

Amendment No. 1 to Project Development Agreement

AMENDMENT NO. 1

TO

PROJECT DEVELOPMENT AGREEMENT

BRAZORIA COUNTY EXPRESSWAY

TEXAS DEPARTMENT OF TRANSPORTATION

BRAZORIA COUNTY, TEXAS

AND

BRAZORIA COUNTY TOLL ROAD AUTHORITY

AMENDMENT NO. 1
TO
288 TOLLWAY
PROJECT DEVELOPMENT AGREEMENT

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

THIS AMENDMENT NO. 1, 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. TxDOT, BCTRA, and the County entered into that certain “Project Development Agreement, Brazoria County Expressway,” effective March 7, 2017 (“PDA”), regarding the “Harris Project” and “Brazoria Project” toll projects in the State Highway 288 right-of-way in Harris and Brazoria Counties.
 2. TxDOT entered into a comprehensive development agreement (“CDA”) for the development of the Harris Project with Blueridge Transportation Group (“BTG”);
 3. TxDOT exercised its termination for convenience rights under Section 31.1.1 of the CDA, and control of the Harris Project has reverted from TxDOT’s developer to TxDOT; and
 4. Section 9.c.(1) of the PDA contains provisions that apply to the toll rates of the Harris Project, which were also in the CDA. The parties wish to amend Section 9.c.(1) to reflect the termination for convenience of the CDA.
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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. Amendment of Section 9.c.(1). (a) of the PDA

Replace the following sentences in Section 9.c.(1).(a):

“The minimum toll rate per mile shall be \$0.06 per mile. The minimum toll charged per toll segment that is not a direct connector shall be the greater of (i) \$0.35 per toll segment or (ii) the minimum toll rate per mile (\$0.06 per mile) multiplied by the actual length (in miles) of the toll segment. The minimum toll charged per toll segment that is a direct connector shall be \$0.35. The foregoing amounts (\$0.06 and \$0.35) are expressed in 2012 dollars and shall be escalated annually thereafter on January 1 of each year by the greater of 2% or the annual percentage increase in the Consumer Price Index, All Urban Wage Earners and Clerical Workers (CPI-W), All City Average, All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics between October of the second immediately preceding year and October of the immediately preceding year.”

With the new sentences:

“The minimum toll rate per mile shall be \$0.09 per mile. The minimum toll charged per toll segment that is not a direct connector shall be the greater of (i) \$0.50 per toll segment or (ii) the minimum toll rate per mile (\$0.09 per mile) multiplied by the actual length (in miles) of the toll segment. The minimum toll charged per toll segment that is a direct connector shall be \$0.50. The foregoing amounts (\$0.09 and \$0.50) are expressed in 2025 dollars and shall be escalated annually thereafter on January 1 of each year by the greater of 2% or the annual percentage increase in the Consumer Price Index, All Urban Wage Earners and Clerical Workers (CPI-W), All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics for the Houston-The-Woodlands-Sugarland area, for any 12-month period in the previous year as determined by TxDOT. The annual escalation cannot exceed 5%.”

2. Amendment of Section 9.c.(1).(b) of the PDA

Replace the following sentences in Section 9.c.(1).(b):

“The base rate toll soft cap shall equal (i) \$0.75 per mile for any toll segment that is not a direct connector or (ii) \$1.50 per toll segment of any toll segment that is a direct connector. For this purpose, “base toll” refers to a two-axle vehicle; the base toll soft cap may be multiplied for vehicles with more axles. The foregoing amounts (\$0.75 and \$1.50) are expressed in 2012 dollars and shall be escalated annually thereafter on January 1 of each calendar year by the greater of 3% or the annual percentage increase in the Texas gross state product per capita (being equal to the Nominal Gross Domestic Product by State for the State of Texas, as published by the

U.S. Department of Commerce, Bureau of Economic Analysis, divided by the most recently published annual estimate of the population for the State of Texas, as published by the U.S. Department of Commerce, Bureau of Economic Analysis) between the third immediately preceding year and the second immediately preceding year.”

With the new sentences:

“The base rate toll soft cap shall equal (i) \$1.48 per mile for any toll segment that is not a direct connector or (ii) \$2.96 per toll segment of any toll segment that is a direct connector. For this purpose, “base toll” refers to a two-axle vehicle; the base toll soft cap may be multiplied for vehicles with more axles. The foregoing amounts (\$1.48 and \$2.96) are expressed in 2025 dollars and shall be escalated annually thereafter on January 1 of each calendar year by the greater of 2% or the annual percentage increase in the Consumer Price Index, All Urban Wage Earners and Clerical Workers (CPI-W), All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics for the Houston-The Woodlands-Sugar Land area, for any 12-month period in the previous year as determined by TxDOT. The annual escalation cannot exceed 5%.”

3. Amendment of Section 9.c.(1).(c) of the PDA

Replace the following sentence in Section 9.c.(1).(c):

“The base toll charged per toll segment may exceed the base toll soft cap to the extent necessary to maintain average travel speeds of the slower of 45 miles per hour on the toll lanes and the speed equal to 15 MPH slower than the posted speed limit (in the case of the Harris Project, as provided in Exhibit 10 to the Comprehensive Development Agreement for the Harris Project).”

With the new sentence:

“The base toll charged per toll segment may exceed the base toll soft cap to the extent necessary to maintain average travel speeds of at least 45 miles per hour on the toll lanes or if the volume exceeds observed 2100 passenger car equivalent (PCE).”

4. Amendment of Section 9.c.(1).(d) of the PDA

Replace “April 1st of each year” with “November 1st of each year”

5. Amendment of Section 13.a

Section 13.a is deleted in its entirety and replaced with the following:

Notices. All notices to either party by the other required under this Agreement shall be delivered to the respective email addresses below with a copy delivered personally or sent by first class U.S. Mail, postage prepaid, addressed to such party at the following respective addresses. Such contacts and addresses may be updated by delivering notice of the change,

and the updated contacts or addresses shall become the current notice information.

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 and Toll Operations Division
125 E. 11th Street
Austin, TX 78701
Attn: Director, Project Finance and Toll Operations Division
Email: projectfinance@txdot.gov

With a copy to:

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

6. Effective Date of Amendment No. 1

This Amendment No. 1 is effective on the date of the last signature once signed by all parties.

**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: _____
