



Travis County Commissioners Court Agenda Request

Meeting Date: January 17, 2012

Prepared By: Steven Manilla **Phone #:** 854-9383

Division Director/Manager:

Department Head/Title: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Davis, Precinct One
Commissioner Huber, Precinct Three

AGENDA LANGUAGE:

Consider and take appropriate action on the following requests:

- A) Approve a Pass-Through Toll Finance Agreement with TxDOT for FM 1626 between west of Brodie Lane and FM 2304 (aka Manchaca Road), in Precinct Three;
- B) Approve a Pass-Through Toll Finance Agreement with TxDOT for FM 969 between FM 3177 (aka Decker Lane) and Hunters Bend Road, in Precinct One; and
- C) Provide Resolutions supporting Tavis County's Pass-Through Toll Finance Agreement with TxDOT for portions of FM 973 and FM 969 in Precinct One and a portion of FM 1626 in Precinct Three.

BACKGROUND/SUMMARY OF REQUEST:

FM 1626 project consists of widening and reconstruction of FM 1626 from 1,100 feet west of Brodie Lane to FM 2304. From 1,100 feet west of Brodie Lane to the Bear Creek Bridge, the roadway will be a five lane section with a continuous left turn lane and 10' shoulders. From Bear Creek Bridge to FM 2304, the roadway will be a five lane curb and gutter section with 6' shoulders and a sidewalk on one side of the roadway. Total project length is approximately 1.11 miles.

FM 969 project consists of widening and reconstruction of FM 969 from FM 3177 to Hunters Bend Road to be done in two phase. Phase I is to widen the roadway to provide continuous left turn lane, shoulders, and a sidewalk on one side of the roadway from FM 3177 to FM 973. Phase II will provide two additional travel lanes, a continuous left turn lane, shoulders, and a sidewalk on one side of the roadway from FM 973 to Hunters Bend Road. Total project length is approximately 3.97 miles.

The Pass-Through Toll Finance Program requires public or private entities to fund all project costs for improvements to state highways. The Program allows for reimbursements to be made only on construction costs. Project costs include engineering, ROW, utility relocation, construction management, and construction. In 2010 the County submitted applications for FM 1626 and FM 973 but we were not selected. In a debriefing with TxDOT afterwards we were advised that many of the

selected projects included offers to reduce the reimbursement on construction costs in order to increase their competitiveness. TNR recommended using the same strategy in preparation for the 2011 Program applications.

STAFF RECOMMENDATIONS:

ISSUES AND OPPORTUNITIES:

State highways are part of the regional transportation system and they have historically been the responsibility of TxDOT. With a few relatively minor exceptions, spending County funds on state highway projects has been limited to right-of-way costs. The highways would need to be designed and built to state standards, which is typically more expensive than county roadways. In the proposed agreements TxDOT will be responsible for the construction phase. As such they will retain responsibility for operation and maintenance of each roadway,

Attached is correspondence from TxDOT showing their responses to various issues raised by County Staff. The most significant outstanding issues pertain to project cost over-runs, under-runs, and timeframes for providing additional funds if needed.

FISCAL IMPACT AND SOURCE OF FUNDING:

TxDOT's reimbursement amounts will be based on the actual low bid construction costs subject to the following two conditions: i) TxDOT will reimburse its proportional share of the amount by which the Actual Cost of Construction exceeds the Estimated Total Construction Cost (cost overrun). However, total reimbursement amount will not exceed 110% of Allowable Construction Costs. ii) TxDOT will reimburse to the County the amount by which the Actual Cost of Construction is less than the Estimated Total Construction Cost (cost under-run), up to 10% of the Estimated total Construction cost, only if the following conditions are met:

- a) The total of actual cost and under-run reimbursement may not exceed the Allowable Construction Cost;
- b) The amount of cost under-run reimbursement received by County must be expended on the Project, or on other mutually acceptable state highway projects located in Travis County's jurisdiction;
- c) The amount of cost under-run reimbursements received by County may be expended on the actual costs of an eligible project's environmental clearance and mitigation, ROW acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or profits; and
- d) County receives TxDOT's prior written consent for the expenditures.

The County will be responsible for funding the engineering, ROW, utility relocation, and construction costs. County is required to advance to TxDOT all funds necessary for the construction of the project at least sixty (60) days prior to the date set for receipt of the construction bids. In the event that TxDOT determines that additional funding by County is required for construction, the County is required to make payment to TxDOT within thirty (30) days from receipt of TxDOT's written notice. PBO has expressed concerns on meeting this tight schedule and the uncapped dollar amounts. TxDOT asserts that they are not able to make any changes due to 43 TAC Part 1 Section 5.58(b)(3) Allocations of Risk Cost Overruns and Under-Runs (see attached TxDOT Responses). In addition, the tight schedule is required during the construction phase in order to prevent delay claims from contractors.

Estimated Total Project Costs

FM 1626: \$12,223,300

Engineering, Permitting, Environmental Clearance, and Construction Eng:
\$1,950,000 (100% County)

ROW and Utility Relocation: \$2,370,000 (100% County)

Construction: \$7,903,300 (\$3,700,000 County)

FM 969: \$18,128,600

Engineering, Permitting, Environmental Clearance, & Construction Eng: \$3,010,000
(100% County)

ROW and Utility Relocation: \$1,580,000 (100% County)

Construction: \$13,538,600 (\$4,000,000 County)

TxDOT Reimbursements

FM 1626: \$4,203,300 (53% of construction cost)

FM 969: \$9,538,600 (71% of construction cost)

County Net Projects Costs

FM 1626: \$8,020,000 (66% County)

FM 969: \$8,590,000 (47% County)

Costs shown above do not include finance costs or inflation.

TxDOT will begin reimbursement payments one year after the project is complete.

FM 1626

Project Length 1.11 miles

Reimbursement Rate: \$0.045 per vehicle-mile traveled

Minimum annual amount: \$210,165 (20 years for full reimbursement)

Maximum annual amount: \$420,330 (10 years for full reimbursement)

Based on TxDOT's traffic projections for 2017 (6,721,000 VMT) and 2037 (9,033,750 VMT), the full reimbursement will be made between 10.3 to 13.8 years depending on actual future volumes.

FM 969

Project Length: 3.97 miles

Reimbursement Rate: \$0.016 per vehicle-mile traveled

Minimum annual amount: \$476,390 (20 years for full reimbursement)

Maximum annual amount: \$953,860 (10 years for full reimbursement)

Based on TxDOT's traffic projections for 2017 (32,024,005 VMT) and 2037 (55,063,900 VMT), the full reimbursement will be made between 10.8 and 18.6 years depending on actual future traffic volumes.

NOTE: For traffic count data, County will be responsible for installation, operations and maintenance of traffic counter equipment at specific traffic count sites. Traffic count data will be provided to TxDOT for calculation of annual reimbursement amount based on per vehicle-mile reimbursement rate.

PBO has advised TNR that funding this project will impact the debt model. The amount needed, albeit not all at once, will affect the County's debt capacity and reduce our ability to fund other projects on the County maintained roadway system.

The County does not need to have the full project amount in-hand at the time a contract is executed with TxDOT. Projected cash flows for these two projects are as follows:

FM 1626 2012 Q2 Eng: \$1,750,000

2014 Q3 ROW: \$2,370,000

2016 Q1 Construction: \$8,103,300

Total: \$12,223,300

FM 969 2012 Q2 Engineering \$1,140,000

2014 Q1 ROW: \$1,580,000

2015 Q4 Construction: \$15,408,600

Total: \$18,128,600

EXHIBITS/ATTACHMENTS:

Pass-Through Agreement for Payment of Pass-Through Tolls by the Department (FM1626)

Pass-Through Agreement for Payment of Pass-Through Tolls by the Department (FM969)

Texas Transportation Commission Minute Order for 2011 Pass-Through Toll Program
TxDOT Responses to County review comments
PBO Memo to Court

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

CC:


: :
0101 - Administrative Svs-



PLANNING AND BUDGET OFFICE
TRAVIS COUNTY, TEXAS

700 Lavaca Street
P.O. Box 1748
Austin, Texas 78767

MEMORANDUM

TO: Commissioners Court
FROM: Jessica Rio, Assistant Budget Director 
DATE: January 9, 2012
SUBJECT: TxDoT Pass-Through Financing

Debt Model and Cash Flow Assumptions:

PBO has been asked to provide the Commissioners Court with our comments regarding the proposed pass-through financing project funding options. As part of PBO's debt model presentation on August 9, 2011 (Agenda Item #20), the impact of an approximate \$30 million in TxDOT projects was included in the debt model presentation. At that time, PBO provided several cash flow scenarios that included up to \$486.31 million in total debt issued by Travis County between FY 12 and FY 18 (in addition to the average \$20.4 million in COs that it is anticipated the County will issue each year for on-going capital needs). While debt service was projected to increase to an estimated \$122.7 million by FY 2017 (a 64.4 % increase over FY 12's debt service of \$74.6 million), the County was not at risk of violating any of its primary key debt ratios.

TNR has provided the following cash flow for the proposed projects as follows:

	FY 12	FY 13	FY 14	FY 15	FY 16	Total
FM 1626	\$1,750,000	-	\$2,370,000	-	\$8,103,300	\$12,223,300
FM 969	1,140,000	-	1,580,000	15,408,600	-	18,128,600
Total	\$2,890,000	\$0	\$3,950,000	\$15,408,600	\$8,103,300	\$30,351,900

Please note that the above amounts do not include issuance costs and rounding of the amounts to the nearest \$5,000 for bond issuance purposes. PBO estimates FM 1626 to total \$12,300,000 with associated issuance costs and FM 969 to total \$18,245,000. The following table provides the total estimated principal and interest (5%) on twenty year debt associated with the projects assuming the estimated costs do not change:

	Total Principal	Total Interest (5%)	Total	Reimbursement	County's Responsibility
FM 1626	\$12,300,000	\$7,404,223	\$19,704,223	(\$4,203,300)	\$15,500,923
FM 969	18,245,000	10,982,931	29,227,931	(9,538,600)	19,689,331
	\$30,545,000	\$18,387,154	\$48,932,154	(\$13,741,900)	\$35,190,254

Bonds Issuance and State Reimbursement:

It is PBO's understanding from Bond Counsel that the County has the authority to issue bonds for this purpose under Texas Government Code §1479.002. These bonds do not need to be voter approved but will resemble long term bonds issued by the County related to voter authorizations. In addition, the agreement includes partial reimbursement from the State (of direct construction costs). PBO recommends that the Court use this reimbursement towards payment of the debt associated with these projects if such payment is financially sound. PBO has requested that the agreement not include any restrictions on the use of the reimbursement in the event that a future Commissioners Court would like to keep such resources in the General Fund and/or the debt associated with these projects has been paid off.

Concerns Raised by PBO:

PBO outlined the following concerns with the proposals in an email dated November 3, 2011:

- Travis County must expend any cost savings achieved on the project or on a mutually acceptable State highway project instead of using to pay associated debt or any other purpose designated by the Commissioners Court. If Travis County can expend such savings on right-of-way, engineering etc. related to the project, this might not be an issue. It only appears to be a concern if the County does not have any more related costs to exhaust such savings.
- The agreement allows the State to initiate change orders where Travis County only has ten days to review and provide comments and yet are wholly responsible for any related costs.
- Reimbursements to the County will not begin to occur until the projects are "substantially" completed as defined by the State. TNR has indicated that FM 969 will be in two phases and Travis County should be able to receive reimbursements on the first phase at least two years sooner than the second phase.
- The total reimbursement amount will not exceed 110% of the allowable construction costs. PBO has understood that there will be no reimbursement of construction management or contingency costs.
- There is no cap to Travis County's funding obligation for these projects. However, there is an option for the County to terminate the agreement if, after design is complete, the project is over 110% over budget.
- Travis County will only have 30 days to provide requested additional funding to the State.

Finally, PBO recommends that the Auditor's Office have sufficient time to review the agreement and the new form of debt that these agreements will produce in order to ensure that all their requirements are met (including that all debt to be issued is for capital expenditures).

cc: Cynthia McDonald (TNR)
Steve Manilla (TNR)
Leroy Nellis (PBO)
Tom Nuckols (County Attorney's Office)
Glenn Opel, County's Bond Counsel
Ladd Pattillo, County's Financial Advisor
Susan Spataro (County Auditor)
Steve Sun (TNR)
Hannah York (County Auditor's Office)
Diana Warner (County Auditor's Office)

**RESOLUTION TO ENTER INTO PASS-THROUGH AGREEMENT WITH
TEXAS DEPARTMENT OF TRANSPORTATION
FOR CONSTRUCTING IMPROVEMENTS TO FM 969 FROM FM 3177 TO
HUNTERS BEND ROAD**

WHEREAS, Texas Transportation Code Section 222.104(b) authorizes the Texas Department of Transportation (“TxDOT”) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity;

WHEREAS, on December 16, 2010 by Minute Order 112526, the Texas Transportation Commission approved a call for submission of projects under the pass-through financing program beginning on December 31, 2010 and ending at 3:00 p.m. on March 1, 2011;

WHEREAS, FM 969 is a part of the state highway system;

WHEREAS, FM 969 is increasingly congested and will become even more congested as the population and vehicle traffic from areas in and around the FM 969 corridor and other parts of eastern Travis County continue to grow;

WHEREAS, Travis County recognizes the need for early planning and preparation for the projected significant increases in population and vehicle traffic;

WHEREAS, improving FM 969 by widening and reconstructing FM 969 from FM 3177 to Hunters Bend Road (the “Project”) would improve safety, alleviate congestion, provide access to existing and planned future development both in and around the FM 969 corridor and other parts of eastern Travis County, and facilitate the efficient movement of goods and services in Travis County;

WHEREAS, the Project would accommodate anticipated traffic volumes in the fast growing Desired Development Zone;

WHEREAS, traffic from the Desired Development Zone will increase congestion and reduce safety if the Project is not constructed;

WHEREAS, the Project is Travis County’s highest priority state highway project in the southeast Travis County area;

WHEREAS, Travis County recognizes the need for early planning and preparation for the projected significant increases in population and vehicle traffic;

WHEREAS, the cities and communities surrounding the existing and proposed FM 969 corridor support the Project;

WHEREAS, pursuant to Texas Transportation Code Section 222.052, Travis County is authorized to contribute funds to be spent by the Texas Transportation Commission (the "Commission") in the development and construction of the public roads and state highway system within the County, and the Commission may accept such a contribution;

WHEREAS, on February 22, 2011, the Travis County Commissioners Court approved the Transportation and Natural Resources Department's request to submit a Pass-Through Toll Financing Program Application for the Project;

WHEREAS, on May 26, 2011, the Commission passed Minute Order Number 112685, authorizing the County to construct the Project;

WHEREAS, on July 28, 2011, the Commission passed Minute Order Number 112755, authorizing TxDOT to enter into a pass-through agreement with the County in furtherance of the Project; and

WHEREAS, the Travis County Commissioners Court finds that undertaking the Project would facilitate the efficient movement of people, goods, and services in Travis County and would benefit the residents of Travis County;

NOW, THEREFORE, the Travis County Commissioners Court hereby authorizes the Travis County Judge to execute Contract No. PT2011-003-01, a pass through agreement for payment of pass-through tolls by TxDOT, under which, among other things:

1. The Project would consist of two phases. Under Phase 1, FM 969 would be widened to provide a continuous left turn lane, shoulders, and a sidewalk on one side of the roadway from FM 3177 to FM 973. Phase 2, FM 969 would be widened to provide two additional travel lanes, a continuous left turn lane, shoulders, and a sidewalk on one side of the roadway from FM 973 to Hunters Bend Road. The total Project length is 3.97 miles; and
2. TxDOT will reimburse the County at a rate of \$0.016 per vehicle-mile traveled. The minimum annual amount that TxDOT will pay is \$476,390 (20 years for full reimbursement), and the maximum amount that TxDOT will pay is \$953,860 (10 years for full reimbursement). TxDOT will reimburse the County \$9,538,600, which amount is 71% of the estimated total construction cost for the Project.

BE IT SO ORDERED ON THIS _____ DAY OF _____, 2012.

By: _____
Samuel T. Biscoe, County Judge

Ron Davis, Commissioner
Precinct 1

Sarah Eckhardt, Commissioner
Precinct 2

Karen Huber, Commissioner
Precinct 3

Margaret Gómez, Commissioner
Precinct 4

**RESOLUTION TO ENTER INTO PASS-THROUGH AGREEMENT WITH
TEXAS DEPARTMENT OF TRANSPORTATION
FOR CONSTRUCTING IMPROVEMENTS TO FM 1626
FROM WEST OF BRODIE LANE TO FM 2304**

WHEREAS, Texas Transportation Code Section 222.104(b) authorizes the Texas Department of Transportation (“TxDOT”) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity;

WHEREAS, on December 16, 2010 by Minute Order 112526, the Texas Transportation Commission approved a call for submission of projects under the pass-through financing program beginning on December 31, 2010 and ending at 3:00 p.m. on March 1, 2011;

WHEREAS, FM 1626 is a roadway on the state highway system that serves regional transportation needs in northern Hays County, one of the fastest growing sectors of the Austin metropolitan area;

WHEREAS, much of the new traffic generated from growth in the FM 1626 corridor in Hays County is destined for the Austin urban area, and traffic from Hays County uses Brodie Lane and FM 2304 (Manchaca Road) to access arterials heading into downtown Austin;

WHEREAS, Hays County has entered into an agreement with TxDOT to widen FM 1626 to a four-lane roadway from FM 967 in Hays County to Brodie Lane in Travis County (the “Hays County Improvements”);

WHEREAS, the Hays County Improvements to FM 1626 between FM 2770 and Brodie Lane will divert regional traffic to Brodie Lane through existing neighborhoods and will significantly degrade the safety of Brodie Lane, a two-lane county road, and the quality of life of the adjoining neighborhoods;

WHEREAS, the Hays County Improvements make it more urgent for improvements to be made within Travis County’s portion of FM 1626 from Brodie Lane to FM 2304 (Manchaca Road) because the additional capacity created by the Hays County Improvements will increase traffic directly onto Brodie Lane and the existing two-lane FM 2304 (Manchaca Road);

WHEREAS, widening and reconstructing FM 1626 from west of Brodie Lane to FM 2304 and widening FM 2304 (Manchaca Road) to a five-lane section with a continuous left turn lane and shoulders (the “Project”) would provide a more direct and efficient route for traffic heading north into Austin;

WHEREAS, Travis County recognizes the need for early planning and preparation for the projected significant increases in population and vehicle traffic;

WHEREAS, the cities and communities surrounding the existing and proposed FM 969 corridor support the Project;

WHEREAS, pursuant to Texas Transportation Code Section 222.052, Travis County is authorized to contribute funds to be spent by the Texas Transportation Commission (the "Commission") in the development and construction of the public roads and state highway system within the County, and the Commission may accept such a contribution;

WHEREAS, on February 22, 2011, the Travis County Commissioners Court approved the Transportation and Natural Resources Department's request to submit a Pass-Through Toll Financing Program Application for the Project;

WHEREAS, on May 26, 2011, the Commission passed Minute Order Number 112685, authorizing the County to construct the Project;

WHEREAS, on July 28, 2011, the Commission passed Minute Order Number 112755, authorizing TxDOT to enter into a pass-through agreement with the County in furtherance of the Project; and

WHEREAS, the Travis County Commissioners Court finds that undertaking the Project would facilitate the efficient movement of people, goods, and services in Travis County and would benefit the residents of Travis County;

NOW, THEREFORE, the Travis County Commissioners Court hereby authorizes the Travis County Judge to execute Contract No. PT2011-007-01, a pass through agreement for payment of pass-through tolls by TxDOT, under which, among other things:

1. The Project consists of the widening and reconstruction of FM 1626 from 1,100 feet west of Brodie Lane to FM 2304 (Manchaca Road). From 1,100 feet west of Brodie Lane to the Bear Creek Bridge, the roadway will be widened to a five-lane section with a continuous left turn lane and ten-foot wide shoulders. There will be a transition section from west of Brodie Lane to the Bear Creek Bridge. From the Bear Creek Bridge to FM 2304 (Manchaca Road), the roadway will be a five-lane curb and gutter section with six-foot wide shoulders and a sidewalk on one side of the roadway. The total Project length is 1.11 miles.
2. TxDOT will reimburse the County at a rate of \$0.045 per vehicle-mile traveled. The minimum annual amount that TxDOT will pay is \$210,165 (20 years for full reimbursement), and the maximum amount that TxDOT

will pay is \$420,330 (10 years for full reimbursement). TxDOT will reimburse the County \$4,203,300, which amount is 53% of the estimated total construction cost for the Project.

