**STANDARD LEASE AGREEMENT**

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| **STATE OF TEXAS** | **§** |  |
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| **COUNTY OF**  | **§** | **LEASE NO.**  |

This lease is made and entered into this date, by and between the State of Texas acting through the Texas Department of Transportation ("the Department," or, "the State"), and name ("Lessee").

The Department is authorized to lease state highway assets pursuant to Chapter 202, Subchapter C, Section 202.052, of the Texas Transportation Code; and

The State is the owner of the real property situated in city, county, state, described on Exhibit "A" attached hereto, and made a part of this lease (“premises”);

Lessee wishes to lease the premises and the State desires to lease the premises to Lessee;

Now, therefore, in consideration of the mutual terms, covenants, and conditions set forth herein, the Department and Lessee hereby agree as follows:

ARTICLE 1. TERM

1.01 The term of this Lease is number years, months, or years and months, beginning on date (“Commencement Date”), and ending on date ("Term"), unless terminated sooner.

1.02 Except as provided in Article 11 of this lease, either of the parties may cancel this lease upon # of days or months written notice to the other party.

ARTICLE 2. RENT

2.01 **Rent.** Lessee shall pay to the State without demand, set off, or deduction, rent in the amount of $ amount per year or month, due and payable in advance on time for regular payment. The first installment shall be due and payable in advance of the Commencement Date in the amount of $amount.

2.02 **Method of payment.** Payment shall be made to the Department at its District office in      ,       County, Texas, or at such other place as the Department may from time to time direct by notice delivered to Lessee.

2.03 **Late Charge.** If Lessee tenders the rent to the Department more than fifteen (15) days after the due date, Lessee shall pay an administrative late charge of five percent (5%) on the total rent due to the Department.

2.04 **Rent Adjustment**. *[Use only if Lease Term is for more than five years]* At the end of each five-year period during the lease Term, the Department may revalue the premises and adjust the rent to reflect changes in the fair market value. The annual or monthly rent shall be adjusted to be equal to the fair market rental value determined by the Department’s appraiser, provided, however, Lessee’s rent shall not be set at less than current rent. Adjustments to the rent shall be made as follows:

(a) The Department shall obtain an appraisal of the premises.

(b) If the Department determines that an adjustment in rent is needed to reflect changes in the fair market value of the premises, it shall deliver to Lessee written notice that the rent will be adjusted. The notice shall include a copy of the Department’s appraisal, the amount of the adjusted rental rate, and the date the new rate is to become effective.

(c) If Lessee does not agree with the Department’s appraisal, Lessee, at its own expense, may submit its own appraisal to the Department for consideration.

1. Lessee’s appraisal must be prepared by an appraiser certified as an appraiser by the Texas Appraisal Licensing and Certification Board.
2. Lessee must instruct its appraiser to consider any and all restrictions on the use of the premises that are contained in this lease, and the actual use of the premises, in determining the highest and best use and the fair market rent value of the premises.
3. Lessee must deliver its appraisal to the Department on or before the 30th day after receiving the Department’s notice of rent adjustment. If Lessee does not deliver its appraisal to the Department on or before the 30thday after receiving the notice of adjustment, the Department’s appraisal shall be binding on the Department and Lessee.

(d) If the Department does not approve of Lessee’s appraisal, the Department's appraiser and Lessee's appraiser shall select a third appraiser to appraise the fair market rent value of the premises. The appraisers for the Department and Lessee shall select the third appraiser no later than the tenth day after Lessee delivers its appraisal to the Department. Lessee shall be solely liable for the third appraiser’s fees and expenses.

(e) The third appraiser’s determination of the fair market rent value, as documented in the appraiser’s signed written report submitted to the Department and to Lessee, shall be binding on the Department and Lessee.

