



Texas Department of Transportation

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

May 18, 2011

CONTACT: RCE

CSJ 3510-04-037
Grand Parkway, Segment D

Mr. Jim Condrey, Chairman
Fort Bend Grand Parkway Toll Road Authority
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

Dear Mr. Condrey:

Attached is one fully executed Right of Use Agreement for the above referenced project. This letter serves as the Fort Bend Grand Parkway Toll Road Authority's (GPTRA) Notice to Proceed effective May 12, 2011.

As a reminder, the GPTRA's direct state cost is due. Please remit a check made payable to the Texas Department of Transportation in the amount of \$75,000.00, which represents GPTRA's direct state cost obligation. Please reference the above CSJ and project name on your check. Also, this Agreement does not contain the necessary provisions for using federal funds; therefore, no federal funds may be used in support of any project listed in this agreement.

Please review the enclosed information and contact Catherine McCreight at (713) 802-5812 should you have any questions.

Sincerely

Delvin L. Dennis, P.E.
District Engineer
Houston District

Attachments

cc: Mr. Mark Patterson, P.E.
Ms. Catherine McCreight

STATE OF TEXAS §

COUNTY OF TRAVIS §

**RIGHT OF USE AGREEMENT
FOR A LOCAL TOLL PROJECT ENTITY'S
USE OF STATE HIGHWAY RIGHT-OF-WAY**

THIS AGREEMENT (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the "State", and the Fort Bend Grand Parkway Toll Road Authority, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, the State built and currently maintains State Highway 99 (the "Grand Parkway") between I-10 and US 59 (the "Current Roadway"); and

WHEREAS, the Current Roadway was built as a collaborative effort that included the County, the State, and major landowners: the large landowners dedicated the right-of-way and contributed \$360,000 per mile for engineering; the County contributed approximately \$4 million to pay for engineering and to purchase right-of-way from the small landowners who would not receive a material benefit to their remaining property; and the State built and maintains the roadway; and

WHEREAS, the State paid \$61 million to construct the roadway in its current configuration and owns all of the right of way for the facility; and

WHEREAS, the State did not expend its funds to acquire the state highway right-of-way along Segment D (the "Segment D Right-of-Way"); and

WHEREAS, on April 28, 2011, the Texas Transportation Commission passed Minute Order 112666, authorizing the State to enter into the necessary agreements with the Local Government to allow the Local Government to make such improvements at its own cost; and

WHEREAS, the portion of Segment D from FM 1093/Westpark Tollway to I-10, 5 miles, is complete in its current configuration; and

WHEREAS, Senate Bill 792 (Acts 2007, 80th Legislature, Reg. Session) (the "Act") provided seven counties, including Fort Bend County, the right to develop Grand Parkway, subject to certain limitations discussed below; and

WHEREAS, consistent with the Act, Fort Bend, Harris, Montgomery, Liberty, Chambers, Galveston and Brazoria Counties (the "Counties") have been engaged in the process set forth in the Act for the development of the Grand Parkway; and

WHEREAS, the State, Houston-Galveston Area Council, and the Counties developed and approved Terms and Conditions for the development of the Grand Parkway as a tolled facility

(the "Terms and Conditions"). The Terms and Conditions for the Grand Parkway describe the ultimate configuration of each segment of the Grand Parkway, establish the initial toll rate as the average per mile toll rate in Harris County, and establish a toll rate escalation methodology that is based on the policy adopted by Harris County; and

WHEREAS, the State and the Counties agreed to waive the Market Valuation required by the Act, effective March 25, 2009 (the "Waiver Agreement"); and

WHEREAS, on September 7, 2009, the County exercised its right to develop, finance, construct and operate the portion of the Grand Parkway within the County; and

WHEREAS, the County created the Authority solely for the purpose of developing the Grand Parkway in accordance with the Act, the Terms and Conditions, and the Waiver Agreement, as applicable; and

WHEREAS, the Authority intends to proceed with the initial development of the Grand Parkway in Fort Bend County and intends to maintain that portion of Segment D from, and including, the FM 1093 intersection to US 59 south; and

Whereas, the State owns and maintains two pump stations (the "Pump Stations"), one at Grand Parkway and FM 1093 and the other at Grand Parkway and US 90A, and will continue to own and operate the Pump Stations; and

WHEREAS, Pursuant to the Act, The State and the Texas Transportation Commission (the "Commission") are required to assist the Authority in its development of Segment D by allowing the Authority to use state highway right-of-way and to access the state highway system as necessary to construct and operate the project; and

WHEREAS, the Act (as codified in Texas Transportation Code, Section 228.0111(l)) requires the Authority to enter into an agreement with the State regarding a county toll project if the Authority intends to use state highway right-of-way; and

WHEREAS, the Act prohibits the State and the Commission from charging the Authority for right-of-way or access, except to reimburse the State for actual costs incurred.