BE IT SO ORDERED ON THIS _____ DAY OF _____, 2012.

By: _____
Samuel T. Biscoe, County Judge

Ron Davis, Commissioner
Precinct 1

Sarah Eckhardt, Commissioner
Precinct 2

Karen Huber, Commissioner
Precinct 3

Margaret Gómez, Commissioner
Precinct 4

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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VARIOUS Districts

On December 16, 2010, by Minute Order 112526, the Texas Transportation Commission (commission) approved a program call for highway projects to be developed on the state highway system under a pass-through toll program agreement (program call). The commission further determined that (i) monies available that can be allocated among all proposals selected under this program call will be limited to an estimated total of \$250 million in Category 12 funds; (ii) only the following category of project costs described in 43 TAC §5.53(a)(11) will be considered as eligible for reimbursement under this program call: construction cost, exclusive of construction engineering cost, and, in the case of a pass-through toll project submitted as a design-build project, the construction cost, exclusive of construction engineering costs must be broken out separately as one component of the total project cost; (iii) the value of development and implementation services and products for the project, including but not limited to environmental studies and mitigation, right-of-way acquisition, engineering, and construction inspection services that have been or will be provided by the department, will be deducted from the eligible reimbursement amounts; and (iv) federal and state funding that is otherwise programmed for or committed to a proposed pass-through toll project will not be considered as part of the proposer's contribution, nor may it be reimbursed under the program.

Pursuant to Minute Order 112526 and Title 43 Texas Administrative Code §§5.51-5.60 (rules), the Texas Department of Transportation (department) published a notice in the Texas Register designating a 60-day period commencing on December 31, 2010, for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was March 1, 2011. Department staff evaluated the proposals that were timely submitted under the program call using the items of consideration set forth in §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

In accordance with §222.104(b), Transportation Code and §§5.54-5.55 of the rules, the commission granted preliminary approval on May 26, 2011, in Minute Order 112685, authorizing the department to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals were selected by the commission in that minute order as providing the best value to the state. The agreements will provide for the payment of pass-through tolls to the selected public entities as reimbursement for the construction of facilities on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

In accordance with §5.58(b)(3)(A) of the rules, the commission finds that it is in the public interest to require all agreements negotiated with the selected public entities to contain a provision that limits reimbursement to the actual costs incurred by the public entity (actual cost provision). The actual cost provision will be based on the following concepts:

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). Payments of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the construction contract (actual cost of construction), subject to the following two exceptions.

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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VARIOUS Districts

- (a) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated total construction cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
 - (b) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated construction of cost, if the following conditions are met:
 - (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's reimbursement amount as set forth in Exhibit A;
 - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
 - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right-of-way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (iv) the public entity receives the department's prior written consent for the expenditures.
- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
 - (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
 - (4) Construction costs shall have the same meaning as described in the program call.

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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VARIOUS Districts

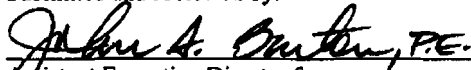
The department and each of the public entities identified in Exhibit A have agreed to a total reimbursement through pass-through tolls for construction of the projects, a reimbursement rate per vehicle or vehicle mile, the minimum amount to be reimbursed in any year with all projects open to traffic, and the maximum amount per year as set forth in the exhibit. Each agreement will expire once the total amount of that agreement has been reimbursed. The projects will be authorized and reimbursed from Category 12, Strategic Priority funds.

In accordance with §5.57 of the rules, the commission finds that: (1) the projects serve the public interest and not merely a private interest; (2) the proposed pass-through agreements are in the best interest of the state; (3) the projects are compatible with existing and planned transportation facilities; and (4) the projects further state, regional, and local transportation plans, programs, policies, and goals.

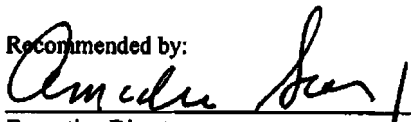
Before the projects in the selected proposals are designed, developed, or constructed using funds administered by the department, the projects: (1) must be included in the department's Unified Transportation Program, thereby identifying committed funding for the project; (2) must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

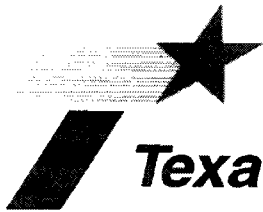
IT IS THEREFORE ORDERED that the executive director or designee is authorized to negotiate and execute a pass-through toll agreement with each of the public entities set forth in Exhibit A for the construction of their respective projects as identified in the exhibit, in accordance with the negotiated terms, actual cost provision described in this minute order, and such other terms the department determines to be necessary.

Submitted and reviewed by:


Assistant Executive Director for
Engineering Operations

Recommended by:


Executive Director
112755 JUL 28 11
Minute Number Date Passed



Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512)832-7000

December 5, 2011

Travis County
Contract No. PT2011-003-01
FM 969: FM 3177 to Hunters Bend Rd
CSJ No. 1186-01-090 & 1186-01-091

Contract No. PT2011-007-01
FM 1626: West of Brodie to FM 2304
1539-02-026

The Honorable Samuel T. Biscoe
County Judge
Travis County
314 W. 11th Street
Austin, Texas 78633

Dear Judge Biscoe:

Thank you for your comments on the Pass-Through Toll Finance Agreement for the above project transmitted via Steven Manilla's electronic mail of November 4, 2011.

Attached are two copies of a revised document. A summary of the Department's responses are as follows:

County Comment No. 1
Section 4(B). Sources and Uses of Funds

Insert "...on Attachment C..." after the words "...specifically identified..." in the first sentence.

Department Response

*Agree to add "on Attachment C" in following sentence, "The Department is responsible only for securing the funding specifically identified on **Attachment C** as the responsibility of the Department and for making that funding available to the Developer as set forth on Attachment C."*

County Comment No. 2
Section 4(B)(ii). Sources and Uses of Funds

Insert "... (110% of Allowable Construction Costs)" after the words "identified on Attachment C" in the first sentence. We also request that the agreement contain a cap on the Developer's potential funding obligation.

Department Response

Agree to add "... (110% of Allowable Construction Costs)" in following sentence, "Unless and to the extent that this agreement is amended, the Department will not be responsible for funding in excess of the Maximum Pass-Through Reimbursement to Developer identified on Attachment C (110% of Allowable Construction Costs)."

Do not agree to cap the Developer's potential funding obligation as this action violates 43 TAC

Part 1 §5.58(b)(3) Allocation of Risk (A) Cost overruns and underruns as the commission did not authorize an increase nor a decrease by cost overruns or underruns the department's liability under the Agreement.

County Comment No. 3

Section 4(C)(i). We request that the Department reimburse the Developer for the actual construction costs regardless of the final cost amount.

If no additional funds can be provided by Department to cover higher than estimated costs then we request a provision that allows value engineering, down-scoping, or phasing the project to get the cost down without violating the environmental document.

Department Response

Do not agree to cap the Developer's potential funding obligation as this action violates 43 TAC

Part 1 §5.58(b)(3) Allocation of Risk (A) Cost overruns and underruns.

Do not agree to an additional provision that allows value engineering, down-scoping or phasing the project. Paragraph 4 of Attachment D allows for design changes.

County Comment No. 4

Section 4(C)(ii). This provision is a bit confusing. Also, we don't understand why an under-run amount of Developer's funds must be expended on the project or a mutually acceptable Department highway project rather than just returned to the Developer.

Department Response

A return of underrun amount of Developer's funds violates 43 TAC Part 1 §5.58(b)(3) Allocation of Risk (A) Cost overruns and underruns.

County Comment No. 5

Section 4(C)(ii)(a). Replace with, "The total of Actual Cost of Construction and cost under-run reimbursements by the Department may not exceed the Department's Proportional Share identified on Attachment C";

Department Response

Do not agree to revise to "The total of Actual Cost of Construction and cost under-run reimbursements by the Department may not exceed the Department's Proportional Share identified on Attachment C". Proposed revision would result in alteration of provision's intent.

County Comment No. 6

Section 4(C)(ii)(b). Insert the word "reimbursements" after "The amount of cost under-run".

Department Response

Agree to modify the sentence as follows "The amount of cost under-run reimbursements received by the Developer must either be expended on the Project, or on other mutually acceptable state highway projects located in the Developer's jurisdiction;"

County Comment No. 7

Section 4(C)(ii)(c). Insert the word "reimbursements" after "The amount of cost under-run".

Department Response

Agree to modify the sentence as follows "The amount of cost under-run reimbursements received by the Developer may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and"

County Comment No. 8

Section 4(D). We request a cap on the amount of funds the Developer is responsible for advancing the Department.

Department Response

Do not agree to a cap on the amount of funds the Developer is responsible for advancing the Department as this action violates 43 TAC Part 1 §5.58(b)(3) Allocation of Risk (A) Cost over-runs and under-runs.

County Comment No. 9

Section 4(D)(i). We request a provision that allows us to mutually agree upon a date for receipt of construction bids for the project.

Department Response

Do not agree to a provision that allows for mutual agreement for date for receipt of construction bids for the project. The Department has been given the responsibility of bidding and construction and the scheduling of receipt of bids shall be according to the Department's pertinent PS&E Review and Processing Schedule. The Department does not object to amending the Project Schedule to reflect an earlier construction start date if environmental approvals are received earlier.

County Comment No. 10

Section 4(D)(ii). We request more time for providing additional funds if it's necessary for us to issue bonds to obtain such funds.

Department Response

Do not agree to suspend time during construction for Developer to secure additional funding. In addition, the Department cannot advance funds to the Developer to continue construction while waiting for Developer to secure additional funding.

County Comment No. 11

Attachment D

Section 5 Construction Responsibilities

Section 5.2. We are concerned that we don't have approval authority for change orders. The time allowed for us to provide comments is limited to only 10 days, and it appears that such costs are to be solely the Developer's responsibility. Since we are paying a significant amount of the construction cost we should be able to mutually agree upon the need and costs for change orders and the Department should pay its proportionate share. We should also be allowed more time to review and comment if it involves complex issues and/or exceeds an amount that we can agree to.

Department Response

Although the ten (10) business day comment period can be revised, the Department cannot be responsible for change orders per Texas Transportation Commission action. Extension of the review time beyond ten (10) business days may delay construction activities.

County Comment No. 12

Section 6 Environmental Assessment and Mitigation

Section 7 Right of Way and Real Property

Section 8 Utilities

Section 9 Architectural and Engineering Services

Although it's clear that the Developer will be responsible for these items it's not clear that the Developer will pay directly for them. It appears that Attachment C includes these costs

and it could be misconstrued that the Developer provides its funds to the Department and would then need Department approval to use them.

Department Response

Section 4D clearly identifies the type of costs that must be provided to the Department. The Developer needs to have all of the funding available at the front end for project development and construction. The Department's funding obligation occurs after completion of the Projects.

Attachment C is incorrect. The "Developer Funding" column should total the Estimated Project Cost instead of the difference between the Estimated Project Cost and the Department's Proportional Share.

County Comment No. 13

Section 10(E). Since the Department is doing the construction administration, we request that the Department take care of the "Notification of Completion" and the "as-built plans" rather than requiring Developer to do that.

Department Response

Agree to revise Section 10E to the following "When the Project is complete, the Department shall issue and sign a "Notification of Completion" certifying that all work has been completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after issuance of this notification, the Department will perform a final inspection and provide to the Developer a list of items, if any, to be completed prior to acceptance by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Acceptance" to the Developer. Within six (6) months after the Department has issued the "Letter of Acceptance," the Developer shall file with the Department a set of as-built plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications."

Since the Developer is responsible for the design and construction phase design services, the responsibility of the "as-built plans" remains the responsibility of the Developer.

County Comment No. 14

Section 10 (H). We request that the Department take care of purchase, installation, maintenance and data collection of traffic counter equipment to be installed on their highways.

Department Response

Do not agree to modify responsibilities. This would be a change in the program parameters of cost allocation.

County Comment No. 15

Section 12 (B). We request that the Department issue the "Notification of Substantial completion" rather than the Developer doing it. Also, can we get some clarity on what the term "year" will mean. Based on 12(G) in the FM 969 Agreement, it appears to be the 12 month period immediately preceding the date of the first Letter of Approval on the first substantially completed phase, and each 12 month period after that, ending on the calendar date of the first Letter of Approval.

Department Response

The "year" starts on the date of issuance of the letter of approval. TxDOT believes the Section is clear but is open to alternative language suggestions.

County Comment No. 16

Section 12(E). With respect to the FM 969 Agreement, in the event that Phase 2 is underway and funds have been expended and TxDOT defaults, the County still needs to get reimbursed for its cost.

Department Response

No changes are necessary. Sections 12 covers repayment and Section 15 covers termination by either party.

County Comment No.17

Section 12(G). Insert the phrase "...by the Department under this agreement.." after the phrase "The first payment..." in the first sentence.

Department Response

Although addressed in 12(A), agree sentence to be modified to "The first payment by the Department under this agreement shall be made within sixty (60) days after the first anniversary of Substantial Completion and the Department's issuance of a Letter of Approval for Payment for the first substantially completed Phase, or in the event that a Letter of Approval for Payment was not issued, then within sixty (60) days after the first anniversary of the Phase's completion and the Department's issuance of a Letter of Acceptance.

County Comment 18

Section 15(C). It should read that the Department, not the Developer, is responsible for commencing construction.

Department Response

Do not agree to revise. Construction commencement schedule is driven by Project Development schedule.

County Comment 19

Section 16. We request a provision that indicates we will get any unspent County funds back from TxDOT.

Department Response

Do not agree to additional provision. Issue covered by terms of Article 4(D).

County Comment 20

Section 38. It looks like TxDOT will be reimbursing the County with Federal funds. The only restrictions we see in the agreement on how the pass-through funds can be used is in Section 4 related to the cost under-run monies. Are there any other restrictions on how the County can use Pass-Through payments and if so can they be addressed in the agreement more clearly than just with Section 38?

Department Response

County is required to comply with all applicable federal and state laws and restrictions therein.

County Comment 21

Attachment C. Includes cost figures that we're not sure of the origin. Let's discuss.

Department Response

As previously stated, the Developer Funding column should be the total project cost. Column will be revised.

County Comment 22

Attachment F. (Project Schedule for FM 969) We request the schedule include time for PTT Agreement and RFQ process as done for the FM 1626 Project Schedule.

Department Response

The Department does not object to amending the Project Schedule to reflect PTT Agreement and RFQ process time.

County Comment 23

We're not sure if TxDOT, or other governmental entity that may have some level of approval authority (FHWA?) places limitations on where reimbursements can be placed

(e.g. debt service) but we need to be able to place our reimbursements wherever the Commissioners Court desires.

Department Response

As per Section 4Cii(b)&(d) The amount of cost under-run received by the Developer must either be expended on the Project, or on other mutually acceptable state highway projects located in the Developer's jurisdiction. No limitations have been placed on reimbursements for costs of Project up to this under-run amount.

County Comment 24

The FM 969 Project is to be phased, which puts us in a position to receive reimbursements quicker. Can we have the same flexibility for the FM 1626 Project if it makes sense (e.g. the new bridge could be built separately).

Department Response

An exception was made for FM 969 due to environmental and physical attributes of the Project. Department does not agree to separate bridge construction from remaining section of FM 1626 or separate FM 1626 into two (2) or more projects.

County Comment 25

The 110% cap that TxDOT has placed upon its funds should be applicable to the County as well. If the Project exceeds the budget we should work together to either reduce costs or obtain additional funds from our respective agencies.

Department Response

Department denies this request. This request violates the program's requirements relating to risk. The Developer is obligated to deliver the Project.

County Comment 26

Section 25 includes language that saves harmless the state from all claims and liabilities attributed to the County's work on this Project. We'd like the same consideration since TxDOT is requiring us to use TxDOT standards and procedures and TxDOT will be managing the construction phase.

Department Response

Request is denied. This request is not legally possible.

County Comment 27

The following clauses are ones we look for in contracts, but that weren't found. TxDOT agreements are different but will the following be addressed, or if not, why they aren't they included:

W-9 Form
Property Taxes Assignment
Funding Out
Prompt Payment

Department Response

W-9 Form does not apply. The W-9 Form is a form requesting the Taxpayer ID number and as a State Agency, TxDOT does not need to supply.

Property Taxes Assignment appears to not apply. Can County offer the purpose of the provision?


Funding Out does not apply. The funding out clause says that only money appropriated in this two year biennium is available and nothing past that.

Prompt Payment does not apply. The prompt payment law addresses payments TxDOT makes to contractors when they send invoices to the State. The repayment set out in Section 12 speaks to when payments are due and how much they will be.

The comments addressed above have been corrected and two revised documents for each Project have been attached for execution.

If you have any questions please contact Ms. Patricia Crews-Weight at (512) 832-7050.

Sincerely,


For Carlos A. Lopez, P.E.
Austin District Engineer

Attachments

cc: John R. Wagner, P.E., North Travis/Georgetown Area Engineer, TxDOT
Ron Davis, County Commissioner, Travis County, Precinct 1
Sarah Eckhardt, County Commissioner, Precinct 1, Travis County
Karen Huber, County Commissioner, Precinct 3, Travis County
Margaret Gómez, County Commissioner, Precinct 4, Travis County
Steve Manilla, P.E., Executive Manager, Transportation and Natural Resources

From: Steven Manilla
To: Pat Crews-Weight
Date: 12/22/2011 8:05 AM
Subject: Re: TxDOT's response to PTT qtns - further qtns

Thanks

>>> Pat Crews-Weight <Pat.CrewsWeight@txdot.gov> 12/22/2011 7:54 AM >>>
Attached are revised copies of the PTT reflecting the additional provision under Termination. As a reminder, the schedule shown in these documents have not been updated as requested by the County in the first round of comments. The new schedule will be inserted by the County or a copy submitted to me and I will include and will then send you clean copies of the final version.

