

AGENDA ITEM 28

Consider accepting the maintenance of streets in Carriage Oaks Subdivision.

Commissioner Boatright noted that the roads are in need of repair, and stated that the property owners should help finance the repairs.

This agenda item has been postponed until further notice.

AGENDA ITEM 29

Discuss and approve the Funding Agreement between Williamson County and TxDOT regarding Right of Way Acquisition, Utility Adjustment, and other purposes - SH 130.

Moved: **Commissioner Limmer**

Seconded: **Judge Doerfler**

Motion: To approve the Funding Agreement between Williamson County and TxDOT regarding Right of Way Acquisition, Utility Adjustment, and other purposes - SH 130.

Vote: **3 – 0. Commissioner Hays was absent from the dais.**

< Attachment >

Resolution

The State of Texas }
 } Know All Men By These Presents:
 County of Williamson }

That on this, the ^{11th}~~4th~~ day of June, A. D. 2002, the Commissioners Court of Williamson County, Texas, met duly called and convened lawful Session at the County Courthouse in Georgetown, Texas, with the following members present:

John Doerfler, County Judge, Presiding
Mike Heiligenstein, Commissioner Precinct One, and
Greg Boatright, Commissioner Precinct Two, and
David Hays, Commissioner Precinct Three, and
Frankie Limmer, Commissioner Precinct Four

WHERE, among other matters, came up for consideration and adoption the following Resolution:

WHEREAS, on April 25, 2002, the Texas Transportation Commission adopted Minute Order No. 108874 rescinding the right-of-way and utility adjustment participation requirements for the cities of Austin, Pflugerville, Round Rock and Georgetown and Travis, Williamson, Caldwell and Guadalupe Counties for SH 130 and directing the Director of the Texas Turnpike Authority Division to enter into any funding agreements with the above-named entities to advance construction of SH 130 in accordance with the requirements of 43 TAC § 15.55; and

WHEREAS, on April 25, 2002, the Texas Transportation Commission adopted Minute Order No. 108873 approving the proposal submitted by Lone Star Infrastructure and directing the Texas Department of Transportation to complete discussions with Lone Star Infrastructure necessary to finalize agreements to construct, maintain and repair SH 130; and

WHEREAS, on May 21, 2002, Williamson County accepted Texas Transportation Commission Minute Order No. 108875, which outlines the responsibilities of Williamson County, Travis County, the City of Austin, and the Texas Department of Transportation with regard to the SH 130, SH 45 and Loop 1 projects; and

WHEREAS, SH 130 is a critically needed infrastructure improvement that will address traffic congestion, regional mobility, safety, and air quality issues in Williamson County;

NOW THEREFORE, BE IT RESOLVED that Williamson County execute the Texas Department of Transportation Funding Agreement (Exhibit A, attached), which outlines the responsibilities of Williamson County and the Texas Department of Transportation with regard to funds for right of way acquisition, utility adjustment, construction timing, and other purposes for SH 130.

The foregoing Resolution was lawfully moved by COMMISSIONER LIMMER, duly seconded by JUDGE DOERFLER, and was then adopted by a vote of 3 voting for and 0 voting against. County Judge John C. Doerfler was duly authorized to sign said resolution as the act and deed of Commissioner's Court of Williamson County and of said County.

John C. Doerfler 6-11-02
John Doerfler, Williamson County Judge

Attest:

Nancy E. Rister
Nancy Rister, Williamson County Clerk

COUNTY: Williamson and Travis
 HIGHWAY: SH 130
 LIMITS: From Interstate Highway 35 at State
 Highway 195, to Interstate Highway
 10 at Seguin

**FUNDING AGREEMENT WITH WILLIAMSON COUNTY FOR
 RIGHT-OF-WAY ACQUISITION, UTILITY ADJUSTMENT AND OTHER PURPOSES
 SH 130**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Turnpike Authority ("TTA"), a division of the Texas Department of Transportation ("Department"), hereinafter called the "State," and Williamson County of Austin ("the County"), collectively referred to as "the Parties," each acting by and through its duly authorized officials.

