

PROJECT DEVELOPMENT AGREEMENT

BRAZORIA COUNTY EXPRESSWAY EXTENSION

TEXAS DEPARTMENT OF TRANSPORTATION

BRAZORIA COUNTY, TEXAS

AND

BRAZORIA COUNTY TOLL ROAD AUTHORITY

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**BRAZORIA COUNTY EXPRESSWAY EXTENSION
PROJECT DEVELOPMENT AGREEMENT**

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

THIS AGREEMENT, by and among the **TEXAS DEPARTMENT OF TRANSPORTATION** (“TxDOT”), an agency of the State of Texas, as authorized by the Texas Transportation Commission (“Commission”), **BRAZORIA COUNTY, TEXAS** (“Brazoria County”), a political subdivision of the State of Texas, and the **BRAZORIA COUNTY TOLL ROAD AUTHORITY** (“BCTRA”), a local government corporation created pursuant to and authorized by chapter 431, subchapter D of the Texas Transportation Code (hereinafter Brazoria County and BCTRA jointly referred to as “County”), is executed to be effective when fully executed by all parties (“Agreement”).

RECITALS

The following recitals are a part of this Agreement:

1. State Highway 288 currently exists in Harris and Brazoria Counties, Texas as a non-tolled segment of the state highway system;
2. The Brazoria County Expressway currently exists in Brazoria County, Texas in the median of State Highway 288 from 200 feet south of the south abutment of the Clear Creek Bridge to County Road 58 as a tolled segment of the state highway system;
3. Chapter 284 of the Texas Transportation Code (the “Code”) authorizes certain counties, including Brazoria County, to construct, acquire, improve, operate, and maintain certain transportation projects;
4. Brazoria County created the Brazoria County Toll Road Authority on or about December 16, 2003 for the purpose of assisting Brazoria County with the financing, construction, and operation of toll roads in Brazoria County. For purposes of this Agreement, each entity (TxDOT on the one hand and Brazoria County and BCTRA on the other hand) shall act as one party;
5. On May 23, 2013, environmental approval was obtained for the Brazoria Project;
6. Under Section 228.011 of the Code, the County has the option to design, construct, finance, operate and maintain improvements to SH 288 within Brazoria County (the “Brazoria Project,” the details of which are described below);

7. Pursuant to Section 228.011(f) of the Code, TxDOT or the Commission may provide written notice to the County meeting the requirements of Section 228.011(e) and describing in reasonable detail the location of a toll project on or along SH 288, a projected cost estimate, sources and uses of funds, and a construction schedule;
8. If after receipt of the notice described immediately above, the County exercises the first option with respect to the toll project described in the notice, and then fails to enter into one or more contracts as described in Section 228.011(f) of the Code by the deadlines described in that provision, then the Commission or TxDOT may enter into a contract for the financing, construction, or operation of the toll project with a different entity;
9. Pursuant to Section 228.011 of the Code, the County may and does intend to, develop, construct, and operate the Brazoria Project, a toll project in the SH 288 corridor beginning at the southern terminus of the current Brazoria County Expressway and continuing southward to CR 60 (the future Grand Parkway/State Highway 99). The terminus of the Brazoria Project will be as set forth in Exhibit "A" attached hereto;
10. Pursuant to Section 228.011(b-1) of the Code, TxDOT shall assist Brazoria County in the financing, construction, and operation of the Brazoria Project, by allowing Brazoria County to use state highway right-of-way owned by TxDOT and to access the state highway system. The same provision of the Code requires Brazoria County to reimburse TxDOT for its use of the right-of-way. Section 228.011(c) of the Code requires TxDOT and Brazoria County enter into an agreement that includes reasonable terms to accommodate the use of the right-of-way by Brazoria County and to protect the interests of the Commission and TxDOT in the use of the right-of-way for operations of TxDOT, including public safety and congestion mitigation on the right-of-way.
11. The Brazoria Project will be constructed by the County on a portion of the State-Owned ROW, as more particularly described in Exhibit "A" to this Agreement, and, in accordance with Section 284.008(c), Transportation Code, the Brazoria Project will become a part of the state highway system when: (1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the County (or another person with the consent or approval of the County); or (2) a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the County (or another person with the consent or approval of the County) in a trust fund held for the benefit of the bondholders. TxDOT will remain responsible for the maintenance of the non-toll lanes of SH 288 in the SH 288 corridor;
12. Chapter 284, Transportation Code, applies to a pooled project in the same manner that it applies to any other project. Brazoria County may issue bonds that are payable either in whole or in part from the revenues of the pooled project and currently intends to system finance the Brazoria Project and to pool it with the Brazoria County Expressway in accordance with Chapter 284, Transportation Code, and the County currently intends to pledge revenues of the pooled project for some or all of the purposes specified in Section 284.065(e), Transportation Code, including specifically, to pay bonds issued to finance capital improvements to the Brazoria Project;