Thanks.
pat

Patricia L. Crews-Weight, PE
Director of Design - AUS
(512) 832-7050

>>> On 12/21/2011 at 11:16 AM, in message <4EF1C0010200006800069704@gwmail.co.travis.tx.us>, Steven Manilla <Steven.Manilla@co.travis.tx.us> wrote:

Thanks Pat. I've distributed this and expect comments by mid next week (we're closed Friday and Monday). Re: an additional termination provision, yes please.

>>> Pat Crews-Weight <Pat.CrewsWeight@txdot.gov> 12/21/2011 10:22 AM >>>
Steve,
I received a response from our attorney regarding the County's concerns.

The PTT program is designed for an LG to advance all of the needed funds and to construct the project itself w/o any contribution by the State. Upon completion, the State accepts the project and begins annual repayments as a percentage of the construction cost. This produces competition among LG to propose good projects that are the best value to the State.

With competition comes risk. When the County asked the State to be responsible for construction, the County is responsible for all of the upfront funding. If the State had not agreed to do the construction work, the County would need to have all of the funding available for all contingencies. The State cannot advance funding for the County. With a period longer than 30 days, the State runs the risk of being in default under the construction contract. When we granted the exception and became responsible for construction, the State is directly responsible to the contractor and runs the risk of default - not the county.

In regard to underruns (and overruns) in Section 4C, the issue relates only to later TxDOT annual PTT reimbursements and is tied back to the original estimated costs. The concept is to reward the County for bringing the construction under the estimated budget by paying them additional money above the actual cost reimbursement (or help the County with a 10% additional payment if it overruns the estimated cost).

The attorney's example:

'I believe the estimated construction cost in the FM 969 agreement is \$13.435M, and the State is agreeing in Section 12 and Attachment C to pay a set percentage of actual costs (low bid amount) which is 71% (estimated at the time of agreement to be \$9.538M). If the low bid amount is \$11M instead of the estimated \$13.435M, the State will reimburse 71% of that \$11M (or \$7.81M). There is an underrun of \$2.435M (the difference between the estimated construction cost and the low bid amount). Under the terms of Section 4.C., only an underrun up to a maximum of 10% of the "Estimated Total Construction Cost" will be added to the 71% reimbursement. Ten percent of the "Estimated Total Construction Cost" is \$1.343M. The \$7.81M (71% of low bid amount) plus the 10% underrun bonus of \$1.343M equals the total reimbursement to the County - \$9.153M. Since the total cost to the County was \$11M, the underrun bonus would likely be spent on the project itself.'

As for the termination provision, we can add another termination provision:

Section 15. D.: by the Developer if after completion of preliminary engineering, specifications and estimates (PS&E) the estimate exceeds 110% of the Estimated Construction Cost prior to bid opening, in which case the Developer agrees to reimburse the Department for its reasonable actual costs incurred during the Project.

Let me know if I need to make the Section 15 revision and send new agreements.

Thanks,
Pat

STATE OF TEXAS §

COUNTY OF TRAVIS §

**PASS-THROUGH AGREEMENT FOR PAYMENT
OF PASS-THROUGH TOLLS BY THE DEPARTMENT**

THIS AGREEMENT is entered between the State of Texas, acting by and through the Texas Department of Transportation, the "Department", and the Developer under Transportation Code, §222.104.

Contracting Parties:

The Department: The Texas Department of Transportation

The Developer: Travis County

BACKGROUND

Texas Transportation Code, §201.103, authorizes the Department to plan and to make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §222.104, authorizes the Department to enter into pass-through agreements for the purpose of improving the state highway system. The Texas Transportation Commission has implemented this provision by enacting rules to be found at 43 TAC Chapter 5, Subchapter E. On May 26, 2011, the Texas Transportation Commission passed Minute Order Number 112685, authorizing the Developer to widen FM 1626 from Brodie Lane to FM 2304 (the "Project"), the location of which is shown on Attachment A, which is attached to and made a part of this agreement. On July 28, 2011, the Texas Transportation Commission passed Minute Order Number 112755, authorizing the Department to enter a pass-through agreement with the Developer in furtherance of the Project. The governing body of the Developer has authorized entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment G. In consideration of the mutual promises contained in this agreement, the Department and the Developer now agree as follows.

AGREEMENT

1. Effective Date

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

2. Amendments

Amendments to this agreement must be in writing and executed by both parties.

3. Scope of Work

The scope of work on FM 1626 will be reconstruction to a five-lane roadway section. The scope of work is described in more detail in Attachment B, which is attached to and made a part of this agreement. A Typical Section Layout and Project Schedule are contained in Attachments E and F, respectively, which are attached to and made a part of this agreement. Before any design, development, or construction work is performed, the

Developer shall confirm that Department funding for the Project is included in the Department's Unified Transportation Program and the Statewide Transportation Improvement Program.

4. Sources and Uses of Funds

- A.** The total estimated cost of the Project is shown in Attachment C, which is attached to and made a part of this agreement. Attachment C includes expected cash contributions from each source of funding. The Department will pay for only those Project costs of a type that have been approved by the Texas Transportation Commission.
- B.** The Department is responsible only for securing the funding specifically identified on Attachment C as the responsibility of the Department and for making that funding available to the Developer as set forth on Attachment C.
- (i) The Department will reimburse the Developer with pass-through payments in the percentages and resulting amounts (the Department's Proportional Share) identified on Attachment C for the actual costs of labor and materials incurred in construction of the Project as determined by the low bid award of the construction contract (Actual Cost of Construction). The amount of the low bid award will be certified by the Developer in accordance with Section 10, Construction Responsibilities. For purposes of reimbursement under this agreement, construction engineering costs are not eligible construction costs.
- (ii) Unless and to the extent that this agreement is amended, the Department will not be responsible for funding in excess of the Maximum Pass-Through Reimbursement to Developer identified on Attachment C (110% of Allowable Construction Costs). The Developer shall be responsible for all costs associated with the Project that are not shown as the responsibility of the Department.
- C.** The Department's obligation to reimburse its Proportional Share of the Actual Cost of Construction is subject to the following two exceptions.
- (i) The Department will reimburse its Proportional Share of the amount by which the Actual Cost of Construction exceeds the Estimated Total Construction Cost identified on Attachment C (cost overrun). The Department's total payment obligation for the Project, however, will not exceed the Maximum Pass-Through Reimbursement amount identified on Attachment C (110% of Allowable Construction Costs).
- (ii) The Department will reimburse to the Developer the amount by which the Actual Cost of Construction is less than the Estimated Total Construction Cost identified on Attachment C (cost under-run), up to a maximum of 10 percent of the Estimated Total Construction Cost, only if all of the following conditions are met:
- (a) The total of actual cost and under-run reimbursements by the Department may not exceed the Department's Allowable Construction Costs identified on Attachment C;
- (b) The amount of cost under-run reimbursements received by the Developer must either be expended on the Project, or on other mutually acceptable state highway projects located in the Developer's jurisdiction;
- (c) The amount of cost under-run reimbursements received by the Developer may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering,

utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and

- (d) The Developer receives the Department's prior written consent for the expenditures.
- D. The Developer shall be responsible for advancing to the Department all funds necessary for the construction of the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Developer shall remit to the State their share of the Estimated Total Construction Costs as identified in Attachment C. In the event that the Department determines that additional funding by the Developer is required for construction at any time during the project, the Department will notify the Developer in writing. The Developer shall make payment to the Department within thirty (30) days from receipt of the Department's written notification. Whenever funds are paid by the Developer to the Department under this Agreement, the Developer shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund". The check or warrant shall be deposited by the Department in an escrow account to be managed by the Department. Funds in the escrow account may only be applied to the pass-through finance Project. If, after final Project accounting, excess funds remain in the escrow account, those funds will be returned to the Developer. The State will not pay interest on any funds provided by the Local Government.

5. Project Implementation

- A. Unless otherwise specified in this agreement, all actions required of the Developer shall be taken by the Developer's Program Manager, who shall be an individual designated by name by the Developer. The Developer's Program Manager shall be authorized by the Developer to perform all or specified aspects of the Project development and implementation. Evidence of authorization shall be submitted to the Department immediately after the effective date of this agreement. The Developer's Program Manager may delegate responsibility to another person in a writing provided to the Department. The Developer must notify the Department in writing as soon as possible, but no later than three (3) business days after authorizing a change in Program Managers.
- B. If the Developer will perform any work under this agreement for which reimbursement will be provided by or through the Department, the Developer must complete training in *Local Government Project Procedures Qualification for the Texas Department of Transportation* within ninety (90) days after this agreement is fully executed. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course. The Developer shall provide the certificate of qualification to the Department. The individual who receives the training certificate may be an employee of the Developer or an employee of a firm that has been contracted by the Developer to perform oversight of the Project. The Department in its discretion may deny reimbursement if the Developer has not designated a qualified individual to oversee the Project.
- C. Unless otherwise specified in this agreement, all actions required of the Department shall be taken by the Department's District Engineer for the Austin District. The District Engineer will designate an Engineer (the TxDOT Project Manager), who will be assisted by other Department personnel, to oversee and monitor compliance with all responsibilities under this agreement including all phases of project development. The

District Engineer may delegate responsibility to the TxDOT Project Manager or another person in a writing provided to the Developer. Whenever this agreement requires an action to be taken by the Department's Executive Director, that responsibility may be delegated to another Department employee who is not below the level of district engineer. On request, the Department will provide the Developer with a copy of the Executive Director's delegation of authority.

- D. The roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project are defined in Attachment D, Project Implementation, which is attached to and made a part of this agreement.

6. Environmental Assessment and Mitigation

Development of the Project shall comply 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 §2.5, and Natural Resources Code, Chapter 191.

- A. The Developer is responsible for the identification and assessment of any environmental problems associated with the development of the Project to the extent permitted by law.
- B. The Developer is responsible for the cost of all environmental permitting, mitigation, remediation, and compliance.
- C. The Developer is responsible for preparing for and providing all public meetings or public hearings required for development of the environmental decision and for summary and analysis of all public meetings or public hearings. When applicable, the Developer is also responsible for certifying that a public hearing has been held in accordance with applicable rules, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. Public hearings may not be held before environmental documents are approved for further processing and may not be held before approval of all highway schematics for the particular project.
- D. The Developer is responsible for the preparation of all documents required to obtain an environmental finding on the Project, and any subsequent reevaluations of that finding that may be required.
- E. The Developer shall submit all requests for permits, all reports, and all findings relating to the Natural Resources Code, Chapter 191, through the Department. The Developer shall provide the Department with final drafts of all necessary requests for permits, reports, and findings required by law. The Department is responsible for all coordination under those acts and for making all necessary filings with the appropriate agencies, and the Department will provide copies of those filings to the Developer. Coordination of the environmental document shall be through the AUS District Environmental Coordinator. The Developer is responsible for obtaining all other permits and is responsible for obtaining all permits and approvals resulting from changes that occur after environmental finding is first obtained, except as otherwise required by law or by agreement between the Department and a state or federal agency.
- F. Before construction is begun, the Developer shall provide the Department with written certification that all required permits and commitments are complete. The Developer shall provide the Department with copies of all permit applications and approvals from each regulatory agency with environmental jurisdiction over the Project.

- G.** All environmental reports and findings shall comply with the latest version of the Department's manuals and Standards of Uniformity. The Developer shall provide the Department with physical and electronic copies of all environmental documentation in a format approved by the Department.

7. Right of Way and Real Property

- A.** The Developer is responsible for the provision and acquisition of all real property needed for the Project, including easements. Right of way widths shall be in accordance with the Austin District's Standard Right of Way Width for the pertinent Roadway Cross Section. All property interests shall be acquired in the name of the State of Texas. The Developer may not acquire right of way until all environmental clearance procedures have been completed and either (1) right of way maps and property descriptions (field notes and plats) have been prepared, or (2) a segment of the right of way map (consisting of one or more contiguous parcels) and the field notes and plat maps for such parcels have been prepared and certified to fall within the right of way limits of the approved schematic. The Developer must comply with all applicable state and federal laws, regulations, policies, and procedures, including the requirements of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq. Documentation to support compliance must be maintained by the Developer. The Developer must obtain advance approval from the Department for any variance in established procedures. The Department's Executive Director may exercise discretion in authorizing an alternative procedure if it is sufficient to discharge the Department's responsibilities for acquiring real property. The Department may monitor and audit the Developer's acquisition of right of way on the Project at any time. On request, the Developer shall furnish the Department with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If the Department 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 Developer shall take all necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Developer.
- B.** The Developer 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 being displaced by the Project. All costs associated with the relocation assistance, including payments to residents and businesses, will be assumed by the Developer.

8. Utilities

If the Project requires the adjustment, removal, or relocation of existing utilities, the Developer shall be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments. The Developer shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including Transportation Code, §203.092; 43 TAC §21.31 et seq. (Utility Accommodation); and 23

CFR Chapter 1, Part 645. The Developer shall 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 at the owners' expense. Before a construction contract for the Project is let, a utility certification must be made available to the Department stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

9. Architectural and Engineering Services

The Developer has responsibility for the performance of architectural and engineering services, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed in design of the Project and carried out during construction of the Project. The engineering plans shall be developed in accordance with the latest version of the Department's manuals. The Department's Executive Director may exercise discretion in authorizing alternative criteria or granting exceptions to this requirement on a case-by-case basis if a particular criterion could not reasonably be met because of physical, environmental, or other relevant factors and if the proposed design is a prudent engineering solution. The procurement of professional services must be competitive and shall comply with Government Code Chapter 2254, Subchapter A and all federal requirements including those described in 23 CFR Part 172 and those relating to participation by Disadvantaged Business Enterprises (DBEs), the Americans with Disabilities Act, and environmental matters. Access to the facility shall be in compliance with the Department's access management policy.

10. Construction Responsibilities

- A.** The Department shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering, material acceptance testing, and construction quality acceptance, and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary after the award of the construction contract. The bidding process must be competitive and must comply with all applicable federal and state laws. The Project and bidding process must be authorized by the Department and Federal Highway Administration before it is advertised for letting.
- B.** The Department has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed, of assessing potential environmental effects of contract revisions, and of obtaining environmental permits, issues, coordination, mitigation, and commitments that may be required by contract revisions.
- C.** Contract revisions including change orders shall comply with the latest version of all national and state administrative criteria and manuals. No contract revision may be made without the prior written approval of the Department's Executive Director if it would affect prior environmental approvals, significantly revise the scope of the Project or the geometric design, or change the cost to the Department. Procedures governing approval are contained in Attachment D.

- D. The Department may conduct any and all oversight activities it deems reasonably necessary or advisable to ensure compliance with this agreement and all state and federal requirements.
- E. When the Project is complete, the Department shall issue and sign a "Notification of Completion" certifying that all work has been completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after issuance of this notification, the Department will perform a final inspection and provide to the Developer a list of items, if any, to be completed prior to acceptance by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Acceptance" to the Developer. Within six (6) months after the Department has issued the "Letter of Acceptance," the Developer shall file with the Department a set of as-built plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications.
- F. The parties to this agreement shall comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form FHWA-1273 in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.
- G. The parties to this agreement shall comply with federal construction materials testing requirements cited in 23 CFR 637, Part B.
- H. The Developer shall be responsible for purchasing, installing, and maintaining the traffic counter equipment for the term of the agreement at the specified Project count sites as shown in Attachment A, Location Map of Project. The Developer shall provide permanent site traffic counter equipment in accordance with the Department specifications. The Developer shall provide installation, preventive, and remedial maintenance, inspection, testing, and repair of traffic data collection equipment including labor, equipment, materials, and parts. The Developer shall provide the above described service including installation of new components and repairs at specified locations. The Department's local district office shall be responsible for collecting the traffic data and then providing this data to the Department's Transportation Planning and Programming Division (TPP) for verification. The number of vehicle-miles travelled on the Project during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates, which shall be performed in good faith and shall be conclusive and not subject to litigation in any forum. For traffic counter equipment malfunctions or breakdowns, a three (3) month traffic data average will be used. The Developer shall confirm the traffic count provided by the Department, and upon agreement of the traffic count, shall give sixty (60) days prior notification of payment, by letter or invoice, to the local district office. The local district office will then verify and approve the invoice and prepare a reimbursement pay form to be submitted to the Department, Finance Division, Accounting Management Section, at least thirty (30) days before the payment is due to the Developer.

11. Maintenance

The Department shall be responsible for maintenance of the Project after completion of the work.

12. Repayment

- A.** The Department will reimburse the Developer by paying an annual amount equal to \$0.045 for each vehicle-mile traveled on the Project during the previous year. Under no circumstances will the annual payment be less than \$210,165 or more than \$420,330, and under no circumstances will the total payment under this Paragraph during the course of this agreement exceed \$4,623,630 unless approved by the Texas Transportation Commission and formalized in an amendment to this agreement. The number of vehicle-miles traveled on the Project during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates in accordance with Section 10, Construction Responsibilities.
- B.** For purposes of repayment under this agreement, "Substantial Completion" is defined as all travel lanes open to traffic as approved by the Department, and no further work is remaining that requires lane closures affecting the mobility of the traveling public. When the Project is Substantially Complete, the Developer may issue and sign a "Notification of Substantial Completion" certifying that all work has been substantially completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after receipt of this notification, the Department will perform an inspection and provide to the Developer a list of items, if any, to be completed prior to approval by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Approval for Payment" to the Developer. In lieu of a Notification of Substantial Completion, the Developer may proceed directly to a Notice of Completion in accordance with Section 10, Construction Responsibilities.
- C.** The first payment by the Department under this agreement shall be made within sixty (60) days after the first anniversary of the Project's Substantial Completion and the Department's issuance of a Letter of Approval for Payment, or in the event that a Letter of Approval for Payment was not issued, then within sixty (60) days after the first anniversary of the Project's completion and the Department's issuance of a Letter of Acceptance. Annual payments shall continue within sixty (60) days after each succeeding anniversary of the Letter of Approval for Payment or the Letter of Acceptance as applicable.
- D.** The number of annual payments and the amount of the final payment will be consistent with payment of the total reimbursement amount determined in accordance with Section 4, Sources and Uses of Funds. Payment under this agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds.

13. Mutual Cooperation

The Department and the Developer shall use all reasonable efforts to meet all deadlines specified in this agreement. The Department and the Developer shall use best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

14. Default

If either party fails to comply with its obligations under this agreement and such failure continues for a period of thirty (30) days or more after written notice of the breach from the

other party, the party failing to comply will be in default and the other party may proceed with its remedies under Section 15, Termination and Section 16, Remedies.

15. Termination

This agreement terminates automatically when the Department has reimbursed the Developer in full. In addition, the agreement may be terminated:

- A. in writing with the mutual consent of the parties;
- B. by either party because of a material breach by the other party; or
- C. by the Department if the Developer has not commenced construction on the Project (including each individual project if this agreement covers multiple projects) within three (3) years of the date of execution of this agreement; or
- D. by the Developer after completion of preliminary engineering, specifications and estimates (PS&E) the estimate exceeds 110% of the Estimated Construction Cost prior to bid opening, in which case the Developer agrees to reimburse the Department for its reasonable actual costs incurred during the Project.

16. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

17. Notices

All notices to either party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Developer:	Department:
County of Travis Attn: County Executive Transportation and Natural Resources P. O. Box 1748 Austin, TX 78767-1748	Texas Department of Transportation Attn: Assistant Executive Director Engineering Operations 125 East 11 th Street Austin, Texas 78701-2483

All notices shall be deemed given on the date delivered in person or deposited in the mail. 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

18. Development Contracts, Subcontracts, and Assignment

- A. Within ten (10) days after execution of this agreement, the Developer shall provide the Department with a fully executed copy of any agency contract or project development contract between the Developer and a private entity for the design, financing, maintenance, operation, or construction of the Project (a Development Contract). For a Development Contract between the Developer and a private entity entered into after execution of this agreement, the Developer shall provide to the Department an executed copy within fifteen (15) days after the Development Contract is executed. A

Development Contract must be subject to all applicable terms and conditions of this agreement.

- B.** A subcontract by the Developer, its agent, or a subcontractor in excess of \$10,000 shall contain all applicable terms and conditions of this agreement and shall be submitted to the Department for review and approval prior to its execution.
- C.** Except as otherwise provided by law or this Paragraph, neither party shall assign any interest in this agreement. In the event that the Developer pledges or assigns its right to receive any revenues derived from this agreement in connection with a loan or with the issuance of bonds, the pledge or assignment shall not operate as an assignment of an interest in this agreement. In that case the Developer shall provide the Department with copies of the loan or bond documentation no less than ten (10) days before the loan is executed or the bonds are issued. Under no circumstances will the Department be liable in any way for debt in any form incurred by the Developer, and any loan or bond documentation will state clearly that the Department has no obligation of repayment of the loan or bonds.
- D.** No Development Contract, subcontract, or assignment will relieve the Developer of its responsibility under this agreement.

19. Ownership of Property

After completion or termination of this agreement, all documents prepared by the Department shall remain the property of the Department. All data prepared under this agreement shall be made available to the Department without restriction or limitation on further use. All documents produced or approved or otherwise created by the Developer shall be transmitted to the Department in the form of photocopy reproduction on a monthly basis as required by the Department. Except as otherwise provided in this agreement, the originals shall remain the property of the Developer. The Developer shall grant the Department an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this contract.

20. Developer Resources

All employees of the Developer shall have adequate knowledge and experience to enable them to perform the duties to which they are assigned. The Developer certifies that it currently has adequate qualified personnel in its employment to perform the work required under this agreement or will be able to obtain adequate qualified personnel from sources other than the Department. On receipt of written notice from the Department detailing supporting factors and evidence, the Developer shall remove from the Project any employee of the Developer who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Developer shall furnish all equipment, materials, supplies, and other resources required to perform the work.

21. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

22. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Developer shall furnish the Department with satisfactory proof of this compliance. The Developer shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

23. 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, 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.

24. Insurance

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

25. Hold Harmless

To the extent permitted by law, the Developer shall save harmless the Department and its officers and employees from all claims and liability due to materials used or supplied by the Developer or activities of the Developer, its agents, or employees, performed under this agreement, and that are caused by or result from error, omission, or negligent act of the Developer or of any person employed by the Developer. To the extent permitted by law, the Developer shall also indemnify and save harmless the Department from any and all expense, including but not limited to attorney fees that may be incurred by the Department in litigation or otherwise resisting the claim or liabilities that may be imposed on the Department as a result of such activities by the Developer, its agents, or employees.

26. Sole Agreement

This agreement constitutes the only agreement between the parties and supersedes any prior understandings or written or oral agreements concerning the subject matter of this agreement.

27. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

28. Gratuities

Any person who is doing business with or who may do business with the Department under this agreement may not make any offer of benefits, gifts, or favors to employees of the Department. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.

29. Conflict of Interest

The Developer shall not assign an employee to the Project if the employee:

- A. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the Department relating to the Project;
- B. has a direct or indirect financial interest in the outcome of the Project;
- C. has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with the Department; or
- D. is a current part-time or full-time employee of the Department.

30. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

31. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

32. Audit

- A. The Department may monitor and audit any aspect of the Project at any time.
- B. Upon completion of the Project, the Department or an independent auditor approved by the Department, at the Department's option, may perform an audit of the Project costs. Any funds due to the Developer, the Department, or others shall be paid by the owing party within thirty (30) days after notification that funds are due.
- C. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement 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.

33. Retention and Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to performance of all aspects of Project development and implementation and all costs incurred under this agreement at an official governmental office of the Department or the Developer, as applicable. The parties shall make those materials available to the Department, the Developer, the State Auditor, the Federal

Highway Administration (FHWA), and the U.S. Office of the Inspector General for review and inspection at the retaining party's official governmental office during the term of this agreement and for four (4) years after the date that the Department has reimbursed the Developer in full or thereafter until any impending claims are resolved. Additionally, the Department, the Developer, and the FHWA shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions, including records in the possession of the Developer's agents, to the extent that they relate to expenditures for which reimbursement is requested. At the request of the Department, the Developer shall submit any information required by the Department in the format directed by the Department.

34. Civil Rights Compliance

The Developer shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Parts 200 and 230), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

35. Disadvantaged Business Enterprise (DBE) Program Requirements

- A.** The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B.** The Developer shall adopt, in its totality, the Department's federally approved DBE program.
- C.** The Developer shall set an appropriate DBE goal consistent with the Department's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Developer shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D.** The Developer shall follow all other parts of the Department's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E.** The Developer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Developer shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The Department's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Developer of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F.** Each contract the Developer signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race,*

color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.

36. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Developer certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this agreement shall require any party to a subcontract or purchase order awarded under this agreement to certify its eligibility to receive federal funds and, when requested by the Department, to furnish a copy of the certification.

37. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief that:

- A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all subrecipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

38. Federal Funding Accountability and Transparency Act Requirements

- A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B.** The Developer agrees that it shall:
- (i) Obtain and provide to the Department a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
 - (ii) Obtain and provide to the Department a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - (iii) Report the total compensation and names of its top five (5) executives to the Department if:
 - (a) More than 80% of annual gross revenues are from the Federal Government, and those revenues are greater than \$25,000,000 annually; and
 - (b) The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

39. Single Audit Report

- A.** The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B.** If threshold expenditures of \$500,000 or more are met during the Developer's fiscal year, the Developer must submit a Single Audit Report and Management Letter (if applicable) to the Department's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact the Department's Audit office at http://www.txdot.gov/contact_us/audit.htm.
- C.** If expenditures are less than \$500,000 during the Developer's fiscal year, the Developer must submit a statement to the Department's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D.** For each year the project remains open for federal funding expenditures, the Developer will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

40. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the Department and the Developer in duplicate.

THE DEPARTMENT

THE DEVELOPER

Signature

Signature

Phil Wilson
Executive Director
Texas Department of Transportation

Samuel T. Biscoe
County Judge
County of Travis

Date

Date

ATTACHMENT A

Location Map of Project



ATTACHMENT B

Scope of Work

FM 1626

The scope of work for this Project is the widening and reconstruction of FM 1626 from west of Brodie Lane to FM 2304 (Manchaca Road) where the roadway is proposed to be widened to a five lane section with continuous left turn lane and shoulders.

There will be a transition section from west of Brodie Lane to the Bear Creek Bridge.

From the Bear Creek Bridge to FM 2304 (Manchaca Road), the roadway is proposed to be constructed to a five lane curb and gutter section with six foot (6') shoulders and a sidewalk on one side of the roadway. The final typical section would be determined during the NEPA process.

Total Project length is 1.11 miles.

A schematic has not been finalized.

The environmental clearance has not begun.

Necessary right of way has not been acquired.

ATTACHMENT C

TOTAL ESTIMATED COSTS AND SOURCES OF FUNDING

Project Highway Improvement	Estimated Total Project Cost	Estimated Total Construction Cost *	Allowable Construction Costs for Payment of Pass-Through Tolls and Percentage of Total Construction Cost (Department's Proportional Share)	Department's Maximum Pass-Through Reimbursement to Developer (110% of Allowable Construction Costs)	Developer Funding	Other Funding Sources
FM 1626	\$11,920,000	\$7,903,300	53% = \$4,203,300	\$4,623,630	\$11,920,000	\$0
Total	\$11,920,000	\$7,903,300	\$4,203,300	\$4,623,630	\$11,920,000	\$0

* As provided in Paragraph 4, the Developer is responsible for advancing to the Department all of the construction cost.

ATTACHMENT D

Project Implementation

Overview

This Attachment defines the roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project.

1. Environmental Studies and Mitigation

- 1.1. The Developer shall complete all environmental studies and documents required to secure environmental approval, including each of the following items.
 - 1.1.1. Preparation and completion of environmental studies, including obtaining right of entry to perform such studies. All environmental studies will be performed by environmental specialists who meet the requirements to perform those studies.
 - 1.1.2. Submission of appropriate documentation (categorical exclusion, environmental assessment, and environmental impact statement, including reevaluation, and supplemental documentation) for Department review and approval. Department review is detailed in section 1.2 below.
 - 1.1.3. Preparation of any document revisions.
 - 1.1.4. Submission to the Department of copies of the environmental studies and documentation adequate for distribution.
 - 1.1.5. Preparation of legal and public notices in accordance with 43 TAC §2.4 for Department review and use.
 - 1.1.6. Arrangements for appropriate public involvement, including court reporters and accommodations for persons with special communication or physical needs related to the public hearing, if requested. The Department will serve as the Hearing Official at any public hearing with the assistance of the Developer.
 - 1.1.7. Preparation of public meeting and hearing materials.
 - 1.1.8. Preparation of any necessary responses to comments.
 - 1.1.9. Preparation of the public meeting and public hearing summary and analysis, and the comment and response reports.
 - 1.1.10. Submission to the Department of a verbatim transcript of any public hearing and the original certification of the public involvement process as described in 43 TAC §2.4.
 - 1.1.11. Preparation of required U.S. Army Corps of Engineers permit applications and associated drawings for impacts to jurisdictional

- waters, including mitigation requirements. The Developer will be wholly responsible for any and all mitigation that would be required.
- 1.1.12. The Developer 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.
 - 1.1.13. Submission to the department 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. As set forth in Exhibit 1, Roles and Responsibilities, the Department will conduct environmental reviews throughout the clearance process in an attempt to receive the environmental approval of the Project.
- 1.2.1. Except as otherwise required by law or by agreement between the Department and a state or federal agency, the Developer is responsible for coordinating with local governmental entities and applicable agencies throughout the Project planning process to assure compliance with applicable laws. The Developer and Department will make every reasonable effort to resolve disagreements with local governments and with state or federal agencies as they relate to environmental approval of the Project.
 - 1.2.2. The Developer will coordinate the submission of documents for agency review with the Department.
 - 1.2.3. The Department is responsible for coordinating all review activities listed in the review schedule defined in Exhibit 2, General Review Schedule. The Department is responsible for working with the lead agency, the cooperating agencies and any affected entities to ensure a timely and thorough coordination process through a specified staff working group. The Developer will be an integral participant throughout the review process to rapidly address comments and concerns necessary to secure clearance within the review schedule.

2. Right of Way Acquisition

- 2.1. As provided in Section 7, Right of Way and Real Property, of this agreement, the Developer is responsible for the acquisition and provision of any right of way or real property needed for the Project (New Right of Way).
- 2.2. The Developer will establish and maintain a project tracking system that is acceptable to the Department and that shows the right of way surveying and mapping, appraisal, acquisition, and relocation status of each parcel.
- 2.3. The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required conveyance documents and other right of way related deliverables required by the Department for its permanent files.

minimum, three original signed copies from the respective property owners.

- 2.7. The Developer will ensure that all right of way used in constructing the Project will be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Developer. The Developer 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 Developer otherwise meets the requirements for regulatory closure.
- 2.8. The Developer will provide tracings and electronic files of right of way maps and property descriptions to the Department and will also provide the Department a final map (digital and hard copy in a format approved by the Department) showing the final location of all utility lines that were adjusted or remained in place and joint use numbers assigned to those utilities.
- 2.9. The Developer will provide to the Department all original deeds and easements that convey property interests to the State of Texas.

3. Utilities

- 3.1. The Developer is responsible for determining the scope of utility work if the Project requires the adjustment, removal, or relocation of a utility facility. Utilities will not be adjusted, removed, or relocated before environmental approval is secured.
- 3.2. The Developer is responsible for notifying the appropriate utility company to schedule adjustments.
- 3.3. The Department will grant the Developer or its authorized representative site access to State right of way where required to execute the work and will issue right of entry for the performance of utility relocation.
- 3.4. The Developer 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.
- 3.5. The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required utility agreements, including joint use acknowledgments.
- 3.6. The Developer will provide to the Department all original utility agreements, including joint-use acknowledgments, that are executed in connection with the Project.

4. Engineering Services

- 4.1.** The Developer 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 Developer.
- 4.2.** At the commencement of an individual highway improvement, the Developer will coordinate a Design Concept Conference with the Department to establish the performance parameters and design requirements for the highway improvement, including the Pavement Design, Hydraulic Design, Design Concept Conference Forms and Typical Sections, which will remain in place throughout the implementation of the highway improvement.
- 4.3.** All plans, specifications, and estimates developed by or on behalf of the Developer shall conform to the latest version of the Department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and the special specifications and special provisions related to them, and shall conform to the latest edition and revisions of the Department's Roadway Design Manual for desirable values unless approved by the Department. The construction plans furnished to the Department shall be reproducible tracings on mylar or equivalent.
- 4.4.** If the Department determines that the complete plans, specifications, and estimates are unacceptable, the Developer shall correct the design documents to the Department's satisfaction. Should additional specifications or data be required by the Department, the Developer shall redesign the plans and specifications to the Department's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Developer.
- 4.5.** If exceptions to the Department's design criteria are required as specified in the Department 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 Department, and if that change does not require the adoption of alternative design criteria or an exception to the Department's design criteria, the Developer will coordinate with the Department and Federal Highway Administration (FHWA) for approval of the change.
 - 4.5.2.** The Department shall have no more than ten (10) business days either (1) to approve the design change as proposed by the Developer or (2) to respond with a Department-recommended alternative to the design change.
 - 4.5.3.** If the Department responds with an alternative to the design change, the Developer and the Department shall work diligently to develop a mutually agreeable design solution.
 - 4.5.4.** The Department is responsible for obtaining any necessary approval from FHWA.

4.6. Reviews

- 4.6.1.** When the design is approximately thirty (30) percent complete, the Developer shall submit a completed pavement design to the Department. The Department may request additional information related to the pavement design, and the Developer shall provide that information promptly. The pavement design must be approved by the Department before letting. After the pavement design has been approved by the Department, it may not be changed by either party without the written consent of the other.
- 4.6.2.** When design is 30% complete, the Developer will coordinate the submission of the following design information for a joint review session between the Developer and the Department to allow comments and concerns to be addressed by the Developer within the expedited review schedule defined in Exhibit 2, General Review Schedule.
- 4.6.3.** The following will be reviewed as set forth in Exhibit 1, Roles and Responsibilities.
- 1) Preliminary cross sections showing existing utility lines, R.O.W.
 - 2) Plan and profile sheet showing existing and proposed:
 - a) R.O.W. lines
 - b) Roadway alignments and profiles
 - c) Intersecting streets
 - d) Curb and lane lines
 - e) Existing Utilities
 - 3) Existing and proposed typical sections including pavement section
 - 4) Preliminary title and index sheets.
 - 5) Preliminary drainage area map, discharge relationships and drainage calculations.
 - 6) Storm drainage master plan.
 - 7) Preliminary culvert layouts.
 - 8) Preliminary bridge and bridge classification culvert layouts, including test hole information.
 - 9) Preliminary retaining wall layout, including test hole information.
 - 10) Sequence of work outline for traffic control.
 - 11) Preliminary traffic control typical sections and layouts.
 - 12) Preliminary intersection layouts.
 - 13) Preliminary utility layouts - identify potential conflicts and exchange of information with existing utilities.
 - 14) Update estimates and prepare preliminary roadway and drainage quantity summary sheets.
 - 15) Updated design contract schedule.
 - 16) Facility typical sections and pavement design.
 - 17) An additional joint review session for 60% design shall be at the discretion of the Department upon the completion of the 30% joint review session.
- 4.6.4.** When the Project design is final, the Developer will coordinate the submission of the following information to the Department for review to

allow comments and concerns to be addressed by the Developer to secure approval of the Department and FHWA within the expedited review schedule defined in Exhibit 2, General Review Schedule.

- 1) Seven (7) 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.
- 4.6.5.** For any individual highway improvement with a construction cost over \$25 million, the Developer shall conduct a value engineering workshop. Proposed changes to the design shall be submitted to the Department for review and approval.
- 4.6.6.** Approval by the Department of the final design submittal in conjunction with the environmental process will constitute authorization for the Developer to advertise for construction bids. Approval may be conditioned on an amendment to this agreement if the final approved design significantly reduces the original scope of the Project as described in this agreement and applicable attachments.

5. Construction Responsibilities

- 5.1.** The Department 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 Department.
- 5.1.2.** All work will be performed, unless otherwise specifically stated in the contract documents for the Project, in accordance with the latest edition of the Department's Guide Schedule for Sampling and Testing, the Quality Assurance Program Manual, the Construction Contract Administration Manual, and the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges or special specifications or provisions approved by the Department.
- 5.1.3.** The Department shall ensure the implementation of a Project Quality Assurance Program (QAP) in conformance with the requirements in 23 CFR 637, Part B.

- 5.2.** The Department will negotiate and approve all change orders and other contract revisions necessary or convenient to accomplish the construction activities for the Project. For change orders and other contract revisions that affect prior environmental approvals or result in non-conformity with the specifications and standards agreed upon for the Project, the Developer 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.
- 5.2.1.** The Department will document any such changes, including a proposed course of action.
- 5.2.2.** The Department will notify the Developer of the need for such changes and submit the appropriate documentation.
- 5.2.3.** The Developer shall have no more than ten (10) business days to respond with comments.
- 5.2.4.** If the Developer responds with comments, the Developer and the Department will work diligently and in good faith to develop mutually agreeable changes that shall then be implemented by the Department.
- 5.2.5.** The Department shall be responsible for obtaining any required approvals from federal, state, or local governmental authorities.
- 5.2.6.** To the extent that a change order requires the adoption of alternative design criteria, an exception to the Department'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.
- 5.3.** The Developer and Department will comply with applicable Federal requirements throughout the procurement and construction process in order to maintain the Department's eligibility for Federal reimbursement for Project costs. The Developer's compliance with requirements necessary to maintain eligibility for federal reimbursement is a condition precedent to performance by the Department.
- 5.4.** Within six (6) months after issuance of the "Letter of Acceptance" for a highway improvement, the Developer will provide to the Department all documents and submittals identified in the Department's Construction Contract Administration Manual. This documentation includes:
- 1) Record Drawings and Final Construction Records,
 - 2) Engineer Certification of Project Completion, and
 - 3) Right of Way Parcel Information (Exhibits, Descriptions, Right of Way Maps, Field Notes, etc.)

6. General

- 6.1.** The Developer and the Department will agree on a transition plan at the time of or before completion of a highway improvement.

- 6.2.** The Developer will schedule regular meetings with the Department to maintain the communication necessary to successfully implement the Project.
- 6.3.** The Developer will prepare program organizational and management documents, including Program Management Plan and Quality Control/Quality Assurance Plan for all work products. The Developer will provide these documents to the Department for all contracted firms participating in the Project.
- 6.4.** The Developer 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, preliminary and final design of the Project.

