6,965.00, Pct. 1, and determine funding source.

Moved by Commissioner Meyers, Seconded by Commissioner Patterson, duly put and unanimously carried (4-0), it is ordered to approve agreement between Fort Bend County and Pate Engineers for Engineering Services in connection with revision of the Preliminary Engineering Report for Development of a New Park and Ride at State Highway 36 (Fairgrounds) in an amount not to exceed \$6,965.00, Pct. 1. Funding: Non-Departmental Fees & Services 045-4010

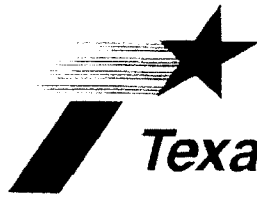
Judge Hebert	yes	Commissioner Meyers	yes
Commissioner Stavinoha	absent	Commissioner Patterson	yes
Commissioner Prestage	yes		

- B. Take all appropriate action on the Local Transportation Project Advance Funding Agreement for a Surface Transportation Program between Fort Bend County and Texas Department of Transportation for work regarding FM1464 from 200 Feet North of FM 1093 to 1,000 Feet South of Fort Bend Westpark Tollway, for an amount not to exceed \$725,000, Mobility Bond Project #59, Pct. 3.

Moved by Commissioner Meyers, Seconded by Commissioner Patterson, duly put and unanimously carried (4-0), it is ordered to approve the Local Transportation Project Advance Funding Agreement for a Surface Transportation Program between Fort Bend County and Texas Department of Transportation for work regarding FM1464 from 200 Feet North of FM 1093 to 1,000 Feet South of Fort Bend Westpark Tollway, for an amount not to exceed \$725,000, Mobility Bond Project #59, Pct. 3.

Judge Hebert	yes	Commissioner Meyers	yes
Commissioner Stavinoha	absent	Commissioner Patterson	yes
Commissioner Prestage	yes		





# **Texas Department of Transportation**

**P.O. BOX 1386 • HOUSTON, TEXAS 77251-1386 • (713) 802-5000**

July 20, 2004

CONTACT: PLAN REVIEW

BY CERTIFIED MAIL #7003 1680 0000 4930 3493

Fort Bend County  
CSJ 1415-02-035  
FM 1464: 200' North of FM 1093 to  
350' South of Westpark Tollway

Mr. D. Jesse Hegemier, P.E.  
County Engineer  
Fort Bend County Engineering Department  
1124 Blume Road  
Rosenberg, Texas 77471-1449

Dear Mr. Hegemier:

Please find attached one fully executed original counterpart of a funding agreement for the subject project. This agreement is for the improvements to FM 1464. We request that you retain this agreement in your permanent records.

If you should have any questions concerning this matter, please contact Ms. Darlene Taylor of this office at (713) 802-5864.

Sincerely,

Raj K. Syal, P.E.  
Director of Plan Review  
Houston District

DDT

Attachments

cc: Mr. Gabriel Y. Johnson, P.E.  
Mr. James W. Koch, P.E.  
Mr. Mark D. Patterson, P.E.  
Ms. Darlene D. Taylor  
Mr. David Williams

Fort Bend County  
CSJ: 1415-02-035  
FM 1464: 200' North of FM 1093  
to 350' South of  
Westpark Tollway

STATE OF TEXAS       §

COUNTY OF TRAVIS     §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For A  
SURFACE TRANSPORTATION PROGRAM –  
METROPOLITAN MOBILITY REHABILITATION**

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

**WITNESSETH**

**WHEREAS**, the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) codified under Title 23 U.S.C. Section 101 et seq., authorize transportation programs to meet the challenges of protecting and enhancing communities and the natural environment and advancing the nation's economic growth and competitiveness; and,

**WHEREAS**, ISTEA and TEA-21 establish federally funded programs for transportation improvements to implement its public purposes; and,

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and,

**WHEREAS**, the State and the Local Government desire improvements to FM 1464 from 200' North of FM 1093 to 350' South of Westpark Tollway, as shown on the Map in Attachment A, to be hereinafter identified as the "Project"; and,

**WHEREAS**, the Local Government has offered to participate in the development and construction of the Project by providing funding; by preparing or having prepared by a consultant the preliminary engineering which includes, but is not limited to, perform field surveys; prepare a drainage study; design plans, specifications and estimates (PS&E);

complete acquisition of right of way; identify any required utility adjustments; and providing other necessary items as required by the State hereinafter called the "Project"; and,