WITNESSETH

WHEREAS, the Texas Transportation Code authorizes the State to layout, construct, maintain, and operate a system of streets, roads, highways and turnpikes that comprise the State Highway System; and,

WHEREAS, TTA plans to construct State Highway 130, to be a controlled access highway from Interstate Highway 35 at State Highway 195, to Interstate Highway 10 at Seguin, herein after called the "Project"; and,

WHEREAS, Commission Minute Order Numbers 83157 and 108875 require \$150,000,000 of the cost of funding the Project to be provided by local entities; and

WHEREAS, the County's share is \$45,000,000.00 as stated in the letter dated December 27, 2001, which is attached hereto as Exhibit "1"; and,

WHEREAS, the County finds that the Project offers benefits to the citizens of the County and desires to contribute funds to right-of-way acquisition, utility adjustments and other Project Costs; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the Parties hereto, the State and the County agree as follows:

AGREEMENT

ARTICLE I. TIME PERIOD COVERED

This Agreement becomes effective when signed by the last Party whose signature makes the agreement fully executed, and said Agreement shall be in full force and effect until all right-of-way acquisition, utility adjustment work and other work deemed necessary by the State on the Project described herein has been completed, including rendition of final and non-appealable judgments in any litigation, or until this Agreement is terminated as hereinafter provided.

ARTICLE 2. PROJECT FUNDING

The State shall perform or cause to be performed those Project items of work which the County and the State have agreed to undertake and/ or pay for as described in Attachment "A" to this Agreement, which is attached to and made a part of this Agreement. This Agreement provides funding for the cost of right-of-way acquisition for the parcels, title insurance fees, relocation assistance, clearance of improvements, utility adjustments, and all other costs which the State deems necessary for any purpose to forward the construction of the Project.

ARTICLE 3. TERMINATION

- (a) Without prejudice to any other legal or equitable right or remedy that either Party would otherwise possess hereunder, or as a matter of law, the non-defaulting Party, upon giving the defaulting Party written notice, shall be entitled to terminate this Agreement in its entirety if the defaulting Party shall fail to remedy any default within twenty (20) business days after receipt of written notice by the defaulting party.
- (b) This Agreement may also be terminated by:
 - (1) mutual written agreement and consent of both Parties;
 - (2) the State, upon thirty (30) days written notice to the County, if the State determines that completion of the Project is not in the best interest of the State; or
 - (3) the County, upon thirty (30) days written notice to the State, if the State has not commenced construction of the Project within ten (10) years of the effective date of this Agreement.
- (c) If the Agreement is terminated in accordance with the above provisions, unless otherwise agreed by the Parties:
 - (1) the County will be responsible for the payment of the Project Costs incurred by the State and which are covered by this Agreement, up to the time of

termination; and

- (2) the State will repay the County, any County funds the State has not expended for Project Costs in accordance with this Agreement at the time of termination.

ARTICLE 4. RIGHT OF ACCESS

If the County is the owner of any part of the Project site, the County shall permit the State or its authorized representative access to the site to perform any activities required in connection with the Project.

ARTICLE 5. RELATIONSHIP OF THE PARTIES

Each Party acknowledges to the other that (i) it is not an agent, servant, or employee of the other Party, and (ii) it is responsible for its own acts and deeds and for those of its agents, contractors, representatives or employees during the performance of the work on the Project.

ARTICLE 6. SOLE AGREEMENT

This Agreement, including any attachments, constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous understanding or representations, whether oral or written, respecting the subject matter of the Agreement. This Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the Parties.

ARTICLE 7. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, assigns, and administrators.

ARTICLE 8. AMENDMENTS

By mutual written consent of the Parties, the scope of work and payment provisions of this Agreement may be amended prior to the expiration of this contract. No amendment to this Agreement shall be effective and binding until it is reduced to writing and signed by duly authorized representatives of both Parties.

ARTICLE 9. CONDUCT OF WORK

The Parties have agreed to follow certain procedures in acquisition of right-of-way, relocation assistance, right-of-way clearance, utility adjustment process, and other work deemed necessary by the State for this Project that are set forth in Attachment "A" to this Agreement. Unless otherwise specifically stated in Attachment "A" to this Agreement, the State shall provide, or contract to provide, such mapping, appraisal, negotiation, relocation assistance, condemnation, engineering inspection and testing services, demolition and disposal of improvements, and any other work or service as may be required to pursue the acquisition of all necessary right-of-way, the completion of utility adjustments in accordance with the approved plans and specifications and other work deemed

necessary by the State. The County shall provide reasonable assistance to the State upon request. The County will assist the State, to the extent allowed by law

ARTICLE 10. INCREASED COSTS

The State or other entities shall be responsible for all SH 130 ROW Costs over the \$45,000,000.00 transferred under this Agreement. If any existing or future land use regulations or ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other proposed changes by the County, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with land use regulations, ordinances or changes will be paid by the County.

