



**MULTIPLE USE AGREEMENT
Advance County Road Signs**

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 (Enter County Name) hereinafter called "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 Resolution/Ordinance No. (Enter Ordinance #), hereinafter identified by reference, authorizing the County's participation in this agreement with the State; and

WHEREAS, the County has requested the State to permit the fabrication, installation and maintenance of advance county road signs on the highway right of way at the locations to be identified by County, hereinafter referred to as the "Premises." As the advance county road sign locations are identified, the County will submit to the State a description of each location for which the County wants to install and maintain an advance county road sign, and upon approval by the State will be incorporated into this agreement attached hereto and,

WHEREAS, the State has indicated its willingness to approve the installation and maintenance of the advance county road signs, conditioned on the State's determination from engineering and traffic investigations conducted in accordance with the terms of this Agreement, that such use will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway.

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. FABRICATION, INSTALLATION AND MAINTENANCE

The County will be responsible for locating the existing advance county road signs. The County shall notify the State of all existing advance county road signs that they wish to maintain and the location of any new advance county road signs that they wish to install. All locations must be approved by the State. All advance county road signs installed under this agreement must be fabricated in accordance with the State's sign specifications which are in effect at the time of the installation for both materials and retroreflectivity. All sign supports for the advance county road sign must meet the crashworthy requirements included in the most current Manual for Assessing Safety Hardware (MASH). Installation or maintenance activities shall not commence until locations have been approved by the State in writing. All installations and maintenance activities must be in accordance with the current version of the Texas Manual on Uniform Traffic Control Devices.

2. INSPECTION

Ingress and egress shall be allowed at all times to such premises 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

The County can park a County vehicle or allow the selected contractor to park a vehicle at or near the site of an advance county road sign during the installation or maintenance of the sign. Parking shall be prohibited when a safety or security threat, as determined by the State, 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 authorized by the State under this agreement will be prohibited. All sign layouts shall be in accordance to the current Standard Highway Sign Design Manual and must be approved by the State prior to the actual erection. No advance county road sign shall be permitted on the main lanes of the interstate highway system or toll road facilities.

5. RESPONSIBILITIES

Installation, timely maintenance, and repair of the advance county road signs 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.

The State will not replace or repair a damaged advance county road sign under this agreement. Failure of the County to maintain an advance county road sign will result in the removal of the sign by the State.

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 removal of the sign.

6. FEES

No fees shall be levied by the County for use of the premise.

7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon written notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate and the County shall be responsible for the timely removal of all advance county road signs authorized under this agreement at no cost to the State. If the State determines that the County has failed to timely remove the required signs, it will perform the necessary work and charge the 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 an advance county road sign is impeding maintenance, damaging the highway facility, impairing safety or that the sign is not being properly maintained, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such sign is not in the public interest, this agreement under which the sign was installed or maintained may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the sign; or (2) terminated and the use of the area in which the advance county road sign is erected 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 premises will be discontinued for the purpose defined herein. The County shall, within thirty (30) days from the date of said notification, clear the premise of all signs that were its construction and maintenance 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

THE COUNTY AGREES TO HOLD AND SAVE THE STATE OF TEXAS FREE FROM DAMAGES THAT MAY RESULT FROM CONSTRUCTION OR MAINTENANCE 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.

The County shall indemnify and save harmless the State and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this agreement and that are caused by or result from error, omission, or negligent act of the party or of any person employed by the party. The County shall also indemnify and save harmless the State from any and all expense, including but not limited to attorney fees that may be incurred by the State in litigation or otherwise resisting the claim or liabilities that may be imposed on the State as a result of such activities by the County, its agents, or employees authorized under this agreement. The County further agrees to indemnify and save harmless the State from and against all claims, demands, and causes of action of every kind and character brought by any employee of the party against the State due to personal injuries and/or death to such employee resulting from any alleged negligent act by either commission or omission on the part of the County. 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, installation, maintenance, repair and use of the advance county road sign. The County shall include the State as an additional insured by endorsement in the County's commercial general liability insurance policy. If applicable, 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 installation and/or maintenance of the signs.

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 the land 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 advance county road sign 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 premises; (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 repossess said land and the premises 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 11th Street
Austin, Texas 78701-2483

(Enter County Name) County
(Mailing Address)

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 County's construction, installation, maintenance, repair or use of the premise.

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 – Details of the an Advance County Road Sign

Exhibit B - List of Advance County Road Sign Locations Approved for a County Sign

Exhibit C - Approved Construction Plans

Exhibit D - Certificate of Insurance (TxDOT Form 1560)

Exhibit E - Attachment A (FHWA Additional Requirements)

IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the (Enter County Name)
on the ____ day of _____, 20____, and the State on the ____ day of _____, 20_____.

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.

(Enter Name of Other Party)
Name of Other Party

By: _____
Signature

By: _____
Director, Maintenance Division

Printed Name

Printed Name

Title

Date

County

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 E

CR 4789

STOP

CO RD
4789
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CR 4789

CO. RD
4789
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SEE SIDE