

Texas Department of Transportation

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

February 8, 2012

CONTACT: DPD

Fort Bend County
→ FM 1093 (Westpark Tollway): James Lane to FM 1463
Control 0543-02-063, 064, etc.

The Honorable Robert E. Hebert
Fort Bend County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469

Dear Judge Hebert:

Please find attached duplicate counterparts of the Advance Funding Agreement for Westpark Tollway between Fort Bend County and the Texas Department of Transportation for the extension of Westpark Tollway with four toll mainlanes, two 2-lane frontage roads and four-lane divided roadway including grade separations over FM 1463/FM 359 and Cross Creek Ranch Drive.

Please have both counterparts executed by the County officials having the authority to enter into this agreement on behalf of the County. Once the counterparts have been executed, please return to TxDOT, attention Mr. Manny Francisco, for further handling.

We need a copy of a resolution or motion by the governing body of the County that commits funds for the development and construction of this project.

Should you have any questions, please contact Mr. James Koch, P.E., at (713) 802-5031 or Mr. Manny Francisco at (713) 802-5250.

Sincerely,

Michael W. Alford, P.E.
District Engineer
Houston District

Attachment

cc: Mr. Pat Henry, P.E.
Mr. Manny Francisco (with attachment)

COUNTY JUDGE
RECEIVED
FEB 9 2012

3/12/12 2 originals each returned to Marcus at Co Attorney

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT
PROJECTS WITH NO REQUIRED MATCH**

THIS 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."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, the Texas Transportation Code, Section 284.008 authorize the State to provide for and contribute toward the acquisition, construction, improvement, operation, maintenance, or pooling of a project under that chapter and under terms agreed to by the State and the Local Government; and

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as development and construction of an extension of Westpark Tollway consisting of four toll mainlanes, two 2-lane frontage roads, and four-lane divided roadway from James Lanes to east of FM 1463/FM 359 including grade separations over FM 1463/FM 359 and over Cross Creek Ranch Drive, for a total length of approximately 5.2 miles called the "Project"; and,

WHEREAS, Commission Minute Order Number 112793 authorizes the State to allow the Local Government to undertake and complete a highway improvement generally described as extension of Westpark Tollway facility consisting of frontage roads and tolled mainlanes, from FM 1463 to James Lanes in the City of Fulshear ; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

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, the State and the Local Government do agree as follows:

AGREEMENT

1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described in this agreement has been completed and accepted by all parties or unless terminated, as provided for by this agreement.

2. Project Funding and Work Responsibilities

- A. The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract. In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.
- B. 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.
- C. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- D. 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 Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

5. 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.

6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

9. Increased Costs

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

B. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

11. Termination

- A. This agreement may be terminated in the following manner:
 - 1. By mutual written agreement and consent of both parties;
 - 2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
 - 3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B. If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.
- C. 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.

12. 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 or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
Fort Bend County Judge 301 Jackson Street, Suite 719 Richmond, Texas 77469	Director of Contract Services Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in 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.

13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

15. Amendments

By mutual written consent of the parties, this agreement may be amended prior to its expiration.

16. State Auditor

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

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

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

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT



Signature

Robert E. Hebert
Typed or Printed Name

County Judge
Title

March 6, 2012
Date



ATTEST: 

Dianne Wilson, County Clerk

THE STATE OF TEXAS


Signature

Lisa Gregg
Regional Director

3/21/12
Date

THE STATE OF TEXAS
COUNTY OF FORT BEND

§
§
§

RESOLUTION AND ORDER

WHEREAS, the Commissioners Court finds it in the best interests of the citizens of Fort Bend County (the “County”), to improve the FM 1093/Westpark Tollway facility in the County, including frontage roads, from Grand Parkway (SH 99) to FM 1463 (the “Project”); and

WHEREAS, the County is committed to the development and construction of the Project; and

WHEREAS, the County and the Texas Department of Transportation (the “State”) entered into a Financial Assistance Agreement, in which the State agreed to provide financial assistance to the County in the aggregate amount of \$40 million, to be disbursed in the amount of \$4 million per year for ten years for the development and construction of the Project; and

WHEREAS, the funds disbursed to, or on behalf of, the County pursuant to the Financial Assistance Agreement shall not be subject to repayment to the State, provided that the County fully funds with local funds an extension of the Westpark Tollway facility, consisting of an extension of the tolled mainlanes from west of FM 723/Spring Green Drive to west of FM 1463 and an extension of the frontage roads from FM 1463 to James Lane in the City of Fulshear, as soon as the necessary environmental approvals are approved; and

