

February 24, 2009

Commissioners Court
Administration Building
Houston, Texas 77002

SUBJECT: Recommendation that Commissioners Court approve an Advance Funding Agreement between Harris County and the Texas Department of Transportation (TxDOT) for the development, design, construction, operation and maintenance of Segment E and a portion of Segment D of the Grand Parkway Precinct 3

Dear Court Members:

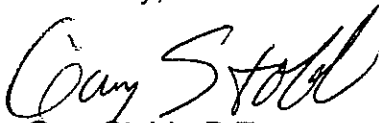
It is recommended that Commissioners Court approve an Advance Funding Agreement between Harris County and the Texas Department of Transportation (TxDOT) for the development, design, construction, operation and maintenance of Segment E and a portion of Segment D of the Grand Parkway.

This agreement does not require any funding by Harris County.

Harris County Toll Road Authority (HCTRA) recommends for all appropriate officials to take all necessary actions to execute this agreement.

Attached are five (5) originals of the Agreement. Please return all five fully executed originals to HCTRA for further processing of TxDOT signatures.

Sincerely,



Gary Stobb, P.E.
Director

GS/JCT/bl

Attachments

cc: Arthur L. Storey, Jr., P.E.
Peter Key
John C. Tyler, P.E.
Clarissa Bauer

Doug Emery, P.E.
Agenda File
Desiree Barrett
Reading File

CSJ: 3510-05-002 and
3510-05-010
District #: 12 – Houston
Code Chart 64: 50102
Project: SH 99: from IH 10 to
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STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A LOCAL GOVERNMENT TO
CONSTRUCT AN ON-SYSTEM IMPROVEMENT
WITH 100% LOCAL FUNDS**

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

WITNESSETH

WHEREAS, Transportation Code, Section 201.209 authorizes the State and a Local Government to enter into agreements to increase the efficiency and effectiveness of government within the scope of their authorized duties; and,

WHEREAS, Texas Transportation Code, Section 222.052 allows a Local Government to contribute funds for the development and construction of public roads and the state highway system; and,

WHEREAS, the State, the Local Government and six other counties are in the process of negotiating an agreement to construct the entire length of SH 99, (the “**Grand Parkway Facility**”) and it has not been determined who will be the developer of the **Grand Parkway**; and,

WHEREAS, the State and the Local Government have entered into or will enter into a **Market Valuation Waiver Agreement** in accordance with Section 228.0111, Transportation Code; and,

WHEREAS, the State and the Local Government desire to proceed with the development design, construction, operation and maintenance of Segment E and a portion of Segment D of the **Grand Parkway** as soon as practical; and,

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WHEREAS, the Local Government has provided or will provide for certain improvements to SH 99 generally described in Attachment "A" to this Agreement (the "Project"); and,

WHEREAS, on _____, 20__, the Texas Transportation Commission passed Minute Order _____, authorizing the State to enter into the necessary agreements with the Local Government to allow the Local Government to make the improvements described in Attachment "A" at its own cost, but subject to reimbursement as provided in this Agreement;

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

AGREEMENT

1. Defined Terms

As used in this Agreement the following terms shall have the meanings provided:

"Advance Funding Contribution" shall mean all amounts funded and Costs incurred by the Local Government in connection with the Project.

"Costs" shall mean all costs incurred by the Local Government in connection with the Project and this Agreement, including but not limited to: financing costs as described in Section 6 of this Agreement; operation and maintenance costs; and right of way development and acquisition cost; utility work and relocation; environmental permitting, mitigation and remediation; preliminary engineering and final design work; all letting to contract costs; all construction bid item costs; all construction contract management costs; and all construction bid item change order costs should they become necessary; and all construction bid item material and equipment testing costs.

"Developer" shall mean (i) the Local Government, (ii) a consortium consisting of the Local Government and the other six counties that the Grand Parkway Facility is projected to traverse, (iii) the State, (iv) one or more private parties or (v) a combination of any of the foregoing, as determined in accordance with the provisions of Section 228.0111, Transportation Code, as amended.

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“Grand Parkway Facility” shall mean the approximately 180 mile proposed circumferential highway known as the State Highway 99 or Grand Parkway project and containing the project scope provisions approved by the Local Government on October 21, 2008, the State on _____, 2009 and the Houston-Galveston Area Council on August 22, 2008.

“Indentures” shall mean, collectively, the second Amended and Restated Toll Road Senior Lien Revenue Bond Indenture between Harris County, Texas and First Interstate Bank of Texas, N.A., dated as of August 6, 2008, and effective September 9, 2008, together with all amendments and supplements thereto.