WHEREAS, the Local Government has provided for the improvement of the section of SH 99 (Grand Parkway) Segment D from, and including, the FM 1093 intersection to US 59 south, as specified in this agreement (the "Project"), in order to operate that section of SH 99 as a toll facility, as approved by a resolution, which is attached to and made a part of this agreement as Attachment "A"; 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 set forth in this agreement, 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 unless terminated as provided in Section 7 of this agreement.

2. Scope of Work

The Local Government shall fund, and develop the Project described as the development of plans, specifications, and estimates and construction for 10 grade separations. These projects include:

1. West Riverpark Drive, and
2. New Territory Boulevard and Ellis Creek (Canal at New Territory), and
3. FM 1464/US 90A/Sandhill and Bullhead Slough, and
4. West Airport Boulevard, and
5. Harlem Road, and
6. West Bellfort (Morton Road), and
7. Mason Road, and
8. Future Peek Road, and
9. Bellaire Boulevard, and
10. Fort Bend Westpark Tollway/FM 1093.

The project is shown on the Project Location map, attached to and made a part of this agreement as Attachment "B."

3. Right of Way

The Authority may use any state highway right-of-way and may access the state highway system as necessary to develop, operate and maintain the Project, subject to the terms of this Agreement. Any other right of way and real property acquisition shall be the responsibility of the Local Government.

4. Project Funding

The Local Government shall provide 100% (one hundred percent) of the necessary funds for development of the Project, including but not limited to: survey, right of way acquisition, required utility work, environmental assessment and remediation, preliminary and final design work; all letting to contract costs; all construction bid item costs; all construction contract management costs; all construction bid item change order costs, should they become necessary; and, all construction bid item material and equipment testing costs. The estimated cost of the project is shown in Attachment "C."

5. Project Responsibilities

The Local Government is responsible for all aspects of the Project unless otherwise indicated in this Agreement.

A. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures.

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:

1. Per agreement;
2. Per all applicable statutes or rules, or;
3. As specified otherwise in a LPAFA.

B. Environmental Assessment and Mitigation

1. The Local Government must comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements.
2. Pursuant to the Waiver Agreement, the State is responsible for coordination with the Federal Highway Administration and environmental clearance through the Record of Decision or Finding of No Significant Impact, to the extent applicable to the Project.
3. The Local Government is responsible for identification and assessment of any environmental problems associated with the Project, and for the cost of any environmental problem's mitigation and remediation.
4. The Local Government is responsible for providing any public meetings or public hearings, if required.
5. Upon request, the Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

C. Compliance with Texas Accessibility Standards and ADA

The Local Government shall ensure that the plans for and the construction of the Project 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).

D. Preliminary Engineering

1. The Local Government will be responsible for the preparation of all the engineering contract documents required for the construction of the Project.
2. The Local Government 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. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. The State will review the plans at 50 and 100 percent completion. The State will have 21 calendar days to review and provide the Local Government with such comments at each review stage for the Riverpark Drive design and for the West Airport Boulevard design and the State will have 30 calendar days to review all other plans and provide the Local Government with such comments at each review stage.

E. Bidding

The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award a contract for construction of the Project in accordance with existing procedures and laws applicable to the Local Government.

F. Construction

1. The Local Government shall notify the State before actual construction work on State right of way begins. The Local Government or its engineer will supervise and

inspect all work performed by the construction contractor and will provide such engineering, inspection, and testing services as may be required to ensure that the construction of the Project is accomplished in accordance with the plans, specifications, and estimates.

2. 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 all pre-work and pre-construction meetings.

6. Project Maintenance

The Local Government shall be responsible for maintenance and operation of the Project.

The State shall be responsible for the maintenance and operation of the Pump Stations, provided, however, the Local Government will pay half (1/2) of the State's cost to operate and maintain the Pump Stations. The State shall invoice the Local Government semi-annually for such costs and provide any supporting documentation of those costs.

7. 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 because the Local Government has breached the contract and the local government has not cured the breach after receiving 30 days' written notice from the State;
- C. The provisions of Section 3 shall survive the termination of this Agreement.

8. 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 must be enacted through a mutually agreed upon, written amendment.

9. 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. Notwithstanding any other provision in this agreement, the State may, at the Local Government's expense, make repairs or taken any other action necessary in the event of a breach of this agreement by the Local Government and that breach adversely affects the safety of the traveling public.

10. 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:	State:
Chairman Ft. Bend Grand Parkway Toll Road Authority c/o Allen Boone Humphries Robinson LLP 3200 Southwest Freeway, Ste. 2600 Houston, Texas 77027	Director of Contract Services Texas Department of Transportation 125 E. 11th Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the regular 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 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.