WHEREAS, the County is required under the Financial Assistance Agreement to execute a project development agreement with the State prior to the County beginning construction of the Project; and

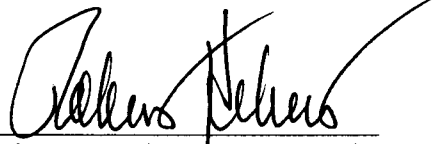
WHEREAS, the County and the State have agreed to allow the Advance Funding Agreement for Voluntary Local Government Contributions to Transportation Improvement Projects with No Required Match (“Advance Funding Agreement”) to serve as the project development agreement for improvements to FM 1093/Westpark Tollway from James Lane to FM 1463/FM 359 required under the Financial Assistance Agreement; and

NOW THEREFORE, BE IT RESOLVED AND ORDERED:

1. That the Commissioners Court approves entering into the Advance Funding Agreement and commits funds for the development and construction of the Project as provided under the Agreement; and
2. That Robert Hebert, County Judge, is authorized to execute the Advance Funding Agreement, on behalf of Fort Bend County.

Adopted this 6 day of March, 2012.

FORT BEND COUNTY

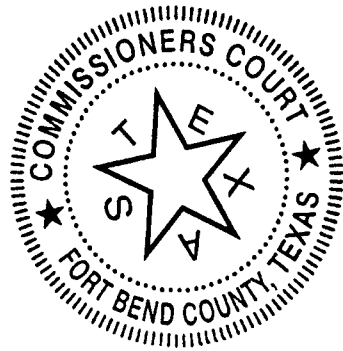


Robert E. Hebert, County Judge

ATTEST:



Dianne Wilson, County Clerk



ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

I. Scope of Work

The extension of the Westpark Tollway facility, consist of divided roadway, frontage roads and tolled mainlanes, from James Lane to east of FM 1463/FM 359, for a total length of 5.2 miles. The tolled mainlanes, consisting of four lanes, shall be extended from a terminus located 0.5 miles west of FM 723/Spring Green Drive to 0.3 miles west of Cross Creek Ranch Drive for a total length of 2.9 miles. The tolled mainlanes shall include grade separations over FM 1463/FM 359 and over Cross Creek Ranch Drive. The pair of two-lane frontage roads shall be extended from FM 1463/FM 359 to west of Cross Creek Ranch Drive, and transition to a four-lane divided roadway to James Lane for a total length of 3.2 miles. The four-lane divided roadway from west of Cross Creek Ranch Drive to FM 359 in the City of Fulshear shall follow the existing FM 1093 alignment. The section between James Lane and FM 359 shall be four lane divided on new location because the existing alignment of FM 1093 does not meet design criteria.

II. Description of the Cost of the Items of Work

A. PRELIMINARY ENGINEERING AND PLAN PREPARATION

- (1) The Local Government shall be responsible for the preparation of preliminary engineering necessary for the development of the plans, specification and estimates (PS&E). The preliminary engineering shall include the development of the schematics, preparation of required environmental documents, right-of-way mapping, utility mapping, and public involvement requirements, and any other work necessary to complete the Project. The PS&E shall be developed in accordance with the State's 2004 Standard Specifications for Construction of Highways Streets and Bridges or its currently approved revisions.
- (2) The State shall review all engineering documentation including schematic, right-of-way maps, utility maps, environmental document and PS&E at fifty percent (50%) and ninety percent (90%). Should the State determine that the engineering documents or portions thereof are unacceptable, the Local Government shall correct the documents to satisfaction of the State. The State shall approve environmental and engineering documents.
- (3) 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 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).

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

- (4) 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* 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* design standards.

B. ENVIRONMENTAL ASSESSMENT AND MITIGATION

Development of a transportation project must comply with the current State's Standards of Uniformity for Local Government projects.

- (1) The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this agreement.
- (2) The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- (3) The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- (4) The Local Government is responsible for the preparation of the environmental documents required for the environmental clearance of this Project.
- (5) 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.

C. ACQUISITION OF RIGHT OF WAY

- (1) Right of way and real property acquisition shall be the responsibility of the Local Government.
- (2) If the Local Government is the owner of any part of the Project site under this agreement, 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.
- (3) 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.
- (4) The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any

needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.