“Master Agreement” shall mean an agreement under which the Developer agrees to finance, develop, operate and maintain or provide for the financing, development and operation of the Grand Parkway Facility in accordance with the terms and conditions approved by the Local Government, TxDOT and the Houston-Galveston Area Council pursuant to the provisions of Section 228.0111, Transportation Code, as amended.

“Project” shall have the meaning given to such term in Attachment “A.”

“Reimbursement” shall have the meaning given to such term in Section 6 of this Agreement.

2. **Period of the Agreement.**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed, **provided, however**, that this Agreement will not be effective until the Local Government has exercised its option to develop, finance, construct, and operate the Project as provided in Section 228.0111(g), Transportation Code. The obligation of the Local Government to proceed with the development, financing, construction, and operation of the Project after the exercise of the option may be conditioned on the feasibility of the Project, including receipt of an acceptable investment grade traffic and revenue report, receipt of other engineering and financial reports, and additional financial and other conditions. This Agreement shall remain in effect until a Master Agreement is executed for the development of the entire Grand Parkway Facility.

3. **Scope of Work.**

In order to advance the development of the Grand Parkway Facility, the Local Government agrees to fund, develop, operate and maintain the Project, subject to the Reimbursement of the Local Government’s Costs, as provided herein. The

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State and the Local Government agree that should the Local Government not be selected as the Developer of the entire Grand Parkway Facility, the Local Government shall transfer all of its right, title and interest in the Project constructed pursuant to this Agreement to the Developer, subject to the requirements of the Indentures and the Reimbursement to the Local Government by the Developer for all Costs associated with the development and construction of the Project. The Project is at the location described in Project Location Map, attached hereto and made a part hereof as Attachment "B".

4. Right of Way.

- a. Right-of-way and real property acquisition shall be the responsibility of the Local Government. The Local Government may acquire right of way, entirely at its own risk, to the extent that early acquisition is authorized by applicable state and federal policy and regulations.

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.

The Local Government must obtain advance approval from the State for any variance in established procedures with respect to right of way acquisition. The State's executive director may exercise discretion in authorizing an alternative procedure if it is sufficient to discharge the State's responsibilities for acquiring real property. The State may monitor and audit the Local Government's acquisition of right of way on the Project at any time. On request, the Local Government shall furnish the State with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If the State determines that right of way maps, field notes, parcel plats, appraisals, access designations, acquisition documentation, relocation assistance benefits, or any other acquisition requirement is not in compliance with this Agreement, the Local Government shall take all reasonable and necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Local Government.

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- b. The Local Government is responsible for any required relocation assistance along the route of the right of way as may be determined to be eligible under the relocation assistance program. The relocation assistance plan must provide reasonable time frames for orderly relocation of residents and businesses on the Project. All costs associated with the relocation assistance, including payments to displaced residents and business, will be assumed by the Local Government.

5. Project Funding.

a. The Local Government shall provide 100% (one hundred percent) of the necessary funds for development of the Project, including but not limited to: financing as described in Section 6 of this Agreement; operation and maintenance; right of way development and acquisition, utility work and relocation, environmental permitting, mitigation, and remediation, preliminary engineering and final design work; all letting to contract costs; all construction bid item costs; all construction contract management costs; all construction bid item change order costs, should they become necessary; and, all construction bid item material and equipment testing costs. An Estimated Project Budget is attached as Attachment "C". All such costs are included in the definition of "Advance Funding" contribution and are Costs subject to Reimbursement.

b. 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.

c. If the Local Government is not the successful developer of the SH 99 Grand Parkway corridor, the successful developer shall reimburse the Local Government all costs subject to Reimbursement as established herein. The Local Government must present itemized and certified statements (acceptable to the State) detailed to show the actual work performed and actual rates. Once the Local Government has been fully reimbursed, operation and maintenance of the Project shall be transferred to the successful developer. Until the Reimbursement has been paid in full, the Local Government shall have the right to operate toll facilities on the Project and collect tolls from users of the Project.