2.05 **Bond or other security.** *[Only if Required by the District Engineer]* Upon execution of this lease, Lessee shall furnish the State a good and sufficient corporate surety bond or other security satisfactory to the State in an amount equal to the rent capitalized for the full term of this lease. The bond shall secure the full performance by Lessee of all the terms, conditions, and covenants of this lease to be performed by Lessee. The bond shall be in a form approved by the department and from a bonding company authorized by the Texas Department of Insurance to issue bonds in this state.

ARTICLE 3. IMPOSITIONS

3.01 **Impositions Defined**. The term "Impositions," means all taxes, charges for public utilities, license, franchise and permit fees, and any other charges by any public authority that are imposed during the lease Term upon the premises or upon the improvements situated on the premises. Nothing in this Article 3 shall be construed as approval or authorization for Lessee’s transfer, assignment, sublease, or conveyance of its interest in the lease or in the premises or in any improvements situated on the premises.

3.02 **Lessee’s Obligation for Impositions**. Lessee will pay all Impositions when due. Lessee shall promptly deliver evidence of payment upon request by the Department. Lessee may not defer the payment of any Imposition in a manner that would cause a lien to be placed upon the premises. The Department shall not be liable for any interruption or failure in the supplying of any utilities to the premises.

ARTICLE 4. Construction

4.01 **Permitted Construction**. (a) At its sole cost and risk, Lessee may construct describe generally (the "improvements") within the premises in compliance with plans and specifications provided for in Sections 4.02 and 4.03 of this lease.

(b) The improvements are to be designed and constructed to provide the Department access to inspect, maintain, and repair the premises.

(c) The Department shall have the right to approve all construction plans. Any significant revision to the approved design of the improvements shall be subject to prior written approval of the District Engineer. (The term “District Engineer,” is defined in Section 13.07 of this lease). The Department’s review of the plans, approval of construction, or approval of modifications or revisions to the plans, shall under no circumstances constitute a representation by the Department as to the quality or safety of the design, or as to the compliance of the design to any applicable laws, statutes, rules and ordinances.

(d) All improvements which are located within the premises at any time during the term of this lease shall become the property of the Department upon expiration or termination of this lease.

4.02 **Preliminary Plans**. Lessee, prior to the Department’s execution of this lease, shall provide the Department with preliminary plans for Lessee’s proposed use of the premises. The preliminary plans shall include maps, and sketches depicting the improvements and Lessee’s proposed use of the premises. The preliminary plans must set out the relation of the proposed use of the premises to the adjacent “Highway Facility,” as that term is defined in Section 13.08 of this lease.

4.03 **Traffic Control Plans**. Lessee, prior to the Department’s execution of this lease, shall provide the Department with a full set of traffic control plans for the Department’s approval. The lessee may not begin construction work until it has received the Department’s written approval of the traffic control plans. The plans, which may include plan sheets, general notes, specifications, and quantities, must fully detail the regulation of traffic on the adjacent Highway Facility during the lease Term. The plans must specify how traffic will be regulated before, during, and after any planned construction on the premises. The plans must conform to the safety and design standards set out in the current version of the Texas Manual on Uniform Traffic Control Devices and may not be amended without the Department’s written consent.

4.04 **Construction Plans**. (a) Lessee shall furnish to the District Engineer two sets of complete plans, details and specifications for the construction the improvements. Lessee may not begin construction without the Department’s written approval of the plans and specifications. The plans and specifications must substantially reflect the design set out in the preliminary plans required under Section 4.02 of this lease. The construction plans must be prepared by a professional architect or engineer registered in Texas, and must bear prominently the architect or engineer’s signature in accordance with applicable architectural and engineering board rules. (b) The improvements shall be designed and constructed to comply with any and all applicable building codes, ordinances and other laws, rules and regulations, including, but not limited to, the Americans with Disabilities Act (ADA), (Public Law 101-336, July 26, 1990, as amended) and the Elimination of Architectural Barriers Act (TABA), (Chapter 469, Texas Government Code, as amended).

