

**First Amendment to the Toll Project Agreement By and Between
The Texas Department of Transportation and the County of Brazoria
Relating to the State Highway 99/Grand Parkway Tollway Project**

This Amendment to the Toll Project Agreement Relating to the State Highway 99/ Grand Parkway Tollway Project (the “Amendment”) is made and entered into by and between the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas, and the County of Brazoria Texas (“County”), a political subdivision of the State of Texas, acting by and through its Commissioners Court, each of whom is a Party hereto and who are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, TxDOT and the County entered into that certain Toll Project Agreement Relating to the State Highway 99/Grand Parkway Tollway Project dated February 7, 2023 (the “Agreement”), pursuant to which the Parties set forth the County’s waiver of its right to develop, finance, construct, and operate the portion of Segment B defined therein as the “Project”; and

WHEREAS, the Parties desire to amend the Agreement on terms set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

The defined term “Project” is hereby amended to mean the 5.9-mile portion of Segment B from the Brazoria/Galveston County line to south of FM 2403 just south of Alvin.

This Amendment is hereby EXECUTED by the Parties hereto in multiple counterparts, each of which shall constitute an original, to be effective on the date of the last signature below.

SIGNATURE PAGE FOLLOWS

Brazoria County:

The Texas Department of Transportation:

L.M. "Matt" Sebesta, Jr.,
County Judge

Marc D. Williams, P.E.,
Executive Director

Date

Date

Attest:

Joyce Hudman, County Clerk

Date

**Toll Project Agreement By and Between
The Texas Department of Transportation and the County of Brazoria
Relating to the State Highway 99/Grand Parkway Tollway Project**

This Toll Project Agreement (“Agreement”) is made and entered into by and between the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas, and the County of Brazoria, Texas (“County”), a political subdivision of the State of Texas, acting by and through its Commissioners Court, each of whom is a Party hereto and who are collectively referred to herein as the “Parties.”

Recitals:

Whereas, Section 373.052 of the Texas Transportation Code (“Code”) grants a local toll project entity the first option to develop, finance, construct, and operate a toll project within the territory of the local toll project entity; and

Whereas, the County is a local toll project entity as defined in Section 373.001(1) of the Code; and

Whereas, Section 373.006 of the Code authorizes TxDOT and a local toll project entity to enter into a toll project agreement that, among other things, identifies the responsibilities of each party for project-related activities, and provides an alternative to the primacy determination process for toll project development; and

Whereas, TxDOT, the County, and Chambers, Fort Bend, Galveston, Harris, Liberty, and Montgomery Counties are all parties to that certain agreement entitled Market Valuation Waiver Agreement for SH 99 (Grand Parkway) (the “MVWA”), which contains terms and conditions for the development of the State Highway 99/Grand Parkway Toll Project (“Grand Parkway”); and

Whereas, the Grand Parkway is a proposed 180-mile circumferential highway traversing the seven counties described above, within the State Highway 99 corridor from State Highway 146 in Galveston County to State Highway 46 in Harris County, and being described in the MVWA as consisting of eleven (11) segments designated A through I-2; and

Whereas, the MVWA describes the location of and facilities comprising Segment B of the Grand Parkway Project, with Segment B being in its entirety a proposed 28.6-mile controlled access toll road with intermittent frontage roads from State Highway 288 to IH 45 South through Brazoria and Galveston Counties; and

Whereas, the 4.6 mile portion of Segment B from the Brazoria/Galveston County line to north of FM 2403 just south of Alvin is referred to hereinafter as the “Project”; and

Whereas, the portion of Segment B located within the territory of Galveston County is referred to hereinafter as the "Galveston Segment B"; and

Whereas, the scope of the Project consists of the minimum scope of Segment B as described in the MVWA, consisting of a two-lane tollway, with the ultimate scope of the Project consisting of a four lane tollway; and

Whereas, Section 373.055 of the Code grants both the County and TxDOT the authority to waive or decline to exercise any option that solely benefits that entity by notifying the other entity of its decision in writing or by agreement; and

Whereas, TxDOT obtained, via a Record of Decision on November 30, 2016, environmental clearance for the Project; and

Whereas, the County wishes to facilitate the development of the Project within Brazoria County by waiving primacy with assurances that the Project will ultimately be built in a way that serves the needs of the community; and

Whereas, Section 373.053 of the Code grants TxDOT the option to develop, finance, construct, and operate the Project in such case that the County fails or declines to exercise its option take such action; and

Whereas, Section 373.007 of the Code provides that unless otherwise provided by a toll project agreement under Section 373.006 or other agreement, an exercise of primacy under Section 373.052 or Section 373.053 over a phase of a toll project is an exercise of primacy over the entire project; and

Whereas, pursuant to Section 373.006 of the Code the Parties hereto wish to enter into this Agreement for the purpose of identifying the responsibilities of each party for Project-related activities, providing an alternative to the primacy determination process for development of the Project, and to further facilitate the financing, construction, operation, and maintenance of the Project.

Now, therefore, the Parties, in consideration of the mutual covenants and agreements herein contained, agree as followed:

Article I. Incorporation of Recitals

The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

Article II. Primacy for the Project

1. The County waives and declines to exercise its option to develop, finance, construct, and operate the Project as described in the MVWA, including the Additional Features described below.