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6. Reimbursement

a. From (i) revenues of the Project or (ii) payment by the Developer, the Local Government will be paid an amount equal to the Local Government's Cost of providing the Advance Funding Contribution (the "Reimbursement"). Unless otherwise agreed to by the Local Government and subject to the requirements of the Indentures, the Project shall not be transferred to the Developer until the Local Government has been fully paid the Reimbursement.

b. The Reimbursement is the Local Government's Cost of providing the Advance Funding Contribution as provided in this Agreement.

c. If the Local Government provides a portion of the Advance Funding Contribution with bonds, notes or other obligations that it issues or incurs, the amount of the Reimbursement with respect to such portion is the total debt service for the Project on such bonds, notes or other obligations as defined in the Indentures, plus all financing cost related to such bonds, notes or other obligations as defined in the Indentures, including costs of defeasance and redemption therefor. The principal amount and all other terms and conditions of such bonds, notes or other obligations will be determined by the Local Government and must be sufficient to (i) meet all the requirements of the Indentures, including any debt service reserve fund requirement and (ii) to pay all capitalized interest and costs of issuance of such bonds, notes or other obligations, as determined in accordance with the Indentures.

d. If the Local Government provides a portion of the Advance Funding Contribution from sources other than proceeds from its bonds, notes or other obligations, the amount of the Reimbursement with respect to such portion is (i) the amount of funds provided, plus (ii) any interest or earnings thereon that the Local Government may have foregone as a result of providing such funds, from the date of advancement until the date of repayment, as the Local Government may determine and calculate.

7. **Project Responsibilities.** The Local Government is responsible for all aspects of the Project unless otherwise indicated in Attachment "D" of this Agreement. All costs associated with such responsibilities, including costs incurred in connection with this section 7, are included in the definition of "Advance Funding Contribution" and are Costs subject to Reimbursement.

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a. Utilities.

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures. The Local Government must obtain advance approval for any variance from established procedures, in connection with utility relocation.

The Local Government will be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities:

- i. per agreement, or;
- ii. per all applicable statutes or rules.

b. Environmental Studies and Mitigation.

The Local Government must comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements.

The State has obtained the final environmental clearance on Segments D and E of the Grand Parkway Facility. The Federal Highway Administration (FHWA) signed the Record of Decision June 2008 for Segment E and the Finding of No Significant Impact for Segment D September 2008.

The Local Government is responsible for the cost of any environmental problem's mitigation and remediation that may occur within the Project right of way.

The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been mitigated and/or remediated.

All costs associated with the foregoing are included in the definition of "Advance Funding Contribution" and are Costs subject to Reimbursement.

c. Compliance with Texas Accessibility Standards and ADA.

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

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costs associated with the foregoing are included in the definition of "Advance Funding Contribution" and are Costs subject to Reimbursement.

d. Engineering.

The Local Government will be responsible for the preparation of all the engineering contract documents required for the construction of the Project.

The Local Government shall prepare the plans, specifications and estimates (PS&E) to be let by the Local Government in accordance with the latest AASHTO or State standards or the Local Government's standards, as approved by the State.

The Local Government shall submit the completed PS&E to the State for review and approval. The Local Government shall not advertise for the construction contract until the State has approved the PS&E documents.

The State shall review all work and associated documentation in accordance with the time limitations set forth in Attachment "F", which is attached hereto and made a part hereof.

All costs associated with the foregoing are included in the definition of "Advance Funding Contribution" and are Costs subject to Reimbursement.

e. Bidding.

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

The Local Government shall notify the State once the project is advertised for bids.

Once the bid tabulations have been received, the Local Government shall inform the State of the successful bidder.

f. Construction.

The State will have the opportunity to review the construction of the Project.

The Local Government shall notify the State before actual construction work on State right of way begins. Said notification shall include, but is not limited to: invitation to all pre-letting and pre-construction meetings; invitation to all work-in-

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progress meetings; and a minimum of 3 workdays notice prior to performing major items of work (such as placing or modifying traffic control plans, pouring any concrete items, and/or performing any work items on the existing or proposed roadway) on the Project.

The Local Government shall submit all change order plan work and associated items to the State for their review and approval prior to enacting any change order associated with the Project. The State shall review the change order plan work and associated items within the time limitations defined in Attachment F. The Local Government or its engineer will supervise and inspect all work performed by the construction contractor and will provide such engineering, inspection and testing services as may be required to ensure that the construction of the Project is accomplished in accordance with the approved PS&E. The Local Government shall test (or cause to be tested) all construction bid item materials and equipment in accordance with the State testing standards. The Local Government shall provide written results of the various tests to the State within 3 workdays following the completion of each test. In cases where a material or an equipment test indicates that the material or equipment fails to meet the State standards, the Local Government shall recommend a course of corrective action to the State. The State shall have the authority to accept or reject the corrective action. If the corrective action plan is rejected by the State, the Local Government shall continue to seek-out a corrective action plan until it develops one that is reasonably acceptable to the State. All costs associated with material and/or equipment corrective actions shall be borne solely by the Local Government.

