

**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 the City of San Antonio , hereinafter called the “City”, 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 City, entered into Resolution/Ordinance No \_\_\_\_\_ here-in-after identified by reference, authorizing the City's participation in agreement with the State; and

**WHEREAS**, the City has requested the State to permit the construction, maintenance and operation of a public land bridge over and within the right of way of Wurzbach Parkway (PASS 1502-Control Section 7774-01), hereinafter referred to as the “Facility”, for the purpose of providing connectivity between two parts of Hardberger Park. The Location is shown graphically by the preliminary conceptual site plan in Exhibit “A”; and

**WHEREAS**, the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the City will enter into agreements with the State for the purpose of determining the respective responsibilities of the City and the State with 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 City will prepare or provide for the construction plans for the Facility, and will provide for the construction work as required by the plans at no cost to the State. The 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 specific layout. They shall also delineate and define the construction responsibilities of both parties hereto. All plans prepared by the City must comply with State approved specifications for highway facilities. The State may require the City to provide documentation and/or require attendance at such meetings as necessary to ensure all applicable requirements have been met. As this project provides a benefit to the state system, the State will not hold the City responsible for the direct State costs associated with their review.

Completed plans and specifications 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. Only when the State is satisfied all requirements have been met will the State issue the City a notice to proceed to the construction phase of the Facility. No access or construction will be allowed within State Right of Way without this notice to proceed.

The City will be responsible for ensuring the Facility complies with all applicable federal and state guidelines related to Environmental Assessment and mitigation. The City shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

The City shall coordinate the sequence of Facility construction and develop a traffic control plan, to ensure uninterrupted flow of traffic along the state roadway. The traffic control plan must be approved by the State at least forty-eight (48) hours prior to beginning the Facility construction.

The City is responsible for all costs of the design, construction, operation and maintenance of the Facility. The state will not participate in any costs associated with the Facility.

The City will be responsible for all costs necessary for the adjustment, removal, or relocation of any utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures. The City must obtain advance approval for any variance from established procedures.

At the completion of the construction phase of the Facility, the City will restore all existing elements within the right of way of Wurzbach Parkway to the condition the elements were on the day the notice to proceed was received by the City.

Upon completion of the project, the City will issue a "Notification of Completion" acknowledging the project's construction completion. The State will inspect the Facility and if the State finds that all elements of the construction plan have been satisfactorily completed and all other requirements under this clause have been met, the State will issue a letter of acceptance acknowledging the completion of the construction. The City may not release the contractor until the City has received the letter of acceptance from the State.

Any future revisions or additions to the Facility 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 City 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 City and found not to comply with ADA or TAS shall be corrected at the entire expense of the City.

## **2. INSPECTION/RIGHT OF ACCESS**

The State or its authorized representative has the right to access to the Facility site at any time to perform any inspection of the Facility or to perform activities related to the maintenance and operation of the State roadway. The City cannot prohibit the State's access to the Facility.

The City shall also allow the Federal Highway Administration personnel access to the Facility for purposes of inspection.

The City will supervise and inspect all work performed on the Facility and provide any engineering inspection and testing services as may be required to ensure that the construction and maintenance of the Facility is accomplished in accordance with the approved plans and specifications.

The State will perform an inspection on the Facility according to the State's pedestrian inspection guidelines in effect at the time of the inspection. The City shall allow all necessary access to the Facility and any required documentation to facilitate the inspection. The State will provide the City with copies of the Bridge Inspection Reports and Follow-up Action Worksheets.

The City is responsible for providing the original load rating at the time the Facility is open to pedestrian use and a maintenance manual to identify thresholds for when the City would need to reassess the load carrying capacity.

Any deficiencies of the Facility identified by a State or City inspection must be addressed by the City in a timely manner.

The State will have the authority to close the Facility to the public when highway maintenance operations are necessary, for the purpose of inspection or at any time the State determines that the Facility is unsafe.

### **3. PARKING REGULATIONS**

Parking will not be allowed on the Facility or any portion of the state right of way adjacent to the Facility. The City shall enforce the no parking requirement.

### **4. PROHIBITION/SIGNS**

Regulations shall be established prohibiting the parking of vehicles 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 Facility will be prohibited. All signs shall be approved by the State prior to the actual erection of the sign.

The City is responsible for the removal of all signs that do not comply with this provision.

### **5. MAINTENANCE RESPONSIBILITIES**

Timely maintenance, repair and operation of the Facility shall be entirely the responsibility of the City. 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, removal of graffiti, paint or signs, 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 at any time the maintenance of the Facility impacts the State's right of way or the Wurzbach Parkway the City must inform the State and provide a maintenance and traffic plan to alleviate the impact on the public. The maintenance cannot begin until the State has reviewed and approved the maintenance and traffic plan.

If the State determines that City has failed to comply with these responsibilities, it will perform the necessary work and charge City the actual cost of the work.

### **6. FEES**

The City cannot charge any fees for the use of the Facility.

## **7. TERMINATION UPON 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 herein to make improvements to the facility shall immediately cease and terminate and City shall be responsible for the Facility's timely removal at no cost to the State. If the State determines that City has failed to timely remove the Facility, it will perform the necessary work and charge City 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 the 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 City shall provide written notification to the State that such Facility will be discontinued for the purpose defined herein. The City shall, within a timeframe specified by the State, 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**

City agrees to hold and save the State of Texas free from damages that may result from construction of the project described herein. The indemnification of the state shall extend for a period of two (2) years beyond the date of termination of this agreement.

During each year while there is any liability by reason of the agreement contained in this subsection of this resolution, including the calendar year 2018, the City of San Antonio (city) shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls

of said entity, with full allowances being made for tax delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to pay any sums which may be or become due during any such year, in no instance to be less than two (2%) per cent of such obligation, together with interest thereon, because of the obligation herein assumed.

Said rate and amount of ad valorem tax is hereby ordered to be levied and is hereby levied against all taxable property in said entity for each year while any liability exists by reason of the obligation undertaken by this subsection of this resolution, and said ad valorem tax shall be assessed and collected each such year until all of the obligations herein incurred shall have been discharged and all liability hereunder discharged.

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 City. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State. Furthermore, the City 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 City 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. The City shall include TxDOT as an additional insured by endorsement in City's commercial general liability insurance policy. Prior to beginning work on the State's right of way, the City'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.

If at any time the State's use of the State owned right of way changes in a manner that requires the removal or alteration of the Facility, the State may terminate this agreement and will have no obligation to move, rebuild, or repair the Facility. If the Facility is removed by the State the City cannot seek reimbursement from the State for the cost of the original construction or any maintenance performed under this agreement.

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

The State asserts only that it has sufficient title for highway purposes. The City 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 City, 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 City 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 repossess 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 City 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 City 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:

|   |  |
|---|--|
| <b>City:</b><br>City of San Antonio<br>Attn: City Manager<br>PO Box 839966<br>San Antonio, TX 78283 | <b>State:</b><br><b><u>Legal Documents:</u></b><br>Texas Department of Transportation<br>Maintenance Division<br>125 E. 11 <sup>th</sup> Street<br>Austin, TX 78701-2483<br><b><u>Inquiries and Local Coordination:</u></b><br>Texas Department of Transportation<br>ATTN: Director of Transportation Planning & Development<br>4615 NW Loop 410<br>San Antonio, TX 78229-5126 |
|---|--|



### 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 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 - Approved Construction Plans

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  
City of San Antonio on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the  
State on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Name of other party)

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

Signature

**STATE OF TEXAS**

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.

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

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

\_\_\_\_\_  
Agency \_\_\_\_\_  
Date

**APPROVAL RECOMMENDED:**

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

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 airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace 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 airspace Facility ceases to be used or is abandoned.

EXHIBIT D