



## MULTIPLE USE AGREEMENT

STATE OF TEXAS     §

COUNTY OF TRAVIS §

**THIS AGREEMENT** made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and Brazoria County, hereinafter called the County, party of the second part, is to become effective when fully executed by both parties.

### WITNESSETH

**WHEREAS** on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the governing body for the County, entered into Order No. \_\_\_\_\_ hereinafter identified by reference, authorizing the County's participation in this agreement with the State; and

Brazoria County

**WHEREAS** the County has requested the State to permit the construction, maintenance, and operation of a public Boat Ramp on the highway right of way, ROADWAY FM 2004, CONTROL SECTION NO. 2523-02-074.

(General description of area including either the control number or GPS coordinates.) Boat Ramp construction cannot be concurrent to any existing or future construction at or near the FM 2004 Chocolate Bayou Bridge. All construction of the boat ramp will adhere to the conditions set forth in \_\_\_\_\_ the \_\_\_\_\_ issued \_\_\_\_\_ Environmental Permits. Shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

**WHEREAS** the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the County will enter into agreements with the State for the purpose of determining the respective responsibilities of the County and the State reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### **1. DESIGN AND CONSTRUCTION**

The County will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State. Any sidewalks, curb ramps and other pedestrian elements to be constructed, either on site or off site, by the County, shall be in accordance with the requirements of Title II of the Americans With Disabilities Act (ADA) and with the Texas Accessibility Standards (TAS). Elements constructed by the County and found not to comply with ADA or TAS shall be corrected at the entire expense of the County.

### **2. INSPECTION**

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

### **3. PARKING REGULATIONS**

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1<sup>1</sup>/<sub>2</sub> ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

#### 4. PROHIBITION/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

#### 5. RESPONSIBILITIES

Timely maintenance, repair and operation of the facility shall be entirely the responsibility of the \_\_\_\_\_ County \_\_\_\_\_. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. These responsibilities expressly include the timely maintenance and repair of any portion of the facility necessary to comply with the Americans with Disabilities Act. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow. If the State determines that the \_\_\_\_\_ County \_\_\_\_\_ has failed to comply with these responsibilities, it will perform the necessary work and charge the \_\_\_\_\_ County \_\_\_\_\_ the actual cost of the work.

#### 6. FEES

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

A. Retention Period. The \_\_\_\_\_ County \_\_\_\_\_ shall maintain all books, documents, papers, accounting records and other evidence pertaining to fees collected and costs (hereinafter called the Records). The \_\_\_\_\_ County \_\_\_\_\_ shall make the records available during the term of the Agreement and for four years from the date the Agreement is terminated, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

B. Audit Report. If fees are collected by the \_\_\_\_\_ County \_\_\_\_\_ for use of the facility under this agreement, the \_\_\_\_\_ County \_\_\_\_\_ will provide the State an annual audit report detailing the fees collected for the use of the facility and the costs associated with constructing, maintaining, and operating the facility within the same period. If the report shows more fees collected than expenses for the construction, or maintenance of the facility the \_\_\_\_\_ County \_\_\_\_\_ must provide a multiple year plan detailing how the additional revenue will be used for construction, operation,

or maintenance of the facility.

C. Availability. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the County's records that are directly pertinent to this Agreement for the purpose of making audits and examinations.

## **7. TERMINATION NOTICE**

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice, and upon the exercise of any such right by either party, all obligations hereinto make improvements to said facility shall immediately cease and terminate and County shall be responsible for the facility's timely removal at no cost to the State. If the State determines that County has failed to timely remove the facility, it will perform the necessary work and charge County the actual cost of the work.

## **8. MODIFICATION/TERMINATION OF AGREEMENT**

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

## **9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS**

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

## **10. RESTORATION OF AREA**

The County shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The County shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