13. In developing and constructing the Brazoria Project, the County expects to use the design-bid-build delivery methodology, and expects to finance the development and construction, and to own and operate the project, through BCTRA;
14. TxDOT has determined that the State will receive substantial benefits from toll road projects to be constructed, operated and maintained by the County, and as provided in this Agreement, through the authorization to use State-Owned ROW by the County for such purposes;
15. In Minute Order 114768 dated November 17, 2016, the Commission approved the Brazoria County Expressway as a toll project, and approved the connection of the Brazoria County Expressway to the state highway system;
16. The County's construction, maintenance, and operation of the Brazoria Project shall comply with the requirements of applicable state and federal law;
17. One purpose of this Agreement is to protect the interests of the Commission and TxDOT in the use of right-of-way for operations of the department, including public safety and congestion mitigation on the right-of-way;
18. Sections 201.209, 222.103, 228.002, 228.011, 284.003, 284.006, and 284.063 of the Code, along with chapter 791 of the Texas Government Code, authorize agreements between TxDOT and certain governmental entities, including counties, pertaining to the design, construction, financing, operation, ownership, and maintenance of highways;
19. TxDOT wishes to transfer to the County, pursuant to Section 228.011 of the Code, rights to use a portion of the State-Owned ROW, as that term is defined below; however, TxDOT will remain responsible for maintenance of the non-toll lanes of SH 288 in the SH 288 corridor;

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and promises of the parties as described in this Agreement, TxDOT, Brazoria County, and BCTRA agree as follows:

1. Definitions

Agreement means this Project Development Agreement.

Brazoria Project means the development, design, construction, financing, operation, and maintenance of improvements in the median of SH 288 from County Road ("CR") 58 to CR 60 (future SH 99), to include two northbound toll lanes and two southbound toll lanes, separated from the general purpose lanes by a hard barrier such as a concrete traffic barrier. The northern terminus of the Brazoria Project is the southern terminus of the existing portion of the Brazoria County Expressway or CR 58. The term includes the structures and pavement for all access points permitted under this Agreement. The term also includes the right of the County to use a portion of

the State-Owned ROW, as described in more detail herein, but does not include title to any of the State-Owned ROW, which shall remain with TxDOT. The Brazoria Project extends from one hard barrier between the toll lanes and the general purpose lanes to the other hard barrier between the toll lanes and the general purpose lanes, inclusive of the hard barriers themselves, but excludes the general purpose lanes and the frontage roads within the SH 288 Corridor.

Effective Date means the date this Agreement is fully executed by all parties.

Environmental Documents means, as applicable, an environmental assessment, an environmental impact statement, a categorical exclusion, a Finding of No Significant Impact, a Record of Decision, any re-evaluation of an environmental assessment, any decision in connection therewith, any environmental permit or related authorization or decision, and/or any other environmental commitments or obligations, as they may relate to the Brazoria Project.

SH 288 Mainlanes and Frontage Roads means the general purpose lanes and frontage roads along the SH 288 Corridor, in Brazoria County, as they exist currently and as they may exist in the future.

State-Owned ROW means all right of way owned by the State in the existing footprint of SH 288.

2. Brazoria Project Description and Overview

- a. The County will provide and be responsible for the design, construction, financing, operation and maintenance of the Brazoria Project, in accordance with and subject to the terms of this Agreement.
- b. The County is hereby authorized to use and will be allowed to utilize a portion of the State-Owned ROW for the construction, operation and maintenance of the Brazoria Project, all as described in attached Exhibit "A," provided that such uses will comply with the requirements of applicable state and federal law and will not impair the interests of TxDOT and the Commission in the use of the State-Owned ROW for operations of the department, including public safety and congestion mitigation on the State-Owned ROW. The County agrees that its use of the State-Owned ROW will not damage, impair safety, impede maintenance, or otherwise restrict operation of the SH 288 Mainlanes and Frontage Roads.
- c. Upon completion, the Brazoria Project and the facilities and structures comprising the Brazoria Project will be owned by the County, and the County will be responsible for the operation and maintenance of the project and such facilities, provided, however, in planning and making policies, the Commission shall consider for incorporation into the State highway system the Brazoria Project as a turnpike that another governmental entity is authorized to construct. TxDOT will retain title to all of the State-Owned ROW, subject to the rights to use the State-Owned ROW transferred to the County herein.
- d. The Brazoria Project will be developed to include two northbound toll lanes and two southbound toll lanes including the barrier separation, and will be located

between the existing northbound and southbound general purpose mainlanes.

- e. Subject to applicable environmental approvals, access to the Brazoria Project will be provided at the following locations:
 - (1) The south terminus of the toll lanes between the SH 288 crossing of CR 60 and CR 63 via ramps to and from the SH 288 general purpose lanes; and
 - (2) Access ramps from the SH 288 general purpose lanes to the toll lanes at approximately the vicinity of CR 57, CR 56, CR 48, and CR 58; and
 - (3) To and from SH 6 intersection with the SH 288 via entrance and exit ramp bridges located north of SH 6 (which may be developed in phases or with the initial segment).
 - (4) Access may be provided at such additional locations as may be agreed to by the County and TxDOT.

All such access points shall be part of the Brazoria Project, owned by the County, and shall be developed, constructed, operated and maintained at the County's cost.

3. Funding, Financing, Construction, and Operation

- a. Pursuant to Section 228.011 of the Code, the County has the primary responsibility for the financing, construction, and operation and maintenance of the Brazoria Project. This provision shall survive the termination of this Agreement, subject to the transfer and handback requirements in Section 8. The County will have sole authority and responsibility for the selection of underwriters, investment bankers, financial advisors, legal counsel and other consultants retained in connection with the financing and procurement of the Brazoria Project.