ATTACHMENT D
Exhibit 1: Roles and Responsibilities for Each Entity

	Responsible Party
Preliminary Engineering	
Retain Consultant	Developer
Develop Preliminary Design	Developer
Develop Preliminary Cost Estimate	Developer
Define Right of Way Requirements	Developer
Department Review and Approval of Preliminary Engineering Report	Developer, Department
Environmental Review	
Retain Consultant	Developer
Draft Environmental Documents	Developer
Schedule & Conduct Public Involvement	Developer, Department
Review of Environmental Documentation	Developer, Department, FHWA
Notification and Documentation of Comments	Developer
Schedule and Hold Public Involvement	Developer, Department
Analyze and Document Public Involvement	Developer
Final Review	Developer, Department, FHWA
Document Approval	Department, FHWA
Environmental Permits, Issues, and Commitments	Developer
Permitting	
Develop Required Permit Applications	Developer
Submit Required Permit Applications	Developer, Department
Right of Way Acquisition	
Develop Right of Way Budget	Developer
Retain Surveyor	Developer
Develop Right of Way Map	Developer
Retain Appraisers	Developer
Work with Owners on Donations, Access, Etc.	Developer
Purchase Parcels After NEPA Process	Developer
Eminent Domain Proceedings	Developer
Utility Identification and Relocation	Developer
Oversight and Audit of Right of Way Process	Department

	Responsible Party
Design	
Retain Designer, Geotech, Surveyor, and other professional service providers	Developer
Develop 30% Submittal Package	Developer
30% Submittal for Department Review	Developer
Develop 60% Submittal Package *	Developer
60% Submittal for Department Review *	Developer
Final Submittal for Department Review	Developer
Approval of Design	Department, FHWA
Bid for Construction	
Preparation of Bid Documents	Developer, Department
Advertisement for Bids	Department
Bid Opening, Evaluation, and Award	Department
Certified Final Award	Department
Construction	
Coordination with Utilities for Relocation	Department
Issuance of Construction Notice To Proceed	Department
Administration of Construction Contract	Department
Inspection of Construction	Department
Issuance of Notification of Substantial Completion	Developer
Issuance of Letter of Approval for Payment	Department
Issuance of Notification of Completion	Developer
Issuance of Letter of Acceptance	Department

* Only applies if Department requires after review of 30% submittal

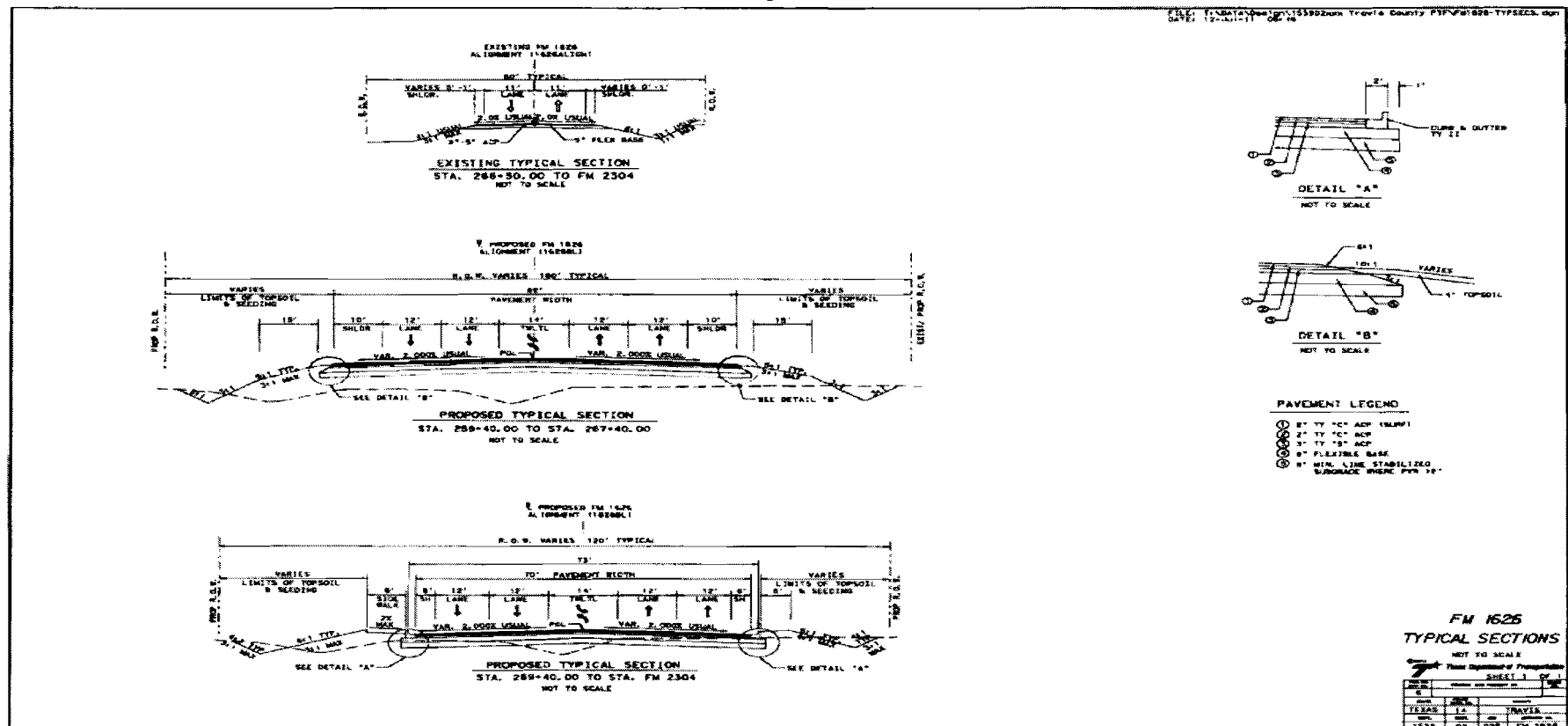
ATTACHMENT D
Exhibit 2: General Review Schedule
 Specific timelines are incorporated into the timeline for each highway improvement.

		Type of Review	Review Time
1		Preliminary/Schematic Layout Review	2 weeks
2	Environmental Review	Joint Environmental Review	To be determined
		Review (Department)	
		Review (Categorical Exclusion) (2 weeks district; 2 weeks ENV)	4 weeks *
		Review (Environmental Assessment) (3 weeks district; 3 weeks ENV)	6 weeks *
		Review (Environmental Impact Statement) (4 weeks district; 4 weeks ENV)	8 weeks *
		Resource Agency Review	To be determined
		FHWA Review (draft document)	To be determined (minimum 4 weeks)
		Release by the Department to Public Hearing *** <ul style="list-style-type: none"> • Advertising for public hearing • Conducting Public Hearing • Receipt of written comments 	6 weeks plus 10 days for receipt of written comments
		Developer Addresses Comments from Public Hearing and prepares Summary and Analysis and Comment Response Report	6 weeks
		Department Review of Summary and Analysis and Comment Response Report (2 weeks district; 2 weeks ENV)	4 weeks *
	FHWA Review of Summary and Analysis and Comment Response Report and issues determination document	To be determined (minimum 4 weeks)	
3	Review of Plans, Specifications, and Estimates	30% Completion	2 weeks
		60% Completion ****	2 weeks
		100% Completion (2 weeks district, 2 weeks DES)	4 weeks **
		Federal Approval of Letter of Authority	1 week

* Review Time may start over for substantial comments on draft of document
 ** Review Time may start over for substantial revisions of plans
 *** Only applies if Public Hearing is required
 **** Only applies if required by Department

ATTACHMENT E

Typical Section Layout



ATTACHMENT F

Project Schedule

FM 1626 - West of Brodie Ln to
 FM 2304

	2012				2013				2014				2015				2016				2017				2018							
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4				
AFA & RFQ	■	■																														
Schematic		■	■	■	■	■	■	■																								
Environmental					■	■	■	■	■	■	■	■																				
PS&E									■	■	■	■	■	■	■	■																
ROW													■	■	■	■																
Bid/Letting																	■															
Construction																	■	■	■	■	■	■	■	■								

Contract No. PT 2011-007-01
CSJ No. 1539-02-026
Federal Highway Administration
CFDA#20.205
Not Research and Development

ATTACHMENT G

Resolution or Ordinance

ATTACHMENT H

PROGRAMMATIC PROCEDURE FOR RIGHT OF WAY OVERSIGHT OF PASS-THROUGH PROJECTS

For those Pass-Through projects where a Pass-Through Toll Agreement (Agreement) has been entered into by and between the Texas Department of Transportation (the Department) and a local public agency (county or municipality), and in conjunction with such Agreement the local public agency (LPA) has also executed a "Certification of Compliance" in the form as attached to this agreement as Attachment H - Exhibit A, the Department shall provide right of way monitoring and audit of the acquisition of right of way in the following manner:

1. Following the execution by the LPA of the Certification of Compliance, schedule a meeting as soon as practical with the LPA officials who will be providing oversight and management of the Project for the LPA, and also with the project managers of any engineering consultant hired by the LPA to directly manage the Project, to include those individuals both from the LPA and under contract with the engineering consultant to handle right of way acquisition.
 - A. At this meeting, discuss the need to establish separate right of way parcel files for each parcel of land or easement to be acquired for the Project, and to include and retain within each parcel file, documentation that establishes that all certifications contained in the "Certification of Compliance" have been met. Emphasize that a detailed written "negotiator's report" for all negotiation contacts must be included within each parcel file (as provided for in the on-line Right of Way Manual Collection).
 - B. Provide a copy of the "Title III Parcel Review Checklist for LPAs" (a copy of which is attached to this agreement as Attachment H - Exhibit B) which the Department will be utilizing when it monitors and audits a random selection of parcel files each month during the progress of the right of way acquisitions for the Project.
 - C. Provide a copy of the form for the conveyance instruments to be utilized for initial acquisition of right of way interests in accordance with the Agreement and also the form for the final conveyance of all right of way interests acquired from the LPA (Developer in the Agreement) to the State of Texas upon completion of each Project.
2. Beginning the month following the initiation of right of way acquisition by the LPA, the Department shall, not less than once a month, meet with the LPA and any consultants retained by the LPA that are handling right of way parcel acquisition and randomly select from those parcels for which acquisition has been completed or are in the process of being submitted for eminent domain proceedings during the prior month, either three of such parcels, or 10% of the total number of such parcels reaching such status during the prior month (whichever is more), and audit such parcel files using the Title III Parcel Review Checklist for LPAs.

- A. For those parcels so audited which according to the audit and completion of the checklist appear to be in compliance with Title III guidelines, place one copy of the checklist within the parcel file, and retain an additional copy of the checklist for the Department's monitoring and auditing file for this Project.
- B. For any parcel so audited for which one or more checklist items indicate non-compliance with Title III guidelines, the Department shall provide written notice to the LPA containing detailed information about such non-compliance, together with recommended action to be taken by the LPA in order to remedy such non-compliance. An additional copy of such written notice shall be placed in the parcel file and a copy also retained by the Department for the Department's monitoring and auditing file for this Project.
- C. During any subsequent month's Department review of parcel files as required under paragraph 2. above, in addition to auditing the number of new parcel files required above, the Department shall specifically re-review any parcel files for which non-compliance notices were provided, and additional written documentation placed in such parcel file indicating the current status relating to the prior non-compliance, and if the non-compliance status still exists, provide an additional written notice of this to the LPA. If, after the third month's review of a parcel with a non-compliance notice, the non-compliance status remains, and it appears to the the Department personnel conducting the review that the LPA is not taking sufficient steps to remedy the non-compliance, the Department Right of Way Division shall be provided a copy of all prior notices of non-compliance for review. If this review determines there is definitely continuing non-compliance without adequate basis or other justification, a letter will be issued from the Right of Way Division to the LPA, informing the LPA that acquisition of the parcel does not meet the requirements of the "Uniform Act" which could result in the Project being ineligible for State and Federal participation in reimbursement payments, and unless remedied, such could be considered a material breach of the Agreement. A copy of this letter will be provided to the local Federal Highway Administration Realty Office and also to the Department Office of General Counsel.

**ATTACHMENT H
EXHIBIT A**

CERTIFICATION OF COMPLIANCE

Travis County, the Developer under a Pass-Through Toll Agreement with the Texas Department of Transportation (the Department) for the purpose of constructing and operating improvements to FM 1626 from 1,100 feet west of Brodie Lane to FM 2304 (Manchaca Road), pursuant to Texas Transportation Commission Minute Order 112755 (the Project), hereby certifies that:

- (1) real property will be acquired for the Project right of way in compliance with all applicable State and Federal laws and requirements, including the policies and practices of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq.;
- (2) it has received and has continuing access to the Online Right of Way Manual Collection; and
- (3) prior to the implementation of any procedures that are at variance with established Department policies and practices for the acquisition of real property, Travis County will submit such procedures in writing to the Department's District Engineer for the Austin District, and the Executive Director's approval must be obtained.

For purposes of this Project, it is understood that references in the Right of Way Manual Collection to TxDOT personnel, Department personnel, District personnel, District, District Engineer, ROW Division, Director of the ROW Division, and other similar Department employees or titles involved in the acquisition process shall be deemed to mean Travis County and its authorized agents. It is the intent of this provision to allow Travis County to acquire real property for the Project on behalf of the Department without prior review and approval of the Department, subject to compliance with all applicable State and Federal laws and requirements as described above, the variance procedure, and the Department's audit and enforcement obligations.

Date: _____, 20__

TRAVIS COUNTY

By: _____
Samuel T. Biscoe
County Judge

ACCEPTED:

TEXAS DEPARTMENT
OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

By: _____
John Barton., P.E.
Assistant Executive Director

By: _____
Printed Name: _____
Title: _____

[THIS CERTIFICATION OF COMPLIANCE SHOULD NOT BE EXECUTED BY THE PARTIES UNTIL AFTER EXECUTION OF THE PASS-THROUGH AGREEMENT]

**ATTACHMENT H
EXHIBIT B**

TITLE III PARCEL REVIEW CHECKLIST FOR LPAs

County:
District:
ROW CSJ No.:
Parcel No.:
Acquiring Agency:

General

Was the informational notice given to owner? Yes No

Date of the notice:

Was the "Landowner's Bill of Rights Statement" properly provided prior to initiation of negotiations? Yes No

Date provided:

Appraisal

Was the real property appraised before the initiation of negotiations? Yes No

Approval date of the appraisal:

Was the owner or his designated representative given the opportunity to accompany the appraiser during inspection of the property? Yes No

Did the appraisal disregard any decrease or increase in value caused by the proposed facility? Yes No

Did the written appraisal of the parcel conform to the established standards for appraisal? Yes No

Does the acquiring agency require compliance with the Uniform Standards of Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) for appraisals? Yes No

Were the appraiser and review appraiser qualified by the acquiring agency? Yes No

Were there any apparent conflicts of interest on the project on behalf of the appraiser or review appraiser? Yes No

Was a written appraisal review report prepared, and an executed certification provided by a qualified review appraiser? Yes No

Were all items of real estate included in the appraisal? Yes No

Were retention values for any improvements retained by the owner properly documented? Yes No

Negotiation

Did the review appraiser negotiate for acquisition? Yes No

Did the appraiser negotiate for any parcel for which the appraised just compensation was more than \$2,500? Yes No

Were acquisition policies and procedures explained to the owner? Yes No

Was prompt written offer made to acquire real property for the full amount of the approved appraisal of just compensation? Yes No

Date of the first written offer:

The written offer included the following:

- statement of the full amount established as just compensation
- separate statement as to damages (if applicable)
- description and location identification of the ROW parcel, and of the interest in the real property to be acquired
- identification of the buildings, structures and other improvements considered to be real property for which the offer is made
- identification of separately owned interests (if applicable)
- a copy of the appraisal report delivered to the owner at the time the offer was made

Was the offer and its basis discussed with the owner? Yes No

Was the owner given reasonable opportunity to consider the offer and to present material believed to be relevant to valuation of the property? Yes No

Was any evidence discovered which suggests that coercive action was taken to compel agreement on price paid for the property? Yes No

Was the owner required to surrender possession before payment was made or proper award deposited in court? Yes No

If the property was donated, was the owner advised of his right to receive just compensation? Yes No

Was every reasonable effort made to acquire the property expeditiously by negotiation? Yes No

Was property acquired under Title VI requirements, without regard to race, color, age, religion, sex, national origin, or handicap? Yes No

Relocation Assistance

The acquisition of this property resulted in the displacement of: (check all that apply)

None Residence Business Farm Operation Non-Profit Organization Personal Property Only

If residential, was a replacement housing supplement computed utilizing comparable decent, safe, and sanitary replacement housing? Yes No

Amount of the supplement:

Date approved:

STATE OF TEXAS §

COUNTY OF TRAVIS §

**PASS-THROUGH AGREEMENT FOR PAYMENT
OF PASS-THROUGH TOLLS BY THE DEPARTMENT**

THIS AGREEMENT is entered between the State of Texas, acting by and through the Texas Department of Transportation, the "Department", and the Developer under Transportation Code, §222.104.

Contracting Parties:

The Department: The Texas Department of Transportation

The Developer: Travis County

BACKGROUND

Texas Transportation Code, §201.103, authorizes the Department to plan and to make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §222.104, authorizes the Department to enter into pass-through agreements for the purpose of improving the state highway system. The Texas Transportation Commission has implemented this provision by enacting rules to be found at 43 TAC Chapter 5, Subchapter E. On May 26, 2011, the Texas Transportation Commission passed Minute Order Number 112685, authorizing the Developer to construct FM 969 from FM 3177 to Hunters Bend Road to a four-lane with continuous turn lane roadway (the "Project"), the location of which is shown on Attachment A, which is attached to and made a part of this agreement. On July 28, 2011, the Texas Transportation Commission passed Minute Order Number 112755, authorizing the Department to enter a pass-through agreement with the Developer in furtherance of the Project. The governing body of the Developer has authorized entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment G. In consideration of the mutual promises contained in this agreement, the Department and the Developer now agree as follows.

AGREEMENT

1. Effective Date

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

2. Amendments

Amendments to this agreement must be in writing and executed by both parties.

3. Scope of Work

The scope of work on FM 969 will be construction of a four-lane roadway with continuous left turn lane and is described in more detail in Attachment B, which is attached to and made a part of this agreement. The Project consists of Phase 1 for FM 969 from FM 3177

to FM 973 and Phase 2 for FM 969 from FM 973 to Hunters Bend Road. A Typical Section Layout and Project Schedule are contained in Attachments E and F, respectively, which are attached to and made a part of this agreement. Before any design, development, or construction work is performed, the Developer shall confirm that Department funding for the Project is included in the Department's Unified Transportation Program and the Statewide Transportation Improvement Program.