The Local Government shall submit all concrete mix designs and shop drawings for all materials intended for use on the Project, including but not limited to traffic signals, bridges, retaining walls, inlets, manholes, and related items or any appurtenances associated with the materials intended for use in roadway construction to the State for the State's approval, prior to fabrication and/or use on the Project. The State shall review the shop drawings within the time limitations defined in Attachment "F."

The State shall have the opportunity to provide inspection of all items of work performed within the State right-of-way. The State will convey items of work not in accordance with the drawings to the Local Government for corrective measures.

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The State shall periodically inspect the project's signs, barricades and traffic control plan to ensure compliance with the Texas Manual on Uniform Traffic Control Devices (TxMUTCD). The State shall attend all pre-work and pre-construction meetings.

All costs associated with the foregoing are included in the definition of "Advance Funding Contribution" and are Costs subject to Reimbursement.

8. Final Inspection.

The Local Government shall request by letter within fifteen (15) days of final completion of any portion of Project work that the local State office perform its final inspection and acceptance of such work.

9. Project Maintenance.

The Local Government shall be responsible for the maintenance and operations of the completed Project. The specific areas of maintenance responsibility is further defined and clearly delineated and shown in Attachment "E", which is attached hereto and made a part of this agreement. All costs associated with the foregoing are included in the definition of "Advance Funding Contribution" and are Costs subject to Reimbursement.

10. State Approvals.

Notwithstanding anything to the contrary contained herein, all State approvals shall be deemed to have occurred if notification to the contrary has not been provided to the Local Government within the applicable time period specified in Attachment "F" to this Agreement.

11. Termination of this Agreement.

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless the:

- a. Agreement is terminated in writing with the mutual consent of the parties;
- b. Agreement is terminated because the Local Government or State have breached, in any material respect, their respective obligations under this Agreement. If the Agreement is terminated as a result of a material breach by the Local Government then the Local Government must reimburse the State for all Project Costs incurred by the State. If the Agreement is terminated as a result of a material breach by the State, the State must reimburse the Local Government for all Project Costs incurred by the Local Government.
- c. If it is determined that some one other than the Local Government will develop the Grand Parkway Facility and the agreement is terminated (as described in

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subparagraph a above), the Local Government shall be reimbursed all costs incurred to the date of the Agreement termination notice.

12. Amendments.

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

13. 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 utilized by either party to this Agreement and shall be cumulative.

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:

Executive Director
Harris County Public Infrastructure Dept.
1001 Preston, 5th Floor
Houston, Texas 77002

State:

District Engineer
Texas Department of Transportation
P.O. Box 1386
Houston, Texas 77251-7386

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

15. Legal Construction.

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

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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 requested by the State. The originals shall remain the property of the Local Government.

18. Compliance with Laws.

The parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

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. Retention of Records and Inspection.

The Local Government shall keep a complete and accurate record to document the performance of the work and to expedite any audit that might be conducted. The Local Government shall maintain all books, documents, papers, accounting records and other documentation relating to costs. Records shall include, but not be limited to, diaries, materials received (invoices), test reports, manufacturer's certificates, warranties, change orders, and time extensions. The Local Government, or its duly authorized representatives shall make such records available to the State, subject to reasonable, prior notification, for verification, review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved.

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21. Insurance.

Prior to the commencement of work on Project right of way, the Local Government agrees that it, or a contractor working on its behalf, will provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage (which shall be maintained until all work on the Project right of way is complete) in the amounts and types specified on the Certificate of Insurance for all persons and entities working on the Project right of way.

22. Debarment Certification.

The Local Government shall not contract with any person that: is suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State. The State shall provide the Local Government with a written listing of any such person prior to the bidding of any contract in connection with this Agreement.

23. Signatory Warranty.

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

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

EXECUTED this _____ day of _____, 2009.

APPROVED AS TO FORM:

HARRIS COUNTY

VINCE RYAN
County Attorney

By _____
CLARISSA KAY BAUER
Assistant County Attorney

By _____
Ed Emmett
County Judge

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THE STATE OF TEXAS

Amadeo Saenz, Jr., P.E.
Executive Director
Texas Department of Transportation

Date

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ATTACHMENT A

Project Description

The Project shall consist of the following: construction of a 4-lane tollway with non-continuous 2-lane roads (from Franz Road to Morton road) and interchanges (including two direct connectors at IH 10 and four direct connectors at US 290) from IH 10 to US 290 (Segment E) to improve the safety and operations of the public roads and state highway system as approved by an order which is attached hereto and made a part hereof as Attachment "B".

