

**A RESOLUTION OF THE COMMISSIONERS COURT OF TITUS COUNTY, TEXAS
RELATING TO AMENDMENT NO. 2 TO THE PASS-THROUGH AGREEMENT**

WHEREAS, Titus County executed a Pass-Through Agreement ("the Agreement") on September 5, 2007 with the State of Texas and the Texas Department of Transportation ("the Department") to develop three Highway Improvement projects, US 271, FM 2348 and FM 1000; and

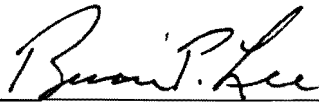
WHEREAS, the Agreement requires Titus County to submit an Engineer's Certification of Completion and convey all new right of way and easements to the State through the Department at the time of or prior to the completion of each individual Highway Improvement as a condition to opening the completed Highway Improvement; and

WHEREAS, the Department and Titus County agree that for the benefit of the traveling public, it is more advantageous to open each individual Highway Improvement to traffic upon reaching Substantial Completion with Substantial Completion being 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; and

WHEREAS, the Department is drafting Amendment No. 2 to the Pass-Through Agreement to reflect this modification and will forward to Titus County for execution;

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF TITUS COUNTY, TEXAS that the County Judge is authorized to execute Amendment No. 2 to the Pass-Through Agreement upon receipt to allow for each Highway Improvement to be open to traffic once Substantial Completion is achieved.

APPROVED on this 14th day of October, 2013.



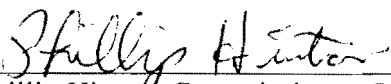
Brian P. Lee, County Judge



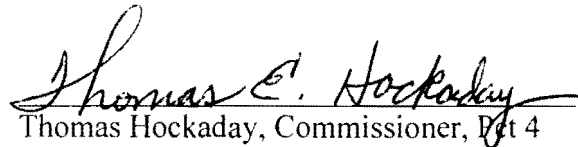
Al Riddle, Commissioner, Pct 1



Mike Fields, Commissioner, Pct 2

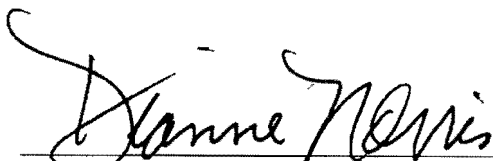


Phillip Hinton, Commissioner, Pct 3



Thomas Hockaday, Commissioner, Pct 4

ATTEST:



By: Dianne Norris, County Clerk



STATE OF TEXAS §

COUNTY OF ~~TRAVIS~~ §
 TITUS

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

Amendment No. 2

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation (the "Department"), and Titus County (the "Developer"), and becomes effective when fully executed by both parties.

BACKGROUND

The Department and the Developer executed a contract on September 5, 2007.

AGREEMENT

The Department and the Developer agree that the contract is amended as follows:

1. Description of Amended Items

Section 10. Construction Responsibilities, Sub-section d, is deleted in its entirety and replaced with the following:

d. Completion.

- (i) For purposes of this agreement, "Substantial Completion" of a Highway Improvement 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 a Highway Improvement 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 ten (10) 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 to Open Highway" to the Developer. Within six (6) months after the Department has issued the "Letter of Approval to Open Highway," the Developer

shall provide to the Department all documents and submittals identified in the Department's Construction Contract Administration Manual. This Documentation includes, but is not limited to:

- 1) Record Drawings and Final Construction Records (including as-built plans signed, sealed, and dated by a professional engineer licensed in the State of Texas that incorporate any contract revisions);
 - 2) Engineer's Certification that the Highway Improvement was constructed in accordance with the plans and specifications;
 - 3) Right of Way Parcel Information (Exhibits, Property Descriptions, Right of Way Maps, Field Notes, Plats, etc.); and
 - 4) The Department Legacy Applications submission requirements as defined in Exhibit 3 attached to this agreement.
- (ii) For purposes of this agreement, "Final Completion" is defined as all work and performance obligations for a Highway Improvement have been completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. When a Highway Improvement is finally complete, the Developer shall issue and sign a "Notification of Final Completion" certifying that all work has been finally completed. After receipt of this notification, the Department will perform a review and provide to the Developer a list of items, if any, to be completed prior to final acceptance by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Final Acceptance" to the Developer.

Section 11. Maintenance, is deleted in its entirety and replaced with the following:

The Department shall be responsible for maintenance of a Highway Improvement after substantial completion of the Highway Improvement and approval by the Department to open it to the public.

