

APPENDIX 3-D

Relief from Local Match Requirements in Economically Disadvantaged Counties

**Relief from Local Match Requirements in
Economically Disadvantaged Counties**

Applicant Handbook



**Texas Department of Transportation
FY 1999**

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INTRODUCTION

This handbook is designed to explain the rules for the relief from local match requirements in economically disadvantaged counties as described in Sections 15.51-15.55 of the Texas Administrative Code. It also provides application assistance to those interested in applying for relief from local match requirements. Additional information and assistance may be obtained by contacting the local district office of the Texas Department of Transportation (TxDOT).

BACKGROUND

Senate Bill 370 of the 75th Legislature amended the Transportation Code to:

require the [Texas Transportation] commission, when evaluating a proposal for a highway improvement project in a local government that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the local government's effort and ability to meet the requirement.

Texas Administrative Code rules implementing the legislation became effective January 1, 1998. Title 43, Texas Administrative Code, Sections 15.50-15.56, describe federal, state, and local responsibilities for cost participation in highway improvement projects. The rules prescribe criteria the commission will consider in evaluating a request for an adjustment. Section 15.55 prescribes cost participation ratios for local governments in those projects.

DEFINITION

The legislation defines an economically disadvantaged county as a county that has, in comparison to other counties in the state,

- below average per capita taxable property value,
- below average per capita income, **and**,
- above average unemployment.

Economically disadvantaged counties will be identified by TxDOT for each fiscal year based on data obtained from the Texas Comptroller of Public Accounts. After the determinations are made, the Transportation Planning and Programming (TPP) division will notify each of TxDOT's local district offices that contain all or a portion of an economically disadvantaged county.

PROJECT ELIGIBILITY

To be eligible, an on-system project must be both commission-authorized and unlet. An off-system project is eligible if it is unlet and commission authorized or approved within a district bank balance program.

APPLICATION PROCESS

The application process for adjusting the local match for projects in economically disadvantaged counties consists of completing the appropriate application forms by a representative of a local eligible government, submission of the application packet to TxDOT and review and action by the Texas Transportation Commission (commission).

The following outline briefly describes the steps to be taken by each governmental entity in the application process.

1. Local official of a governmental entity in an economically disadvantaged county submits completed forms to the local TxDOT district office.
2. The local TxDOT district office forwards the completed forms to TPP in Austin.
3. TPP reviews all the applications and prepares them to be presented to the commission for their review and action once a quarter.
4. The commission takes action.
5. TPP contacts the local TxDOT district offices with the results of the commission action.
6. The local TxDOT districts contact the respective local government officials who submitted a request with the commission results.

Two forms are required for an application packet to be complete: the project information sheet and an affidavit. The forms are not part of this handbook, but will be provided along with it. The project information sheet is also available as a Word 6.0 electronic file, which may be obtained by contacting the local TxDOT district office.

The Project Information Sheet requires information pertaining to the project for which the relief from the local match requirement is requested. The project's location and limits, scope, costs and adjustment rational, among other items, must be provided.

The Affidavit certifies that the information is true and correct; it must be notarized before being submitted to TxDOT.

NOTE: Incomplete forms may be returned to the applicant potentially resulting in significant delays in processing the request.

APPENDIX 1: Economically Disadvantaged Counties, Fiscal Year 1999

County	TxDOT District		County	TxDOT District
Bee	Corpus Christi		Leon	Bryan
Brooks	Pharr		Marion	Atlanta
Brown	Brownwood		Maverick	Laredo
Cameron	Pharr		Mitchell	Abilene
Cass	Atlanta		Morris	Atlanta
Coleman	Brownwood		Newton	Beaumont
Cottle	Childress		Nolan	Abilene
Crosby	Lubbock		Palo Pinto	Fort Worth
Culberson	El Paso		Presidio	El Paso
Dawson	Lubbock		Red River	Paris
Dickens	Childress		Reeves	Odessa
Dimmitt	Laredo		Robertson	Bryan
Duval	Laredo		Sabine	Lufkin
Ector	Odessa		San Augustine	Lufkin
El Paso	El Paso		San Patricio	Corpus Christi
Franklin	Paris		Starr	Pharr
Frio	San Antonio		Tyler	Beaumont
Grimes	Bryan		Upshur	Atlanta
Hall	Childress		Uvalde	San Antonio
Harrison	Atlanta		Val Verde	Laredo
Hidalgo	Pharr		Ward	Odessa
Jim Hogg	Pharr		Webb	Laredo
Jim Wells	Corpus Christi		Willacy	Pharr
Kinney	Laredo		Winkler	Odessa
Kleberg	Corpus Christi		Wood	Tyler
Liberty	Beaumont		Zavala	Laredo
La Salle	Laredo			

APPENDIX 2: Contacts

The addresses and contact phone numbers for the local TxDOT district offices:

Abilene P.O. Box 150 Abilene, Texas 79604-0150 (915) 676-6800	Amarillo P.O. Box 2708 Amarillo, Texas 79105-2708 (806) 356-3200	Atlanta P.O. Box 1210 Atlanta, Texas 75551-1210 (903) 796-2851
Austin P.O. Drawer 15426 Austin, Texas 78761-5426 (512) 832-7000	Beaumont 8350 Eastex Freeway Beaumont, Texas 77708 (409) 892-7311	Brownwood 2495 Highway 183 North Brownwood, Texas 76802 (915) 646-2591
Bryan 1300 North Texas Avenue Bryan, Texas 77803-2760 (409) 778-2165	Childress P.O. Box 900 Childress, Texas 79201-0900 (940) 937-2571	Corpus Christi P.O. Box 9907 Corpus Christi, Texas 78469-9907 (512) 808-2300
Dallas P.O. Box 3067 Dallas, Texas 75221-3067 (214) 320-6100	El Paso P.O. Box 10278 El Paso, Texas 79994-0278 (915) 774-4200	Fort Worth P.O. Box 6868 Fort Worth, Texas 76115-0868 (817) 370-6500
Houston P.O. Box 1386 Houston, Texas 77251-1386 (713) 802-5000	Laredo 1817 Bob Bullock Loop Laredo, Texas 78043 (956) 712-7400	Lubbock P.O. Box 771 Lubbock, Texas 79408-0771 (806) 745-4411
Lufkin 1805 North Timberland Dr. Lufkin, Texas 75901 (409) 634-4433	Odessa 3901 E. U.S. Highway 80 Odessa, Texas 79761 (915) 332-0501	Paris 1365 N. Main Street Paris, Texas 75460-2697 (903) 737-9300
Pharr P. O. Drawer EE Pharr, Texas 78577-1231 (956) 702-6100	San Angelo 4502 Knickerbocker Rd. San Angelo, Texas 76904 (915) 944-1501	San Antonio P.O. Box 29928 San Antonio, Texas 78284-3601 (210) 615-1110
Tyler 2709 W. Front St. Tyler, Texas 75702-7712 (903) 510-9100	Waco P.O. Box 1010 Waco, Texas 76703-1010 (254) 867-2700	Wichita Falls 1601 Southwest Pkwy Wichita Falls, Texas 76302-4906 (940) 720-7700
Yoakum P.O. Box 757 Yoakum, Texas 77995-0757 (512) 293-4300		

APPENDIX 3: Rules

CHAPTER 15-Transportation Planning and Programming, Subchapter E. Federal, State, and Local Participation

§15.50. Purpose. This subchapter describes federal, state, and local responsibilities for cost participation in highway improvement projects.

§15.51. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commission - The Texas Transportation Commission.
- (2) Congestion Mitigation and Air Quality Improvement Program (CMAQ) - A federal program, established and administered in accordance with 23 United States Code §104 and federal regulations, which provides federal funds for a project in a non-attainment area that contributes to the attainment of a natural ambient air quality standard or will have certified benefits to air quality.
- (3) Construction cost - All direct and indirect costs identified by the department's cost accounting system to a highway improvement project, other than for right of way acquisition, preliminary engineering, and construction engineering.
- (4) Construction engineering cost/expenses - Engineering or project administration costs and expenses incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement project after contract award.
- (5) Department - The Texas Department of Transportation.
- (6) District office - One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.
- (7) Economically disadvantaged county - As determined from data provided to the department by the Texas Comptroller of Public Accounts at the beginning of each fiscal year, a county that has, in comparison to other counties in the state:
 - (A) below average per capita taxable property value;
 - (B) below average per capita income; and
 - (C) above average unemployment.

- (8) Eligible utilities – Costs of utility adjustments, required by a highway improvement project, that are eligible, in accordance with federal and state law, for reimbursement by the department.
- (9) Executive director – The executive director of the department, or a designee not below the level of deputy executive director or assistant executive director.
- (10) Farm and Ranch to Market (FM/RM) System Route - A road on the system of roads designated by the commission under Transportation Code, §201.104.
- (11) Federal funds - Financial assistance provided by the federal government for highway improvement projects.
- (12) Highway improvement project - A project which provides for the design, construction, improvement, or enhancement of a public road, including bridges, culverts, or other necessary structures related to public roads, either on or off the state highway system.
- (13) Incremental payments – A local government’s payment of its funding share in a manner other than the standard payment provision provided in §15.52(6)(A) of this title (relating to Agreements), including an initial payment made in accordance with that section, followed by payment of the remaining amount at a time established in the funding agreement, or periodic payments made in accordance with the schedule established in the funding agreement.
- (14) Local government - Any county, city, other political subdivision of this state, or special district that has the authority to finance a highway improvement project.
- (15) Local participation – Minimum financial assistance provided by a local government to participate in costs associated with highway improvement projects.
- (16) Matching funds/participation ratio - Those portions of funds required or chargeable for the contribution toward a highway improvement project's cost by a local government.
- (17) Metropolitan highway – A local road or street which compliments the state highway system, as designated by the commission.
- (18) Metropolitan planning organization (MPO) - An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.
- (19) National Highway System (NHS) - A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those

principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.