4.05 **Construction Standards**. The improvements, and any repairs to the improvements, shall be constructed in accordance with the following standards:

(a) Lessee's selection of a general contractor shall be subject to the Department's written approval;

(b) All construction work shall be performed in a good, workmanlike manner in accordance with good industry practice for the type of work in question;

(c) Lessee must obtain all required governmental licenses, permits and authorizations prior to beginning construction and shall provide copies of same to the Department upon request;

(d) Lessee must maintain insurance coverage in the amounts set forth in Article 9 of this lease during all construction;

(e) After commencement of construction, Lessee shall prosecute the construction with due diligence; and

(f) *[if required by District Engineer]* Simultaneously with the execution of this Lease, Lessee at its sole cost and expense, shall deliver to the Department a performance bond having a penal sum of $amount, issued by a company licensed by the Texas Department of Insurance and in a form acceptable to Lessor, naming the Department as Obligee.

4.06 **Temporary Use of the Department's Property**. If Lessee requires use of the Department’s right of way for access, staging, or storage, Lessee shall submit a written request to the Department for the Department’s written authorization of the requested use. Lessee shall submit the request not less than 30 days before the use of Department right of way is necessary. The request must include a complete set of traffic control plans, as described in this Article 4 of the lease. The approval or denial of Lessee’s temporary use of Department property shall be at the sole discretion of the District Engineer. The Lessee’s temporary use of Department property shall not give the Lessee any right or interest in Department property.

4.07 **As-Built Plans**. Lessee shall provide the Department a complete set of reproducible "As- Built" plans no later than 90 days after the completion of construction. The plans must be prepared by a professional architect or engineer registered in Texas, and must bear prominently the architect or engineer’s signature in accordance with applicable architectural and engineering board rules.

4.08. **Hold Harmless.** Lessee shall indemnify, protect, and hold harmless the State from and against all claims and liabilities arising by virtue of or relating to inspection, construction, maintenance, or repair of the premises or of the improvements situated on the premises (including repairs, restoration, and rebuilding).

ARTICLE 5. Use of the premises

5.01 **Permitted Use**. Subject to the terms and provisions this lease, Lessee shall continuously use and occupy the premises solely for the purpose of purpose. Any proposed change in the use is subject to the Department’s written approval. Lessee’s use of the premises shall not interfere with highway use.

5.02 **Maintenance Requirements**. Lessee shall maintain the improvements and the premises at its sole expense. Lessee shall keep the improvements and premises in good condition, both as to safety and appearance. Lessee shall deliver up the premises in good repair and condition, reasonable wear and tear excepted, at the expiration or termination of this lease.

5.03 **Lessee’s Removal of improvements.** Lessee must submit plans for the removal of any improvements and shall not remove any improvements without prior written approval of the District Engineer.

ARTICLE 6. Compliance with Laws

6.01 **Hazardous Materials.** "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by the federal government, the State of Texas, or by any local governmental agency, including, but not limited to:

(a) Any material or substance that is:

 (1) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1317;

 (2) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; or

(3) defined as a “hazardous waste pursuant to Section 1004 of the Resource

Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

(b) petroleum;

(c) asbestos; or

(d) polychlorinated biphenyls (PCBs).

6.02 **Hazardous Materials Laws.** “Hazardous Materials Laws” means any federal, state, or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, or disposal of any Hazardous Materials, the contamination of the environment, or any removal of such contamination, including, without limitation, those statutes referred to in Section 6.01 of this lease.

6.03 **Compliance with Laws.** Lessee shall not undertake or suffer any activity to be conducted upon the premises that constitutes a nuisance, is immoral or obscene, or is a threat to the welfare of the general public. Lessee, at its own expense, shall comply, and will cause, its employees, agents, representatives, licensees, concessionaires, invitees, assignees, subtenants, and any individual or entity using or occupying the premises by, through or under Lessee, to comply with all applicable laws, statutes, rules, and ordinances, whether now existing or hereafter enacted or promulgated that apply to the construction, alteration, occupation, or use of the premises and improvements, including the Americans with Disabilities Act (ADA), (Public Law 101-336, July 26, 1990, as amended), the Elimination of Architectural Barriers Act (TABA), (Chapter 469, Texas Government Code, as amended), and Hazardous Materials Laws. Nothing in this Article 6 shall be construed as approval or authorization for Lessee’s transfer, assignment or conveyance of its interest in the lease or in the premises or in the improvements.