Section 12. Repayment, Sub-section a, is deleted in its entirety and replaced with the following:

- a. This paragraph applies until the Project as a whole is finally complete. The Department shall reimburse the Developer by paying a semi-annual amount equal to \$0.15 for each vehicle-mile traveled on any Highway Improvement for which the Department has issued a Letter of Approval to Open Highway and the Highway Improvement is open to the public. The semi-annual reimbursement will be no more than \$8,431,000. Under no circumstances will the total payment for any Highway

Improvement exceed the maximum reimbursement amount shown in Attachment C for that Highway Improvement.

Section 12. Repayment, Sub-section b, is deleted in its entirety and replaced with the following:

- b. This paragraph applies after the Project as a whole is finally complete. The Department shall reimburse the Developer by paying a semi-annual amount equal to \$0.15 for each vehicle-mile traveled on the Project. The semi-annual reimbursement will be no less than \$4,215,500 and no more than \$8,431,000. Under no circumstances will the total payment for any Highway Improvement exceed the maximum reimbursement amount shown in Attachment C for that Highway Improvement.

Section 12. Repayment, Sub-section d, is deleted in its entirety and replaced with the following:

- d. The first semi-annual payment shall be made within 60 days after the six month anniversary date of the opening of the first Highway Improvement to the public and the Department's issuance of a Letter of Approval to Open Highway. If the documentation required by Section 10.d. for any Highway Improvement is not provided to and accepted by the Department prior to the expiration of six months after issuance of the Letter of Approval to Open Highway for that Highway Improvement, the payments for that Highway Improvement shall not commence until the documentation is submitted to the Department, notwithstanding any other time period that is contained in the Agreement. Subsequent semi-annual payments shall be made at six month intervals thereafter and shall include reimbursement for vehicle miles traveled on each Highway Improvement as it is substantially completed and opened to the public.

Attachment D, Project Implementation,

Section 2, Right-of-Way Acquisition, Sub-Section 2.9 is deleted in its entirety and replaced with the following:

The Developer shall, upon substantial completion of each individual Highway Improvement, submit the completed Right of Way Maps and property descriptions for Department review and approval. Upon approval, the Developer will convey all ownership of the new right of way to the State of Texas through the Department. The conveyance shall be in a form acceptable to the Department and shall be of fee simple title. The Developer shall also convey all applicable conveyance instruments to the Department for its permanent files.

2.9.1 The Developer shall also provide the Department with title insurance for the new right of way in the name of the State of Texas as the insured owner.

2.9.2 The Developer shall provide tracings and electronic files of right of way maps and property descriptions to the Department.

2.9.3 The Developer shall 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 (including xyz coordinates-NAD83 adjusted to surface) that were adjusted or remained in place and joint use numbers assigned to those utilities.

Section 5, Construction Responsibilities, Sub-Section 5.5 is deleted in its entirety and replaced with the following:

Within six (6) months after issuance of the "Letter of Approval to Open Highway" for the construction of a Highway Improvement, the Developer shall provide to the Department all documents and submittals identified in the Department's Construction Contract Administration Manual. This Documentation includes, but is not limited to:

- 1) Record Drawings and Final Construction Records (including as-built plans signed, sealed, and dated by a professional engineer licensed in the State of Texas that incorporate any contract revisions);
- 2) Engineer's Certification that the Highway Improvement was constructed in accordance with the plans and specifications;
- 3) Right of Way Parcel Information (Exhibits, Property; Descriptions, Right of Way Maps, Field Notes, Plats, etc.); and
- 4) The Department Legacy Applications submission requirements as defined in Exhibit 3 attached to this agreement.

Section 6, General, Sub-Section 6.4 is deleted in its entirety and replaced with the following:

The Developer and the Department will attempt to agree on a transition plan at the time of or before completion of a Highway Improvement. Prior to opening each new Highway Improvement for public use, the "Notification of Substantial Completion" and the "Letter of Approval to Open Highway" will be properly submitted.

All other terms and conditions of the above-numbered agreement not hereby amended remain in full force and effect.

2. Signatory Warranty

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

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

THE DEPARTMENT

THE DEVELOPER

Signature

Signature

Phil Wilson
Executive Director
Texas Department of Transportation

Titus County
County Judge
100 W. First Street, Suite 200
Mt. Pleasant, TX 75455

Typed or Printed Name and Title

Typed or Printed Name and Title

Date

Date

October 14, 2013