4. Sources and Uses of Funds

- A.** The total estimated cost of the Project is shown in Attachment C, which is attached to and made a part of this agreement. Attachment C includes expected cash contributions from each source of funding. The Department will pay for only those Project costs of a type that have been approved by the Texas Transportation Commission.
- B.** The Department is responsible only for securing the funding specifically identified on Attachment C as the responsibility of the Department and for making that funding available to the Developer as set forth on Attachment C.
 - (i) The Department will reimburse the Developer with pass-through payments in the percentages and resulting amounts (the Department's Proportional Share) identified on Attachment C for the actual costs of labor and materials incurred in construction of the Project as determined by the low bid award of the construction contract (Actual Cost of Construction). The amount of the low bid award will be certified by the Developer in accordance with Section 10, Construction Responsibilities. For purposes of reimbursement under this agreement, construction engineering costs are not eligible construction costs.
 - (ii) Unless and to the extent that this agreement is amended, the Department will not be responsible for funding in excess of the Maximum Pass-Through Reimbursement to Developer identified on Attachment C (110% of Allowable Construction Costs). The Developer shall be responsible for all costs associated with the Project that are not shown as the responsibility of the Department.
- C.** The Department's obligation to reimburse its Proportional Share of the Actual Cost of Construction is subject to the following two exceptions.
 - (i) The Department will reimburse its Proportional Share of the amount by which the Actual Cost of Construction exceeds the Estimated Total Construction Cost identified on Attachment C (cost overrun). The Department's total payment obligation for the Project, however, will not exceed the Maximum Pass-Through Reimbursement amount identified on Attachment C (110% of Allowable Construction Costs).
 - (ii) The Department will reimburse to the Developer the amount by which the Actual Cost of Construction is less than the Estimated Total Construction Cost identified on Attachment C (cost under-run), up to a maximum of 10 percent of the Estimated Total Construction Cost, only if all of the following conditions are met:
 - (a) The total of actual cost and under-run reimbursements by the Department may not exceed the Department's Allowable Construction Costs identified on Attachment C;
 - (b) The amount of cost under-run reimbursements received by the Developer must either be expended on the Project, or on other mutually acceptable state highway projects located in the Developer's jurisdiction;

- (c) The amount of cost under-run reimbursements received by the Developer may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (d) The Developer receives the Department's prior written consent for the expenditures.
- D.** The Developer shall be responsible for advancing to the Department all funds necessary for the construction of the Project.
- (i) The Project will be built in two separate Phases and payment of funds by the Developer will be scheduled to coincide with the applicable Phase. At least sixty (60) days prior to the date set for receipt of the construction bids for a Phase, the Developer shall remit to the State the amount representing the Estimated Total Construction Cost as identified in Attachment C for the applicable Phase of the Project: Phase 1 = \$7,629,580; and Phase 2 = \$5,806,181.
 - (ii) In the event that the Department determines that additional funding by the Developer is required for construction at any time during either Phase of the Project, the Department will notify the Developer in writing. The Developer shall make payment to the Department within thirty (30) days from receipt of the Department's written notification.
 - (iii) Whenever funds are paid by the Developer to the Department under this agreement, the Developer shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund". The check or warrant shall be deposited by the Department in an escrow account to be managed by the Department. Funds in the escrow account may only be applied to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds will be returned to the Developer. The State will not pay interest on any funds provided by the Local Government.

5. Project Implementation

- A.** Unless otherwise specified in this agreement, all actions required of the Developer shall be taken by the Developer's Program Manager, who shall be an individual designated by name by the Developer. The Developer's Program Manager shall be authorized by the Developer to perform all or specified aspects of the Project development and implementation. Evidence of authorization shall be submitted to the Department immediately after the effective date of this agreement. The Developer's Program Manager may delegate responsibility to another person in a writing provided to the Department. The Developer must notify the Department in writing as soon as possible, but no later than three (3) business days after authorizing a change in Program Managers.
- B.** If the Developer will perform any work under this agreement for which reimbursement will be provided by or through the Department, the Developer must complete training in *Local Government Project Procedures Qualification for the Texas Department of Transportation* within ninety (90) days after this agreement is fully executed. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course. The Developer shall provide the certificate of qualification to the Department. The individual who receives

the training certificate may be an employee of the Developer or an employee of a firm that has been contracted by the Developer to perform oversight of the Project. The Department in its discretion may deny reimbursement if the Developer has not designated a qualified individual to oversee the Project.

- C. Unless otherwise specified in this agreement, all actions required of the Department shall be taken by the Department's District Engineer for the Austin District. The District Engineer will designate an Engineer (the TxDOT Project Manager), who will be assisted by other Department personnel, to oversee and monitor compliance with all responsibilities under this agreement including all phases of project development. The District Engineer may delegate responsibility to the TxDOT Project Manager or another person in a writing provided to the Developer. Whenever this agreement requires an action to be taken by the Department's Executive Director, that responsibility may be delegated to another Department employee who is not below the level of district engineer. On request, the Department will provide the Developer with a copy of the Executive Director's delegation of authority.
- D. The roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project are defined in Attachment D, Project Implementation, which is attached to and made a part of this agreement.

6. Environmental Assessment and Mitigation

Development of the Project shall comply 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 §2.5, and Natural Resources Code, Chapter 191.

- A. The Developer is responsible for the identification and assessment of any environmental problems associated with the development of the Project to the extent permitted by law.
- B. The Developer is responsible for the cost of all environmental permitting, mitigation, remediation, and compliance.
- C. The Developer is responsible for preparing for and providing all public meetings or public hearings required for development of the environmental decision and for summary and analysis of all public meetings or public hearings. When applicable, the Developer is also responsible for certifying that a public hearing has been held in accordance with applicable rules, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. Public hearings may not be held before environmental documents are approved for further processing and may not be held before approval of all highway schematics for the particular project.
- D. The Developer is responsible for the preparation of all documents required to obtain an environmental finding on the Project, and any subsequent reevaluations of that finding that may be required.
- E. The Developer shall submit all requests for permits, all reports, and all findings relating to the Natural Resources Code, Chapter 191, through the Department. The Developer shall provide the Department with final drafts of all necessary requests for permits, reports, and findings required by law. The Department is responsible for all coordination under those acts and for making all necessary filings with the appropriate agencies, and the Department will provide copies of those filings to the Developer. Coordination of the environmental document shall be through the AUS District

Environmental Coordinator. The Developer is responsible for obtaining all other permits and is responsible for obtaining all permits and approvals resulting from changes that occur after environmental finding is first obtained, except as otherwise required by law or by agreement between the Department and a state or federal agency.

- F. Before construction is begun, the Developer shall provide the Department with written certification that all required permits and commitments are complete. The Developer shall provide the Department with copies of all permit applications and approvals from each regulatory agency with environmental jurisdiction over the Project.
- G. All environmental reports and findings shall comply with the latest version of the Department's manuals and Standards of Uniformity. The Developer shall provide the Department with physical and electronic copies of all environmental documentation in a format approved by the Department.

7. Right of Way and Real Property

- A. The Developer is responsible for the provision and acquisition of all real property needed for the Project, including easements. Right of way widths shall be in accordance with the Austin District's Standard Right of Way Width for the pertinent Roadway Cross Section. All property interests shall be acquired in the name of the State of Texas. The Developer may not acquire right of way until all environmental clearance procedures have been completed and either (1) right of way maps and property descriptions (field notes and plats) have been prepared, or (2) a segment of the right of way map (consisting of one or more contiguous parcels) and the field notes and plat maps for such parcels have been prepared and certified to fall within the right of way limits of the approved schematic. The Developer must comply with all applicable state and federal laws, regulations, policies, and procedures, including the requirements of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq. Documentation to support compliance must be maintained by the Developer. The Developer must obtain advance approval from the Department for any variance in established procedures. The Department's Executive Director may exercise discretion in authorizing an alternative procedure if it is sufficient to discharge the Department's responsibilities for acquiring real property. The Department may monitor and audit the Developer's acquisition of right of way on the Project at any time. On request, the Developer shall furnish the Department with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If the Department 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 Developer shall take all necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Developer.
- B. The Developer 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 being displaced by the Project. All costs associated with the relocation assistance, including payments to residents and businesses, will be assumed by the Developer.

8. Utilities

If the Project requires the adjustment, removal, or relocation of existing utilities, the Developer shall be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments. The Developer shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including Transportation Code, §203.092; 43 TAC §21.31 et seq. (Utility Accommodation); and 23 CFR Chapter 1, Part 645. The Developer shall 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 at the owners' expense. Before a construction contract for the Project is let, a utility certification must be made available to the Department stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

9. Architectural and Engineering Services

The Developer has responsibility for the performance of architectural and engineering services, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed in design of the Project and carried out during construction of the Project. The engineering plans shall be developed in accordance with the latest version of the Department's manuals. The Department's Executive Director may exercise discretion in authorizing alternative criteria or granting exceptions to this requirement on a case-by-case basis if a particular criterion could not reasonably be met because of physical, environmental, or other relevant factors and if the proposed design is a prudent engineering solution. The procurement of professional services must be competitive and shall comply with Government Code Chapter 2254, Subchapter A and all federal requirements including those described in 23 CFR Part 172 and those relating to participation by Disadvantaged Business Enterprises (DBEs), the Americans with Disabilities Act, and environmental matters. Access to the facility shall be in compliance with the Department's access management policy.

10. Construction Responsibilities

- A.** The Department shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering, material acceptance testing, and construction quality acceptance, and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary after the award of the construction contract. The bidding process must be competitive and must comply with all applicable federal and state laws. The Project and bidding process must be authorized by the Department and Federal Highway Administration before it is advertised for letting. Within ten (10) days after the award of the construction contract, the Developer shall provide to the Department a certified statement that describes the total amount of the award and identifies the bid amount for each of the major component parts.
- B.** The Department has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed, of assessing

potential environmental effects of contract revisions, and of obtaining environmental permits, issues, coordination, mitigation, and commitments that may be required by contract revisions.

- C.** Contract revisions including change orders shall comply with the latest version of all national and state administrative criteria and manuals. No contract revision may be made without the prior written approval of the Department's Executive Director if it would affect prior environmental approvals, significantly revise the scope of the Project or the geometric design, or change the cost to the Department. Procedures governing approval are contained in Attachment D.
- D.** The Department may conduct any and all oversight activities it deems reasonably necessary or advisable to ensure compliance with this agreement and all state and federal requirements.
- E.** When the Project is complete, the Department shall issue and sign a "Notification of Completion" certifying that all work has been completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after issuance of this notification, the Department will perform a final inspection and provide to the Developer a list of items, if any, to be completed prior to acceptance by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Acceptance" to the Developer. Within six (6) months after the Department has issued the "Letter of Acceptance," the Developer shall file with the Department a set of as-built plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications.
- F.** The parties to this agreement shall comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form FHWA-1273 in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.
- G.** The parties to this agreement shall comply with federal construction materials testing requirements cited in 23 CFR 637, Part B.
- H.** The Developer shall be responsible for purchasing, installing, and maintaining the traffic counter equipment for the term of the agreement at the specified Project count sites as shown in Attachment A, Location Map of Project. The Developer shall provide permanent site traffic counter equipment in accordance with the Department specifications. The Developer shall provide installation, preventive, and remedial maintenance, inspection, testing, and repair of traffic data collection equipment including labor, equipment, materials, and parts. The Developer shall provide the above described service including installation of new components and repairs at specified locations. The Department's local district office shall be responsible for collecting the traffic data and then providing this data to the Department's Transportation Planning and Programming Division (TPP) for verification. The number of vehicle-miles travelled on the Project during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates, which shall be performed in good faith and shall be conclusive and not subject to litigation in any forum. For traffic counter equipment malfunctions or breakdowns, a three (3) month traffic data average will be used. The Developer shall confirm the traffic count provided by the Department, and

upon agreement of the traffic count, shall give sixty (60) days prior notification of payment, by letter or invoice, to the local district office. The local district office will then verify and approve the invoice and prepare a reimbursement pay form to be submitted to the Department, Finance Division, Accounting Management Section, at least thirty (30) days before the payment is due to the Developer.

11. Maintenance

The Department shall be responsible for maintenance of the Project after completion of the work.

12. Repayment

- A.** This paragraph A. applies until the Project as a whole is substantially complete and all highway improvements are open to the public. The Department will reimburse the Developer by paying an annual amount equal to \$0.016 for each vehicle-mile traveled on the Phase(s) of the Project (Phase 1, Phase 2, or both, as applicable for the particular year) during the previous year on the highway improvements that were substantially complete and open to the public at any time during the previous year. For each highway improvement segment that is opened after the first highway improvement, the number of vehicle-miles traveled on the Project during the previous year shall include vehicle miles traveled on the newly opened highway improvement beginning on the date that the newly opened highway improvement is substantially complete and opened to the public. Under no circumstances will the annual payment be more than \$953,860.
- B.** This paragraph B applies after the Project as a whole is substantially complete and all highway improvements are open to the public. The Department will reimburse the Developer by paying an annual amount equal to \$0.016 for each vehicle-mile traveled on the Project during the previous year on the highway improvements that were substantially complete and open to the public at any time during the previous year. Under no circumstances will the annual payment be less than \$476,930 or more than \$953,860.
- C.** Under no circumstances will the total payment under this Section during the course of this agreement exceed \$10,492,460 unless approved by the Texas Transportation Commission and formalized in an amendment to this agreement. The number of vehicle-miles traveled on the Project during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates in accordance with Section 10, Construction Responsibilities.
- D.** Under no circumstances will payments under this Section during the course of this agreement exceed \$5,958,208 for Phase 1 or \$4,534,252 for Phase 2 unless approved in writing by the Department's Executive Director.
- E.** If one Phase has been substantially completed at the time this agreement is terminated pursuant to either Section 15(A) or Section 15(B), the Department's obligation to reimburse under this Section for that Phase shall remain in effect until the maximum total reimbursable amount for the applicable Phase as shown in paragraph D above is reached.
- F.** For purposes of repayment under this agreement, "Substantial Completion" is defined as all travel lanes open to traffic as approved by the Department, and no further work is remaining that requires lane closures affecting the mobility of the traveling public. When

each Phase of the Project is Substantially Complete, the Developer may issue and sign a "Notification of Substantial Completion" certifying that all work for the Phase has been substantially completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after receipt of this notification, the Department will perform an inspection and provide to the Developer a list of items, if any, to be completed prior to approval by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Approval for Payment" for the applicable Phase to the Developer. In lieu of a Notification of Substantial Completion, the Developer may proceed directly to a Notice of Completion in accordance with Section 10, Construction Responsibilities.

- G. The first payment by the Department under this agreement shall be made within sixty (60) days after the first anniversary of Substantial Completion and the Department's issuance of a Letter of Approval for Payment for the first substantially completed Phase, or in the event that a Letter of Approval for Payment was not issued, then within sixty (60) days after the first anniversary of the Phase's completion and the Department's issuance of a Letter of Acceptance. Annual payments shall continue within sixty (60) days after each succeeding anniversary of the first Letter of Approval for Payment or the Letter of Acceptance as applicable.
- H. The number of annual payments and the amount of the final payment will be consistent with payment of the total reimbursement amount determined in accordance with Section 4, Sources and Uses of Funds. Payment under this agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds.

13. Mutual Cooperation

The Department and the Developer shall use all reasonable efforts to meet all deadlines specified in this agreement. The Department and the Developer shall use best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

14. Default

If either party fails to comply with its obligations under this agreement and such failure continues for a period of thirty (30) days or more after written notice of the breach from the other party, the party failing to comply will be in default and the other party may proceed with its remedies under Section 15, Termination and Section 16, Remedies.

15. Termination

This agreement terminates automatically when the Department has reimbursed the Developer in full. In addition, the agreement may be terminated:

- A. in writing with the mutual consent of the parties;
- B. by either party because of a material breach by the other party; or
- C. by the Department if the Developer has not commenced construction on the Project (including each individual project if this agreement covers multiple projects) within three (3) years of the date of execution of this agreement; or
- D. by the Developer after completion of preliminary engineering, specifications and estimates (PS&E) the estimate exceeds 110% of the Estimated Construction Cost prior to bid opening, in which case the Developer agrees to reimburse the Department for its reasonable actual costs incurred during the Project.

16. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

17. Notices

All notices to either party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Developer:	Department:
County of Travis Attn: County Executive Transportation and Natural Resources P. O. Box 1748 Austin, TX 78767-1748	Texas Department of Transportation Attn: Assistant Executive Director Engineering Operations 125 East 11 th Street Austin, Texas 78701-2483

All notices shall be deemed given on the date delivered in person or deposited in the mail. 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

18. Development Contracts, Subcontracts, and Assignment

- A. Within ten (10) days after execution of this agreement, the Developer shall provide the Department with a fully executed copy of any agency contract or project development contract between the Developer and a private entity for the design, financing, maintenance, operation, or construction of the Project (a Development Contract). For a Development Contract between the Developer and a private entity entered into after execution of this agreement, the Developer shall provide to the Department an executed copy within fifteen (15) days after the Development Contract is executed. A Development Contract must be subject to all applicable terms and conditions of this agreement.
- B. A subcontract by the Developer, its agent, or a subcontractor in excess of \$10,000 shall contain all applicable terms and conditions of this agreement and shall be submitted to the Department for review and approval prior to its execution.
- C. Except as otherwise provided by law or this Paragraph, neither party shall assign any interest in this agreement. In the event that the Developer pledges or assigns its right to receive any revenues derived from this agreement in connection with a loan or with the issuance of bonds, the pledge or assignment shall not operate as an assignment of an interest in this agreement. In that case the Developer shall provide the Department with copies of the loan or bond documentation no less than ten (10) days before the loan is executed or the bonds are issued. Under no circumstances will the Department be liable in any way for debt in any form incurred by the Developer, and any loan or bond documentation will state clearly that the Department has no obligation of repayment of the loan or bonds.

D. No Development Contract, subcontract, or assignment will relieve the Developer of its responsibility under this agreement.

19. Ownership of Property

After completion or termination of this agreement, all documents prepared by the Department shall remain the property of the Department. All data prepared under this agreement shall be made available to the Department without restriction or limitation on further use. All documents produced or approved or otherwise created by the Developer shall be transmitted to the Department in the form of photocopy reproduction on a monthly basis as required by the Department. Except as otherwise provided in this agreement, the originals shall remain the property of the Developer. The Developer shall grant the Department an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this contract.

20. Developer Resources

All employees of the Developer shall have adequate knowledge and experience to enable them to perform the duties to which they are assigned. The Developer certifies that it currently has adequate qualified personnel in its employment to perform the work required under this agreement or will be able to obtain adequate qualified personnel from sources other than the Department. On receipt of written notice from the Department detailing supporting factors and evidence, the Developer shall remove from the Project any employee of the Developer who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Developer shall furnish all equipment, materials, supplies, and other resources required to perform the work.

21. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

22. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Developer shall furnish the Department with satisfactory proof of this compliance. The Developer shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

23. 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, 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.

24. Insurance

To the extent that this agreement authorizes the Developer or its contractor to perform any work on Department right of way, before beginning work the entity performing the work

shall provide the Department with a fully executed copy of the Department'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 Department right of way. This coverage shall be maintained until all work on the Department right of way is complete. If coverage is not maintained, all work on Department right of way shall cease immediately, and the Department may recover damages and all costs of completing the work.

25. Hold Harmless

To the extent permitted by law, the Developer shall save harmless the Department and its officers and employees from all claims and liability due to materials used or supplied by the Developer or activities of the Developer, its agents, or employees, performed under this agreement, and that are caused by or result from error, omission, or negligent act of the Developer or of any person employed by the Developer. To the extent permitted by law, the Developer shall also indemnify and save harmless the Department from any and all expense, including but not limited to attorney fees that may be incurred by the Department in litigation or otherwise resisting the claim or liabilities that may be imposed on the Department as a result of such activities by the Developer, its agents, or employees.