2. The Parties acknowledge and agree that TxDOT will only exercise its option to develop, finance, construct and operate the Project if both County and Galveston County waive and decline their respective options to develop, finance, construct and operate the Galveston Segment B and the Project.

Subject to the above condition, TxDOT exercises its option to develop, finance, construct, and operate the Project, including the Additional Features described below.

3. Notwithstanding any provision of Chapter 373 of the Code to the contrary, TxDOT shall, within 180 days after the amendment to the MVWA described below becomes effective, initiate financial feasibility studies for the Project.

4. Notwithstanding any provision of Chapter 373 of the Code to the contrary, TxDOT, upon determining the Project is feasible to support financing, shall within three years after the amendment to the MVWA described below becomes effective, enter into a contract for the construction of the Project.

In the event that TxDOT fails to initiate the feasibility studies or enter into a contract for the construction of the Project as described above, then pursuant to Section 373.054 of the Code, either party may reinitiate the primacy determination process described in Subchapter B of Chapter 373 of the Code. In that event, TxDOT shall not be liable to the County for any other relief or remedies. Notwithstanding the foregoing, TxDOT shall retain primacy over the entire Project, as long as the above requirements are met.

Article III. Obligations of the Parties

1. TxDOT will construct the Project to include the features included within the minimum scope of Segment B as described in the MVWA.

2. In addition to the features of the Project described in the minimum scope of Segment B as described in the MVWA, the County has requested that the Project be constructed to include the following features (the "Additional Features"):

- a) direct connectors to and from the Project to State Highway 35 Bypass; and
- b) two toll lanes in each direction; and
- c) all elements of the schematic included in the approved environmental clearance that exceed the minimum scope of the Project within the MVWA.

TxDOT and the County acknowledge that the Additional Features are not included within the minimum scope for Segment B as described in the MVWA and therefore may not at this time be constructed without an amendment to the MVWA allowing for their construction. The County will work with the other parties to the MVWA to

secure amendments as needed to allow for the construction of the Additional Features by TxDOT. If that amendment is obtained and effective by no later than two years after the effective date of this Agreement (the "Amendment Date"), then TxDOT will include the Additional Features as part of the design and construction of the Project. If that amendment is not obtained and effective by the Amendment Date, the Parties will mutually agree on an amended timeline for construction of the Project and what, if any, Additional Features will be included in the Project.

3. TxDOT agrees to construct the Project so that overpasses over thoroughfares are built with sufficient horizontal clearance on each side over the thoroughfare as to allow for the future expansion of each thoroughfare to accommodate four additional lanes (two each direction) without requiring the overpass to be torn down and rebuilt. Thoroughfare locations will be mutually approved by the Parties.

Article IV. No Waiver of Immunity

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, agents, and volunteers as a result of its execution of this Agreement and the performance of the covenants contained herein. Furthermore, no provision in this Agreement prohibits any other Party from seeking financial aid or in-kind reimbursement from any state or federal agency or program.

Article V. Notice

Any notice required to be given under this Agreement will be deemed received when sent by United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand delivery, or electronic or facsimile transmission confirmed by mailing written confirmation substantially the same time as such electronic or facsimile transmission, and addressed to the respective Party at the following address:

To TxDOT: Texas Department of Transportation,
Houston District
7600 Washington Ave.
Houston, TX 77007
Attention: District Engineer

To County: Brazoria County
111. E. Locust, Suite 102A
Angleton, Texas 77515
Attention: County Judge

Copy To: Brazoria County Engineer
451 N. Velasco, Suite 230
Angleton, Texas 77515
Attention: County Engineer

Article VI. Miscellaneous Terms

1. The Parties will observe and comply with all applicable federal, state, and local laws, rules, ordinances, and regulations affecting the conduct of services provided and the performance of obligations undertaken by this Agreement.

2. In case any one or more provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

3. The Parties agree that, in performing the governmental functions contemplated in this Agreement or in paying for the performance of those governmental functions, each party will make that performance or those payments from current revenues legally available to that party.

4. All Parties recognize and agree that nothing herein shall be construed to create any rights in any third parties.

5. The Parties understand and acknowledge that TxDOT may, in its sole discretion, assign to the Grand Parkway Transportation Corporation some or all of the rights and obligations of TxDOT to design, construct, and operate the Project.

Article VII. Entire Agreement

This Agreement represents the entire agreement between the Parties with respect to the subject matter covered by this Agreement. This Agreement may be amended by the mutual written agreement of the Parties.

Article VIII. Authority to Enter into Agreement

Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have the authorization to sign on behalf of their respective organizations.

The foregoing Agreement is hereby **EXECUTED** by the parties hereto in duplicate counterparts, each of which shall constitute an original, to be effective on

the later of the date of the last signature below or the completion of all conditions in Article II, Section 2.

SIGNATURE PAGE FOLLOWS

Brazoria County:

[Handwritten Signature]

L.M. "Matt" Sebesta, Jr.,
County Judge

12/13/2022

Date

The Texas Department of
Transportation:

DocuSigned by:
[Handwritten Signature]

Marc D. Williams, P.E.,
Executive Director

2/7/2023

Date

Attest:

[Handwritten Signature]

Joyce Hudman, County Clerk

12/14/2022

Date