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ATTACHMENT B

Order

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, 2009, with the following members present, to-wit:

| | |
|------------------|------------------------------|
| Ed Emmett | County Judge |
| El Franco Lee | Commissioner, Precinct No. 1 |
| Sylvia R. Garcia | Commissioner, Precinct No. 2 |
| Steve Radack | Commissioner, Precinct No. 3 |
| Jerry Eversole | Commissioner, Precinct No. 4 |

and the following members absent, to-wit: _____,
constituting a quorum, when among other business, the following was transacted:

ORDER APPROVING ADVANCE FUNDING AGREEMENT BETWEEN HARRIS COUNTY AND THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE DEVELOPMENT, DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF A PORTION OF THE GRAND PARKWAY WITHIN HARRIS COUNTY AND EXERCISING CONDITIONAL LOCAL PRIMACY WITH RESPECT TO SUCH PORTION

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

| | Yes | No | Abstain |
|------------------------|--------------------------|--------------------------|--------------------------|
| Judge Ed Emmett | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. El Franco Lee | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Sylvia R. Garcia | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Steve Radack | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Jerry Eversole | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

RECITALS:

In order to facilitate the development of the Grand Parkway, TxDOT and the County desire to enter into an advance funding agreement (attached hereto as Exhibit A, the "Advance Funding Agreement") which, subject to certain conditions, provides for the County to advance fund certain costs and proceed with the development, design, construction and operation of Segment E and a portion of Segment D of the Grand Parkway, all within Harris County (the "County") (as more particularly described in the Advance Funding Agreement, the "Project"); and

The Advance Funding Agreement provides that it will not be effective until the County has exercised its option to develop, finance, construct, and operate the Project as provided in Section 228.0111(g), Texas Transportation Code;

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS, THAT:

Section 1. Approval of Advance Funding Agreement. The Advance Funding Agreement between the County and TxDOT, in the form attached hereto as Exhibit A, is hereby approved, and the County Judge of Harris County or his designee is authorized to execute such agreement.

Section 2. Conditional Exercise of Local Primacy.

(a) The County hereby exercises its local primacy option to develop, finance, construct, and operate the Project as set out in Section 228.0111(g), provided that the obligation of the County to proceed is conditioned on the feasibility of the Project, as provided in the Advance Funding Agreement, including receipt of all or part of the following, as the County may determine: (i) an investment-grade traffic and revenue report on the Project; (ii) final engineering reports and studies for the Project; (iii) an analysis of the financial impact of the Project on the County's toll road system that is acceptable to the County; and (iv) confirmation from either Moody's Investors Service or Standard & Poor's Corporation, or both, that the proposed commitment to undertake the Project will not have an adverse impact on the rating of the County's outstanding bonds.

(b) The foregoing exercise of local primacy is solely for the portion of the Grand Parkway (the Project) to be developed in accordance with the Advance Funding Agreement and shall in no way limit, impair or affect the rights of the counties (including the County) traversed by the Grand Parkway with respect to the remainder of the Grand Parkway, which shall continue to be reviewed and evaluated subject to the local option provisions provided in Section 228.0111, Texas Transportation Code.

Section 3. Effective Date. This Order shall be in force and effect from and after its passage on the date shown below.

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ATTACHMENT C

Estimated Project Budget

The following Project budget figures are estimated only. Reimbursements will be based on actual costs.

| Description 3510-05-002: SH 99: Franz Road to US 290 (Segment E) | Total Estimated Cost | Federal Participation | | State Participation | | Local Participation | |
|---|----------------------------|--------------------------|------------|---------------------|------------------|---------------------|----------------------|
| | | % | Cost | % | Cost | % | Cost |
| CONSTRUCTION COSTS | | | | | | | |
| Right of way* / Utilities | \$50,000,000 | 0% | \$0 | 0% | \$0 | 100% | \$50,000,000 |
| PS&E | \$24,110,000 | 0% | \$0 | 0% | \$0 | 100% | \$24,110,000 |
| TxDOT Review Costs | \$75,000 | 0% | \$0 | 100% | \$75,000 | 0% | \$0 |
| Subtotal | \$74,185,000 | | \$0 | | \$75,000 | | \$74,110,000 |
| Construction | \$307,000,000 | 0% | \$0 | 0% | \$0 | 100% | \$307,000,000 |
| Direct State Costs (oversight) | \$300,000 | 0% | \$0 | 100% | \$300,000 | 0% | \$0 |
| TOTAL | \$381,485,000 | | \$0 | | \$375,000 | | \$381,110,000 |

*Estimated cost of right-of-way does not include any donations.