26. Sole Agreement

This agreement constitutes the only agreement between the parties and supersedes any prior understandings or written or oral agreements concerning the subject matter of this agreement.

27. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

28. Gratuities

Any person who is doing business with or who may do business with the Department under this agreement may not make any offer of benefits, gifts, or favors to employees of the Department. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.

29. Conflict of Interest

The Developer shall not assign an employee to the Project if the employee:

- A.** owns an interest in or is an officer or employee of a business entity that has or may have a contract with the Department relating to the Project;
- B.** has a direct or indirect financial interest in the outcome of the Project;
- C.** has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with the Department; or
- D.** is a current part-time or full-time employee of the Department.

30. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

31. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

32. Audit

- A. The Department may monitor and audit any aspect of the Project at any time.
- B. Upon completion of the Project, the Department or an independent auditor approved by the Department, at the Department's option, may perform an audit of the Project costs. Any funds due to the Developer, the Department, or others shall be paid by the owing party within thirty (30) days after notification that funds are due.
- C. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement 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.

33. Retention and Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to performance of all aspects of Project development and implementation and all costs incurred under this agreement at an official governmental office of the Department or the Developer, as applicable. The parties shall make those materials available to the Department, the Developer, the State Auditor, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General for review and inspection at the retaining party's official governmental office during the term of this agreement and for four (4) years after the date that the Department has reimbursed the Developer in full or thereafter until any impending claims are resolved. Additionally, the Department, the Developer, and the FHWA shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions, including records in the possession of the Developer's agents, to the extent that they relate to expenditures for which reimbursement is requested. At the request of the Department, the Developer shall submit any information required by the Department in the format directed by the Department.

34. Civil Rights Compliance

The Developer shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Parts 200 and 230), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

35. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Developer shall adopt, in its totality, the Department's federally approved DBE program.
- C. The Developer shall set an appropriate DBE goal consistent with the Department's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Developer shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Developer shall follow all other parts of the Department's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Developer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Developer shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The Department's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Developer of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Developer signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

36. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Developer certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this agreement shall require any party to a subcontract or purchase order awarded under

this agreement to certify its eligibility to receive federal funds and, when requested by the Department, to furnish a copy of the certification.

37. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief that:

- A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all subrecipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

38. Federal Funding Accountability and Transparency Act Requirements

- A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B.** The Developer agrees that it shall:
 - (i) Obtain and provide to the Department a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
 - (ii) Obtain and provide to the Department a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - (iii) Report the total compensation and names of its top five (5) executives to the Department if:

- (a) More than 80% of annual gross revenues are from the Federal Government, and those revenues are greater than \$25,000,000 annually; and
- (b) The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

39. Single Audit Report

- A.** The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B.** If threshold expenditures of \$500,000 or more are met during the Developer's fiscal year, the Developer must submit a Single Audit Report and Management Letter (if applicable) to the Department's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact the Department's Audit office at http://www.txdot.gov/contact_us/audit.htm.
- C.** If expenditures are less than \$500,000 during the Developer's fiscal year, the Developer must submit a statement to the Department's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D.** For each year the project remains open for federal funding expenditures, the Developer will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

40. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the Department and the Developer in duplicate.

THE DEPARTMENT

THE DEVELOPER

Signature

Signature

Phil Wilson
Executive Director
Texas Department of Transportation

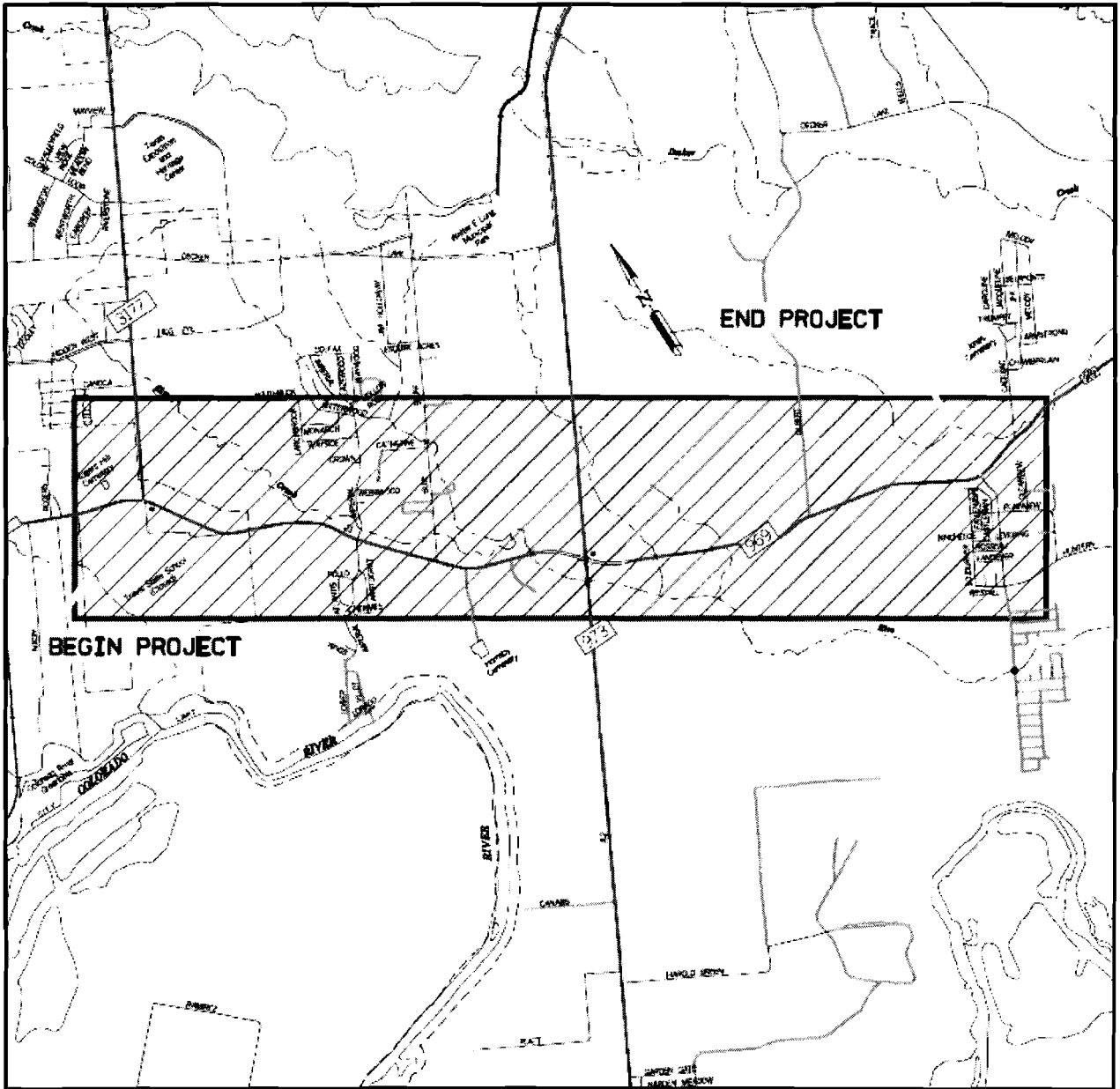
Samuel T. Biscoe
County Judge
County of Travis

Date

Date

ATTACHMENT A

Location Map of Project



ATTACHMENT B

Scope of Work

The scope of work for this project is the widening and reconstruction of FM 969 from FM 3177 to Hunters Bend Road to be done in two phases.

FM 969 CSJ 1186-01-090

Phase I will be to widen the roadway to provide continuous left turn lane, shoulders and a sidewalk on one side of the roadway from FM 3177 to FM 973.

Project length for Phase I will be approximately 2.096 miles.

The environmental clearance process has not begun.

Right of way determinations have not been completed.

FM 969 CSJ 1186-01-091

The scope of work for this Phase will be to provide two additional travel lanes, a continuous left turn lane, shoulders and a sidewalk on one side of the roadway from FM 973 to Hunters Bend Road.

Project length for Phase II will be approximately 1.868 miles.

A schematic has not been initiated.

The environmental clearance process has not begun.

Necessary right of way has not been acquired.

ATTACHMENT C

TOTAL ESTIMATED COSTS AND SOURCES OF FUNDING

Project Highway Improvement	Estimated Total Project Cost	Estimated Total Construction Cost	Allowable Construction Costs for Payment of Pass-Through Tolls and Percentage of Total Construction Cost (Department's Proportional Share)	Department's Maximum Pass-Through Reimbursement to Developer (110% of Allowable Construction Costs)	Developer Funding	Other Funding Sources
FM 969	\$16,135,761	Phase 1 = \$7,629,580 Phase 2 = \$5,806,181 \$13,435,761	Phase 1 = \$5,416,553 Phase 2 = \$4,122,047 71% = \$9,538,600	Phase 1 = \$5,958,208 Phase 2 = \$4,534,252 \$10,492,460	\$16,135,761	\$0
Total	\$16,135,761	\$13,435,761	\$9,538,600	\$10,492,460	\$16,135,761	\$0

ATTACHMENT D

Project Implementation

Overview

This Attachment defines the roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project.

1. Environmental Studies and Mitigation

- 1.1. The Developer shall complete all environmental studies and documents required to secure environmental approval, including each of the following items.
 - 1.1.1. Preparation and completion of environmental studies, including obtaining right of entry to perform such studies. All environmental studies will be performed by environmental specialists who meet the requirements to perform those studies.
 - 1.1.2. Submission of appropriate documentation (categorical exclusion, environmental assessment, and environmental impact statement, including reevaluation, and supplemental documentation) for Department review and approval. Department review is detailed in section 1.2 below.
 - 1.1.3. Preparation of any document revisions.
 - 1.1.4. Submission to the Department of copies of the environmental studies and documentation adequate for distribution.
 - 1.1.5. Preparation of legal and public notices in accordance with 43 TAC §2.4 for Department review and use.
 - 1.1.6. Arrangements for appropriate public involvement, including court reporters and accommodations for persons with special communication or physical needs related to the public hearing, if requested. The Department will serve as the Hearing Official at any public hearing with the assistance of the Developer.
 - 1.1.7. Preparation of public meeting and hearing materials.
 - 1.1.8. Preparation of any necessary responses to comments.
 - 1.1.9. Preparation of the public meeting and public hearing summary and analysis, and the comment and response reports.
 - 1.1.10. Submission to the Department of a verbatim transcript of any public hearing and the original certification of the public involvement process as described in 43 TAC §2.4.
 - 1.1.11. Preparation of required U.S. Army Corps of Engineers permit applications and associated drawings for impacts to jurisdictional

waters, including mitigation requirements. The Developer will be wholly responsible for any and all mitigation that would be required.

- 1.1.12.** The Developer 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.
 - 1.1.13.** Submission to the department 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.** As set forth in Exhibit 1, Roles and Responsibilities, the Department will conduct environmental reviews throughout the clearance process in an attempt to receive the environmental approval of the Project.
- 1.2.1.** Except as otherwise required by law or by agreement between the Department and a state or federal agency, the Developer is responsible for coordinating with local governmental entities and applicable agencies throughout the Project planning process to assure compliance with applicable laws. The Developer and Department will make every reasonable effort to resolve disagreements with local governments and with state or federal agencies as they relate to environmental approval of the Project.
 - 1.2.2.** The Developer will coordinate the submission of documents for agency review with the Department.
 - 1.2.3.** The Department is responsible for coordinating all review activities listed in the review schedule defined in Exhibit 2, General Review Schedule. The Department is responsible for working with the lead agency, the cooperating agencies and any affected entities to ensure a timely and thorough coordination process through a specified staff working group. The Developer will be an integral participant throughout the review process to rapidly address comments and concerns necessary to secure clearance within the review schedule.

2. Right of Way Acquisition

- 2.1.** As provided in Section 7, Right of Way and Real Property, of this agreement, the Developer is responsible for the acquisition and provision of any right of way or real property needed for the Project (New Right of Way).
- 2.2.** The Developer will establish and maintain a project tracking system that is acceptable to the Department and that shows the right of way surveying and mapping, appraisal, acquisition, and relocation status of each parcel.
- 2.3.** The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required

the access denial line shall be submitted to the Department for review and approval.

- 2.6.2.** The Developer shall develop driveway permits and associated exhibits acceptable to the Department for each access point and obtain, at a minimum, three original signed copies from the respective property owners.
- 2.7.** The Developer will ensure that all right of way used in constructing the Project will be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Developer. The Developer 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 Developer otherwise meets the requirements for regulatory closure.
- 2.8.** The Developer will provide tracings and electronic files of right of way maps and property descriptions to the Department and will also provide the Department a final map (digital and hard copy in a format approved by the Department) showing the final location of all utility lines that were adjusted or remained in place and joint use numbers assigned to those utilities.
- 2.9.** The Developer will provide to the Department all original deeds and easements that convey property interests to the State of Texas.

3. Utilities

- 3.1.** The Developer is responsible for determining the scope of utility work if the Project requires the adjustment, removal, or relocation of a utility facility. Utilities will not be adjusted, removed, or relocated before environmental approval is secured.
- 3.2.** The Developer is responsible for notifying the appropriate utility company to schedule adjustments.
- 3.3.** The Department will grant the Developer or its authorized representative site access to State right of way where required to execute the work and will issue right of entry for the performance of utility relocation.
- 3.4.** The Developer 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.
- 3.5.** The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required utility agreements, including joint use acknowledgments.

- 3.6. The Developer will provide to the Department all original utility agreements, including joint-use acknowledgements, that are executed in connection with the Project.

4. Engineering Services

- 4.1. The Developer 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 Developer.
- 4.2. At the commencement of an individual highway improvement, the Developer will coordinate a Design Concept Conference with the Department to establish the performance parameters and design requirements for the highway improvement, including the Pavement Design, Hydraulic Design, Design Concept Conference Forms and Typical Sections, which will remain in place throughout the implementation of the highway improvement.
- 4.3. All plans, specifications, and estimates developed by or on behalf of the Developer shall conform to the latest version of the Department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and the special specifications and special provisions related to them, and shall conform to the latest edition and revisions of the Department's Roadway Design Manual for desirable values unless approved by the Department. The construction plans furnished to the Department shall be reproducible tracings on mylar or equivalent.
- 4.4. If the Department determines that the complete plans, specifications, and estimates are unacceptable, the Developer shall correct the design documents to the Department's satisfaction. Should additional specifications or data be required by the Department, the Developer shall redesign the plans and specifications to the Department's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Developer.
- 4.5. If exceptions to the Department's design criteria are required as specified in the Department 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 Department, and if that change does not require the adoption of alternative design criteria or an exception to the Department's design criteria, the Developer will coordinate with the Department and Federal Highway Administration (FHWA) for approval of the change.
 - 4.5.2. The Department shall have no more than ten (10) business days either (1) to approve the design change as proposed by the Developer or (2) to respond with a Department-recommended alternative to the design change.

- 4.5.3. If the Department responds with an alternative to the design change, the Developer and the Department shall work diligently to develop a mutually agreeable design solution.
- 4.5.4. The Department is responsible for obtaining any necessary approval from FHWA.

4.6. Reviews

- 4.6.1. When the design is approximately thirty (30) percent complete, the Developer shall submit a completed pavement design to the Department. The Department may request additional information related to the pavement design, and the Developer shall provide that information promptly. The pavement design must be approved by the Department before letting. After the pavement design has been approved by the Department, it may not be changed by either party without the written consent of the other.
- 4.6.2. When design is 30% complete, the Developer will coordinate the submission of the following design information for a joint review session between the Developer and the Department to allow comments and concerns to be addressed by the Developer within the expedited review schedule defined in Exhibit 2, General Review Schedule.
- 4.6.3. The following will be reviewed as set forth in Exhibit 1, Roles and Responsibilities.
 - 1) Preliminary cross sections showing existing utility lines, R.O.W.
 - 2) Plan and profile sheet showing existing and proposed:
 - a) R.O.W. lines
 - b) Roadway alignments and profiles
 - c) Intersecting streets
 - d) Curb and lane lines
 - e) Existing Utilities
 - 3) Existing and proposed typical sections including pavement section
 - 4) Preliminary title and index sheets.
 - 5) Preliminary drainage area map, discharge relationships and drainage calculations.
 - 6) Storm drainage master plan.
 - 7) Preliminary culvert layouts.
 - 8) Preliminary bridge and bridge classification culvert layouts, including test hole information.
 - 9) Preliminary retaining wall layout, including test hole information.
 - 10) Sequence of work outline for traffic control.
 - 11) Preliminary traffic control typical sections and layouts.
 - 12) Preliminary intersection layouts.
 - 13) Preliminary utility layouts - identify potential conflicts and exchange of information with existing utilities.
 - 14) Update estimates and prepare preliminary roadway and drainage quantity summary sheets.

- 15) Updated design contract schedule.
 - 16) Facility typical sections and pavement design.
 - 17) An additional joint review session for 60% design shall be at the discretion of the Department upon the completion of the 30% joint review session.
- 4.6.4.** When the Project design is final, the Developer will coordinate the submission of the following information to the Department for review to allow comments and concerns to be addressed by the Developer to secure approval of the Department and FHWA within the expedited review schedule defined in Exhibit 2, General Review Schedule.
- 1) Seven (7) 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.
- 4.6.5.** For any individual highway improvement with a construction cost over \$25 million, the Developer shall conduct a value engineering workshop. Proposed changes to the design shall be submitted to the Department for review and approval.
- 4.6.6.** Approval by the Department of the final design submittal in conjunction with environmental process will constitute authorization for the Developer to advertise for construction bids. Approval may be conditioned on an amendment to this agreement if the final approved design significantly reduces the original scope of the Project as described in this agreement and applicable attachments.

5. Construction Responsibilities

- 5.1.** The Department 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 Department.
 - 5.1.2.** All work will be performed, unless otherwise specifically stated in the contract documents for the Project, in accordance with the latest edition of the Department's Guide Schedule for Sampling and Testing, the Quality Assurance Program Manual, the Construction Contract Administration Manual, and the Standard Specifications for

- Construction and Maintenance of Highways, Streets, and Bridges or special specifications or provisions approved by the Department.
- 5.1.3.** The Department shall ensure the implementation of a Project Quality Assurance Program (QAP) in conformance with the requirements in 23 CFR 637, Part B.
- 5.2.** The Department will negotiate and approve all change orders and other contract revisions necessary or convenient to accomplish the construction activities for the Project. For change orders and other contract revisions that affect prior environmental approvals or result in non-conformity with the specifications and standards agreed upon for the Project, the Developer 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.
- 5.2.1.** The Department will document any such changes, including a proposed course of action.
- 5.2.2.** The Department will notify the Developer of the need for such changes and submit the appropriate documentation.
- 5.2.3.** The Developer shall have no more than ten (10) business days to respond with comments.
- 5.2.4.** If the Developer responds with comments, the Developer and the Department will work diligently and in good faith to develop mutually agreeable changes that shall then be implemented by the Department.
- 5.2.5.** The Department shall be responsible for obtaining any required approvals from federal, state, or local governmental authorities.
- 5.2.6.** To the extent that a change order requires the adoption of alternative design criteria, an exception to the Department'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.
- 5.3.** The Developer and Department will comply with applicable Federal requirements throughout the procurement and construction process in order to maintain the Department's eligibility for Federal reimbursement for Project costs. The Developer's compliance with requirements necessary to maintain eligibility for federal reimbursement is a condition precedent to performance by the Department.
- 5.4.** Within six (6) months after issuance of the "Letter of Acceptance" for a highway improvement, the Developer will provide to the Department all documents and submittals identified in the Department's Construction Contract Administration Manual. This documentation includes:
- 1) Record Drawings and Final Construction Records,
 - 2) Engineer Certification of Project Completion, and
 - 3) Right of Way Parcel Information (Exhibits, Descriptions, Right of Way Maps, Field Notes, etc.)