- (5) The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.

D. UTILITY RELOCATION

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 to ensure that utility facilities are adjusted, removed, or relocated. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

E. CONSTRUCTION

- (1) The Local Government 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 that may become necessary subsequent to the award of the construction contract.
- (2) The Local Government will use its approved contract letting and award procedures to let and award the construction contract.
- (3) Prior to their execution, the State will be given the opportunity to review contract change orders that will result in design changes.
- (4) The Local Government 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 PS&E.
- (5) The State may conduct any oversight activities it deems reasonably necessary or advisable to ensure compliance with this agreement and all State requirements.
- (6) The State may periodically inspect the Project's signs, barricades, and traffic control plan to ensure compliance with the Texas Manual on Uniform Traffic Control Devices. The State may attend pre-construction meetings and construction status meetings.
- (7) Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

F. MAINTENANCE

The Local Government shall be responsible for the maintenance and operation of the tolled mainlanes and ramps including overpasses at FM 1463/FM 359 and Cross Creek Ranch Drive after completion of the work. The State shall be responsible for maintenance and operation of the four lane divided roadway, frontage roads and major crossings.

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

III. Schedule of Payment

The Local Government shall reimburse the State for use of the existing right of way for the Project at \$40.00 per acre. in the amount of \$1,844.40. The Local Government shall pay the Project direct costs in the amount of \$170,000.00 to be incurred by the State for the review of all engineering documentation including schematic, right-of-way maps, utility maps, environmental document, PS&E, and construction oversight.

IV. Actual Cost Agreement

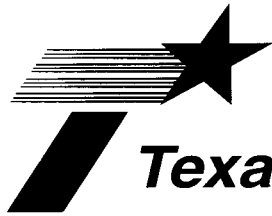
- (1) The Local Government is responsible for 100% of the Project cost.
- (2) This Project cost estimate shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to:
 - (a) costs of real property;
 - (b) costs of utility work;
 - (c) costs of environmental assessment and remediation;
 - (d) cost of preliminary engineering and design;
 - (e) cost of construction and construction management; and
 - (f) any other local project costs.
- (3) The Local Government will be responsible for all costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this agreement or approved otherwise in an amendment to this agreement.
- (4) In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing.

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

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

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (by Local Government)	\$7,449,400.00	0%	\$0	0%	\$0	100%	\$7,449,400.00
Environmental (by Local Government)	\$930,000.00	0%	\$0	0%	\$0	100%	\$930,000.00
Right of Way (by Local Government including ROW Re- imbursement)	\$4,151,844.40	0%	\$0	0%	\$0	100%	\$4,151,844.40
Utility Adjustment (by Local Government)	\$857,000.00	0%	\$0	0%	\$0	100%	\$857,000.00
Construction (by Local Government)	\$49,662,400.00	0%	\$0	0%	\$0	100%	\$49,662,400.00
Subtotal	\$63,050,644.40	0%	\$0	0%	\$0	100%	\$63,050,644.40
Environmental Direct State Costs	\$25,000.00	0%	\$0	0%	\$0	100%	\$25,000.00
Right of Way Direct State Costs	\$10,000.00	0%	\$0	0%	\$0	100%	\$10,000.00
Engineering Direct State Costs	\$30,000.00	0%	\$0	0%	\$0	100%	\$30,000.00
Utility Direct State Costs	\$5,000.00	0%	\$0	0%	\$0	100%	\$5,000.00
Construction Direct State Costs	\$100,000.00	0%	\$0	0%	\$0	100%	\$100,000.00
Indirect State Costs	\$0	0%	\$0	0%	\$0	100%	\$0
TOTAL	\$63,220,644.40	0%	\$0	0%	\$0	100%	\$63,220,644.40

Initial payment by the Local Government to the State: \$ 70,000.00
Payment by the Local Government to the State before construction: \$ 101,844.40
Estimated total payment by the Local Government to the State: \$ 171,844.40
This is an estimate. The final amount of Local Government participation will be based on actual costs.



Texas Department of Transportation

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

February 6, 2012

CONTACT: DPD

→ Fort Bend County
FM 1093 (Westpark Tollway): FM 1463 to SH 99
Control 1258-03-042 and 043

The Honorable Robert E. Hebert
Fort Bend County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469

Dear Judge Hebert:

Please find attached duplicate counterparts of the Advance Funding Agreement for Westpark Tollway between Fort Bend County and the Texas Department of Transportation (TxDOT) for the extension of Westpark Tollway with four mainlanes and two 2-lane frontage roads including grade separations over Katy-Gaston Road and FM 723/Spring Green Drive.