- (20) National System of Interstate and Defense Highways (Interstate Highway System) - A system of roads and bridges that constitute a part of the National Highway System designated by the United States Congress as essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.
- (21) Off-State Highway System Bridge Program - A federally mandated program by which federal funds are made available to replace or rehabilitate bridges under the jurisdiction of a local government and not on the state highway system, administered in accordance with criteria set forth under federal law and regulations and state law, safety standards, design standards, and construction standards.
- (22) Off-state highway system routes - Those routes not designated on the state highway system which are the responsibility of local governments.
- (23) Off-State Highway System Safety Program - A federally mandated program by which federal funds are made available for safety improvements to facilities under the jurisdiction of a local government and not on the state highway system, administered in accordance with criteria set forth under federal law and regulations and state law, safety standards, design standards, and construction standards.
- (24) On-State Highway System Bridge Program - A federally mandated program by which federal funds are made available to replace or rehabilitate bridges on the state highway system in accordance with criteria set forth under federal law and regulations and state law, safety standards, design standards, and construction standards.
- (25) On-State Highway System Safety Program - A federally mandated program by which federal funds are made available for safety improvements on the state highway system in accordance with criteria set forth under federal law and regulations and state law, safety standards, design standards, and construction standards.
- (26) Phase 1 Trunk System Corridor – Corridors of the Texas Trunk System prioritized for project development by the commission.

- (27) Preliminary engineering cost/expenses - Costs and expenses incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement project before contract award.
- (28) Principal Arterial Street System (PASS) Program - A commission approved program to improve urban arterial streets designated on the state highway system to relieve major traffic corridors and enhance total system operations in urban areas over 200,000 in population.
- (29) Reconstruction - The primary activities involving the rebuilding of a segment of highway along the existing route as well as those associated with the acquisition of rights of way where necessary to upgrade to current standards.
- (30) Rehabilitation - The primary activities to restore, or re-establish in good condition, a segment of highway (not including the construction of additional travel lanes, other than high occupancy vehicle lanes or auxiliary lanes).
- (31) Reservoir agency - A public or private agency that has the authority to construct, maintain, or operate a reservoir facility.
- (32) Right of way costs - All direct and indirect costs identified by the department's cost accounting system for the acquisition of land or an interest in land necessary for the development of a highway improvement project (including access rights to abutting properties and usually including eligible utility relocation/adjustment costs).
- (33) Right of way procurement - That process identified with the acquisition of real property, access rights, mineral rights, and easements permitted in accordance with state law for the construction of approved highway improvement projects.
- (34) State funds - Money received by the department, other than federal funds or local participation, to be expended for highway improvement projects.
- (35) State highway system - The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Transportation Code, §201.103.
- (36) State highway system routes - Those state numbered routes designated as a part of the state highway system.

- (37) State Park Road Program - A program by which state funds are utilized to construct roads within or adjacent to public facilities administered by the Texas Parks and Wildlife Department.
- (38) Surface Transportation Program (STP) - A federal-aid program where states may obligate federal funds to projects related to certain public roads, in accordance with the criteria established in federal law and regulations.
- (39) Texas Trunk System – A rural highway network as defined in §15.41 of this title (relating to Definitions).
- (40) Transportation Enhancement Program - A federally mandated program identified in §11.200 et seq. of this title (relating to Statewide Transportation Enhancement Program), providing federal funding for activities that enhance the intermodal transportation systems and facilities within the state for the enjoyment of the users of those systems.
- (41) United States (U.S.) System Route - Those routes designated on the state highway system as U.S. highways and eligible for federal-aid funds as set forth in federal law and regulations.
- (42) Urban Road System - A commission designated system of routes that consist of the continuation of Farm to Market Roads in urban areas over 50,000 in population.
- (43) Urban Streets Program - A state program of projects, designated by the commission, on certain urban streets developed and constructed in accordance with state law and safety, design, and construction standards.
- (44) Urbanized area - As defined in 23 United States Code §101, an area with a population of 50,000 or more designated by the United States Bureau of Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, and subject to the approval of the United States Secretary of Transportation.
- (45) Utility relocation/adjustment costs - Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and §21.31 et seq. of this title (relating to Utility Accommodation).

§15.52. Agreements. When a local government or reservoir agency is responsible for providing financial assistance for a highway improvement project, the department and the local

government or reservoir agency shall enter into an agreement before any work is performed. The agreement will include, but not be limited to, the following provisions of this section.