## **11. PREVIOUS AGREEMENTS**

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

## 12. INDEMNIFICATION

TO THE EXTENT ALLOWED BY LAW AND UP TO THE LIMITATIONS ON LIABILITY SET FORTH IN THE TEXAS TORT CLAIMS ACT, AS AMENDED THE County WILL INDEMNIFY THE STATE AGAINST ANY AND ALL DAMAGES AND CLAIMS FOR DAMAGES, INCLUDING THOSE RESULTING FROM INJURY OR DEATH OF PERSONS OR FOR LOSS OF OR DAMAGE TO PROPERTY, ARISING OUT OF, INCIDENT TO OR IN ANY MANNER CONNECTED WITH THE CONSTRUCTION, OPERATION OR MAINTENANCE OF THE FACILITY, WHICH INDEMNIFICATION SHALL EXTEND TO AND INCLUDE ANY AND ALL COURT COSTS, ATTORNEY'S FEES AND EXPENSES RELATED TO OR CONNECTED WITH ANY CLAIMS OR SUITS FOR DAMAGES AND SHALL, IF REQUESTED IN WRITING BY THE STATE TO DO SO, ASSIST THE STATE OR RELIEVE THE STATE FROM DEFENDING ANY SUCH SUITS BROUGHT AGAINST IT. THE INDEMNIFICATION OF THE STATE SHALL EXTEND FOR A PERIOD OF TWO (2) YEARS BEYOND THE DATE OF TERMINATION OF THIS AGREEMENT. No party to this agreement intends to waive, relinquish, limit, or condition its general governmental immunity from liability in any way.

Each party agrees and acknowledges that it is not an agent, servant, or employee of the other party and that under this provision each party is responsible only for its own acts and for those of its agents, servants, independent contractors, or employees. Such responsibility includes but is not limited to any claims or amounts arising or recovered under the "Workers Compensation Law," the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the County. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State. Furthermore, the County shall become fully subrogated to the State's rights of recovery and shall be entitled to maintain any action over and against any third party who may be liable for damages. The State agrees to execute and deliver instruments and papers and to otherwise do that which is necessary to secure such rights.

## 13. INSURANCE

The County, shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance, repair and operation of the facility. County shall include TxDOT as an additional insured by endorsement in County's commercial general liability insurance

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policy. Prior to beginning work on the State's right of way, the \_\_\_\_\_ County's construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) or appropriate certificate of self-insurance and shall maintain the required coverage during the construction of the facility.

#### **14. USE OF RIGHT OF WAY**

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

#### **15. ADDITIONAL CONSENT REQUIRED**

The State asserts only that it has sufficient title for highway purposes. The \_\_\_\_\_ County shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

#### **16. FHWA ADDITIONAL REQUIREMENTS**

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

#### **17. CIVIL RIGHTS ASSURANCES**

The \_\_\_\_\_ County, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the \_\_\_\_\_ County shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and reposess said land and the facilities thereon and

hold the same as if said agreement had never been made or issued.

## **18. AMENDMENTS**

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

## **19. 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, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

## **20. AUDIT**

The State may conduct an audit or investigation of any aspect of this agreement. The \_\_\_\_\_ County must provide the State with access to any information the State considers relevant to the investigation or audit. The audit can include, but is not limited to, any contract for construction or maintenance of any facility or structure authorized by this agreement or any contract to provide a service to the \_\_\_\_\_ County if that service is authorized by this agreement.

## **21. AUTHORITY OF STATE AUDITOR**

The State auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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.

## **22. NOTICES**

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

### **STATE**

Texas Department of Transportation  
Maintenance Division  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

### **Brazoria County**

Bryan Frazier  
Brazoria County Parks Dept.  
41871 State Highway 288  
Angleton, TX 77515

## **23. TIMELY PAYMENT**

When required by any provision of this agreement requires a payment to be made to the State, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the

State for the full cost of repairing any damages to the highway facility which may result from the other party's construction, maintenance, repair or operation of the facility.

#### **24. WARRANTS**

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

List of Attached Exhibits:

Exhibit A - General Layout

Exhibit B - Metes and Bounds Description

Exhibit C - Certificate of Insurance (TxDOT Form 1560)

Exhibit D - Attachment A (FHWA Additional Requirements)



**IN WITNESS WHEREOF**, the parties have hereunto affixed their signature, the

\_\_\_\_\_ County \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2025 and the,

State on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**STATE OF TEXAS**

\_\_\_\_\_  
Brazoria County

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
L.M. "Matt" Sebesta, Jr.  
Printed Name

\_\_\_\_\_  
County Judge  
Title

\_\_\_\_\_  
Brazoria County  
Agency

\_\_\_\_\_  
Contact Office and Telephone No.

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

By: \_\_\_\_\_  
Director, Maintenance Division

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
District Engineer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

## **ATTACHMENT A**

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.105.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
2. Any change in the authorized use of real property interest shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. Real property interest shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the real property interest facility ceases to be used or is abandoned.