6.04 **Cleanup costs, default, and indemnification.** (a) Lessee shall be fully and completely liable to the State for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation, or sale of Hazardous Materials, in or about the premises. Lessee’s obligations under this section of the lease shall survive the termination of this lease and shall be in effect for as long as Lessee may be liable under applicable laws.

(b) Lessee shall indemnify, defend, and save the State harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon the State (as well as the State's attorney fees and costs) as a result of Lessee's use, disposal, transportation, generation, or sale of Hazardous Materials.

(c) If Lessee fails to comply with any of the provisions of this Article 6 of the Lease, the State, in addition to the rights and remedies set forth elsewhere in this lease, shall be entitled to:

(1) terminate this lease immediately; and

(2) recover any and all damages associated with the Lessee’s non-compliance, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, and any and all damages and claims asserted by third parties and the State's attorney fees and costs.

ARTICLE 7. Inspection

7.01 **Inspection**. The Department and its authorized representatives may enter the premises at any time to inspect, maintain, or reconstruct highway facilities as necessary, and to determine compliance with the terms and conditions of this lease. The Department’s inspection of the premises shall not constitute a representation as to the quality or safety of the design or construction of the premises.

ARTICLE 8. Liens and Financing

8.01 **Allowable Mortgages and Security Interests.** Lessee may mortgage or otherwise pledge or grant a security interest in its leasehold interest to secure financing for the acquisition of the leasehold and for the construction and operation of an improvement permitted under this lease, subject to the terms and conditions contained in this lease.

8.02 **Prohibited Mortgages and Liens.** Notwithstanding the provisions of Section 8.01 of this lease, Lessee shall keep the lease and any improvements on the premises free from all liens. Lessee shall furnish to the Department within five days of receipt by Lessee copies of any and all notices and correspondence directed to Lessee by any person or entity alleging the right to file a lien, or notifying Lessee of the filing of any lien against the fee of the premises. If a lien is filed against the fee or against the improvements, Lessee shall immediately discharge the lien by payment, bonding or otherwise.

8.03 **No Liens Upon Expiration or Termination**. Lessee and its successors shall deliver the premises and the improvements to the Department free and clear of any debt or encumbrances at the expiration or termination of this lease.

8.04 **Department’s Lien.** If Lessee defaults under this lease, the State has a lien on all goods, chattels, or personal property of any description belonging to Lessee that are placed in, or become part of, the premises, as security for rent due and to become due for the remainder of the current lease term. This lien is not in lieu of, nor in any way affects, the statutory landlord’s lien, but is in addition to it, and Lessee grants to the State a security interest in all personal property placed in or on the premises for purposes of this contractual lien.

ARTICLE 9. Indemnity and Insurance

9.01 **Indemnity.** Lessee shall indemnify and save harmless the State from any and all liability, damage, expense, cause of action, suits, claims, or judgments by any reason whatsoever caused by, or arising out of, the use, occupation, and control of the premises by Lessee, its employees, agents, representatives, licensees, concessionaires, invitees, assignees, subtenants, and by any individual or entity using or occupying the premises by, through or under Lessee. Nothing in this Article 9 shall be construed as authorization of approval of Lessee’s transfer, assignment or conveyance of its interest in the lease, the premises or in any improvements situated on the premises.

9.02 **Liability Insurance**. (a) At all times during the lease Term, Lessee, at its sole cost and expense, shall, carry commercial general liability insurance coverage with limits of at least $1,000,000 for each occurrence and $2,000,000 general aggregate. The policy shall insure against bodily injury, death and property damage and shall include:

 (1) coverage for premises and operations;

 (2) coverage for the Department's concurring negligence; and

 (3) contractual liability coverage insuring the obligations of Lessee under the terms of this lease, including but not limited to the indemnity obligations herein.

