Contract # CTIF-01-226
District # 7
Code Chart 64 # 50226
Project: Tom Green 2014 CTIF Award

**STATE OF TEXAS §**

**COUNTY OF TRAVIS §**

# COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT AGREEMENT

**THIS AGREEMENT** *is made by and between the State of Texas, acting by and through* the Texas Department of Transportation, called the "State", and Tom Green County, acting by and through its duly authorized officials, called the "County."

## WITNESSETH

**WHEREAS,** Transportation Code, Chapter 256, Subchapter C allows for the Texas Department of Transportation to make grants to counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production; and

**WHEREAS,** The County has submitted its application for the Grant funding from the State and its application was approved; and

**WHEREAS**, state law requires counties to meet certain contract standards relating to the management and administration of State funds; and

**WHEREAS**, the Governing Body of the County has approved entering into this agreement by resolution or ordinance which is attached to and made a part of this agreement as Attachment A; and

**NOW THEREFORE,** the State and the County agree as follows:

## AGREEMENT

**1. Agreement Period.** This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Projects are completed or unless terminated as provided below.

**2. Scope of Work.** The County shall complete the transportation infrastructure projects as proposed in its List of Transportation Infrastructure Projects defined in 3. below. The County shall place the transportation infrastructure projects on the county road system.

**3. List of Transportation Infrastructure Projects.** The County is responsible to review the list of projects listed on its previously submitted application for a grant from the fund and create a List of Transportation Infrastructure Projects prioritizing its choice of projects which can be performed with the grant amount awarded to the County by the State. Within thirty (30) calendar days after final execution of this agreement, the County shall submit to the State this List of Transportation Infrastructure Projects (in a format specified by the State). This List of Transportation Infrastructure Projects shall include an estimated month and year of starting construction and completing construction for each funded project including the estimated project cost for each project. During the term of this agreement, updates to the List of Transportation Infrastructure Projects may be made by the County. Updates can include changes in priority, changes in estimated cost, changes in month or year of starting

or completing construction, or adding or deleting projects. Any proposed new projects shall include the same information as was required for projects submitted as part of the application for a grant from the fund. Updated List of Transportation Infrastructure Projects or a statement of no material change to the previously submitted list shall be submitted to the State no less than semi-annually. Any update to the List of Transportation Infrastructure Projects requires written concurrence from the State to the County.

**4. Project Sources, Uses of Funds, and Reimbursement.**

a. The State has authorized the total amount of grant award from the fund as shown in Attachment B, Amount of Grant Award and Funding Commitments, which is attached to this agreement. The expected cash contributions from the State, the County, or other parties are shown in Attachment B. The State will reimburse only for allowable project costs for this program in accordance with 43 TAC § 15.192. The County must be in compliance with the requirements of this agreement to receive reimbursement of project costs.

b. The County shall submit monthly billing statements or a statement that no construction or maintenance work was performed during the previous month, in accordance with procedures defined by the State, accompanied by a certification of work performed during the previous month. Along with the billing statements submitted by the County, it shall submit copies of all paid invoices and/or force account documentation. Within thirty (30) days of receipt of a complete billing statement and supporting documentation, the State will reimburse the County.

c. The County shall not commence construction of a funded transportation infrastructure project prior to receipt of written approval from the State in accordance with procedures defined by the State.

d. If the County commences performance on a transportation infrastructure project but fails to complete the project, the State may seek reimbursement of all money received by the County for that individual transportation infrastructure project.

e. For each transportation infrastructure project located on the State highway system, the County shall contribute to the State (from the amount awarded to the County from the fund and the County's matching funds) an amount equal to the allowable costs incurred by the State for that project.

f. The County may submit in writing to the State a proposed amendment during the term of this agreement changing the order of projects on its List of Transportation Infrastructure Projects or identifying additional project(s) or extended limits on an approved project that contains all information required by rule for that project. If funds are available within the amount awarded to the County, the State may execute the proposed amendment allowing the County to use the available funds in the revised order, for the additional project(s), or for extended limits on an approved project in the County.

g. 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.

**5. Project Responsibilities**. The County is responsible for all aspects of the work constituting this Project or list of projects unless otherwise indicated in this agreement. In order to obtain reimbursement for eligible expenses from the State, the County shall certify to the State in accordance with procedures defined by the State that they have complied with all program requirements and applicable federal, state, and local laws and regulations.

**6. Final Inspection**. The County shall perform final inspection and acceptance of each transportation infrastructure project when it is complete. The County shall send a copy of a document evidencing inspection and acceptance of the project to the State within thirty (30) days after the inspection is completed.

**7. Right of Way and Real Property Acquisition**. The County shall comply with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601et seq.