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ATTACHMENT C

Estimated Project Budget

The following Project budget figures are estimated only. Reimbursements will be based on actual costs.

| Description 3510-05-010: SH 99: 0.720 Miles North of Kingsland Boulevard to Franz Road (Segment D) | Total Estimated Cost | Federal Participation | | State Participation | | Local Participation | |
|---|-------------------------|--------------------------|------------|---------------------|-----------------|---------------------|---------------------|
| | | % | Cost | % | Cost | % | Cost |
| CONSTRUCTION COSTS | | | | | | | |
| Right of way* / Utilities | \$4,792,568 | 0% | \$0 | 0% | \$0 | 100% | \$4,792,568 |
| PS&E | \$5,254,000 | 0% | \$0 | 0% | \$0 | 100% | \$5,254,000 |
| TxDOT Review Costs | \$25,000 | 0% | \$0 | 100% | \$25,000 | 0% | \$0 |
| Subtotal | \$10,071,568 | | \$0 | | \$25,000 | | \$10,046,568 |
| Construction | \$60,000,000 | 0% | \$0 | 0% | \$0 | 100% | \$60,000,000 |
| Direct State Costs (oversight) | \$60,000 | 0% | \$0 | 100% | \$60,000 | 0% | \$0 |
| TOTAL | \$70,131,568 | | \$0 | | \$85,000 | | \$70,046,568 |

*Estimated cost of right-of-way does not include any donations.

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ATTACHMENT D Project Implementation

Overview

This Attachment defines the roles, the responsibilities, and the working relationship between the Local Government and the State during the implementation of the Project.

1. Environmental Studies and Mitigation

- 1.1.** The Local Government shall be responsible for all required environmental permitting and including any mitigation or remediation.
 - 1.1.1.** Preparation of required US Army Corps of Engineers permit applications and associated drawings for impacts to jurisdictional waters, including mitigation requirements. The Local Government will be responsible wholly for any and all mitigation that would be required.
 - 1.1.2.** The Local Government is responsible for all Project-related environmental permits, issues, and commitments, including any mitigation or remediation that may be required under any law or regulation.
 - 1.1.3.** Submission to the State of documentation showing that all environmental permits, issues, and commitments have been or will be completed, including copies of permits or other approvals required prior to construction in accordance with 23 CFR §771.109.

- 1.2.** Roles and Responsibilities, the State will conduct concurrent environmental reviews of the permitting, mitigation or remediation in an attempt to expedite the environmental approval of the Project.
 - 1.2.1.** Except as otherwise required by law or by agreement between the State and a state or federal agency, the Local Government is responsible for coordinating with local governmental entities and applicable agencies throughout the Project planning process to assure compliance with applicable laws. The Local Government and State will make every reasonable effort to resolve disagreements with local governments and with state or federal

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agencies as they relate to environmental permitting and including any mitigation or remediation, approval of the Project.

- 1.2.2.** The Local Government will coordinate the submission of documents for concurrent Agency review with the State.

2. Right-of-Way Acquisition

- 2.1** Except as provided in Article 3, the Local Government, independently of the State, is responsible for the acquisition and provision of any right-of-way or real property needed for the Project.
- 2.2** The Local Government will establish and maintain a project tracking system that is acceptable to the State and that shows the right of way surveying and mapping, appraisal, acquisition, and relocation status of each parcel.
- 2.3** The Local Government will prepare right-of-way maps, field notes, parcel plats, and other data as needed to describe the right-of-way and access rights necessary for the Project.
- 2.3.1** The field notes and parcel plats will be signed and sealed by a Registered Professional Land Surveyor currently licensed by the "Texas Board of Professional Land Surveying."
- 2.4** The Local Government will acquire fee simple title and any required drainage channel easements free and clear of all liens and or other interest in the land sufficient for construction of the Project encumbrances for all land to be used as right-of-way for the Project. The acquisitions will be made in its own name.
- 2.5.1.** Title to the New Right of Way will exclude oil, gas, and sulfur from the deed without any right in the owners to ingress or egress to or from the surface of the land for the purpose of exploring, developing, drilling, or mining.
- 2.5** The Local Government is responsible for the negotiation of access points at the time of acquisition based on State's Roadway Design Manual, the State's Access Management Manual, and the preferred engineering access points shown on the schematic for the Project.
- 2.5.1** The access points for the Project will be incorporated into the deed when the property is acquired
- 2.6** The Local Government will ensure that all right-of-way used in constructing the Project will be free and clear of all hazardous materials and contaminants.