- (1) Right of entry. If the local government or reservoir agency is the owner of the project site, it shall permit the department or its authorized representative access to occupy the site to perform all activities required to execute the work.
- (2) Right of way and/or utility relocation/adjustments. The local government will provide all necessary right of way and utility relocation/adjustments, whether publicly or privately owned, in accordance with §15.55 of this title (relating to Construction Cost Participation). When specified, the reservoir agency will provide all necessary right of way and utility/relocation adjustments, whether publicly or privately owned. Existing utilities will be relocated and/or adjusted with respect to location and type of installation in accordance with the requirements of the department as specified in §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and §21.31 et seq. of this title (relating to Utility Accommodation).
- (3) Funding arrangement. The agreement will specify the type of funding share arrangement agreed upon by the department and the local government. The funding share arrangement shall include any adjustments required by §15.55 of this title (relating to Construction Cost Participation). The funding arrangement agreed upon by the department and the reservoir agency will be as specified under §15.54(f) of this title (relating to Construction).
 - (A) Standard. The local government is responsible for all, or a specified percentage as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way as well as the direct cost for any work included which is ineligible for federal or state participation. When specified, the reservoir agency is responsible for all of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way as well as the direct cost for any work included which is ineligible for federal or state participation.
 - (B) Alternate. A fixed price funding arrangement may be used if requested by the local government and approved by the executive director.

- (i) Definition. Under this arrangement, a local government is responsible for a firm fixed price which is a lump sum price not subject to adjustment except:
 - (I) in the event of changed site conditions;
 - (II) if work requested by the local government is ineligible for federal participation; or
 - (III) as mutually agreed upon by the department and the local government.
- (ii) Conditions. The department may enter into a firm fixed price agreement only:
 - (I) for projects that include state participation, as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation); and
 - (II) if the fixed price is based on the estimated cost of the work for which the funds are received.
- (iii) Approval. In approving a request for an alternate funding arrangement, the executive director will consider:
 - (I) requests by the local government to include work which is ineligible for federal or state participation;
 - (II) need for expeditious project completion;
 - (III) type of work proposed and the ability to accurately estimate its cost; and
 - (IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.
- (4) Interest. The department will not pay interest on funds provided by the local government or the reservoir agency. Funds provided by the local government or the reservoir agency will be deposited into, and retained in, the state treasury.
- (5) Amendments. In the case of significantly changed site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department and the local government or reservoir agency will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government or reservoir agency.
- (6) Payment provision. The agreement will establish the conditions for payment by the local government or reservoir agency, including, but not limited to, the method of payment and the time of payment.

(A) Standard. Following execution of the agreement, the local government or reservoir agency will pay, as a minimum, its funding share for the estimated cost of preliminary engineering for the project. Prior to the department's scheduled date for contract letting, the local government or reservoir agency will remit to the department an amount equal to the remainder of the local government's or reservoir agency's funding share for the project.

(i) When the standard funding arrangement is used, after the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's or reservoir agency's funding share, then the department shall notify the local government or reservoir agency which shall transmit the required amount to the department. If it is found that the amount received is in excess of the local government's or reservoir agency's funding share, the excess funds paid by the local government or reservoir agency shall be returned.

(ii) When a fixed price funding arrangement is used, the lump sum price is not subject to adjustment except as provided for in paragraph (3)(B) of this section (relating to Agreements).

(B) Alternate. Incremental payments may be made if requested by the local government and approved by the executive director. When the standard funding arrangement is used, after the project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department shall notify the local government which shall transmit the required amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned. When a fixed price funding arrangement is used, the lump sum price is not subject to adjustment except as provided for in paragraph (3)(B) of this section (relating to Agreements).

(i) Conditions. The department may approve incremental payments only if:

- (I) the incremental payments sought are based on the estimated cost for the work for which the funds are received and payment is made in accordance with the schedule established in the funding agreement; and
 - (II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).
- (ii) Approval. In approving a request for incremental payments, the executive director will consider:
- (I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;
 - (II) past payment performance;
 - (III) need for expeditious project completion;
 - (IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and
 - (V) any other considerations relating to the benefit of the state, the public, and the operations of the department.
- (7) Termination. If the local government or reservoir agency withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government or reservoir agency is participating.
- (8) Responsibilities of the parties. The agreement shall identify the responsibilities of each party, including, but not limited to, preparing or providing construction plans, advertising for bids, awarding a construction contract, and construction supervision.
- (A) Local performance of construction work.
- (i) Request. If requested by a county or municipality and approved by the executive director or designee, an agreement with the commissioners court of a county or the governing body of a municipality may provide for minor improvement of the state highway system by county or municipal employees under direct county or municipal control, where minor improvements are to include:
 - (I) projects on a metropolitan highway not maintained by the department and not contained in the off-state highway system bridge program; or