**8. Suspension**. If the State determines that the County has not been complying with 43, TAC, Part I, Chapter 15, Subchapter O, the State may prohibit the County from continuing with all projects on the List of Transportation Infrastructure Projects until the County complies.

**9. Termination of this Agreement**. This agreement shall remain in effect until the transportation infrastructure projects identified in the most current List of Transportation Infrastructure Projects with concurrence from the State are completed and accepted by all parties, unless the:

a. Agreement is terminated in writing with the mutual consent of the parties; or
b. Agreement is terminated because the County has breached the agreement for Failure to *Comply as stated in Paragraph 16*.

**10. Environmental Permitting and Regulatory Issues**.

a. The County must comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements.
b. The County is responsible for coordination and environmental clearance.
c. The County is responsible for identification and assessment of any environmental problems associated with the project(s) and for the cost of any environmental problem's mitigation and remediation.
d. The County is responsible for providing any required public meetings or public hearings for assessing and mitigating environmental issues.
e. The County shall provide the State with written certification by a qualified professional that all identified environmental problems have been remediated and that all required permits and clearances from appropriate regulatory agencies have been obtained.

**11. Compliance with Texas Accessibility Standards and ADA**. The County shall ensure that the plans for and the construction of the transportation infrastructure projects subject to this agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Texas Government Code, Chapter 469, Elimination of Architectural Barriers. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.). The County shall provide written

certification to the State of compliance, or non-applicability, for each transportation infrastructure project.

**12. Project Maintenance**. The County shall maintain any roadway on the County system constructed under this Agreement after completion of the proposed work.

**13. Historically Underutilized Business (HUB) Program Requirements**. The County shall comply with all applicable requirements of the Comptroller of Public Accounts (CPA) Historically Underutilized Business (HUB) Program.

**14. Grant Management Standards**. The County must comply with the Uniform Grant Management Standards promulgated by the Office of the Governor under 34 TAC Part 1, Chapter 20, Subchapter I – Comptroller.

**15. Certification**.
Within sixty (60) days after the completion of a listed transportation infrastructure project, the County must submit a written certification to the State in accordance with procedures defined by the State that it has complied with the requirements for this grant awarded under 43 TAC, Part 1, Chapter 15, Subchapter O, including a certification that the project has been constructed in accordance with all applicable requirements, laws, rules and requirements. The Certification must describe the allowable costs for the project and the amount reimbursed from the fund.

**16. Failure to Comply.**

a. If the State determines that the County has not complied with one or more material requirements of the grant rules, the State may prohibit the County from participating in the program.
b. The prohibition from participating may continue until the State determines that the County has complied with all material requirement of the applicable rule.
c. The State may remove the County's project or projects from participation in the program if the project(s) is not let or begun as force account work within three (3) years of the execution of this agreement or within another reasonable period agreed to by the State and the County.
d. Prior to exercising any remedies above or the remedy regarding reimbursement in 4.d., the State will provide a written notice to the County identifying the applicable requirement and specifying the failure to comply.
e. The County may respond in writing to the State with a reasonable schedule for the County's timely compliance with the applicable requirement, or if compliance is not practical, with an alternative proposal that is acceptable to the State. Should the County fail to deliver an acceptable response to the State within thirty (30) days after the date that the County received the notice, the State may proceed with the applicable remedies allowed by rule.

**17. Amendments**. An amendment to this agreement must be in writing and executed jointly by the State and the County.

**18. Remedies.** This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

**19. Notices.** All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to the party at the following addresses:

| County: | State: |
|---|---|
| Judge Stephen C. Floyd | Texas Dept. of Transportation |
| Tom Green County | Director – Contract Services Office |
| 112 West Beauregard | 125 E. 11th Street |
| San Angelo, Texas 76903 | Austin, Texas 78701-2483 |

All notices shall be deemed given on the date delivered or deposited in the regular mail, unless otherwise provided in this agreement. 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 the request shall be honored and carried out by the other party.

**20. 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.

**21. Responsibilities of the Parties.**

a. The State and the County agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.
b. To the extent permitted by law, the County agrees to indemnify and save harmless the State, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the Project by the County, its contractors, subcontractors, agents and employees, and from any claims or amounts arising or recovered under the Workers' Compensation Laws; the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.
c. The parties expressly agree that this project is not a joint venture or enterprise. However, if a court should find that the parties are engaged in a joint venture or enterprise, then the County agrees to pay any liability adjudicated against the State for acts and deeds of the County, its employees or agents during the performance of this Project.
d. The County shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting any claim or liabilities which may be imposed on the State as a result of activities by the County, its agents, or employees.

e. Should the County's transportation infrastructure project require the County or its contractor to perform any work on State right of way, the County, by contract, shall require each: (1) contractor and subcontractor it may hire to secure a policy of insurance in the maximum statutory limits for tort liability, naming the State as an additional insured under its terms; and (2) contractor it may hire to indemnify and hold harmless the County and the State from all claims, liability, and damages resulting from the contractor's performance under a contract to do work.