11. 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.

12. 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.

13. Ownership of Documents

Upon completion or termination of this Agreement, all documents and data prepared by either party shall remain of the State or Local Government, provided all documents and data prepared under this Agreement shall be made available to the State or Local Government upon request.

14. Compliance with Laws

The parties shall comply with all applicable 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.

15. 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. Nothing in this Agreement is intended to nor shall be constructed to alter the Terms and Conditions or Waiver Agreement.

16. Retention of Records and Inspection

The Local Government shall keep a complete and accurate record to document the performance of the work and to expedite any audit that might be conducted. The Local

Government shall maintain all books, documents, papers, accounting records, and other documentation relating to costs. Records shall include, but not be limited to, diaries, materials received (invoices), test reports, manufacturer's certificates, warranties, change orders, and time extensions. The Local Government shall make such materials available to the State, the Local Government, or their duly authorized representatives for verification, 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.

17. Insurance

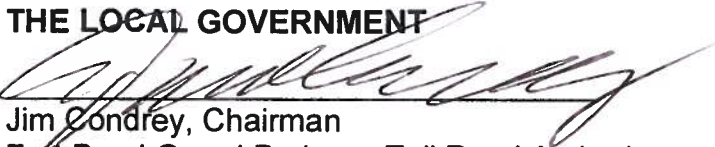
If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage 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.

18. 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


Jim Condrey, Chairman
Fort Bend Grand Parkway Toll Road Authority

May 7, 2011
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 of Contract Services
Texas Department of Transportation

May 12, 2011
Date

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

CERTIFICATE FOR RESOLUTION

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

I, the undersigned officer of the Board of Directors of Fort Bend Grand Parkway Toll Road Authority, do hereby certify as follows:

1. The Board of Directors of Fort Bend Grand Parkway Toll Road Authority, convened in regular session on the 20th day of April, 2011, and the roll was called of the members of the Board:

Jim Condrey	Chairman
Bobbie A. Tallas	Vice Chairman
Charles Rencher	Secretary
Cliff Terrell	Treasurer
Melody Hess	Assistant Secretary

and all of said persons were present except Director(s) _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at the meeting: a written

**RESOLUTION AUTHORIZING THE CHAIRMAN TO EXECUTE RIGHT OF USE
AGREEMENT FOR A LOCAL PROJECT ENTITY'S USE OF
STATE HIGHWAY RIGHT-OF-WAY**

was introduced for the consideration of the Board. It was then duly moved and seconded that the resolution be adopted; and, after due discussion, the motion, carrying with it the adoption of the resolution, prevailed and carried unanimously.

2. A true, full, and correct copy of the aforesaid resolution adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; the action approving the resolution has been duly recorded in the Board's minutes of the meeting; the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of the Board as indicated therein; each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the aforesaid meeting, and that the resolution would be introduced and considered for adoption at the meeting, and each of the officers and members consented, in advance, to the holding of the meeting for such purpose; the meeting was open to the public as required by law; and public notice of the time, place, and subject of the meeting was given as required by Chapter 551, Texas Government Code.

SIGNED AND SEALED the 20th day of April, 2011.



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Secretary, Board of Directors

RESOLUTION AUTHORIZING THE CHAIRMAN TO EXECUTE RIGHT OF USE
AGREEMENT FOR A LOCAL PROJECT ENTITY'S USE OF STATE HIGHWAY
RIGHT-OF-WAY

WHEREAS, the Fort Bend Grand Parkway Toll Road Authority (the "Authority")
is a local government corporation;

WHEREAS, the Authority is authorized to enter into the Right of Use Agreement
for a Local Project Entity's Use of State Highway Right-of-Way (the "Agreement") with
the Texas Department of Transportation ("TxDOT") related to toll projects for Segment
D of the Grand Parkway; and

WHEREAS, the Board of Directors of the Authority (the "Board") is of the
opinion that administrative efficiency will be served by authorizing the Chairman and
Secretary to execute the Agreement with TxDOT as approved by the Board through the
annual operating budget or other Board action; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT BEND
GRAND PARKWAY TOLL ROAD AUTHORITY THAT:

Section 1: The Board of Directors of the Authority hereby authorizes the
Chairman and Secretary to execute the Agreement related to toll projects for Segment D
of the Grand Parkway.

Section 2: This Resolution is effective immediately upon passage.

PASSED AND APPROVED on April 20, 2011.