(b) The limits of policies required by this section of the lease are subject to review and escalation as deemed necessary by the Department once every two years from the commencement date of this lease until its expiration or sooner termination.

9.03 **Contractor's Insurance**. Lessee shall require its contractors to carry at all times while engaged in the construction, alteration, repair, reconstruction or maintenance of the improvements during the lease Term, the following minimum insurance with companies authorized to do business in the State of Texas, naming the Department, as an additional insured, against claims of injuries to persons or damages to property, as a result of, or arising out of such construction, alteration, repair, reconstruction or maintenance of the improvements by Lessee's contractors:

(a) Worker's compensation as required by Texas law with the policy endorsed, where reasonably available, to provide a waiver of subrogation as to Lessee and the Department, and employer's liability insurance of at least $1,000,000 (or the statutorily required minimum if higher) for each accident.

(b) Commercial general liability insurance with limits of at least $1,000,000 each occurrence and at least $2,000,000 general aggregate, which policy shall insure against bodily injury, death and property damage and shall include (i) coverage for premises and operations; and (ii) contractual liability coverage.

(c) Comprehensive automobile liability insurance, covering owned, hired and non‑owned vehicles, with minimum limits of $500,000 combined single limit, such insurance to include coverage for loading and unloading hazards.

9.04 **Insurance Certificates and Endorsements**. (a) All liability insurance policies required under this lease shall be with companies licensed by the Texas Department of Insurance and shall:

(1) be endorsed to include the Department as an additional insured;

(2) contain cross-liability and severability of interest endorsements;

(3) state that this insurance is primary insurance as regards other insurance carried by any Lessee; and

(4) include waiver of subrogation endorsements in a form acceptable to the Department.

(b) Lessee shall also include waiver of subrogation endorsements in favor of the Department on any insurance coverages Lessee may carry in addition to that required herein for the premises or activities conducted thereon, including but not limited to workers compensation insurance.

(c) Lessee shall furnish the Department with certificates of all coverage required herein and with copies of the required endorsements prior to the commencement of this lease, and annually thereafter for each renewal policy not less than 30 days prior to the expiration of said policies. Certificates of insurance shall specify the additional insured status mentioned above as well as the waiver of subrogation and shall contain any other endorsements required herein.

(d) Lessee shall provide to the Department a certified copy of any and all insurance policies required in this lease upon request of the Department. Lessee's obligation to carry and pay for the insurance required under this lease will continue beyond the term of this lease in the event Lessee remains in possession of the premises for any reason, or in the event Lessee is obligated to remove the improvements, in which case, Lessee will continue to carry such insurance so long as Lessee remains in possession or until the Department deems such removal to be complete.

(e) If Lessee fails to have a certificate of any required policy of insurance on deposit with the Department at any time during the lease Term or subsequent thereto in the event of any continued possession of the premises, or in the event the certificate fails to comply with the insurance company quality or coverage requirements hereof, such failure may be treated by the Department as a default by Lessee.

ARTICLE 10. Transfers of Interest

10.01 **Transfers of Interest**. Lessee shall not transfer, assign, sublease, or convey the lease, improvements, or the premises to another person or entity without the prior written approval of the District Engineer. The Department shall not be obligated to consent to any proposed transfer, assignment, or conveyance by Lessee. If Lessee transfers, assigns, or conveys its rights or interests in the lease or in the premises or in any improvements situated on the premises without the Department’s written consent, the Department may, at its option declare this lease terminated. If the Department consents in writing to the transfer, assignment, or conveyance of its rights or interests in the lease or in the premises or in any improvements situated on the premises, the assignee or subtenant must assume all of Lessee’s obligations under this lease, and Lessee will remain liable for every obligation under the lease.

10.02 **Collection of Rent from Assignee**. The Department, at its option, may collect rent from Lessee’s assignee, subtenant, mortgagee, pledgee or party to whom the leasehold interest was hypothecated, and apply the net amount collected to the rent payable under this lease. The Department shall not waive any of its rights under this lease or release Lessee from any of its obligations by collecting or applying rents collected.