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All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Local Government. The Local Government shall provide written documentation from appropriate regulatory agencies that all known hazardous materials and contaminants in the right of way have been adequately mitigated or that the Local Government otherwise meets the requirements for regulatory closure.

2.7 The Local Government will retain ownership of the right of way until it is determined who will develop SH 99, Grand Parkway corridor in its entirety. If the Local Government is not the successful developer the right of way development and acquisition costs will be reimbursed by the successful corridor developer and right of way ownership will be transferred to the State. The conveyance shall be in a form acceptable to the State and shall be of fee simple title. Local Government shall also convey all applicable conveyance instruments to the State for its permanent files.

2.7.1. The Local Government will also provide the State with title insurance for the New Right of Way in the name of the State of Texas as the insured owner.

2.7.2. The Local Government will provide tracings and electronic files of right of way maps to the State.

2.7.3. The Local Government will also provide the State a final map showing the final location of all utility lines that were adjusted or remained in place.

3. Utilities

3.1 The Local Government is responsible for determining the scope of utility work if the required right of way encroaches on existing utilities and the Project requires their adjustment, removal, or relocation.

3.2 The Local Government is responsible for notifying the appropriate utility company to schedule adjustments.

3.3 The State will grant the Local Government or its authorized representative site access required to execute the work with the State owned right of way and will issue right of entry for the performance of utility relocation.

3.4 The Local Government is responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities.

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4. Engineering Services

- 4.1** The Local Government will remain the single point of contact for engineering and design issues. All correspondence and instruction to the design consultants will be the sole responsibility of the Local Government.
- 4.2** At the commencement of the Project, the Local Government will coordinate a Design Concept Conference with the State to establish the performance parameters and design requirements for the highway improvement, including the Pavement Design (provided by the State), Hydraulic Design, Design Concept Conference Forms and Typical Sections, which will remain in place throughout the implementation of the Project.
- 4.3** All plans, specifications, and estimates developed by or on behalf of the Local Government shall conform to the latest version of the State's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to State-required special specifications and special provisions. The State's executive director may exercise discretion in authorizing an alternative specification or alternative design criteria. The construction plans furnished to the State shall be reproducible tracings on mylar or equivalent.
- 4.4** If the State determines that the complete plans, specifications, and estimates are unacceptable, the Local Government shall correct the design documents to the State's satisfaction. Should additional specifications or data be required by the State, the Local Government shall redesign the plans and specifications to the State's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Local Government.
- 4.5** If exceptions to the State's design criteria are required as specified in the State Roadway Design Manual, a request for exceptions shall follow the procedure set forth in that manual.
 - 4.5.1** If it becomes necessary to change a design after it has been approved by the State, and if that change does not require the adoption of alternative design criteria or an exception to the State's design criteria, the Local Government will coordinate with the State for approval of the change.
 - 4.5.2** The State shall have no more than 10 business days either (1) to approve the design change as proposed by the Local Government or

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(2) to respond with a State-recommended alternative to the design change.

4.5.3 If the State responds with an alternative to the design change, the Local Government and the State shall work diligently to develop a mutually agreeable design solution.

4.6 The State is responsible for performing the pavement design. The Local Government shall submit to the State the Geotechnical Information obtained as part of the PS&E development. The State may use the information to perform the pavement design.

4.7 Reviews

Review submittals will include 30%, 60%, 90% and 100% review milestones summarized in the State's Consultant Contract Administration General Guidelines for Plans, Specification and Estimate (PS&E) Milestone Submittals. The Local Government will submit three (3) copies for the State's review.

4.7.1. A joint review session between the Local Government and the State will be performed to allow comments and concerns to be addressed by the Local Government within the expedited review schedule as defined in Attachment F, General Schedule.

4.7.2. When the Project design is final, the Local Government will coordinate the submission of the following information for a concurrent review to allow comments and concerns to be addressed by the Local Government to secure approval of the State within the expedited review schedule

- 1) Three (3) copies of final plans, specifications, and engineer's estimate.
- 2) Revisions to the preliminary design submittal.
- 3) Proposal to award construction contract in compliance with applicable state and federal requirements.
- 4) Proposed contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals.
- 5) Documentation of all environmental permits, issues, and commitments that will be addressed in construction.

4.7.3. Approval by the State of this final design submittal and the State Letter of Authority will constitute authorization for the Local Government to advertise for construction bids.