ARTICLE 11. SIGNATORY WARRANTY

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the Party represented.

ARTICLE 12. VENUE

Any and all legal action related directly or indirectly to this Agreement must be filed in Travis County, Texas.

ARTICLE 13. LEGAL CONSTRUCTION

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such 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.

ARTICLE 14. OWNERSHIP OF DOCUMENTS

Upon the completion or termination of this Agreement, all documents prepared by the State or its agents or contractors shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. After completion of the Project, the County may request copies of all Project right-of-way files relating to right-of-way within the corporate city limits of the County.

ARTICLE 15. COMPLIANCE WITH LAWS

The Parties shall comply with all Federal and State laws, statutes, rules and regulations affecting the performance of this Agreement. When required, the County shall furnish the State with satisfactory proof of this compliance.

ARTICLE 16. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, and when both Parties have signed this Agreement, each counterpart shall be deemed an original as if the Parties had signed one and the same instrument.

ARTICLE 17. NOTICES

Where the parties are required to provide written notice, such notice shall be deemed given when either (i) hand-delivered or (ii) deposited in the U.S. mail, first class, postage pre-paid, provided a copy is also sent via facsimile on the same day as the mailing. Such written communication shall be sent or delivered to the address and fax numbers shown below.

IN WITNESS WHEREOF, THE STATE AND THE COUNTY have executed this Agreement to effectuate its purpose.

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____ Date: _____
Phillip E. Russell, P.E.
Director, Texas Turnpike Authority Division of the
Texas Department of Transportation

WILLIAMSON COUNTY

By: John C. Doerfler Date: 6-11-02
John C. Doerfler
County Judge

Approval for the execution of this Agreement by the County Judge of Williamson County was provided by resolution of the Commissioner's Court of Williamson County on 6-11-02, 2002.

For the purpose of this Agreement, the address and fax number of record for each Party is as follows:

For the County:

Williamson County
2nd Floor Courthouse
710 Main Street
Georgetown, Texas 78626
Attn: John C. Doerfler
Fax: 512-943-1662

For the Texas Turnpike Authority Division of the Texas Department of Transportation:

Texas Turnpike Authority
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701
Attn: Director
Fax: 512-305-9518

ATTACHMENT "A"**Work Responsibilities
And
Payment Provisions****A. Work Responsibilities****1. Right-of-way Acquisition, Relocation Assistance and Clearance of Improvements**

The State shall prepare right-of-way maps, property descriptions, title information, and other data as needed to properly describe the right-of-way for the Project. The State shall be responsible for acquiring right-of-way for the Project and will pay for the personnel and services necessary to acquire, either through purchase or condemnation, the right of way and to administer relocation assistance and the clearance and disposition of improvements from the right-of-way. All applicable Federal and State laws governing the acquisition policies for acquiring real property will be followed.

2. Utility Adjustments/Relocations

The proposed construction of the Project will require the adjustment, removal or relocation of utility facilities (including, without limitation, equipment and facilities used directly or indirectly in the provision of water, wastewater, gas, electric, telephone, internet, cable, voice, video or data transmission services). The State shall identify the necessary utility work and shall coordinate with the affected utility companies to design and schedule their adjustments. The State or the appropriate utility companies shall be responsible for all of the work associated with the removal or relocation of such utility facilities, which work shall be in accordance with applicable State law, regulations, policies and procedures.

3. Environmental Remediation

- a. The State has prepared the appropriate environmental documentation and has secured environmental clearance for the Project.
- b. All the costs associated with the remediation of any environmental adverse impacts on County owned property or clearly caused by the County on Parcels acquired within the County, such remediation required to be taken as a result of State or Federal environmental laws and regulations, shall be the responsibility of the County, not the State.
- c. The state will undertake all reasonable legal actions to recover the costs associated with the remediation of any environmental adverse impacts caused by the property owner or other responsible party on Parcels acquired within the County.

B. Payment Provision

1. The State may use the funds transferred by the County for any purpose.

C. Funding Provisions

1. Funding Schedule

- a. Within ninety (90) days after execution of this Agreement, the County shall transfer to the State the sum of \$45,000,000.00.
- b. In the event construction of the Project within the County or its jurisdictions has not commenced within ten (10) years of date of the effective date of this Agreement, the parties will enter into negotiations regarding reimbursement, if any, of funds previously expended by the State under the terms of the Agreement.