4. Environmental and Right of Way

a. Responsibilities of the County

(1) Environmental

(a) The development of the Brazoria Project shall comply with the Environmental Documents, and with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, 43 TAC §2.50, and the Natural Resources Code, Chapter 191. The County is responsible for all environmental mitigation, remediation, permits, and compliance identified in the Environmental Documents with respect to the Brazoria Project.

(b) The County will promptly advise TxDOT of any proposed design, construction, or operational changes or issues that may impact commitments in the Environmental Documents or that may require additional environmental documents or approvals.

(c) The County will pay for, and take the lead on, any environmental re-evaluation that pertains to the Brazoria Project or to any environmental approval needed for any reconfiguration including ramp additions or deletions, extension of or addition to the Brazoria Project.

(d) The County will be responsible for managing, treating, handling, storing, remediating, removing, transporting (where applicable) and disposing of all hazardous materials, including contaminated groundwater, encountered or discovered in connection with the development, design, construction, operation, and/or maintenance of the Brazoria Project, including where such hazardous materials might be found in or on that part of the State-Owned ROW used for the Brazoria Project, in accordance with applicable law and governmental approvals.

(2) **Right of Way**

(a) Within ten (10) business days of the Effective Date of this Agreement, the County shall make payment in the amount of \$_____ to TxDOT as reimbursement under Section 228.011 of the Code, for the use by the County of portions of the State-Owned ROW, inclusive of air space, for the development, construction, operation and maintenance of the Brazoria Project. This amount equals (a) TxDOT's actual costs to acquire right-of-way transferred to the County for use in the Brazoria Project, or (b) an amount equal to the average actual historical right-of-way acquisition values for comparable right-of-way located in proximity to the Brazoria Project on the date of original acquisition of the right-of-way.

(b) Notwithstanding the foregoing, TxDOT shall have the right to use and have access over, across, and on the Brazoria Project and the State-Owned ROW as may be necessary or desirable to enable TxDOT to cause the SH 288 Mainlanes and Frontage Roads to be constructed, maintained, and operated without paying any additional compensation therefore. In exercising such right, TxDOT shall cooperate with the County to lessen the impact of such uses on the County's construction, operation, and maintenance of the Brazoria Project. For any maintenance, construction or other repairs, other than emergency repairs, TxDOT shall provide at least 48 hours written notice to the County prior to exercising its rights under this paragraph.

b. **Responsibilities of TxDOT**

(1) **Right of Way**

(a) As provided in Section 228.011 of the Code, and subject to Section 4.a.(2) of this Agreement, TxDOT will transfer to the County the rights, inclusive of air space, to use a portion of the State-Owned ROW for the construction, operation and maintenance of the Brazoria Project, all as described in attached Exhibit "A," provided that such uses will comply with the requirements of applicable state and federal law and will not impair the interests of TxDOT and the Commission in the use of the State-Owned ROW for operations of the department, including public safety and congestion mitigation on the State-Owned ROW. Such right shall include, but not be limited to, the right to use a portion of the State-Owned ROW for the storage of equipment and materials used by the County in the maintenance of the Brazoria Project. The location of any such storage site shall be by agreement between TxDOT and the County.

(b) Subject to the rights of use transferred to the County (which shall include air rights), TxDOT will retain ownership of all of the State-Owned ROW, including those portions which the County has the right to use, and will further retain ownership of the SH 288 Mainlanes and Frontage Roads.

5. Design and Construction

a. Responsibilities of the County

- (1) Subject only to the terms of this Agreement, the County has responsibility for the design and construction of the Brazoria Project. The County is responsible for the timely development of the plans, specifications and construction of the Project, including all required and remaining utility relocations and/or adjustments, and all costs associated therewith.
- (2) Plans and specifications developed by the County for the Brazoria Project are and shall be in accordance with the standards required by TxDOT as defined in 43 TEX. ADMIN. CODE §27.51. In the absence of applicable standards in the Code or the TxDOT design standards, the plans and specifications must be in compliance with the American Association of State Highway and Transportation Officials (“AASHTO”) standards. All plans and specifications have been and shall be developed in accordance with the design criteria for functional classification and design speed as shown on the approved ultimate schematics as prepared with the SH 288 (US 59 to CR 60) Environmental Assessment which obtained a Finding of No Significant Impact on May 23, 2013, unless modified by an environmental reevaluation or approved design deviation. The County may request a design deviation from TxDOT subject to Sections 4 and 5 of this Agreement.
- (3) Plans and specifications for the Brazoria Project conform to the latest version of TxDOT’s Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and to the Texas Manual of Uniform Traffic Control Devices (TMUTCD). However, the Executive Director of TxDOT or designee may approve use of alternative specifications if the alternative is determined to be sufficient to ensure the quality and durability of the finished product for its intended use and the safety of the traveling public. All signing for the Brazoria Project within the State-Owned ROW shall conform to TMUTCD standards for toll/managed lane facilities.
- (4) The County shall submit to TxDOT plans and specifications for the Brazoria Project at the 30% and 90% phases.
- (5) Brazoria County will provide to TxDOT the Construction Plans and Specifications. TxDOT will have 14 calendar days to review and comment should it have any issues.