10.03 **Effect of Expiration or Termination of lease**. The expiration or termination of this lease automatically and without further action cancels all transfers, assignments, conveyances, and subleases of this lease.

10.04 **Transfer by the Department.** If the Department sells or transfers the premises or the leasehold estate or any part thereof and as part of such transaction assigns its interest as the Department in and to this lease, then from and after the effective date of the transfer, the Department will have no further liability under this lease to Lessee.

ARTICLE 11. DEFAULT and Remedies

11.01 **Breach and Default.** Lessee shall be in breach of this lease if Lessee fails to pay any installment of rent or other amount due and payable when due; fails to comply with its obligations pertaining to the construction, use, and maintenance of the premises; abandons the premises; fails to maintain insurance in the amounts and types required by this lease; fails to follow any federal, state, and local law that applies to Lessee’s use of the premises; or fails to perform or comply with any of the other conditions expressed or implied in this lease. Whether the Lessee is in breach shall be determined by the District Engineer in his or her sole discretion. Lessee shall be in default if Lessee fails to remedy any breach of this lease within ten days after receiving notice from Lessor. Whether the Lessee is in default shall be determined by the District Engineer in his or her sole discretion.

11.02 **Cumulative Remedies.** If the District Engineer determines that Lessee is in default, the Department, at its option, may exercise any and all remedies available to the State under law. All of the State’s rights and remedies shall be cumulative and not exclusive, and shall include without limitation the following:

(a) The Department may terminate this Lease on ten days' written notice to Lessee and this lease shall terminate on the date specified therein and Lessee shall quit and surrender the premises by said date.

(b) If the lease is terminated and the District Engineer determines it is necessary to request the removal of the improvements, the removal shall be accomplished by the lessee in a manner prescribed by the District Engineer. If the Department requires Lessee to remove all or part of the improvements:

(1) Lessee, at its own expense, shall prepare and submit plans to the District Engineer for removal of the improvements and shall not commence removal without prior written approval from the District Engineer.

(2) Lessee must remove the improvements at its own expense within the time provided in the Department’s notice of termination to Lessee and must restore the premises as nearly as practicable to the same condition that existed before Lessee entered thereon, except as otherwise approved in writing by the Department.

(3) If Lessee fails or refuses to remove all or a part of the improvements as required by the Department, the Department may, but is not obligated to, assume possession, control and ownership of the premises and the improvements.

(4) If Lessee fails or refuses to remove all or a part of the improvements as required by the Department, the Department may, but is not obligated to, enter upon the premises for the purpose of demolishing and removing the improvements. Lessee shall pay the Department’s costs for such demolition and removal, including, but not limited to, costs for labor, materials, equipment, plans and administration, within 30 days after notice of a statement of said costs from the Department.

(5) Lessee shall indemnify, protect, and hold harmless the State from and against all claims and liabilities arising by virtue of or relating to the State’s entry onto the premises and demolition and removal of the all or a part of the improvements.

11.03 **Lessee Remains Liable**. Termination of this lease will not relieve Lessee from the payment of any sum or sums then due and payable to the Department hereunder for any claim for damages accruing against Lessee. All money due under the terms of this lease will bear interest at the rate of ten percent (10%) per annum from the date when due until actually paid.

ARTICLE 12. GENERAL PROVISIONS

12.01 **Acceptance “As-Is,” and Waiver of Warranty.** Lessee has fully inspected the premises and is leasing the premises “as is,” with all faults and defects. The Department disclaims any warranty of suitability that may otherwise have arisen by operation of law. The Department does not warrant that there are no latent defects in the premises that are vital to Lessee’s using the premises for their intended purpose and that the premises will remain in a suitable condition. Lessee leases the property “as is,” whether suitable or not, and waives the implied warranty of suitability.