- (II) projects or activities appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveway construction, landscaping, signs, lighting, guardrails and other items incidental to the roadway itself on facilities for which the department is responsible for maintenance.
- (ii) Approval. The executive director or designee may authorize a county or municipality to perform minor improvement of the state highway system, if the county or municipality commits in the agreement to comply with all federal, state and department requirements and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply. In approving a request from a county or municipality for minor improvement of the state highway system, the executive director or designee will consider:
 - (I) previous experience of the county or municipality in performing the type of work proposed;
 - (II) need for expeditious project completion;
 - (III) cost effectiveness of the proposal as compared to awarding the project through the competitive bidding process; and
 - (IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.
- (iii) Exceptions. The commission may authorize a county or municipality to perform other than minor improvement of the state highway system, if those improvements are determined to be in the best interest of the state, and the county or municipality commits in the agreement to comply with all federal, state and department requirements and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply. In approving a request, the commission will consider the criteria prescribed in clause (ii) of this subparagraph.
- (B) Local letting and management of construction projects.
 - (i) Request. A local government may submit a written request to the department to assume the responsibility for letting, construction, and construction management of a specific project.
 - (ii) Approval. The executive director may authorize a local government to award and manage a construction contract if:

- (I) the improvement is for a project not on the state highway system or is for a project on a metropolitan highway not maintained by the department;
 - (II) the project is not in the off-state highway system bridge program;
 - (III) the department lacks the expertise or resources necessary to award a construction contract in an efficient and timely manner;
 - (IV) the local government is found to be capable of awarding and managing the construction contract in a timely manner consistent with federal, state and department regulations; and
 - (V) the local government commits in the agreement to comply with all federal, state and department requirements and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply.
- (C) Acknowledgment. The local government or reservoir agency must acknowledge in the agreement that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

§15.53. Preliminary and Construction Engineering Expenses.

- (a) Purpose. This section defines the responsibility of local governments for preliminary engineering and construction engineering expenses associated with the development of highway improvement projects.
- (b) Funding. Preliminary and construction engineering expenses may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), and in accordance with criteria set forth by federal law and regulations. Any required local participation is subject to adjustment under §15.55 of this title (relating to Construction Cost Participation).

§15.54. Construction.

- (a) Purpose. This section describes the conditions under which state, federal and local financing of construction costs are to be shared.

- (b) Funding. Construction costs may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, as described in §15.55 of this title (relating to Construction Cost Participation), and in accordance with criteria set forth by federal and state law and regulations. The local government shall also be responsible for the total cost of any work included which is ineligible for federal or state participation as specified in §15.52 of this title (relating to Agreements).
- (c) Sidewalks. The department will also provide for sidewalk construction, accomplished in accordance with the requirements of the Americans with Disabilities Act and other applicable state and federal laws, on designated state highway system routes:
- (1) when replacing an existing sidewalk;
 - (2) where highway construction severs an existing sidewalk system (the state will make connections within highway right of way to restore sidewalk system continuity); or
 - (3) where pedestrian traffic is causing or is expected to cause a safety conflict.
- (d) Control of Access on Freeway Mainlanes.
- (1) For facilities with full control of access, such as interstate highways or freeways developed by commission designation pursuant to Transportation Code, Chapter 203, access to the main travel lanes is fully controlled through designation, purchase of access rights, or provision of frontage roads.
 - (2) The department will include frontage roads in the planning stage of highways with full access control when:
 - (A) it is necessary to unlandlock the remainder of a parcel of land which has a value equal to or nearly equal to the cost of the frontage road;
 - (B) the appraised damages, resulting from the absence of frontage roads at the time of planning, would exceed the cost of the frontage roads; or
 - (C) it is necessary to restore circulation of local traffic due to local roads or streets being severed or seriously impaired by the construction of the controlled access highway, and an economic analysis shows the benefits derived more than offset the costs of constructing and maintaining the frontage roads.
 - (3) In those instances where requests for additional frontage roads are received during or subsequent to the planning stage or after the freeway has been constructed, they may be considered and placed in order of the priority of highway needs.