- (6) The County shall be responsible for construction of the Brazoria Project in accordance with the latest version of TxDOT's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, and the County shall be responsible for oversight and field inspection of construction activities, including the cost for such inspections and associated testing services, to verify conformance with the plans and specifications for the Brazoria Project.
- (7) Field changes to the Brazoria Project which would impact operation or maintenance of the SH 288 Mainlanes and Frontage Roads shall be submitted to TxDOT for approval prior to being accomplished. Should the County wish to accept any nonconforming work, TxDOT shall be advised of the nonconforming work and shall have final approval of the decision to accept such work.
- (8) Upon completion of construction of the Brazoria Project, the County shall issue to TxDOT a Certificate of Final Completion, showing the date of final completion and certifying that the Brazoria Project has been constructed according to approved plans and specifications. At the earliest possible date thereafter, the County will deliver to TxDOT the final sets of plans and specifications (the "As-Builts").
- (9) All work and costs related to relocation, adjustment, or removal of existing utilities necessary to resolve conflicts and allow for construction of the Brazoria Project, other than those costs required to be borne by the utilities, shall be the responsibility of the County, including without limitation the identification of existing utilities and coordination with utility owners to secure relocation, adjustment, or removal of those facilities.
- (10) All utility relocations and/or adjustments shall be in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including 43 TAC §21.31 et seq. (Utility Accommodation) and 23 CFR Chapter 1, Part 645. TxDOT acknowledges that utility relocation, adjustment, or removal activities may be undertaken on the County's behalf by its contractor, in which case the County shall be responsible for assuring that the contractor carries out all such relocation, adjustment, and removal activities in a manner consistent with applicable laws and administrative regulations.
- (11) The County will be responsible for the management of traffic and design and implementation of traffic control plans during construction in accordance with applicable laws and regulations, and will submit proposed traffic control plans and documents to TxDOT for review and approval. Traffic control plans shall provide for maintaining the same number of operating general purpose lanes as currently exists from the hours of 5:00 am to 9:00 am and from 3:00 pm to 7:00 pm on weekdays. Any proposed reduction in the number of operating general purpose lanes shall be subject

to TxDOT's prior written approval.

- (12) TxDOT personnel will be permitted to review all proposed change orders, design and construction deviations, non-conformance reports, and notices of design change to the extent such changes impact operation or maintenance of the SH 288 Mainlanes and Frontage Roads. TxDOT will provide comments within fourteen (14) calendar days of receipt of such documents. If no comments are provided within that time period, it will be deemed that TxDOT has provided no comments to such instruments.

6. Operations and Maintenance

a. Responsibilities of the County

- (1) Subject to the terms of this Agreement, the County will be responsible for the operation and maintenance of the Brazoria Project from and after substantial completion of the Brazoria Project. TxDOT and the County agree that the Brazoria Project will be operated and maintained by the County. The County agrees to maintain and operate the Brazoria Project in a manner suitable to relevant standards and acceptable procedures similar to those TxDOT uses on state facilities to include TxDOT's Maintenance Management Manual, Maintenance Operations Manual, and Roadside Vegetation Manual; as well as in accordance with the terms of the bond indenture or other financing instrument pursuant to which bonds or other obligations payable from revenues of the Brazoria Project are issued (the "Indenture").
- (2) The County's maintenance obligation includes all routine maintenance, along with all capital maintenance and capital improvements, including, but not limited to:
 - (a) Bridge repair and rehabilitation
 - (b) Pavement repair and rehabilitation
 - (c) Concrete traffic barrier repair, replacement, and rehabilitation
 - (d) Sign/lighting/striping repair, replacement and rehabilitation
 - (e) Signal installation, repair, replacement, including coordination with cities, and
 - (f) Toll equipment repair and replacement.
- (3) The County will be responsible for the promulgation and enforcement of safety and operational standards for the Brazoria Project, including the determination, posting and enforcement of speed limits. The County will be responsible for all traffic management and safety operations on the Brazoria

Project, to include:

- (a) police services
 - (b) wrecker services
 - (c) incident response
 - (d) lane closure, and
 - (e) emergency evacuation coordination.
- (4) The County will provide TxDOT a minimum fourteen (14) day advance written notice of all planned maintenance or other activity which will or may impact traffic on the SH 288 Mainlanes and Frontage Roads, which notice will include information regarding any expected lane closures. In the event of a condition requiring emergency maintenance operations, the County may perform that maintenance immediately, and shall notify TxDOT within two (2) hours or as soon as reasonably possible of the beginning of that maintenance that such emergency maintenance operations are being performed. The County shall use its best efforts to coordinate with TxDOT on the status of such emergency maintenance operations and to minimize disruption to traffic on the SH 288 Mainlanes and Frontage Roads, until all such maintenance activities are complete and the facility is fully operational.
- (5) It is understood and agreed that the operation of the Brazoria Project may by necessity be curtailed temporarily in the event of damage caused by flood, accidents or other similar causes. In that event, the County shall be responsible for repairing any damage to the Brazoria Project. The County will do everything reasonable to provide for rapid and timely repairs to those portions which are damaged to ensure that the operation of the facility will be reinstated as soon as possible.
- (6) The County will coordinate with the Office of the Governor of Texas regarding emergency declarations or waivers of tolls on the Brazoria Project during declared emergency evacuations. Any such toll waivers during declared emergencies shall be the responsibility of the County.
- (7) The County shall operate and maintain the Brazoria Project so as to minimize impacts on the ongoing operation and maintenance on SH 288 Mainlanes and Frontage Roads. In the event that TxDOT determines that the County's operation of the Brazoria Project materially interferes with or adversely affects the construction, maintenance, operation, and/or use of the SH 288 Mainlanes and Frontage Roads, TxDOT will consult with the County, and such modifications or remedial actions acceptable in good faith to both parties for the continued operation of the Brazoria Project will be accomplished and shall be done at the sole expense of the County.