Please have both counterparts executed by the County officials having the authority to enter into this agreement on behalf of the County. Once the counterparts have been executed, please return to TxDOT, attention Mr. Manny Francisco, for further handling.

We need a copy of a resolution or motion by the governing body of the County that commits funds for the development and construction of this project.

Should you have any questions, please contact Mr. James Koch, P.E., at (713) 802-5031 or Mr. Manny Francisco at (713) 802-5250.

Sincerely,

Michael W. Alford, P.E.
District Engineer
Houston District

Attachment

cc: Mr. James Koch, P.E.
Mr. Manny Francisco (with attachment)

COUNTY JUDGE
RECEIVED
FEB 7 2012

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For
WESTPARK TOLLWAY - FM 1463 TO SH 99
On - System**

THIS 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".

WITNESSETH

WHEREAS, federal law establishes 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 the Local Government; and

WHEREAS, federal and State laws require the Local Government to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Code, Section 284.008 authorizes the State to provide for and contribute toward the acquisition, construction, improvement, operation, maintenance, or pooling of a project under that chapter and under terms agreed to by the State and the Local Government; and

WHEREAS, the Texas Transportation Code, Section 222.103 and Title 43, Texas Administrative Code, Sections 27.50 to 27.58 (toll equity rules) prescribe the conditions for financing of a toll facility of a public or private entity; and

WHEREAS, the Local Government built and is currently operating and maintaining the Westpark Tollway, which terminates at SH 99; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 112757, authorizing the State to undertake and complete a highway improvement generally described as the extension of Westpark Tollway with four toll mainlanes and two 2-lane frontage roads, from FM 1463 to SH 99 including grade separations over Katy-Gaston Road and FM 723/Spring Green Drive, for a total length of approximately 4.2 miles, called the "Project"; and,

WHEREAS, the Local Government is committed to the development and construction of the Project; and,

WHEREAS, the Texas Transportation Commission passed Minute Order Number 112793, authorizing the State to grant final approval of the request by the Local Government for financial assistance; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 112898, authorizing the State to make funding available to the Local Government following substantial completion of the Project and opening of the roadway to traffic; and

WHEREAS, the Local Government entered into a Financial Assistance Agreement with the State for the development and construction of an extension of the Westpark Tollway, four toll mainlanes and two 2-lane frontage roads, from FM 1463 to SH 99 including grade separations over Katy-Gaston Road and FM 723/Spring Green Drive; and

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated March 6, 2012, which is attached to and made a part of this agreement as Attachment "A" for the improvement covered by this agreement. A map showing the Project location appears in 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. 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 extension of the Westpark Tollway facility, including two 2-lane frontage roads, from FM 1463 to SH 99 for a total length of 4.2 miles. The tolled mainlanes, consisting of four lanes, will extend a total length of 3.0 miles and will include grade separations over Katy-Gaston Road and FM 723/Spring Green Drive as shown on Attachment "B".

(1) The Local Government shall be responsible for the preparation of preliminary engineering necessary for the development of the plans, specification and estimates (PS&E). The preliminary engineering shall include the development of the schematics, preparation of required environmental documents, right-of-way mapping and public involvement requirements, and any other work necessary to complete the Project. The PS&E shall be developed in accordance with the State's 2004 Standard Specifications for Construction of Highways Streets and Bridges or its currently approved revisions.

(2) The State shall review all engineering documentation including schematic, right-of-way maps, utility maps, environmental document and PS&E at thirty percent (30%), sixty percent (60%) and ninety percent (90%). Should the State determine that the engineering documents or portions thereof are unacceptable, the Local Government shall correct the documents to satisfaction of the State. The State shall approve environmental and engineering documents.

(3) The Local Government shall prepare right of way maps and property deeds descriptions for the additional right-of-way.

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

(5) The State may periodically inspect the Project's signs, barricades, and traffic control plan to ensure compliance with the Texas Manual on Uniform Traffic Control Devices. The State may attend pre-construction meetings and construction status meetings.

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 to and made a part of this agreement. 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. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. 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 designated a qualified individual to oversee the Project.