- (A) When right of way and utility adjustment costs are shared with a local government on a standard participation basis applicable to the highway designation, the department may assume 100% responsibility for additional frontage road construction as follows:
- (i) on relatively short sections of frontage roads where through lane traffic is experiencing high accident rates due to local access and where such construction can be expected to substantially improve safety; or
 - (ii) in heavily traveled urban corridors where gaps occur in the existing frontage road systems, and closing these frontage road gaps will restore system continuity and provide a cost-effective method of enhancing traffic operations in the corridor.
- (B) The department may assist a requesting local government in the construction of additional frontage roads as follows:
- (i) where a usable section of frontage road that will be of benefit to the traveling public is to be developed (usable section being defined as an addition or extension from a cross road separation to cross road separation or connecting to a public roadway or major traffic generator);
 - (ii) where such frontage road construction is judged to not adversely impact existing traffic operations or safety;
 - (iii) where the department is responsible for design and construction of the added frontage roads; and
 - (iv) except as provided in subparagraph (E) of this paragraph, and as adjusted under §15.55 of this title (relating to Construction Cost Participation), when the requesting local government furnishes 100% of needed right of way and utility adjustment costs and 50% of the cost of construction, including preliminary and construction engineering.
- (C) The department may approve additional frontage road construction, which is 100% funded by the requesting local government as follows:
- (i) if the frontage road construction primarily provides new or improved access to abutting property and does not necessarily provide a usable section as defined

in subparagraph (B)(i) of this paragraph (a type of addition that would provide limited benefits to the general traveling public []); and

(ii) except as provided in subparagraph (E) of this paragraph, where the department is responsible for designing and constructing the frontage road and the requesting local government is responsible for 100% of the construction, right of way, and utility adjustment costs including preliminary and construction engineering.

(D) Where right of way costs are 100% the responsibility of the requesting local government, relocation assistance benefits will also be 100% the responsibility of the local government and must be accomplished in compliance with department policies and procedures.

(E) The department may waive any one or more of the cost conditions stated in subparagraphs (B)(iv) and (C)(ii) of this paragraph, provided that the waiver is first approved by written order of the commission. In approving a waiver, the commission will base its decision on consideration of the population level, bonded indebtedness, tax base, and tax rate of the local government involved, or other conditions the commission deems pertinent.

(4) For additional frontage roads requested subsequent to the planning stage or after the freeway has been constructed, control of access as originally conceived for the facility may be modified to allow access to the proposed frontage road only to the extent as may be permitted by safety considerations and in keeping with department policies and procedures. The sale or disposal of access rights shall be accomplished in accordance with §§21.101-21.104 of this title (relating to Disposal of Real Estate Interests).

(5) Access driveway facilities shall be for securing access to abutting property. Costs and provision thereof shall be in accordance with the criteria and responsibilities established in §§11.50-11.53 of this title (relating to Access Driveways to State Highways).

(e) Drainage Construction Costs.

(1) In general, it shall be the duty and responsibility of the department to construct, at its expense, a drainage system within state highway right of way, including outfalls, to

accommodate the storm water which originates within and reaches state highway right of way from naturally contributing drainage areas.

- (2) Where a drainage channel, man-made, natural, or a combination of both, is in existence prior to the acquisition of highway right of way, including right of way for widening the highway, it shall be the duty and responsibility of the state to provide for the construction of the necessary structures and/or channels to adjust or relocate the existing drainage channel in such a manner that the operation of the drainage channel will not be injured. The construction expense required shall be considered a construction item. The acquisition of any land required to accomplish this work shall be considered a right of way item, with cost participation to be in accordance with §15.55 of this title (relating to Construction Cost Participation).
- (3) Where an existing highway crosses an existing drainage channel, and a political unit or subdivision with statutory responsibility for drainage develops a drainage channel to improve its operation, both upstream and downstream from the highway, and after the state establishes that the drainage plan is logical and beneficial to the state highway system, and there is no storm water being diverted to the highway location from an area which, prior to the drainage plan, did not contribute to the channel upstream of the highway, and after construction on the drainage channel has begun or there is sufficient evidence to insure that the drainage plan will be implemented, the department, at its expense, shall adjust the structure and/or channels within the existing highway right of way as necessary to accommodate the approved drainage plan.
- (4) Where a state highway is in existence, and there is a desire of others to cross the existing highway at a place where there is not an existing crossing for drainage, then those desiring to cross the highway must provide for the entire cost of the construction and maintenance of the facility which will serve their purpose while at the same time adequately serving the highway traffic. The design, construction, operation, and maintenance procedures for the facility within state highway right of way must be acceptable to the department.
- (5) In the event the local government involved expresses a desire to join the department in the drainage system in order to divert drainage into the system, the local

government shall pay for the entire cost of collecting and carrying the diverted water to the state's system and shall contribute its proportional share of the cost of the system and outfall based on the cubic feet per second of additional water diverted to it when compared to the total cubic feet per second of water to be carried by the system. The local government requesting the drainage diversion shall indemnify the state against or otherwise acknowledge its responsibility for damages or claims for damages resulting from such diversion.

(f) Highway adjustments for reservoir construction.