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5. Construction Responsibilities

- 5.1** The Local Government will supervise and inspect all work performed during construction and provide engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications.
- 5.1.1.** Unless the parties enter a separate agreement to the contrary, all correspondence and instruction to the contractor performing the work will be the sole responsibility of the Local Government.
- 5.1.2.** All work will be performed, unless otherwise specifically stated in the contract documents for the Project, in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges or special specifications or provisions approved by the State.
- 5.2** The State will allow the Local Government or its authorized representative to have access within the State owned right of way to perform any activities required to execute the work and issue a right of entry for the performance of all construction activity.
- 5.3** The Local Government will negotiate and approve all Change Orders and contract revisions that the Local Government finds necessary or convenient to accomplish the construction activities for the Project. For Change Orders and contract revisions that affect prior environmental approvals or result in non-conformity with the specifications and standards agreed upon for the Project, the Local Government must assess any potential environmental effects and any additional or revised environmental permits, issues, coordination, mitigation, and commitments required as a result of the contract revisions.
- 5.3.1.** The Local Government will document any such changes, including a proposed course of action.
- 5.3.2.** The Local Government will notify the State of the need for such changes and submit the appropriate documentation.
- 5.3.3.** The State shall have no more than 10 business days after the Local Government's submission either to approve the changes as submitted by the Local Government or to respond with the State's proposed revisions.
- 5.3.4.** If the State responds with revisions, the Local Government and the State will work diligently and in good faith to develop mutually

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agreeable changes that shall then be implemented by the Local Government.

5.3.5. The Local Government shall be responsible for obtaining any required approvals from federal, state, or local governmental authorities, with the exception of the State, and except as otherwise specified in this agreement.

5.3.6. To the extent that a Change Order requires the adoption of alternative design criteria, an exception to the State's design criteria, or a change in the approved design, the design must be approved as set forth in Sections 4.3, 4.4, or 4.5, as applicable.

5.4 Within six (6) months of issuance of the "Notification of Completion," the following documentation will be provided to the State:

- 1) Record Drawings
- 2) Engineer Certification of Project Completion
- 3) Right of Way Parcel Information (Exhibits, Descriptions, Right of Way Maps, Field Notes, etc.)

6. General

6.1 Unless otherwise specified in this agreement, all actions required of the Local Government shall be taken by the Local Government's Program Manager, who shall be an individual designated by name by the Local Government. The Local Government's Program Manager may delegate responsibility to another person in a writing provided to the State.

6.2 Unless otherwise specified in this agreement, all actions required of the State shall be taken by the State's District Engineer for the Houston District. The District Engineer may delegate responsibility to another person in a writing provided to the Local Government. Whenever this agreement requires an action to be taken by the State's executive director, that responsibility may be delegated to another State employee who is not below the level of district engineer. On request, the State will provide the Local Government with a copy of the executive director's delegation of authority.

6.3 The Local Government and the State will attempt to agree on the procedures and policies to be used by the State in the auditing of Project activities.

6.4 The Local Government will schedule regular meetings with the State to maintain the communication necessary to successfully implement the Project.

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- 6.5** The Local Government will prepare program organizational and management documents, including Program Management Plan and Quality Control/Quality Assurance Plan for all work products. The Local Government will provide these documents to the State for all contracted firms participating in the Project.
- 6.6** The Local Government will maintain all documentation relative to implementation and completion of the Project, including without limitation documentation relating to environmental issues, acquisition of right of way, final design, bidding, award, and construction of the Project.
- 6.7** The agreement is based on the approved schematic design included as part of the Record of Decision dated June 2008
- 6.8** In the event of any conflict between this Attachment D and the Agreement, the provisions of the Agreement shall control.

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**ATTACHMENT F
 General Review Schedule**

Specific timelines are incorporated into the timeline for each highway improvement.

| | | Type of Review | Review Time |
|---|--|----------------------|-------------|
| 1 | Review of Plans, Specifications, and Estimates | 30% Completion | 2 weeks |
| | | 60% Completion | 2 weeks |
| | | 100% Completion | 2 weeks |
| | | Letter of Authority | 2 weeks |
| 2 | Construction Phase Reviews | Shop Drawing Review | 2 weeks |
| | | Change Order Reviews | 2 weeks |

Notes:

1. All plans, specifications, and estimates developed by or on behalf of the Local Government shall conform to the latest version of State Standard Specifications for Construction and maintenance of Highways, Streets, and Bridges, and shall conform to State required special specifications and special provisions.
2. The review time shown is for the State's review and does not account for work by others as a result of the State's review.