- C.** 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.
- D.** 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.
- E.** 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 otherwise provided for in this agreement or approved otherwise in an amendment to this agreement.
- F.** 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 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.
- G.** In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- H.** 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 Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- I.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- J.** The State will not pay interest on any funds provided by the Local Government.
- K.** 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.
- L.** 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.
- M.** If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

- N.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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 investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- O.** Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- P.** 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, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- Q.** 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;
- 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 Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

5. 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.

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

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

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

9. Compliance with Texas Accessibility Standards and ADA

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 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 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* design standards. 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 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 Local Government 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 that 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 Local Government 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, Subpart B.

12. Project Maintenance

The Local Government shall be responsible for the maintenance and operation of the tolled Mainlanes and ramps including overpasses at Katy-Gaston Road and FM 723/Spring Green Drive after completion of the work. The State shall be responsible for maintenance and operation of the frontage roads and major crossings.

13. Right of Way and Real Property

- A.** Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
- B.** If the Local Government is the owner of any part of the Project site under this agreement, 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.
- C.** 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 State and its representatives for review and inspection.

- D.** The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E.** In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the obligation of federal spending authority.
- F.** The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G.** The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
- H.** Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to

appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.

- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

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:	State:
Fort Bend County Judge	Director of Contract Services
301 Jackson Street, Suite 719	Texas Department of Transportation
Richmond, Texas 77469	125 E. 11 th Street
	Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so 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 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

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.

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. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

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. Civil Rights Compliance

The Local Government shall comply with the regulations of the United States Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200),

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).

24. Disadvantaged Business Enterprise (DBE) Program Requirements

- A.** The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B.** The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C.** The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D.** The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E.** The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this LPAFA. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this LPAFA. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F.** Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

25. 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." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or

otherwise excluded from or ineligible for participation in Federal Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. 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.

26. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's 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 shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. 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.

27. 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.

28. Federal Funding Accountability and Transparency Act Requirements

- A.** Any recipient or sub-recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B.** For sub-awards greater than \$25,000, the Local Government, as a recipient of federal funding, shall:
1. Obtain and provide to the State and the Federal government, a Central Contracting (CCR) number with the Federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR website whose address is: <https://www.bpn.gov/ccr/default.aspx>;
 2. Obtain and provide to the State and the Federal government, a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top executives to the State and Federal government if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and
 - ii. Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

29. Single Audit Report

- A.** 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.
- B.** If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
- C.** If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a Statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D.** For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or Statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

30. Signatory Warranty

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

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

LOCAL GOVERNMENT



Signature

Robert E. Hebert

Typed or Printed Name

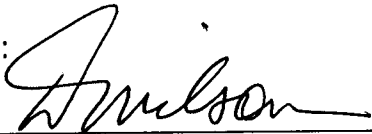
County Judge

Title

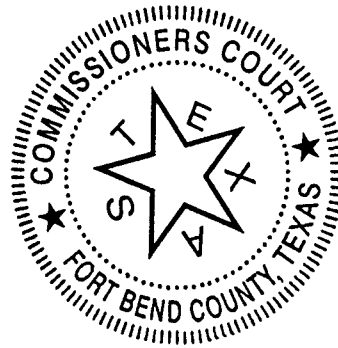
March 6, 2012

Date

ATTEST:



Dianne Wilson, County Clerk



THE STATE OF TEXAS



Janice Mullenix

Director of Contract Services

Texas Department of Transportation

March 23, 2012

Date

List of Attachments:

Attachment "A" - Resolution or Ordinance (Local Government)

Attachment "B" - Location Map

Attachment "C" - Project Budget and Description

CSJ Nos.: 1258-03-042 and 043
District No. 12 - Houston
Code Chart 64 No.: 50080
Project: FM 1093 (Westpark Tollway)
Federal Highway Administration
CFDA : 20.205
Not Research and Development

ATTACHMENT "A"
RESOLUTION OR ORDINANCE

THE STATE OF TEXAS
COUNTY OF FORT BEND

§
§
§

RESOLUTION AND ORDER

WHEREAS, the Commissioners Court finds it in the best interests of the citizens of Fort Bend County (the “County”), to improve the FM 1093/Westpark Tollway facility in the County, including frontage roads, from Grand Parkway (SH 99) to FM 1463 (the “Project”); and

WHEREAS, the County is committed to the development and construction of the Project; and