- (1) Where existing highways and roads provide a satisfactory traffic facility in the opinion of the department and no immediate rehabilitation or reconstruction is contemplated, it shall be the responsibility of the reservoir agency, at its expense, to replace the existing road facility disturbed by reservoir construction in accordance with the current design standards of the department, based upon the road classification and traffic needs.
- (2) Where no highway or road facility is in existence but where a route has been designated for construction across a proposed reservoir area, the department will bear the cost of constructing a satisfactory facility across the proposed reservoir, on a line and grade for normal conditions of topography and stream flow, and any additional expense as may be necessary to construct the highway or road facility to line and grade to comply with the requirements of the proposed reservoir shall be borne by the reservoir agency.
- (3) In soil conservation and flood control projects involving the construction of flood retarding structures where a highway or road operated by the department will be inundated at less than calculated 50-year frequencies by the construction of a floodwater retarding structure, it will be expected that the soil conservation service or one of its cooperating agencies will provide funds as necessary to raise or relocate the road above the water surface elevation which might be expected at 50-year intervals. In those cases where a highway or road operated by the department will not be inundated by floods of less than 50-year calculated frequency, it will be the purpose of the department to underwrite this hazard for the general welfare of the state and

continue to operate the road at its existing elevation until such time as interruption and inconvenience to highway travel may necessitate raising the grade.

(g) Irrigation crossings.

(1) Where an irrigation facility is in existence prior to the acquisition of highway right of way, including right of way for widening, and the highway project will interfere with such a facility, the following provisions shall govern.

(A) If, at the place of interference, the irrigation facility consists primarily of an irrigation canal which crosses the entire width of the proposed right of way, this shall be considered a crossing and it shall be the duty and responsibility of the department to construct and maintain an adequate structure and to make the necessary adjustments or relocations of minor laterals and pumps, etc., associated with the crossing, in such a manner that the operation of the irrigation facility will not be injured. The construction work at a crossing will be considered a construction item with the expense to be borne by the department. The acquisition of any land required to accomplish the adjustments and/or relocation shall be a right of way consideration.

(B) Any irrigation facility encountered which does not cross the right of way and consists primarily of a longitudinal canal and/or associated irrigation appurtenances such as pumps, gates, etc., which must be removed and relocated shall be considered a right of way item.

(C) In those cases where both crossing and longitudinal adjustments or relocation of irrigation facilities are encountered, each segment shall be classified in accordance with subparagraph (A) and (B) of this paragraph.

(2) Where a highway is in existence, and there is a desire of others to cross the existing highway with an irrigation facility at a highway point where there is not an existing crossing facility, then those desiring to cross the highway must provide for the entire cost of the construction and maintenance of the irrigation facility which will serve their purpose while at the same time adequately serve the highway traffic. The design, construction, operation, and maintenance procedures for the facility within highway right of way must be acceptable to the department.

(h) Continuous and safety lighting systems and traffic signals. For the installation, maintenance, and operation of continuous and safety lighting systems and traffic signals, the local government shall be responsible for providing matching funds as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), except as adjusted under that section. Such installation, maintenance, and operation shall be accomplished in accordance with §25.5 of this title (relating to Installation, Operation, and Maintenance of Traffic Signals) and §25.11 of this title (relating to Continuous and Safety Lighting Systems).

§15.55. Construction Cost Participation.

- (a) Required cost participation. The commission may require, request, or accept from a local government matching or other funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives.
- (b) Exception. In evaluating a proposal for a highway improvement project in a local government that consists of all or a portion of an economically disadvantaged county, the commission shall, for those projects in which the commission is authorized by law to provide state cost participation, adjust the minimum local matching funds requirement after evaluating a local government's effort and ability to meet the requirement.
 - (1) Request for adjustment. The city council, county commissioners court, district board, or similar governing body of a local government that consists of all or a portion of an economically disadvantaged county shall submit a request for adjustment to the local district office of the department. The request will include, at a minimum:
 - (A) the proposed project scope;
 - (B) the estimated total project cost;
 - (C) a breakdown of the anticipated total cost by category (e.g., right-of-way, utility adjustment, plan preparation, construction);
 - (D) the proposed participation rate;
 - (E) the nature of any in-kind resources to be provided by the local government;
 - (F) the rationale for adjusting the minimum local matching funds requirement; and
 - (G) any other information considered necessary to support a request.

(2) Evaluation. In evaluating a request for an adjustment to the local matching funds requirement, and a local government's effort and ability to meet the requirement, the commission will consider a local government's:

- (A) population level;
- (B) bonded indebtedness;
- (C) tax base;
- (D) tax rate;
- (E) extent of in-kind resources available; and
- (F) economic development sales tax.

(c) The following Appendix A to this section establishes federal, state, and local cost participation ratios for highway improvement projects, subject to the availability of funds to the department. Figure 1: 43 TAC §15.55(c).