b. Responsibilities of TxDOT

- (1) TxDOT will provide all routine and capital maintenance for all facilities and structures within the SH 288 Corridor, not including the Brazoria Project.
- (2) TxDOT will provide the County with a minimum fourteen (14) day advance written notice of all planned maintenance or other activity which will or may impact traffic or revenues on the Brazoria Project, which notice will include information regarding any expected lane closures. In the event of a condition requiring emergency maintenance operations, TxDOT may perform that maintenance immediately, and shall notify the County within two (2) hours or as soon as reasonably possible of the beginning of that maintenance that such emergency maintenance operations are being performed. TxDOT shall use its best efforts to coordinate with the County on the status of such emergency maintenance operations and to minimize disruption to traffic on the SH 288 Mainlanes and Frontage Roads, and also to minimize disruption to traffic and revenues on Brazoria Project, until all such maintenance activities are complete and the facility is fully operational.
- (3) It is understood and agreed that the operation of the SH 288 Mainlanes and Frontage Roads may by necessity be curtailed temporarily in the event of damage caused by flood, accidents or other similar causes. In that event, TxDOT shall be responsible for repairing the damaged facility. TxDOT will do everything reasonable to provide for rapid and timely repairs to those portions which are damaged to ensure that the operation of the facility or facilities will be reinstated as soon as possible.
- (4) TxDOT will perform all state and federally required inspections for bridges and other structures on or along the Brazoria Project, but not including overhead toll gantries, tolling signs, and related structures and facilities, which shall be the responsibility of the County to inspect. The County agrees to provide to TxDOT access to the Brazoria Project as needed to conduct such inspections, and also to provide to TxDOT other information, materials, and assistance as needed to conduct such inspections.

7. Tolls and Tolling

a. Toll Equipment

- (1) The County (either itself or through its contractor) will be responsible for the installation, oversight, testing, commissioning, maintenance, and operation of the toll collection and back-office systems for the Brazoria Project, including all associated hardware and software. The County will design and construct the toll equipment on the Brazoria Project so that it will be interoperable and will accommodate existing toll interoperability agreements between TxDOT and other local agencies including the Harris

County Toll Road Authority, METRO, and the Fort Bend County Toll Road Authority.

b. Toll Rates and Policy

- (1) County intends to set its toll rates based upon transportation studies, financing requirements, and the BCTRA Toll Rate Setting Policy.

c. Toll Collection

- (1) The County will have the exclusive right at all times to enforce and collect tolls from the users of the toll lanes of the Brazoria Project, and to retain those toll revenues.
- (2) The County will be responsible for providing and managing toll collection, violation processing and collection (including all necessary enforcement proceedings), revenue handling and accounting, and customer service with respect to the Brazoria Project.

8. Transfer of Brazoria Project to TxDOT; Handback Requirements

a. Section 284.008(c), Transportation Code, provides that a project will become a part of the state highway system when: (1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds (or another person with the consent or approval of the issuer); or (2) a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer (or another person with the consent or approval of the issuer) in a trust fund held for the benefit of the bondholders. At the time the Brazoria Project becomes part of the state highway system pursuant to Section 284.008(c) of the Code, Brazoria County and BCTRA agree to convey to TxDOT all of their right, title, and interest in the Brazoria Project pursuant to a deed without warranty of title.

b. Prior to and in connection with the transfer of the Brazoria Project to TxDOT in accordance with Section 284.008(c), Transportation Code, Brazoria County and BCTRA agree to comply with the handback requirements as contained in Exhibit “B”.

9. Public Information Act

a. Confidentiality

- (1) The parties understand and agree that each of them is subject to the requirements of the Public Information Act (“PIA”), and that all statements and agreements contained herein, and all future agreements entered into in furtherance of this Agreement, respecting the confidentiality of documents and other information, are subject to and limited by the requirements of the PIA. In the event that a request is made under the PIA for documents in the possession of one party which came from the other party, and the party from which the documents came contends they contain confidential and/or proprietary information, then the party possessing those documents agrees

to take such steps as are reasonable and necessary, and allowed under the PIA, to protect those documents from public disclosure. The party from whom the documents originated agrees to bear the expenses incurred by the party resisting the disclosure of the documents.

- (2) Neither party shall be liable to the other for any disclosure of documents required under the PIA, notwithstanding that such disclosure may be contrary to the terms of this Agreement or the terms of any future agreement entered into in furtherance of this Agreement.