12.02 **Casualty**. Lessee shall immediately notify the Department of substantial destruction or damage to the premises. In no event shall the Department be responsible or liable for any damage or loss of property of Lessee. If the improvements are destroyed, either in whole or in substantial part, by fire or other casualty, Lessee shall, within 60 days of such occurrence, notify the Department of Lessee's election to either (i) terminate this lease, such termination to be effective as of the date of such notice of termination, or (ii) reconstruct the improvements in compliance with plans and specifications which have been reviewed and approved in writing by the Department. If Lessee shall fail to notify the Department of its election within the time above provided, then Lessee shall be deemed to have elected to terminate this lease. If this lease is terminated under this section, Lessee shall remove the improvements in accordance with the procedure set out in Section 11.02(b) of this lease.

12.03 **Force Majeure.** If the curing of any default (other than failure to pay any sums due, including, but not limited to, insurance premiums or Impositions) or the performance of any other covenant, agreement, obligation or undertaking herein contained is delayed (after the party obligated or permitted under the terms hereof to do or perform the same has made a good‑faith effort to avoid delay) by reason of war, government regulations or government interferences (not including the right of the Department to exercise the Department's rights hereunder), fire or other casualty or any circumstances reasonably beyond such party's control regardless of whether any such circumstance is similar to any of those enumerated or not, each party will be excused from doing or performing the same during such period of delay.

12.04 **Waiver.** No waiver by the Department of any default or breach of any term, condition or covenant of this lease may be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

12.05 **Exhibits.** All exhibits referred to herein are to be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.

12.06 **Successors.** The terms, conditions and covenants contained in this lease shall apply to, and inure to the benefit of Lessee’s successors in interest and legal representatives except as otherwise herein expressly provided. No rights however shall inure to the benefit of any assignee of Lessee unless the assignment to such assignee has been approved by the Department in writing as provided in Article 10 of this lease.

12.07 **Department’s Expenses.** Lessee shall forfeit the security deposit made for this lease, or any bonds issued to secure Lessee’s compliance with this lease, and shall pay the Department’s litigation costs and any other expense incurred by the Department to enforce its rights under this lease.

12.08 **Holdover.** If Lessee holds over and continues in possession of the premises after expiration of the term of this lease, Lessee will be deemed to be occupying the premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this lease, except that as liquidated damages by reason of such holding over, the amounts payable by Lessee under this lease shall be increased such that the annual or monthly rental shall equal one hundred twenty-five percent (125%) of the rent paid to the Department for the year or month immediately preceding the expiration date of this lease and Lessee shall continue to pay all Impositions as required by this lease. The above-described tenancy from month-to-month may be terminated by either party upon 30 days written notice to the other. Any rental due after such notice has been given is to be calculated on a pro rata basis. If upon notice of termination by the Department, Lessee tenders rental in excess of the amount due and payable and the Department accepts such payment, the acceptance of such payment will not operate as a waiver by the Department of the notice of termination unless such waiver is in writing and signed by the Department.

12.09 **Relationship Between the Department and Lessee.** The relationship between the Department and Lessee is and shall at all times remain solely that of landlord and tenant and will not be deemed an agency, partnership or joint venture.

12.10 **Non-Discrimination.** Lessee, for itself, its successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, religion, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap will be excluded from participation in, be denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the premises, that in connection with the construction of any improvements on the premises and the furnishing of services thereon, no such discrimination will be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, and that such discrimination will not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on the premises. Lessee 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. The breach of any of the above nondiscrimination covenants will be an act of default entitling the Department to terminate this lease in accordance with the procedures set forth herein.

12.11 **Audit Provision.** In accordance with Section 2262.003, Texas Government Code, the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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.

12.12 **Flammable, Explosive or Hazardous Materials.** Notwithstanding anything herein to the contrary, no part of the premises will be used for the manufacture or storage of flammable, explosive or hazardous materials or for any occupation which would be deemed by the Department to be hazardous to the traveling public.