**22. Ownership of Documents.** Upon completion or termination of this agreement, all documents prepared by the State 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. All documents produced or approved or otherwise created by the County shall be made available to the State upon request by the State. The originals shall remain the property of the County.

**23. Compliance with Laws.** The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, permitting requirements, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the County shall furnish the State with satisfactory proof of this compliance.

**24. Sole Agreement.** This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

**25. Retention of Records and Inspection.** The County shall keep a complete and accurate record to document the performance of the work and to expedite any audit that might be conducted. The County shall maintain all books, documents, papers, accounting records and other documentation relating to costs. Records shall include, but not be limited to, diaries, materials received (invoices), test reports, manufacturer's certificates, warranties, change orders, and time extensions. The County shall make those materials available to the State or their duly authorized representatives for verification, review and inspection at its office during the contract period and for three (3) years from the date the final payment is received by the County or until any impending litigation, or claims are resolved.

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

**THIS AGREEMENT IS EXECUTED** by the State and the County in duplicate.

**THE COUNTY**

Signature

Stephen C. Floyd, County Judge
Printed Name and Title

5-20-14
Date

**THE STATE OF TEXAS**

Signature

Typed or Printed Name

Title

Date

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# ATTACHMENT A

## Resolution or Ordinance

**RESOLUTION BY THE COMMISSIONERS COURT OF TOM GREEN COUNTY, TEXAS, DESIGNATING AUTHORIZED REPRESENTATIVES AND SIGNATORIES TO ACT IN CERTAIN MATTERS PERTAINING TO THE COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM.**

**WHEREAS**, Tom Green County has received a Total Eligible Grant Award Notification related to the County Transportation Infrastructure Fund ("TIF") Grant Program from the Texas Department of Transportation ("TxDOT"); and

**WHEREAS** the Commissioners Court of Tom Green County has determined that it is in the best interests of the citizens of the County to enter into an Agreement with TxDOT concerning the County TIF Grant Program; and

**WHEREAS** TxDOT has created County TIF Grant Program Implementation Procedures that Tom Green County is required to follow to receive the grant funding; and

**WHEREAS**, TxDOT requires that execution of various County TIF Grant-related documents by County representatives be authorized by the Court.

**THEREFORE, IT IS RESOLVED BY THE COMMISSIONERS COURT OF TOM GREEN COUNTY, TEXAS, THAT:**

1. The County Judge is authorized as the County's official representative in any correspondence or discussion between the County and TxDOT related to the County TIF Grant Program and is authorized to sign the following documents on behalf of the County: County TIF Grant Agreement after approval by TxDOT and by the Commissioners Court; Certification Form 1; Invoices (TxDOT reimbursement requests); and any County TIF Grant Agreement amendments approved by the Court.

   The County Judge shall maintain full discretion in signing any document related to the County TIF Grant Program and shall not be compelled to certify any statement related to the County TIF Grant Program unless satisfied that to the best of his knowledge such statements are true and correct. The County Judge is authorized to establish internal controls that may include additional review and signature requirements for documents related to the County TIF Grant Program.

2. The County Commissioners are authorized to sign the following documents on behalf of the County for Transportation Infrastructure Projects located within their respective precincts: Certification Form 2; Certification Form 3; and Individual Project Billing Sheets.

   A County Commissioner shall maintain full discretion in signing these documents and shall not be compelled to certify any statement related to the County TIF Grant Program unless satisfied that to the best of his or her knowledge such statements are true and correct.

**ADOPTED THIS 29 DAY OF APRIL, 2014, BY THE COMMISSIONERS COURT OF TOM GREEN COUNTY, TEXAS.**

Absent
Judge Stephen C. Floyd

Ralph Hoelscher
Commissioner Ralph Hoelscher, Pct. 1
County Judge Pro-Tem

Commissioner Aubrey deCordova, Pct. 2

Rick Bacon
Commissioner Rick Bacon, Pct. 3

Commissioner Bill Ford, Pct. 4

ATTEST:

Elizabeth McGill
Elizabeth McGill, County Clerk

COMMISSIONERS' COURT, TOM GREEN COUNTY, TEXAS

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# ATTACHMENT B

## Amount of Grant Award and Funding Commitments

**County of:** Tom Green

**Amount of Grant Funds Awarded by State:** $ $462,441

**Minimum amount of County Matching Funds*:** $ $115,610

* The State Share will be 90% for counties determined to be "economically disadvantaged" by Transportation Code 222.053. These counties will have a minimum of 10% county matching funds. The State Share will be 80% for counties not determined to be "economically disadvantaged" by Transportation Code 222.053. These counties will have a minimum of 20% matching funds.