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Relief from Local Match Requirements

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> Project is on the Interstate Highway System 	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State
<ul style="list-style-type: none"> Project is on the State Highway System (except Farm to Market System, Urban Road System, PASS or Phase 1 Trunk System Corridor) 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> Project is on the Urban Road (UR) System 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% Local #6, #7 -or- 90% State #6 10% Local -or- 80% Federal #6 10% State 10% Local -or- 80% Federal #7 20% Local

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Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> • Project is on the Principal Arterial Street System (PASS)(except for existing US, SH & FM system routes) 	100% State -or- 80% Federal 20% State #1	100% State -or- 80% Federal 20% State #1	50% State 50% Local -or- 80% Federal 10% State #1 10% Local
<ul style="list-style-type: none"> • Project is not on the State Highway System and is not in the Urban Street Program 	100% Local -or- 80% Federal 20% Local #1	80% Federal 20% Local #1, #2	100% Local -or- 80% Federal 20% Local #1
<ul style="list-style-type: none"> • Project is not on the State Highway System and is: <ul style="list-style-type: none"> • within urbanized area > 50,000 and • in Urban Street Program 	100% Local	80% State 20% Local #3	100% Local

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Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> • Project is on the FM system: <ul style="list-style-type: none"> New FM Route Existing FM route 	100% State -or- 80% Federal 20% State 100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State 100% State -or- 80% Federal 20% State	100% Local 90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> • Project is on a Phase 1 Trunk System Corridor 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State
<ul style="list-style-type: none"> • State Park Road Program 	100% State	100% State	100% State

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Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> On State System Bridge Program 	100% State -or- 80% Federal 20% State	80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> Off State System Bridge Program 	80% Federal 10% State 10% Local	80% Federal 10% State 10% Local	100% Local
<ul style="list-style-type: none"> On State System Safety Program 	100% State -or- 90% Federal 10% State	90% Federal 10% State	100% State -or- 90% Federal 10% State
<ul style="list-style-type: none"> Off State System Safety Program If included in the Railroad Signal Safety Program 	90% Federal 10% Local 90% Federal 10% State	90% Federal 10% Local 90% Federal 10% State	90% Federal 10% Local 90% Federal 10% State
<ul style="list-style-type: none"> Transportation Enhancement Projects #4 	80% Federal 20% Local	80% Federal 20% Local	80% Federal 20% Local

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Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> • Traffic signal is: <ul style="list-style-type: none"> • on the State Highway System, and • population < 50,000 or • Traffic signal is: <ul style="list-style-type: none"> • on a freeway, on the State Highway System 	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State -or- 90% State 10% Local
<ul style="list-style-type: none"> • Traffic signal is: <ul style="list-style-type: none"> • on the State Highway System, and • population > 50,000 or • Traffic signal is: <ul style="list-style-type: none"> • off the State Highway System 	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local

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Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> Continuous Lighting Systems on the State Highway System #9 	100% State #5 -or- 80% Federal #5 20% State -or- 100% Local #5 -or- 50% State #8 50% Local -or- 40% Federal 10% State #8 50% Local	100% State #5 -or- 80% Federal #5 20% State -or- 100% Local #5 -or- 50% State #8 50% Local -or- 40% Federal 10% State #8 50% Local	100% State #5 -or- 80% Federal #5 20% State -or- 100% Local #5 -or- 50% State #8 50% Local -or- 40% Federal 10% State #8 50% Local
<ul style="list-style-type: none"> Safety Lighting on the State Highway System #9 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State

All participation ratios shown depict the minimum local participation for eligible costs.

NOTES:

#1 If any of the following conditions apply:

- a) the project is selected for NHS funding;
- b) the MPO (within an urbanized area > 200,000 population) elects to use Federal STP(MM) or CMAQ funds;
- c) the MPO (within urbanized area ≤ 200,000 population), in consultation with the district, elects to use Federal STP(UM) Funds; or
- d) the district, in consultation with the local governments (within urban area with population between 5,000 and 50,000), elects to use Federal STP(UM) Funds.

#2 The cost for all new storm sewer, curb and gutter, driveways, and sidewalks is included as part of project.

#3 The City will provide for storm sewers, curb and gutter, sidewalks, driveways, and environmental mitigation.

#4 Federal participation is limited to the amount authorized by the commission, not to exceed 80% of the eligible project costs.

#5 The local government assumes the entire cost of the subsequent operation and maintenance.

#6 In urbanized areas of less than 200,000 but more than 50,000 population, the participation will be:

- a) For new routes: 100% Local
- b) For projects on the existing state highway system, either:
 - 1) 100% Local
 - 2) 90% State, 10% Local; or
 - 3) 80% Federal, 10% State, 10% Local, if the District, in cooperation with the MPO, elects to use Federal STP(UM) funds.

#7 In urbanized areas of greater than 200,000 population, the participation will be:

- a) 100% Local; or
- b) 80% Federal, 20% Local, if the MPO elects to use Federal STP(MM) or CMAQ funds.

#8 Maintenance costs to be shared 50% State, 50% Local.

#9 See 43 TAC §25.11 for additional information regarding continuous and safety lighting systems.