10. Default

Default shall occur only in the event either party fails to comply to its respective obligations hereunder. In such event, the non-defaulting party shall give the defaulting party written notice of the condition of default. The defaulting party may cure such default within thirty (30) days from and after date of receipt of notice of default; provided that if the default is of such a nature that the cure cannot with diligence be completed within such time period, and the defaulting party has commenced meaningful steps to cure promptly after receiving the notice of default, the defaulting party shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to diligently effect cure. In the event of failure to cure such default within the time periods provided in this section, the non-defaulting party may thereafter notify the defaulting party of its intent to terminate this Agreement. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

11. Termination

- a. This Agreement may be terminated upon the occurrence of any of the following conditions:
 - (1) by written, mutual agreement and consent of the parties hereto;
 - (2) by either party hereto, upon the default of the other party, according to the process set forth above;
 - (3) by the County, in the event available funding is not sufficient to construct the Brazoria Project based on bids received from prospective contractors or in the event that cost of requirements for environmental mitigation, remediation or compliance are in excess of funding available to the County for the Brazoria Project and no additional funding can be secured;
 - (4) by written notice of termination from TxDOT to the County, in the event that (i) TxDOT acquires the right, pursuant to Section 228.011 of the Code (or any similar or successor statutory provision governing the relative rights of TxDOT and local entities to develop toll projects), to enter into a contract for the financing, construction, or operation of the Brazoria Project; or (ii) the Brazoria Project becomes part of the State Highway System pursuant to 284.008(c) of the Code; or

- (5) by written notice of termination from TxDOT to the County, in the event that the County at any time cancels or abandons the Brazoria Project.
- b. Notwithstanding anything to the contrary herein, the County shall maintain, and shall have the right to operate toll facilities and collect toll revenue on the Brazoria Project, so long as the bonds or other obligations secured by toll revenue from the Brazoria Project remain outstanding.

12. Miscellaneous

a. **Notices.** All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

To the County at:
L.M. "Matt" Sebesta, Jr., P.E.
Brazoria County Judge
111 E. Locust, Suite 102A
Angleton, TX 77515
matts@brazoriacountytx.gov

With a copy to:
Matt Hanks, J.D., P.E.
Brazoria County Engineer
451 N. Velasco, Suite 230
Angleton, TX 77515
matth@brazoriacountytx.gov

To TxDOT at:

Texas Department of Transportation
Project Finance, Debt and Strategic Contracts Division
125 E. 11th Street
Austin, TX 78701
Attn: Benjamin Asher
Email: Benjamin.Asher@txdot.gov

with a copy to:

Texas Department of Transportation
Strategic Projects Office
Houston District
P.O. Box 1386
Houston, TX 77251
Attn: Varuna Singh
Email: Varuna.Singh@txdot.gov

b. **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 provision shall, to the fullest extent permitted by law, be reformed to effectuate the intention of the parties expressed in such provision. To the extent that it cannot be so reformed, that 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. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

c. **Insurance.** To the extent that this Agreement authorizes the County or its contractor to perform any work on TxDOT right of way, before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT'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 TxDOT right of way. This coverage shall be maintained until all work on TxDOT right of way is complete. If coverage is not maintained, all work on TxDOT right of way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

d. **Hold Harmless.** To the extent permitted by law, each party shall save harmless the other party and its officers, employees, and consultants from all claims and liability due to the materials or activities of the first party, its agents, or employees, performed under this Agreement that are caused by or result from error, omission, or negligent act of the first party or of any person employed by the first party.

e. **Force Majeure.** Each party shall be excused from any delay in or failure of its performance hereunder, which are caused by the following:

- (1) aircraft or railroad-train incident;
- (2) acts of God, such as earthquake, tidal wave, tornado, hurricane, flood, or other cataclysmic phenomena;
- (3) terrorism;
- (4) war or other national emergency; or
- (5) events or occurrences beyond the reasonable control of that party.

f. **Amendments.** Any changes in the character, agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the County and TxDOT.

g. **Successors and Assigns.** This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including without limitation any successor agency to the County. TxDOT is permitted, without the consent of the County, to assign its interests in this Agreement to a successor agency or entity, which successor agency or entity exercises essentially the same rights and powers as are currently exercised by TxDOT. Other than as provided in the preceding sentence or otherwise in this Agreement, neither TxDOT nor the County shall assign, sublet, or transfer its interest in this Agreement without the prior written

consent of the other party to this Agreement, unless otherwise provided by law. Notwithstanding the preceding, TxDOT shall provide written notice of any assignment to the County.

h. **Relationship of the Parties.** Except for the limited purposes expressly stated herein, nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent between TxDOT, Brazoria County, and/or BCTRA. Further, nothing in this Agreement, or the performance thereof by the parties, shall constitute a joint enterprise or partnership between TxDOT, Brazoria County, and/or BCTRA.

TxDOT agrees to directly undertake all its obligations under this Agreement or to cause such obligations to be undertaken by a third party as TxDOT may reasonably determine. The County agrees to directly undertake all its obligations under this Agreement or to cause such obligations to be undertaken by its contractor for the Brazoria Project or another third party as County may reasonably determine.

i. **Representations and Warranties.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder; that this Agreement has been duly authorized by all necessary action of that party; and that each signatory on behalf of that party is fully authorized to bind that entity to the terms of this Agreement.

j. **Limitations.** All covenants and obligations of TxDOT and the County under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of TxDOT or the County shall have any personal obligations or liability hereunder.

k. **Sole Benefit.** This Agreement is entered into for the sole benefit of TxDOT and the County and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as creating any liability in favor of any third party or parties against either TxDOT or the County, relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the County, or giving any benefits, rights, remedies, or claims to any other public or private person, firm, corporation or other entity.

l. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____

Its: _____

Date: _____

BRAZORIA COUNTY, TEXAS

By: _____

L.M. "MATT" SEBESTA, JR.