Chairman, Board of Directors

ATTEST:

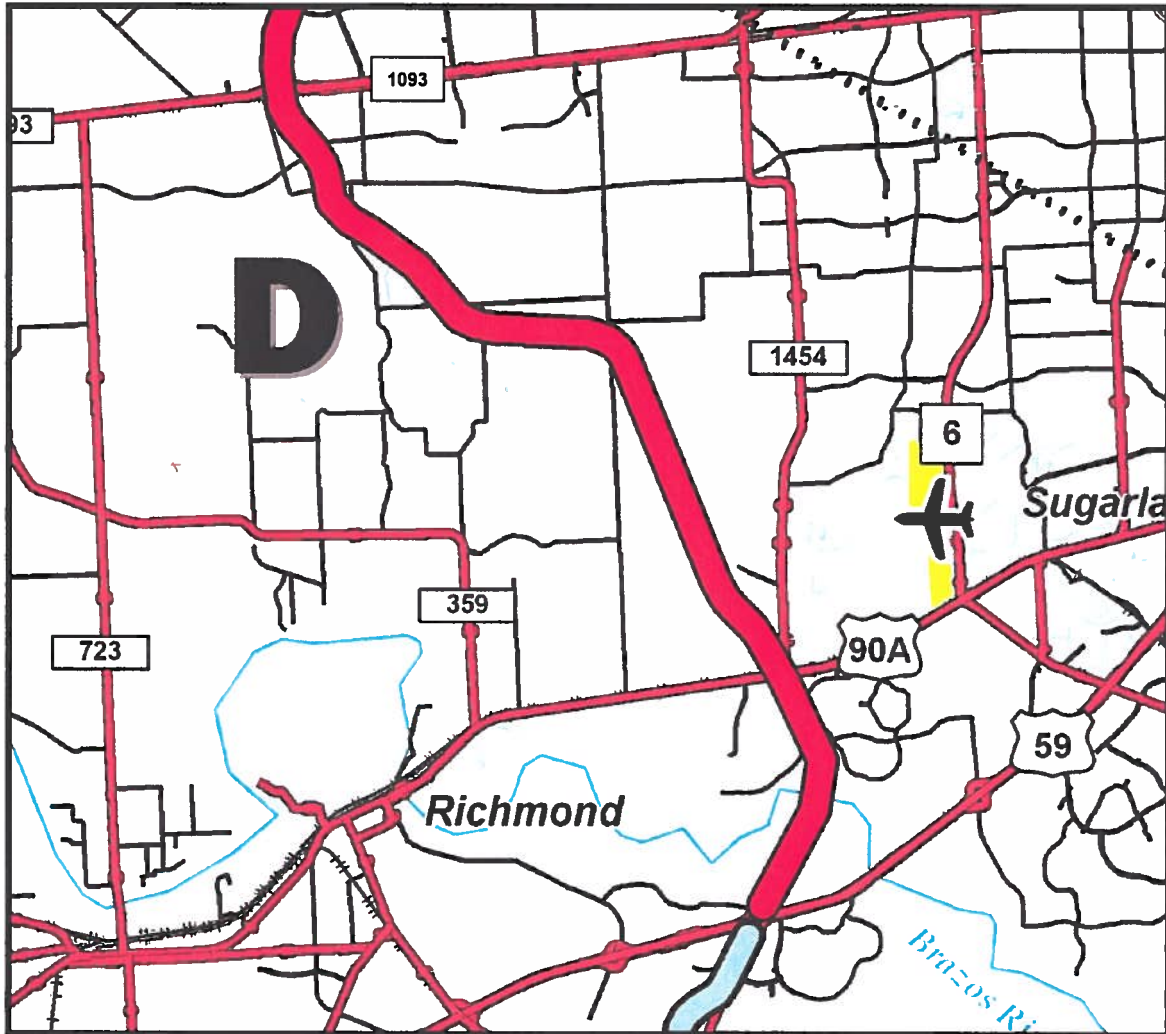
Secretary, Board of Directors

(SEAL)



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ATTACHMENT B
PROJECT LOCATION MAP
SHOWING PROJECT



ATTACHMENT C ESTIMATED PROJECT BUDGET

Description	Total Program Cost	Federal Participation	State Participation	Local Participation
	@100%	@0%	@0%	@100%
Grand Parkway Segment D Grade Separations	\$ 122,822,949.00	\$ -	\$ -	\$ 122,822,949.00
<u>SUBTOTAL</u>	<u>\$ 122,822,949.00</u>	<u>\$ -</u>		<u>\$ 122,822,949.00</u>
Direct State Costs (including plan review, inspection, and oversight)	\$ 75,000.00	\$ -	\$ -	\$ 75,000.00
<u>TOTAL INCURRED COST</u>	<u>\$ 122,897,949.00</u>	<u>\$ -</u>		<u>\$ 122,897,949.00</u>
<u>TOTAL REIMBURSIBLE COST</u>		<u>\$ -</u>		

This is an estimate only. Final participation amounts, including Direct State Costs, will be based on actual charges to the project.