WHEREAS, the County and the Texas Department of Transportation (the “State”) entered into a Financial Assistance Agreement, in which the State agreed to provide financial assistance to the County in the aggregate amount of \$40 million, to be disbursed in the amount of \$4 million per year for ten years for the development and construction of the Project; and

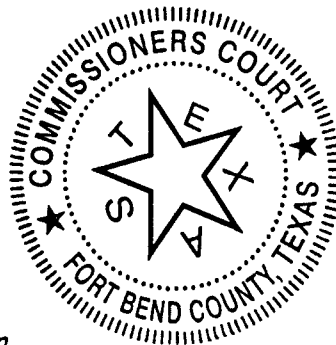
WHEREAS, the County is required under the Financial Assistance Agreement to execute a project development agreement with the State prior to the County beginning construction of the Project; and

WHEREAS, the County and the State have agreed to allow the Advance Funding Agreement for Westpark Tollway – FM 1463 to SH 99 On – System (“Advance Funding Agreement”) to serve as the project development agreement for the Project required under the Financial Assistance Agreement; and

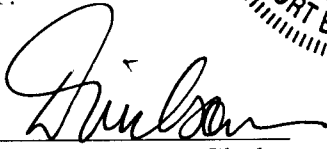
NOW THEREFORE, BE IT RESOLVED AND ORDERED:

1. That the Commissioners Court approves entering into the Advance Funding Agreement and commits funds for the development and construction of the Project as provided under the Agreement; and
2. That Robert Hebert, County Judge, is authorized to execute the Advance Funding Agreement, on behalf of Fort Bend County.

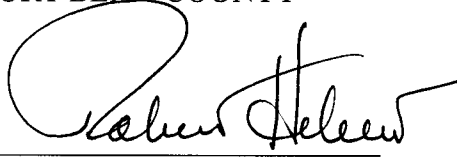
Adopted this 6 day of March, 2012.



ATTEST:

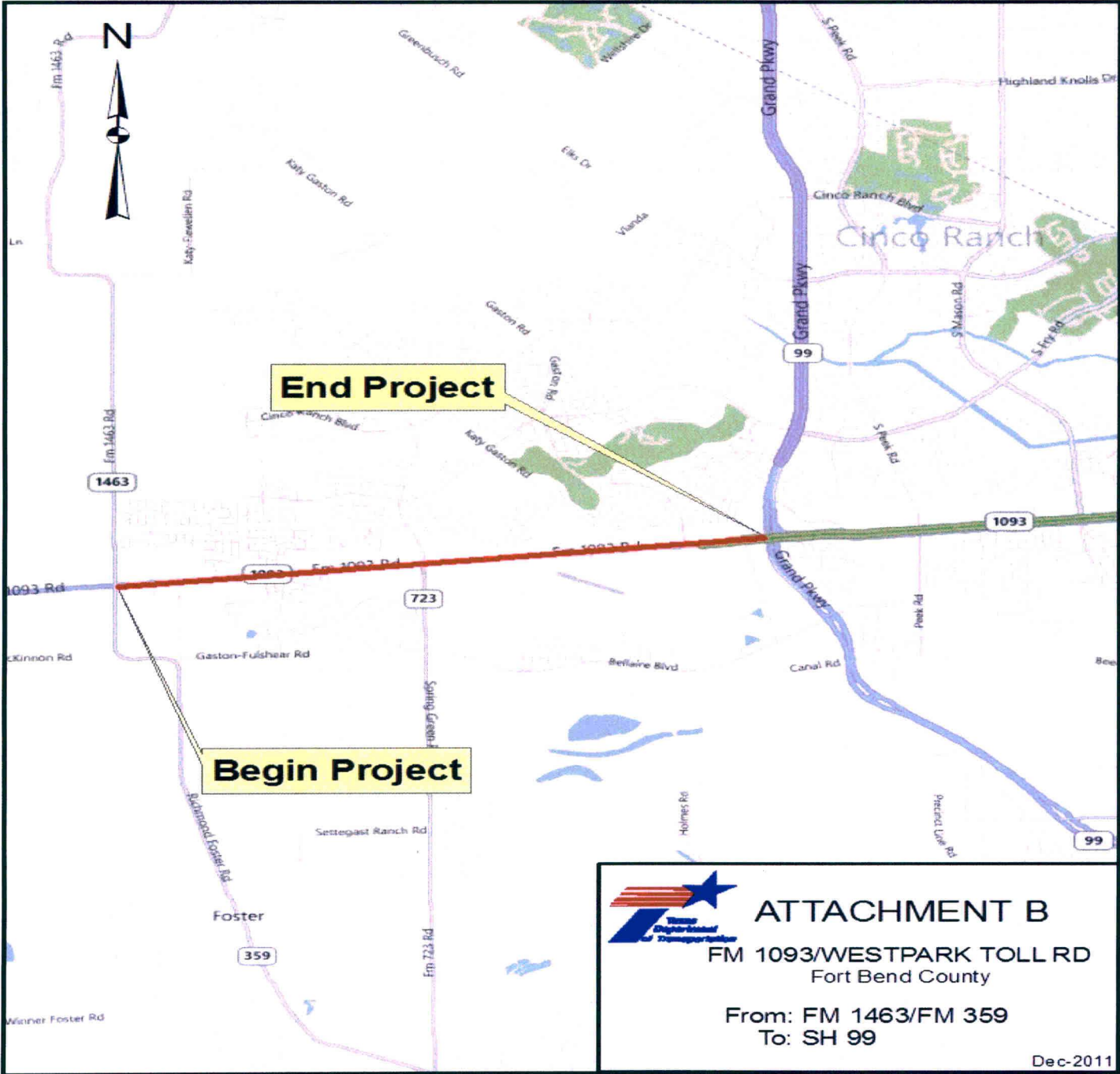

Dianne Wilson, County Clerk

FORT BEND COUNTY


Robert E. Hebert, County Judge

CSJ Nos.: 1258-03-042 and 043
District No. 12 - Houston
Code Chart 64 No.: 50080
Project: FM 1093 (Westpark Tollway)
Federal Highway Administration
CFDA : 20.205
Not Research and Development

ATTACHMENT "B" LOCATION MAP



ATTACHMENT "C"
Project Budget and Description

The total estimated cost associated with the development and construction of the four toll mainlanes and two 2-lane frontage roads, from FM 1463 to SH 99 including grade separations over Katy-Gaston Road and FM 723/Spring Green Drive necessary to complete the Project is \$61,748,009.20. The Local Government shall reimburse the State for perpetual use of the existing right of way for the Project at \$40.00 per acre.

As provided for in the Financial Assistance Agreement between the State and Fort Bend County, executed on December 19, 2011, the State has agreed to provide financial assistance to the Local Government in the aggregate amount of \$40,000,000. The \$40,000,000. shall be provided to the Local Government in the amount of \$4,000,000. per year for ten years following substantial completion of the Project and opening of the roadway to traffic.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (by Local Government)	\$6,274,250.00	0%	\$0	0%	\$0	100%	\$6,274,250.00
Environmental (by Local Government)	\$400,000.00	0%	\$0	0%	\$0	100%	\$400,000.00
Right-of-way (by Local Government including ROW Re-imburement)	\$9,002,209.20	0%	\$0	0%	\$0	100%	\$9,002,209.20
Utility Adjustment (by Local Government)	\$3,913,250.00	0%	\$0	0%	\$0	100%	\$3,913,250.00
Construction (by Local Government)	\$41,828,300.00	0%	\$0	0%	\$0	100%	\$41,828,300.00
Subtotal	\$61,418,009.20	0%	\$0	0%	\$0	100%	\$61,418,009.20
Environmental Direct State Costs	\$50,000.00	0%	\$0	0%	\$0	100%	\$50,000.00
Right of Way Direct State Costs	\$20,000.00	0%	\$0	0%	\$0	100%	\$20,000.00
Engineering Direct State Costs	\$50,000.00	0%	\$0	0%	\$0	100%	\$50,000.00
Utility Direct State Costs	\$10,000.00	0%	\$0	0%	\$0	100%	\$10,000.00
Construction Direct State Costs	\$200,000.00	0%	\$0	0%	\$0	100%	\$200,000.00
Indirect State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
TOTAL	\$61,748,009.20	0%	\$0	0%	\$0	100%	\$61,748,009.20

CSJ Nos.: 1258-03-042 and 043
District No. 12 - Houston
Code Chart 64 No.: 50080
Project: FM 1093 (Westpark Tollway)
Federal Highway Administration
CFDA : 20.205
Not Research and Development

Initial payment by the Local Government to the State: \$130,000.00

Payment by the Local Government to the State before construction: \$202,209.20

Estimated total payment by the Local Government to the State: \$332,209.20

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