County Judge

Date: _____

**BRAZORIA COUNTY TOLL ROAD
AUTHORITY**

By: _____

GARY IDOUX

Chairman

Date: _____

EXHIBIT A

MAP OF BRAZORIA PROJECT SHOWING STATE OWNED ROW

EXHIBIT B

HANDBACK REQUIREMENTS

HANDBACK REQUIREMENTS

1. Handback Requirements

The County must prepare a Handback Plan that contains the methodologies and activities to be undertaken or employed to meet the requirements of TxDOT at the time the County transfers the Brazoria Project to TxDOT (“Handback” or the “Handback Date”) pursuant to Section 8 of the Agreement. County must submit the Handback Plan, including a Residual Life Methodology Plan, to TxDOT for review at least 48 months before the anticipated Handback Date. The Parties will resolve comments to allow TxDOT approval of the Residual Life Methodology Plan at least 36 months before the anticipated Handback Date. The Residual Life Methodology Plan must include all elements that are part of the Brazoria Project, including entrance and exit ramps and associated structures (collectively, the “Elements”). The County is responsible for performing, at its expense, all work necessary so that the Brazoria Project meets the Residual Life Requirements specified in the Handback Plan on the Handback Date.

Table 1, Residual Life Requirements, defines the Residual Life at Handback which the Elements must have at Handback. For any Element in Table 1, where a Residual Life at Handback is specified, the Residual Life at Handback must be equal to or greater than the period set forth. The time period of the Required Final Residual Life as noted in Table 1 begins at Handback Date. For any Element of the Brazoria Project for which a Residual Life at Handback is not specified in Table 1, the Residual Life at Handback for the Element must equal the documented serviceable life of the Element or five (5) years, whichever is less.

2. Residual Life Inspections

(a) Once the County determines and notifies TxDOT of the intent to transfer the facility to TxDOT, the County will perform Residual Life Inspections within the Brazoria Project. The Residual Life Inspections will include all Elements within the Brazoria Project regardless of whether the County has undertaken Renewal Work for a particular Element in the period prior to any Residual Life Inspection. The County will prepare and submit to TxDOT a plan for conducting three (3) Residual Life Inspections over the course of 36 months prior to the Handback Date. TxDOT must be given the opportunity to witness any of the inspections and/or tests. The County must deliver to TxDOT, within ten (10) calendar days after it is created, the output data arising from any testing and any interpretation thereof made by the testers. Within thirty (30) days following performance of each Residual Life Inspection, the County must submit to TxDOT the findings of the inspection, Residual Life test results and Residual Life calculations. County must perform Residual Life Inspections and testing with appropriate coverage such that the results are representative of the whole Brazoria Project as described in Table 1.

(b) The Residual Life Methodology Plan must contain the evaluation and calculation criteria to be adopted for the calculation of the Residual Life at Handback for all Elements of the Brazoria Project. The scope of any Residual Life testing must be included, together with a list of all independent Residual Life testing organizations, proposed by the County.

(c) TxDOT’s written approval of the Residual Life Methodology Plan, including the scope and schedule of inspections, is required before commencement of Residual Life Inspections.

- (d) County must perform all Work necessary to meet or exceed the Residual Life requirements contained in Table 1 by the time of Handback of the Brazoria Project to TxDOT.
- (e) At the point of Handback, the County must certify in writing to TxDOT that all physical Elements of the Brazoria Project meet or exceed their respective Residual Life requirements.
- (f) Between thirty-six (36) and thirty-three (33) months prior to the Handback Date, the County must perform the first Residual Life Inspection (the First Inspection), including all Elements set forth in Table 1. Within thirty (30) calendar days following performance of the First Inspection, the County must submit to TxDOT the First Inspection Report which must contain the findings of the inspection, including Residual Life test results, the report of the independent testing organization(s), and County calculation of the Residual Life at Handback for all Elements.
- (g) Between twenty-one (21) and eighteen (18) months prior to the Handback Date, the County must perform the second Residual Life Inspection (the Second Inspection) including all Elements within the Brazoria Project, regardless of whether the County has undertaken Renewal Work for a particular Element in the period since the First Inspection. Within thirty (30) calendar days following performance of the Second Inspection, County must submit the Second Inspection Report to TxDOT, which must contain the findings of the inspection.
- (h) Between twelve (12) and six (6) months before the Handback date, the County must perform a final Residual Life Inspection (the Final Inspection) including all Elements within the Brazoria Project, regardless of whether the County has undertaken Renewal Work for a particular Element in the period since the First Inspection. Within thirty (30) calendar days following performance of the Final Inspection, the County must submit the Final Inspection Report to TxDOT, which must contain the findings of the inspection.