**WHEREAS**, the State and the Local Government executed an agreement on the 30th day of April, 2001 for the development of the preliminary engineering for FM 1464. The agreement specifies that the Local Government has the responsibility of providing items associated with preliminary engineering generally described as right of way mapping, property descriptions, and schematic layout for FM 1464. The limits of the subject Project is included within the scope of this agreement; and,

**WHEREAS**, the State will secure its funding share, perform the environmental assessment, provide necessary environmental documentation and permits, provide any required public meetings, provide any necessary environmental mitigation, arrange for the adjustment of utilities, review the PS&E, let the construction contract, provide the construction inspection and provide other items as required; 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**, on January 29, 2000 the Texas Transportation Commission passed Minute Order 107737, authorizing the State to undertake and complete a highway improvement through the expenditure of discretionary funds; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated May 4, 2004 which is attached hereto and made a part hereof as Attachment B for the participation in the development and construction of the Project; and,

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

## **AGREEMENT**

### **1. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

### **2. Scope of Work**

The State and the Local Government agree that the scope of the Project shall be limited to the scope authorized by the Texas Transportation Commission. The scope of the Project is to prepare the environmental assessment, right of way maps, property descriptions, schematic layout; perform field surveys; prepare a drainage

study; conduct public meetings/hearings; prepare plans, specifications and estimates (PS&E); complete acquisition of right of way; construct the Project (including grading, paving, structures, etc. as applicable); and any other work necessary to perform preliminary engineering.

### **3. Local Project Sources and Uses of Funds**

- a. The total estimated cost of the Project is shown in the Project Budget - Attachment C which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C. The State will pay for only those project costs that have been approved by the Texas Transportation Commission.
- b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. 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.
- c. The State will be responsible for securing the Federal and 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.
- d. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless approved otherwise in an amendment to this Agreement.
- e. Prior to the performance of any engineering review work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in Attachment C. The Local Government will pay at a minimum its funding share for the estimated cost of preliminary engineering for the project.
- f. 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 costs.
- g. In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. If a waiver has been granted, 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.

- k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.
- l. The Texas Comptroller of Public Accounts has determined that certain counties qualify as Economically Disadvantaged Counties in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. This Agreement reflects adjustments to the standard financing arrangement based on this designation.
- m. 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.

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.

#### **4. 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, or;
- b. because of a breach of this Agreement. Any cost incurred due to a breach of contract shall be paid by the breaching party.
- c. After the PS&E the Local Government may elect not to provide the funding and the Project does not proceed because of insufficient funds; the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the project.

#### **5. Amendments**

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

#### **6. 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.

#### **7. Utilities**

If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Government will

be responsible for determining the scope of utility work and the State will notify the appropriate utility company to schedule adjustments.

The State shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC§ 21.31 et seq. relating to Utility Accommodation. The Local Government will be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities:

- a. per agreement;
- b. per applicable statutes or rules, or;
- c. as specified otherwise in this Agreement.

Prior to letting a construction contract for the Project, a utility certification must be made available to the State upon request stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

#### **8. Environmental Assessment and Mitigation**

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- a. The State is responsible for the identification and assessment of any environmental problems associated with the development of the project governed by this Agreement.
- b. The State is responsible for the cost of any environmental problem's mitigation and remediation.
- c. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- d. The State will obtain written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

#### **9. Compliance with Texas Accessibility Standards and ADA**

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

#### **10. Architectural and Engineering Services**

The Local Government shall provide the architectural and engineering services. The architectural and engineering services shall include, but not be limited to,

preparing the right of way mapping, property descriptions, and schematic layout; performing field surveys; and preparing a drainage study.

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 latest edition and revisions of the State's *Highway Design Division Operations and Procedures Manual* or the American Association of State Highway and Transportation Officials *A Policy on Geometric Design of Highways and Streets*, Federal regulations for conformity with the Clean Air Act air quality requirements, the EPA-National Pollutant Discharge Elimination System requirements, the *Texas Manual on Uniform Traffic Control Devices*, and the *American Association of State Highway and Transportation Officials Guide For The Development of Bicycle Facilities*. In addition, all engineering work shall be prepared using the English system of measurements. Documents prepared for the purpose of public involvement shall be in the English unit system.

The Local Government shall assume all costs in preparing or causing to be prepared the Project's preliminary engineering and for completing the plans, specifications and estimates (PS&E) for the final design of the project.

