

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

JOINT PARTICIPATION AGREEMENT FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE INTERSECTION OF WEST BELLFORT AND S.H. 99 ("GRAND PARKWAY") IN FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2

This Agreement, made and entered into by and between Fort Bend County Assistance District No. 2 ("CAD 2"), Fort Bend County ("County") and Fort Bend Grand Parkway Toll Road Authority ("FBGPTRA"), both body corporates and politics under the laws of the State of Texas, collectively, the "Parties".

WHEREAS, CAD 2 has been created to fund, among other things, the construction of certain roads within its boundaries; and

WHEREAS, CAD 2 levies a one percent (1%) sales tax and has determined that the expenditure of sales tax funds for the Project (defined herein) serves a public purpose; and

WHEREAS, CAD 2 entered into a Joint Participation Agreement with Fort Bend County and Fort Bend County Municipal Utility District No. 194 for the design and construction of an access road along the eastern side of the Grand Parkway, north of West Bellfort, for a distance of approximately 5,000 feet, which is considered a high-priority project to be financed by CAD 2 (the "First Priority Project"); and

WHEREAS, the Parties have agreed that the improvements to the intersection of West Bellfort and the Grand Parkway and transitions to existing roadway, including improvements under the bridge and an exit ramp from the Grand Parkway north of West Bellfort (collectively, the "Project"), is the second-highest priority of roads to be financed by CAD 2; and

WHEREAS, CAD 2 will finance the Project from its sales tax revenues; however, at the moment there is a shortfall in such revenues; and

WHEREAS, FBGPTRA desires to provide short term funding for the CAD 2, to be reimbursed as soon as sufficient sales tax revenues exist and full reimbursement has been made by CAD 2 to parties to be reimbursed for the First Priority Project, subject to 3. H. of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and benefits to the parties hereto, CAD 2 and FBGPTRA agree as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective on the date signed by both Parties and shall remain in effect until CAD 2 has reimbursed FBGPTRA in full under the terms of this Agreement.

2. Scope of Work

Widening of West Bellfort pavement under the Grand Parkway main lanes and transitions to the existing roadway, signal modifications, both U-turns under the Grand Parkway, and the design and construction of a northbound exit ramp from the Grand Parkway, north of West Bellfort.

3. Responsibilities

- A. CAD 2 has levied a 1% sales tax from businesses within its boundaries and shall receive such revenue from the State Comptroller. As CAD 2 funds are available and reimbursement made in full for the First Priority Project, subject to subsection G. below, CAD 2 shall reimburse FBGPTRA for payments made by FBGPTRA due to the shortfall, as described herein.
- B. FBGPTRA shall use its available funds to pre-finance the estimated \$2.3 million, including 10% contingencies, to complete the Project. The engineering costs are included in the \$2.3 million.
- C. County shall permit FBGPTRA to make improvements to the West Bellfort pavement owned by the County necessary to construct the Project.
- D. FBGPTRA shall prepare, or cause to be prepared, the drawings and specifications for the Project.
- E. FBGPTRA shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contracts for construction of the Project. Administration of the contracts includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contracts.
- F. FBGPTRA shall comply with all statutory requirements for contract letting and award procedures to let and award the construction contract(s). FBGPTRA shall proceed with construction as soon as possible and will endeavor to complete construction of the Project by December 31, 2013.
- G. At completion of construction of the West Bellfort pavement improvements, FBGPTRA shall provide all bonds to Fort Bend County (the "County"). The County shall maintain and own the West Bellfort pavement improvements. However, FBGPTRA shall maintain and own both U-turns under the Grand Parkway and the northbound exit ramp from the Grand Parkway.
- H. CAD 2 shall have the right to retain, at its sole option, up to fifty (50)% of sales tax revenue received from the State Comptroller for its use.

4. Reimbursement by CAD 2

Reimbursement by CAD 2 to FBGPTRA shall be at the earliest dates possible after full reimbursement to Parties to be reimbursed for the First Priority Project, subject to Section 3. H. above. Payment shall only be made from sales tax revenues from CAD 2. CAD 2 shall reimburse FBGPTRA for the Project, meaning any Project costs expended by FBGPTRA, plus interest calculated at the net effective interest rate that FBGPTRA sells its first series of bonds. Interest shall continue to run until FBGPTRA has been fully reimbursed for the Project.

5. Environmental Assessment and Mitigation

FBGPTRA is responsible for securing all required environmental clearances for the Project. All related costs shall be considered an additional cost of the Project. FBGPTRA shall be entitled to reimbursement from CAD sales tax revenues, and FBGPTRA shall be paid in accordance with reimbursement provisions set forth above in Section 4.

6. Termination of this Agreement

This Agreement is not subject to termination prior to completion of the financing and reimbursement of the Project. Upon full reimbursement to FBGPTRA for this Project, this Agreement shall be terminated. Notwithstanding the above, the County's ownership and maintenance obligations for the West Bellfort pavement improvements pursuant to Section 3. G. shall survive the termination of this Agreement.

7. Dispute Resolution

- A. In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, the Parties agree to submit the dispute to mediation in Richmond, Texas.
- B. In the event any Party desires to mediate any dispute, that party shall notify the other Parties in writing of the dispute desired to be mediated. If the Parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation. The mediator shall be selected by mutual agreement between the Parties.
- C. All expenses associated with mediation shall be shared equally by each Party (1/3 each).
- D. The requirement to seek mediation shall be a condition required before filing an action at law or in equity. Any such action shall be filed in a court of competent jurisdiction in Fort Bend County, Texas, and the laws of Texas shall apply.

8. Amendments

Amendments and changes 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 Projects, may be enacted through a mutually agreed upon, written amendment.

9. Remedies

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. None of the Parties may terminate its duties under this Agreement except in accordance with its provisions.

10. Notices

- A. 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:

CAD 2: Fort Bend County Assistance District No. 2

Attn: Marcus D. Spencer
Fort Bend County, Assistant County Attorney
309 S. 4th Street, Suite 728
Richmond, TX 77469

COUNTY: Fort Bend County

Attn: Roy L. Cordes, Jr.
Fort Bend County Attorney
309 S. 4th Street, Suite 728
Richmond, TX 77469

FBGPTRA: Fort Bend Grand Parkway Toll Road Authority

Attn: Chairman
Fort Bend County Toll Road Authority
c/o Allen Boone Humpries Robinson LLP
3200 Southwest Freeway, Ste. 2600
Houston, TX 77027

- B. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Any Party may change the above address by sending written notice of the change to the other Parties. Any 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. Compliance with Laws

The Parties shall comply with all federal, county, 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.

13. Sole Agreement

This Agreement constitutes the sole and only agreement between the Parties regarding the Project and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

14. 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 each other, 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 Parties 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.

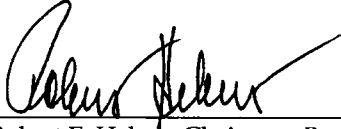
15. Authority to Execute Agreement

The Governing Body of each Party has authorized its execution and the Agreement has been approved at a duly called and posted meeting.

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

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FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2:



Robert E. Hebert, Chairman, Board of Directors

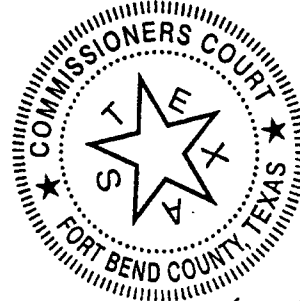
5-22-2012

Date

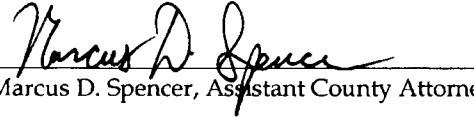
Attest:



Dianne Wilson, County Clerk



Approved:



Marcus D. Spencer, Assistant County Attorney

5/18/2012

Date

FORT BEND COUNTY:



Robert E. Hebert, County Judge

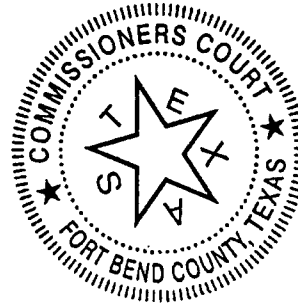
5-22-2012

Date

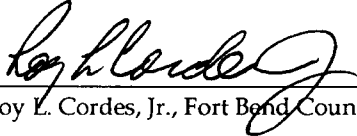
Attest:



Dianne Wilson, County Clerk



Approved:

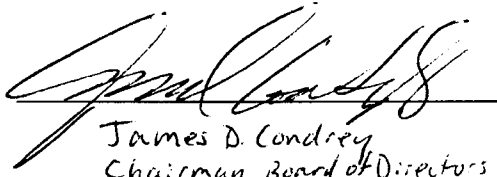


Roy L. Cordes, Jr., Fort Bend County Attorney

5/21/2012

Date

FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY:


James D. Condrey
Chairman, Board of Directors

May 16, 2012
Date

APPENDIX

The appendix attached to this Agreement consists of:

Exhibit "A" Location of Project and descriptions