Exhibit 1

December 27, 2001

John W. Johnson
Chairman, Texas Transportation Commission

Robert Nichols
Member, Texas Transportation Commission

Ric Williamson
Member, Texas Transportation Commission

Texas Department of Transportation
DeWitt C. Greer Building
125 E. 11th Street
Austin, Texas 78701

Re: SH 130 Local Financial Participation

Dear Chairman Johnson and Commission Members Nichols and Williamson:

There has been much debate about SH 130: alignment, freeway vs. toll expressway, local right-of-way contributions, etc. On one issue there is no debate. We all need SH 130 constructed as soon as possible. The time has come for all of us to pull together and begin this important project.

Over the last year, our jurisdictions have held bond elections asking our citizens to participate in funding a portion of the SH 130 right-of-way. The most recent election to bring local financial participation up to 50% was held last month by Travis County. All of these elections have passed overwhelmingly.

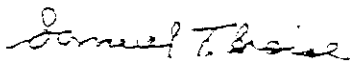
We applaud TxDOT's efforts to move SH 130 forward through the Exclusive Development Agreement process. We know it is time for our jurisdictions to step forward and provide our contributions to funding SH 130. We also know that it is more important for TxDOT to have our financial participation now than it is for us to buy right-of-way over the next 2-3 years.

For that reason we are prepared to recommend to our respective bodies that we deliver \$150.0 million to TxDOT by June 1, 2002 or thereafter as deemed necessary by TxDOT. This number is based on ROW and utility estimates provided last summer. These funds would be available for TxDOT to use for any purpose to forward the construction of SH 130. The source of these funds would be as follows:

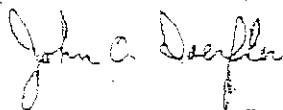
Travis County	\$90.0 million
Williamson County	\$45.0 million
City of Austin	\$15.0 million

While we will never agree to all of the terms and conditions of the SH 130 Minute Order, we do know that local funding is a critical component of the SH 130 funding equation. Each of our jurisdictions are planning to sell bonds early next year. We need to know as soon as possible if TxDOT is willing to accept our offer in order for these funds to be included in our Fiscal Year 2002 bond sales.

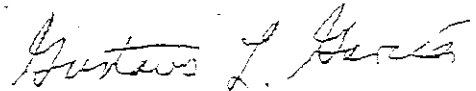
Last, we pledge our efforts to work with other jurisdictions along the SH 130 corridor to match our financial participation. Working together, we can make sure that SH 130 construction is initiated in Year 2002. We are ready to help and look forward to working with the State over the next several months to assure that SH 130 is finally built.



Judge Sam Biscoe
Travis County



Judge John Doerfler
Williamson County



Mayor Gus Garcia
City of Austin

cc: Michael W. Behrens, P.E., Executive Director, TxDOT
Phil Russell, P.E., Division Director, TIA
Travis County Commissioners Court
Williamson County Commissioners Court
City of Austin City Council

Memorandum

To: Eugene Taylor, County Attorney
Williamson County
From: Michael Weaver
Prime Strategies, Inc.
Regarding: Construction Bid Documents/Contracts
Date: May 6, 2002

Please find enclosed a redline version of the Williamson County Bond Program Bid Instructions, Special Conditions, General Conditions of Agreement, and Appendix A. As you recall these documents were reviewed and approved by your office late last year. The Commissioners Court then adopted these for use on all road bond project.

We have been using these documents for the projects currently being advertised and those under construction. Through this process we have worked with both the construction industry and our team to identify several areas to clarify and update. The recommended changes are highlighted in these revisions.

I would like to schedule Commissioners Court action to adopt these revisions as soon as possible. Because of our construction letting schedule, I would like for the Court to consider this item on May 21st. If you have any questions, please let me know.

Cc: Judge John Doerfler, w/attachments
Commissioner Mike Heiligenstein, Pct. 1, w/attachments
Commissioner Greg Boatright, Pct. 2, w/attachments
Commissioner David Hays, Pct. 3, w/attachments
Commissioner Frankie Limmer, Pct. 4, w/attachments

*Approved 6-11-02
John C. Doerfler*