12.13  **Public Utility and Common Carrier Rights.** Lessee shall not to interfere with the rights of any public utility company or other common carrier to locate, operate and maintain their facilities within the Department's highway right of way. Lessee’s use of the premises and the improvements under this lease is subject to the statutory right of public utilities and common carriers, if applicable, and that such use by Lessee and the relocation or removal of the improvements subject to this lease shall be accomplished at Lessee's sole expense at the Department's request if required to accommodate the location, operation or maintenance of facilities pursuant to those statutory rights.

12.14 **Assumption of Risk.** Lessee assumes all risks of losses resulting from the lease.

12.15 **Repairs Needed for the Safety of the Traveling Public.** If the District Engineer determines that there is a condition or omission with respect to the improvements that is a hazard to the safe operation of a Highway Facility, the District Engineer shall give Lessee written notice of the condition and shall specify a reasonable time in which curative action shall be completed. If Lessee fails to cure the hazardous condition as required in the written notice, the Department may enter the premises and perform the necessary repairs at Lessee’s sole liability, except that no notice is required in case of emergency. Lessee shall pay all costs for repairs to the improvements. Payment shall be made no later than 30 days after Lessee receives a statement of the Department’s repair costs. Lessee shall indemnify, protect, and hold harmless the State from and against all claims and liabilities arising by virtue of or relating to construction, maintenance or repair of the premises or of the improvements situated on the premises.

ARTICLE 13.Miscellaneous

13.01 **Notices.** (a) Any notice provided for or permitted to be given under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) three calendar days after it is deposited with the United the States Postal Service, postage prepaid, registered or certified mail, return receipt requested, and addressed to the intended recipient at the address or addresses designated below. Notice may also be given by:

(1) personal or courier delivery to the party to be notified;

(2) facsimile transmission; or

(3) other commercially reasonable means, and will be effective when actually received.

(b) If to Lessee: name

 address line1

 address line 2

(c) If to the Department: Texas Department of Transportation

 address line 1

 address line 2

Attn: District Engineer

(d) The parties may change their respective notice addresses to any other location within the United the States by giving a notice of the change in accordance with this Section.

13.02 **Governing Law.** This lease is to be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in county name County, Texas, unless otherwise provided herein.

13.03 **Severability.** In case any one or more of the provisions contained in this lease are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this lease will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13.04 **Amendments.** The amendment, modification or alteration of the terms hereof will not be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

13.05 **Headings.** The article and section captions contained in this lease are for convenience only and do not in any way limit or amplify any term or provision hereof.

13.06 **The Department.** Unless specifically stated otherwise herein, the term "the Department" as used herein includes the Department, its successors and assigns, and its authorized agents, representatives, employees and/or contractors.

13.07 **District Engineer.** Any reference in this lease to the District Engineer means the District Engineer, Texas Department of Transportation, location, Texas, and his or her delegate. When written approval of the Department is necessary under this lease said approval is to be obtained from the District Engineer except as otherwise provided herein or otherwise by law.

13.08 **Highway Facility.** “Highway Facility” means any present or future physical roadway improvements within existing or future right of way, including, but not limited to, bridges, embankments, drainage areas, traffic signals, signs and roadway surfaces and subsurfaces as well as structures and facilities not physically located within the highway right of way that are used in the construction, maintenance or operation of a highway, including, but not limited to warehouses, storage areas, maintenance sites, roadside parks, administration buildings and parking lots, except for improvements constructed or placed on the Premises by Lessee.

13.09 **Memorandum of Lease.** At the Department's request, Lessee will execute a memorandum of this lease in recordable form setting forth such provisions of this lease as the Department deems desirable and may record such memorandum in the Real Property Records of the Office of the County Clerk, county name County, Texas.

13.10 **No Option.** The Department’s submission of this lease to Lessee for inspection and execution does not constitute a reservation of or option for the premises. This lease shall become effective against any party only upon execution of all parties and delivery of a fully executed counterpart by the Department to Lessee.

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| **TEXAS DEPARTMENT OF TRANSPORTATION**Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_nameRight of Way Division DirectorDate:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **LESSEE**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |