

FIRST AMENDMENT TO FINANCIAL ASSISTANCE AGREEMENT WESTPARK TOLLWAY

THIS FIRST AMENDMENT TO FINANCIAL ASSISTANCE AGREEMENT (this "Amendment"), by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission ("TxDOT"), and **FORT BEND COUNTY**, a political subdivision of the State of Texas (the "County"), is executed to be effective the 14th day of June, 201 8 (the "Effective Date").

WITNESSETH

WHEREAS, TxDOT and the County are parties to that certain Financial Assistance Agreement for the development and construction of an extension of the Westpark Tollway facility, including frontage roads, from the Grand Parkway (SH 99) to FM 1463, effective as of December 19, 2011 (the "Agreement"). All capitalized terms not otherwise defined in this Amendment will have the same meaning as described in the Agreement; and

WHEREAS, TxDOT and the County desire to amend the Agreement to revise the limits of the frontage road extension to be funded and constructed by the County as a condition to the financial assistance provided by TxDOT not being subject to repayment.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, TxDOT and the County agree as follows:

1. **Amendment to Section 1.** Section 1 of the Agreement is hereby amended in its entirety to read as follows:

"1. TxDOT will 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, and to be used to pay for or reimburse the costs of the development and construction of the Project, including without limitation the costs of right-of-way acquired after the effective date of this Agreement and utility relocation. The financial assistance is conditioned on the Project receiving the necessary environmental approvals. Funding from the financial assistance will not be made available to the County until substantial completion of the project and opening of the roadway to traffic. The County is responsible for paying all other costs of the Project, including any overruns in excess of the Project budget, unless otherwise approved by the Commission.

Subject to the satisfaction of the foregoing conditions, this funding is committed by TxDOT and is not subject to future discretionary actions of TxDOT or the Commission. The parties recognize that this funding commitment is an integral part of the overall plan of finance for the Project. The parties further recognize and acknowledge that the funds committed herein may be applied to pay for or reimburse costs incurred in connection with the development and construction of the Project, including surveying and right-of-way acquisition, and including costs incurred prior to the receipt of those funds, but only

those costs incurred after the effective date of this Agreement and any required project authorization from the Federal Highway Administration.

2. **Amendment to Section 5.** Section 5 of the Agreement is hereby amended in its entirety to read as follows:

“5. Subject to paragraph 6 below and this paragraph 5, amounts disbursed to, or on behalf of, the County pursuant to this Agreement shall not be subject to repayment to TxDOT, 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 west of Cross Creek Ranch Boulevard in the City of Fulshear, as soon as the necessary environmental approvals for the project are received. An extension of the frontage roads from west of Cross Creek Ranch Boulevard to James Lane in the City of Fulshear is being funded with funds allocated by the Houston-Galveston Area Council (HGAC), which are considered to be local funds for purposes of Minute Order 112793. If the County fails to i) begin construction of the extension of the frontage roads from FM 1463 to west of Cross Creek Ranch Boulevard within two years after all necessary environmental approvals are received, or ii) fails to begin construction of the toll main lanes within two years after all necessary environmental approvals are received and the toll main lanes are determined to be financially feasible (the “Default Date”), the County shall repay all amounts disbursed to, or on behalf of, the County under this agreement no later than ten years after the last disbursement date. Unpaid amounts shall bear interest from the Default Date to the date on which such amounts and the interest thereon are repaid at a rate per annum equal to the rate for funds on deposit in the state highway fund for that period.”

3. **Authorization.** Each party to this Amendment represents to the other that it is fully authorized to enter into this Amendment and to perform its obligations hereunder and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Amendment in accordance with its terms, other than those that have been obtained.

4. **Remainder of Agreement.** Except as amended hereby, the Agreement shall continue in full force and effect in the form that was effective immediately before the execution of this Amendment.

5. **Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, TxDOT and the County have executed this Amendment by multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

FORT BEND COUNTY

By: _____

Robert E. Hebert
County Judge

Date: 5-8-2018

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____

James M. Bass
Executive Director

Date: 6/14/2018

ATTEST: _____

Laura Richard
County Clerk