Table 1 Residual Life Requirements
for Brazoria Project

Element Category	Required Final Residual Life (yrs)	Element Category	Required Final Residual Life (yrs)	Element Category	Required Final Residual Life (yrs)
Structures		Road Pavement		Ancillary	
Reinforced concrete	50	Main lanes	10	Earthwork slopes	50
Pre-stressed concrete	50			Metal beam guard rail	10
Structural steelwork	50	Frontage/access roads	10	Concrete barrier	20
Weathering steel	50	Toll plaza approaches	10	Impact attenuators	*
Corrugated steel	20			Lighting columns	10
Corrosion protection for structural steelwork	10	High mast lighting	10	High mast lighting Overhead signs	10
Deck surfacing	10			Traffic signal housing and mountings	10
Deck joints	10			Fences	10
Bearings	30			Manhole covers, gratings, frames, and boxes	50
Railing	50	Toll Collection and TM Facilities	N/A	curbs and gutters	10
Sign/signal gantries	30			Lanterns (lamps/luminaires)	*
Retaining walls	25	Drainage		Roadside traffic signs	*
Noise Walls	25	Underground storm sewer systems	50	Pavement markings	*
Traffic signal poles	10	Culverts	50	Delineators	*
		Ditches	10		
		Inlets	50		

* See attached description of conditions at Handback

3. Description of Conditions at Handback

The County agrees that it will perform, at its expense, all work necessary so that the Brazoria Project meets the requirements shown below on the Handback Date.

3.1 Graffiti:

Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces.

3.2 Guardrails and Safety Barriers

All guardrails, safety barriers, concrete barriers, etc. are free of defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.

3.3 Impact attenuators

All impact attenuators are appropriately placed and correctly installed, and functional, free from structured defects.

3.4 Traffic, Toll, and Guide Signs

- a. Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects.
- b. Identification markers are provided, correctly located, visible, clean and legible.
- c. Sign mounting posts are vertical and structurally sound.
- d. All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights.
- e. Obsolete and redundant signs are removed or replaced as appropriate.
- f. Visibility distances meet the stated requirements.
- g. Sign information is of the correct size, location, type and wording to meet its intended purpose and any statutory requirements.
- h. All structures and elements of the signing system are free from debris and have clear access provided.
- i. Dynamic message signs are in an operational condition.

3.4.1 General – Safety critical signs

Requirements as above, plus: “Stop,” “Yield,” “Do Not Enter,” “One Way” and “Wrong Way” signs are clean, legible and undamaged.

3.5 Drainage

Pipes and Channels:

- a. Each element of the drainage system is functioning by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.
- b. Drainage treatment devices: drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in emergency.
- c. Travel Way: The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.
- d. Discharge systems: surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.
- e. Drainage pathways through and around concrete traffic barriers that are located between the toll/managed lanes and general purpose lanes, are maintained in their proper function and clean to

avoid ponding that impacts the travel way for the toll/managed lanes and the general purpose lanes.

3.6 Roadway Lighting - General

- a. All lighting is free from defects and provides acceptable uniform lighting quality.
- b. Lanterns are clean and correctly positioned.
- c. Lighting units are free from accidental damage or vandalism.
- d. Columns are upright, correctly founded, visually acceptable and structurally sound.
- e. All obstruction lights are present and working (if required).
- f. Compartment door is secure with all bolts in place.

3.7 Performance Requirements for Pavements

3.7.1 Pavement Condition Rating System

Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with a TxDOT approved Pavement Management Rating System.

Measurement:

Pavement Condition Score for 80% of Auditable Sections exceeding:

- Mainlanes and ramps – CRS = 7.5 - 100%

3.7.2 Pavement Ruts – Mainlanes, Shoulders & Ramps

Depth as measured using an automated device in compliance with TxDOT Standards. 10ft straight edge used to measure rut depth for localized areas.

Measurement:

Percentage of wheel path length with ruts greater than ¼” in depth in each Auditable Section:

- Mainlanes, shoulders and ramps – 3% - Nil
- Frontage roads – 10% - Nil

Depth of rut at any location greater than 0.5” – Nil

3.7.3 Pavement Ride Quality

Measurement of International Roughness Index (“IRI”) according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles.

To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance.

Renewal work and new construction subject to construction quality standards.

Measurement:

For 80% of all Auditable Sections measured, IRI throughout 98% of each Auditable Section is less than or equal to:

- Mainlanes, ramps – 95** inches per mile
- IRI measured throughout 98% of each lane containing a bridge deck in any Auditable Section, 0.1 mile average – 200** inches per mile
- Individual discontinuities greater than 0.75” – Nil

**To allow for measurement bias, an adjustment of -10 (minus 10) is made to IRI measurements for concrete pavements before assessing threshold compliance.

3.7.4 Pavement Failures

No instances of failures exceeding the failure criteria set forth in the TxDOT approved Pavement

Management Rating System, including potholes, base failures, punchouts and jointed concrete pavement failures.

3.7.5 Joints in Concrete

Joints in concrete paving are sealed and watertight.

3.7.6 Curbs

Curbs are free of defects.

3.7.7 Pavement Markings

Pavement markings are:

- a. clean and visible during the day and at night
- b. whole and complete and of the correct color, type, width and length
- c. placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets

Markings – General Portable retroreflectometer, which uses 30 meter geometry meeting the requirements described in ASTM E 1710.

3.7.8 Raised reflective markers

Raised reflective pavement markers, object markers and delineators are:

- a. clean and clearly visible
 - b. of the correct color and type
 - c. reflective or retroreflective as TxDOT standard
 - d. correctly located, aligned and at the correct level firmly fixed in a condition that will ensure that they remain at the correct level.
-