The State will perform a 30 percent, 60 percent, 90 percent and final review of the engineering plans, specifications and estimate work being developed by the Local Government's consultant. The State will also review all geotechnical, surveying, design, environmental, hydraulic reports and data submitted by the Local Government, process environmental documents and oversee any necessary public involvement.

If the Local Government has submitted work in accordance with the terms of this contract but the State requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Local Government shall make such revisions as requested and as directed by the State.

The Local Government shall be responsible for the accuracy of work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts.

The Local Government's responsibility for all questions arising from design errors and/or omissions will be determined by the State. The Local Government will not be relieved of the responsibility for subsequent correction of any such errors or omissions.

The responsible Engineer shall sign, seal and date all appropriate engineering submissions to the State in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Professional Engineers.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by disadvantaged business enterprises (DBEs), ADA, and environmental matters.

#### **11. Construction Responsibilities**

- a. The State shall 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, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. The State will use its approved contract letting and award procedures to let and award the construction contract.
- c. Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.

#### **12. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of 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.

#### **13. Right of Way and Real Property**

The Local Government is responsible for the provision and acquisition of any needed right of way or real property.

The Local Government shall assume all costs in preparing right-of-way maps, property descriptions and other data as needed to properly describe the right-of-way which the Local Government is to acquire and provide the State. The right-of-way



maps and property descriptions shall be submitted to the State for review and approval. Tracings of the right-of-way maps shall be furnished to the State for its permanent records.

Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of a Project site, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.

All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

If the Local Government purchases right of way for a Local Government street, title will be acquired in the name of the Local Government in accordance with applicable laws unless specifically stated otherwise and approved by the State.

The Local Government shall be responsible for all right of way acquisition costs and these costs shall not be eligible for State reimbursement under this Agreement.

#### **14. Notices**

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

##### **Local Government:**

Mr. D. Jesse Hegemeir, P.E.  
County Engineer  
Fort Bend County Engineering Dept.  
1124 Blume Road  
Rosenberg, Texas 77471-1449

##### **State:**

Mr. Gary K. Trietsch, P.E.  
District Engineer  
Texas Department of Transportation  
P. O. Box 1386  
Houston, Texas 77251

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**15. Legal Construction**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**16. 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.

**17. 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 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 form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

**18. 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.

**19. 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.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. 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, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA 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.

**23. Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

**24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

**26. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of

any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**28. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

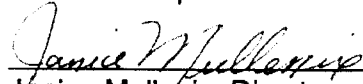
  
\_\_\_\_\_  
Name

Robert E. Hebert, County Judge  
Printed Name and Title

5/4/2004  
Date

**THE STATE OF TEXAS**

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



Janice Mullenix, Director  
Contract Services Office  
Office of General Council

7.14.04

Date



Montgomery County  
CSJ: 1415-02-035  
FM 1464: 200' North of FM 1093  
to 350' South of  
Westpark Tollway

## ATTACHMENT C

### Project Budget and Description

The Local Government will participate in the development and construction of the six-lane roadway on FM 1464 starting 200' North of FM 1093 to 350' South of Westpark Tollway. The total estimated cost associated with this Project is \$1,450,000. The State and the Local Government will each contribute a fifty percent (50%) funding share towards the construction and construction management costs of the Project. The Local Government shall be responsible for one hundred percent (100%) of the costs associated with preliminary engineering, plan preparation, plan review, PS&E, right of way acquisition, and utility adjustments and the cost of the items will not count towards the Local Government's match to the State funds. The State has estimated the Project costs to be as follows:

Project Description	Total Estimate Cost	State Participation	Local Participation
<b>1415-02-035 FM 1464: 200' N of FM 1093 to 1000' South of Fort Bend Westpark Tollway</b>			
<b>CONSTRUCTION COSTS</b>			
Construction	\$1,283,250.00	\$641,625.00	\$641,625.00
TxDOT Review *	\$0.00	\$0.00	\$0.00
Engineering & Contingencies (E&C)** (Estimated @ 11.5% of construction)	\$166,750.00	\$83,375.00	\$83,375.00
<b>TOTAL</b>	<b>\$1,450,000.00</b>	<b>\$725,000.00</b>	<b>\$725,000.00</b>

\* No charge for review costs.

\*\* Engineering and contingencies charges will be based on actual charges.

**Local Government's Participation = \$725,000.00**

For the purposes of this Project the Local Government and their consultant will be considered an extension of State staff and no review costs will be charged to the Local Government for this mutually beneficial Project. This is a construction estimate only; final participation amounts will be based on actual charges to the Project.