6. General

- 6.1.** The Developer and the Department will agree on a transition plan at the time of or before completion of a highway improvement.
- 6.2.** The Developer will schedule regular meetings with the Department to maintain the communication necessary to successfully implement the Project.
- 6.3.** The Developer will prepare program organizational and management documents, including Program Management Plan and Quality Control/Quality Assurance Plan for all work products. The Developer will provide these documents to the Department for all contracted firms participating in the Project.
- 6.4.** The Developer 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, preliminary and final design of the Project.

ATTACHMENT D
Exhibit 1: Roles and Responsibilities for Each Entity

	Responsible Party
Preliminary Engineering	
Retain Consultant	Developer
Develop Preliminary Design	Developer
Develop Preliminary Cost Estimate	Developer
Define Right of Way Requirements	Developer
Department Review and Approval of Preliminary Engineering Report	Developer, Department
Environmental Review	
Retain Consultant	Developer
Draft Environmental Documents	Developer
Schedule & Conduct Public Involvement	Developer, Department
Review of Environmental Documentation	Developer, Department, FHWA
Notification and Documentation of Comments	Developer
Schedule and Hold Public Involvement	Developer, Department
Analyze and Document Public Involvement	Developer
Final Review	Developer, Department, FHWA
Document Approval	Department, FHWA
Environmental Permits, Issues, and Commitments	Developer
Permitting	
Develop Required Permit Applications	Developer
Submit Required Permit Applications	Developer, Department
Right of Way Acquisition	
Develop Right of Way Budget	Developer
Retain Surveyor	Developer
Develop Right of Way Map	Developer
Retain Appraisers	Developer
Work with Owners on Donations, Access, Etc.	Developer
Purchase Parcels After NEPA Process	Developer
Eminent Domain Proceedings	Developer
Utility Identification and Relocation	Developer
Oversight and Audit of Right of Way Process	Department

	Responsible Party
Design	
Retain Designer, Geotech, Surveyor, and other professional service providers	Developer
Develop 30% Submittal Package	Developer
30% Submittal for Department Review	Developer
Develop 60% Submittal Package *	Developer
60% Submittal for Department Review *	Developer
Final Submittal for Department Review	Developer
Approval of Design	Department, FHWA
Bid for Construction	
Preparation of Bid Documents	Developer, Department
Advertisement for Bids	Department
Bid Opening, Evaluation, and Award	Department
Certified Final Award	Department
Construction	
Coordination with Utilities for Relocation	Department
Issuance of Construction Notice To Proceed	Department
Administration of Construction Contract	Department
Inspection of Construction	Department
Issuance of Notification of Substantial Completion	Developer
Issuance of Letter of Approval for Payment	Department
Issuance of Notification of Completion	Developer
Issuance of Letter of Acceptance	Department

* Only applies if Department requires after review of 30% submittal

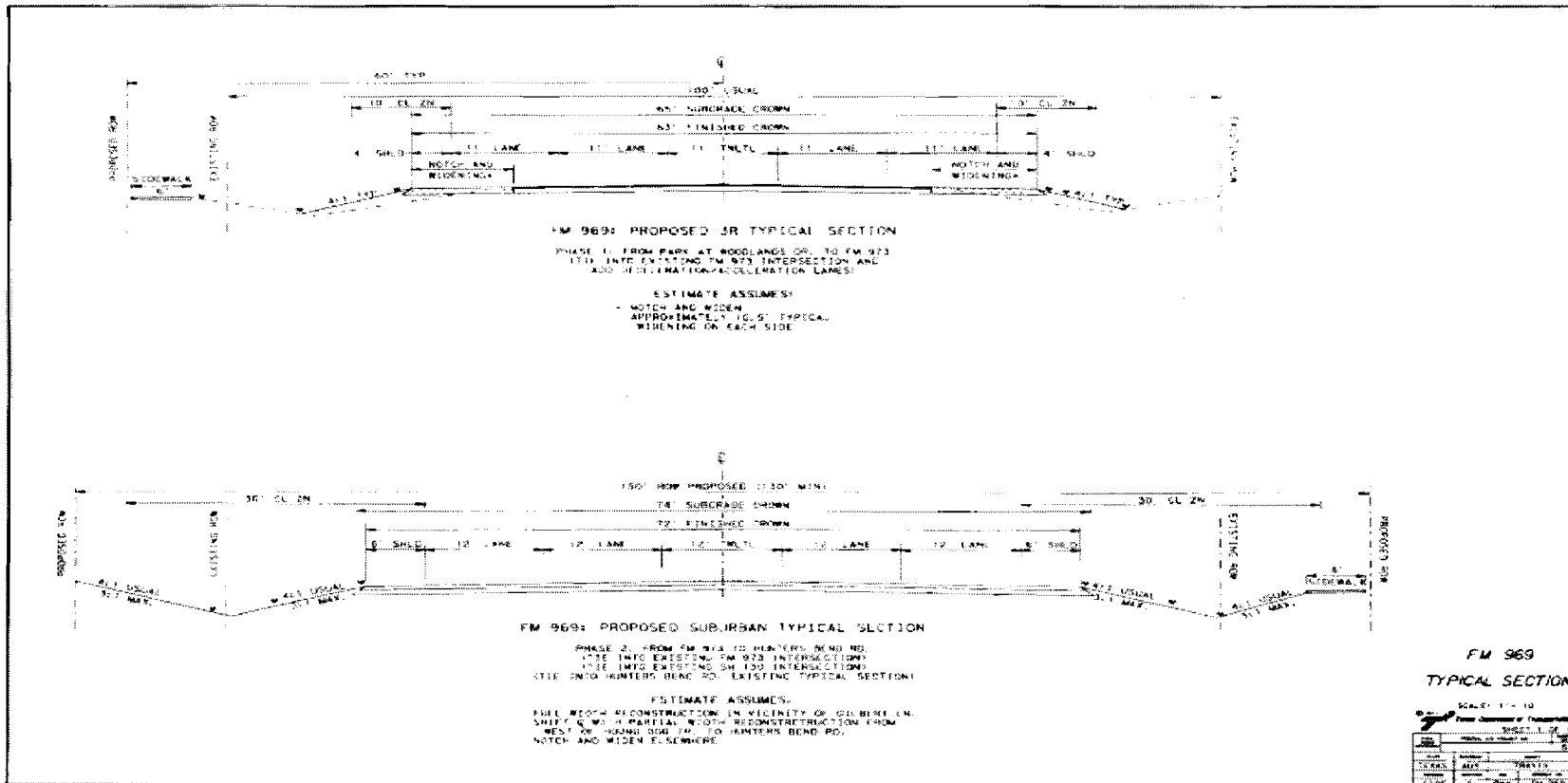
ATTACHMENT D
Exhibit 2: General Review Schedule
 Specific timelines are incorporated into the timeline for each highway improvement.

Type of Review		Review Time
1	Preliminary/Schematic Layout Review	2 weeks
2	Environmental Review	To be determined
	Joint Environmental Review (Department)	
	Review (Categorical Exclusion) (2 weeks district; 2 weeks ENV)	4 weeks *
	Review (Environmental Assessment) (3 weeks district; 3 weeks ENV)	6 weeks *
	Review (Environmental Impact Statement) (4 weeks district; 4 weeks ENV)	8 weeks *
	Resource Agency Review	To be determined
	FHWA Review (draft document)	To be determined (minimum 4 weeks)
	Release by the Department to Public Hearing *** <ul style="list-style-type: none"> • Advertising for public hearing • Conducting Public Hearing • Receipt of written comments 	6 weeks plus 10 days for receipt of written comments
	Developer Addresses Comments from Public Hearing and prepares Summary and Analysis and Comment Response Report	6 weeks
	Department Review of Summary and Analysis and Comment Response Report (2 weeks district; 2 weeks ENV)	4 weeks *
	FHWA Review of Summary and Analysis and Comment Response Report and issues determination document	To be determined (minimum 4 weeks)
3	Review of Plans, Specifications, and Estimates	
	30% Completion	2 weeks
	60% Completion ****	2 weeks
	100% Completion (2 weeks district, 2 weeks DES)	4 weeks **
	Federal Approval of Letter of Authority	1 week

- * Review Time may start over for substantial comments on draft of document
- ** Review Time may start over for substantial revisions of plans
- *** Only applies if Public Hearing is required
- **** Only applies if required by Department

ATTACHMENT E

Typical Section Layout



ATTACHMENT F

Project Schedule

Contract No. PT2011-003-01
 CSJ No. 1186-01-090 & 1186-01-091
 Federal Highway Administration
 CFDA#20.205
 Not Research and Development

		2012				2013				2014				2015				2016				2017				2018			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
FM 969 Phase I - FM 3177 to FM 973																													
	AFA & RFQ	■																											
	Schematic	■		■																									
	Environmental	■		■																									
	PS&E	■		■				■																					
	ROW	■		■				■																					
	Bid/Letting	■		■				■																					
	Construction	■		■				■																					

		2012				2013				2014				2015				2016				2017				2018			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
FM 969 Phase II - FM 973 to Hunters Bend Road																													
	AFA & RFQ	■																											
	Schematic	■		■																									
	Environmental	■		■																									
	PS&E	■		■				■																					
	ROW	■		■				■																					
	Bid/Letting	■		■				■																					
	Construction	■		■				■																					

Contract No. PT2011-003-01
CSJ No. 1186-01-090 & 1186-01-091
Federal Highway Administration
CFDA#20.205
Not Research and Development

ATTACHMENT G

Resolution or Ordinance

ATTACHMENT H

PROGRAMMATIC PROCEDURE FOR RIGHT OF WAY OVERSIGHT OF PASS-THROUGH PROJECTS

For those Pass-Through projects where a Pass-Through Toll Agreement (Agreement) has been entered into by and between the Texas Department of Transportation (the Department) and a local public agency (county or municipality), and in conjunction with such Agreement the local public agency (LPA) has also executed a "Certification of Compliance" in the form as attached to this agreement as Attachment H - Exhibit A, the Department shall provide right of way monitoring and audit of the acquisition of right of way in the following manner:

1. Following the execution by the LPA of the Certification of Compliance, schedule a meeting as soon as practical with the LPA officials who will be providing oversight and management of the Project for the LPA, and also with the project managers of any engineering consultant hired by the LPA to directly manage the Project, to include those individuals both from the LPA and under contract with the engineering consultant to handle right of way acquisition.
 - A. At this meeting, discuss the need to establish separate right of way parcel files for each parcel of land or easement to be acquired for the Project, and to include and retain within each parcel file, documentation that establishes that all certifications contained in the "Certification of Compliance" have been met. Emphasize that a detailed written "negotiator's report" for all negotiation contacts must be included within each parcel file (as provided for in the on-line Right of Way Manual Collection).
 - B. Provide a copy of the "Title III Parcel Review Checklist for LPAs" (a copy of which is attached to this agreement as Attachment H - Exhibit B) which the Department will be utilizing when it monitors and audits a random selection of parcel files each month during the progress of the right of way acquisitions for the Project.
 - C. Provide a copy of the form for the conveyance instruments to be utilized for initial acquisition of right of way interests in accordance with the Agreement and also the form for the final conveyance of all right of way interests acquired from the LPA (Developer in the Agreement) to the State of Texas upon completion of each Project.
2. Beginning the month following the initiation of right of way acquisition by the LPA, the Department shall, not less than once a month, meet with the LPA and any consultants retained by the LPA that are handling right of way parcel acquisition and randomly select from those parcels for which acquisition has been completed or are in the process of being submitted for eminent domain proceedings during the prior month, either three of such parcels, or 10% of the total number of such parcels reaching such status during the prior month (whichever is more), and audit such parcel files using the Title III Parcel Review Checklist for LPAs.

- A. For those parcels so audited which according to the audit and completion of the checklist appear to be in compliance with Title III guidelines, place one copy of the checklist within the parcel file, and retain an additional copy of the checklist for the Department's monitoring and auditing file for this Project.
- B. For any parcel so audited for which one or more checklist items indicate non-compliance with Title III guidelines, the Department shall provide written notice to the LPA containing detailed information about such non-compliance, together with recommended action to be taken by the LPA in order to remedy such non-compliance. An additional copy of such written notice shall be placed in the parcel file and a copy also retained by the Department for the Department's monitoring and auditing file for this Project.
- C. During any subsequent month's Department review of parcel files as required under paragraph 2. above, in addition to auditing the number of new parcel files required above, the Department shall specifically re-review any parcel files for which non-compliance notices were provided, and additional written documentation placed in such parcel file indicating the current status relating to the prior non-compliance, and if the non-compliance status still exists, provide an additional written notice of this to the LPA. If, after the third month's review of a parcel with a non-compliance notice, the non-compliance status remains, and it appears to the the Department personnel conducting the review that the LPA is not taking sufficient steps to remedy the non-compliance, the Department Right of Way Division shall be provided a copy of all prior notices of non-compliance for review. If this review determines there is definitely continuing non-compliance without adequate basis or other justification, a letter will be issued from the Right of Way Division to the LPA, informing the LPA that acquisition of the parcel does not meet the requirements of the "Uniform Act" which could result in the Project being ineligible for State and Federal participation in reimbursement payments, and unless remedied, such could be considered a material breach of the Agreement. A copy of this letter will be provided to the local Federal Highway Administration Realty Office and also to the Department Office of General Counsel.

**ATTACHMENT H
EXHIBIT A**

CERTIFICATION OF COMPLIANCE

Travis County, the Developer under a Pass-Through Toll Agreement with the Texas Department of Transportation (the Department) for the purpose of constructing and operating improvements to FM 969 from FM 3177 to Hunters Bend Road, pursuant to Texas Transportation Commission Minute Order 112755 (the Project), hereby certifies that:

- (1) real property will be acquired for the Project right of way in compliance with all applicable State and Federal laws and requirements, including the policies and practices of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq.;
- (2) it has received and has continuing access to the Online Right of Way Manual Collection; and
- (3) prior to the implementation of any procedures that are at variance with established Department policies and practices for the acquisition of real property, Travis County will submit such procedures in writing to the Department's District Engineer for the Austin District, and the Executive Director's approval must be obtained.

For purposes of this Project, it is understood that references in the Right of Way Manual Collection to TxDOT personnel, Department personnel, District personnel, District, District Engineer, ROW Division, Director of the ROW Division, and other similar Department employees or titles involved in the acquisition process shall be deemed to mean Travis County and its authorized agents. It is the intent of this provision to allow Travis County to acquire real property for the Project on behalf of the Department without prior review and approval of the Department, subject to compliance with all applicable State and Federal laws and requirements as described above, the variance procedure, and the Department's audit and enforcement obligations.

Date: _____, 20__

TRAVIS COUNTY

By: _____
Samuel T. Biscoe
County Judge

ACCEPTED:

TEXAS DEPARTMENT
OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

By: _____
John Barton., P.E.
Assistant Executive Director

By: _____
Printed Name: _____
Title: _____

**ATTACHMENT H
EXHIBIT B**

TITLE III PARCEL REVIEW CHECKLIST FOR LPAs

County:
District:
ROW CSJ No.:
Parcel No.:
Acquiring Agency:

General

Was the informational notice given to owner? Yes No

Date of the notice:

Was the "Landowner's Bill of Rights Statement" properly provided prior to initiation of negotiations? Yes No

Date provided:

Appraisal

Was the real property appraised before the initiation of negotiations? Yes No

Approval date of the appraisal:

Was the owner or his designated representative given the opportunity to accompany the appraiser during inspection of the property? Yes No

Did the appraisal disregard any decrease or increase in value caused by the proposed facility? Yes No

Did the written appraisal of the parcel conform to the established standards for appraisal? Yes No

Does the acquiring agency require compliance with the Uniform Standards of Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) for appraisals? Yes No

Were the appraiser and review appraiser qualified by the acquiring agency? Yes No

Were there any apparent conflicts of interest on the project on behalf of the appraiser or review appraiser? Yes No

Was a written appraisal review report prepared, and an executed certification provided by a qualified review appraiser? Yes No

Were all items of real estate included in the appraisal? Yes No

Were retention values for any improvements retained by the owner properly documented? Yes No

Negotiation

Did the review appraiser negotiate for acquisition? Yes No

Did the appraiser negotiate for any parcel for which the appraised just compensation was more than \$2,500? Yes No

Were acquisition policies and procedures explained to the owner? Yes No

Was prompt written offer made to acquire real property for the full amount of the approved appraisal of just compensation? Yes No

Date of the first written offer:

The written offer included the following:

- statement of the full amount established as just compensation
- separate statement as to damages (if applicable)
- description and location identification of the ROW parcel, and of the interest in the real property to be acquired
- identification of the buildings, structures and other improvements considered to be real property for which the offer is made
- identification of separately owned interests (if applicable)
- a copy of the appraisal report delivered to the owner at the time the offer was made

Was the offer and its basis discussed with the owner? Yes No

Was the owner given reasonable opportunity to consider the offer and to present material believed to be relevant to valuation of the property? Yes No

Was any evidence discovered which suggests that coercive action was taken to compel agreement on price paid for the property? Yes No

Was the owner required to surrender possession before payment was made or proper award deposited in court? Yes No

If the property was donated, was the owner advised of his right to receive just compensation? Yes No

Was every reasonable effort made to acquire the property expeditiously by negotiation? Yes No

Was property acquired under Title VI requirements, without regard to race, color, age, religion, sex, national origin, or handicap? Yes No

Relocation Assistance

The acquisition of this property resulted in the displacement of: (check all that apply)

None Residence Business Farm Operation Non-Profit Organization Personal Property Only

If residential, was a replacement housing supplement computed utilizing comparable decent, safe, and sanitary replacement housing? Yes No

Amount of the supplement:

Date approved:

Amount of actual replacement housing payment: Date of payment:

If a non-residential displacement, list all payments made.

Moving Payment - Business, Farm, or Non-Profit

Amount(s): Date(s):

Moving Payment - Personal Property

Amount(s): Date(s):

Reestablishment Payment

Amount(s): Date(s):

Were applicable Relocation Assistance Advisory Services offered to the displaced resident, business, or farm operation, or non-profit organization? Yes No

Was a 90-Day Notice given to the displaced person? Yes No

Date of notice:

Was a 30-Day Notice to Vacate given to the displaced person? Yes No

Date of notice:

Were all relocation benefits calculated and paid in accordance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments thereto."? Yes No

Based on review, is the acquiring agency complying with all *Title III* guidelines? Yes No

Parcel Legal Description / Plat

Do the survey and mapping technical requirements comply with the technical requirements as set forth in applicable Department manuals? Yes No

Does a broad review of the parcel legal description / plat and comparison to the right of way map indicate the presence of all component parts? Yes No

Signature of TxDOT Review Agent

Date