

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the **TEXAS DEPARTMENT OF TRANSPORTATION** ("TxDOT"), by and through its Executive Director, and the **TEXAS GENERAL LAND OFFICE** by and through the Chief Clerk of the Texas General Land Office concerning the use for highway right of way purposes by TxDOT of real property owned by the State of Texas and under the management of the General Land Office ("GLO"), including submerged lands (hereinafter collectively referred to as "State Property").

WHEREAS, TxDOT and GLO agree it is in the best interest of the State of Texas for the two aforementioned agencies to have a clear understanding and procedure for handling matters relevant to TxDOT's use of State Property for highway right of way purposes; and

WHEREAS, it is agreed that for new right of way and expansion of existing right of way involving State Property, TxDOT will acquire a Highway Purposes Use Agreement (the "Agreement") from the GLO pursuant to authority granted in Sections 203.052, 203.053, 203.056, 203.057 and 203.058 of the Texas Transportation Code; and

WHEREAS, it is agreed that it is necessary that the State receive fair market value compensation for the use by TxDOT of the State Property; and

WHEREAS, it is agreed the following are understandings of the respective parties concerning these matters.

NOW THEREFORE, it is agreed between the stated Parties:

1. Environmental issues related to planning, designing, constructing, maintaining and operating transportation projects over State Property covered by the MOU shall be addressed by US Army Corps of Engineers ("USACE"), GLO, Texas Natural Resource Conservation Commission ("TNRCC") and other applicable governmental agencies at the USACE Joint Processing Meeting. If USACE has no jurisdiction over the subject real property, such issues shall be addressed at the project planning stage with notification to GLO, TNRCC and other applicable governmental agencies.
 - a. Goals and Administrative Policies as set out in Rule 16.2, Chapter 16, Part 1, Title 31, Texas Administrative Code shall be complied with requiring the GLO or the School Land Board ("SLB") to include in a document proposing an action involving those contemplated by this MOU provisions requiring either a consistency determination or a determination of no adverse effect, all as set out in Rule 16.2 and related rules.
 - b. The GLO and the SLB shall not take a major action that is inconsistent with the goals and policies of Chapter 16, Part I, Title 31, Texas Administrative Code but will comply with the rules promulgated for such Chapter.
 - c. Rules promulgated by the GLO enumerated in Rules 16.1 through 16.4 of Chapter 16, Part 1, Title 31, Texas Administrative Code will be complied with prior to execution of any Agreement contemplated by this MOU and construction of the facility. Thereafter, such Rules will be adhered to throughout the term of any such Agreement or extensions thereof for purposes of repair and reconstruction.
 - d. GLO, USACE, TNRCC and other governmental agencies responsible for the protection and preservation of public lands and waters shall coordinate a single environmental response.
2. The procedure for determining lump sum compensation representing full fair market value for the real property rights acquired by TxDOT will include:
 - a. an initial appraisal by a TxDOT-approved appraiser,

- b. review of appraisal by a GLO-approved appraiser,
 - c. good faith negotiation by both agencies of any differences,
 - d. mediation, either formal or informal, as agreed by the Parties to resolve differences existing on a case by case basis,
 - e. in the event the parties are unable to agree, a determination shall be made by GLO pursuant to Section 203.058, Texas Transportation Code, and
 - f. No administrative fees for execution of the Agreement or issuance of necessary permits will be charged by GLO.
3. Each Agreement for State Property subject to this MOU will be based on a new short form Agreement previously agreed to as to form by the Parties. A copy of the Agreement promulgated for use in situations contemplated by the MOU is attached hereto and will be recorded after its completion and execution. The Agreement shall specifically reserve all mineral interests to the State, as the ownership of the minerals of the subject property dictates, and shall provide that upon abandonment of the area for highway purposes, the property interest will revert to the State. The Agreement shall also reserve for the State of Texas, or for such other state agency possessing such right, the exclusive right to grant easements, rights-of way and/or other grants of interest authorizing use of the State Property, to the extent such uses do not unreasonably interfere with TxDOT's highway use or endanger TxDOT facilities or create a hazard to the public users thereof.
 - a. A metes and bounds description of the State Property to be used will be required for each Agreement. A survey performed by a Registered Professional Land Surveyor ("RPLS") will be acceptable except in those circumstances in which anticipated TxDOT improvements may cause permanent shoreline alteration or other change/modification of a GLO property shoreline boundary. In such cases, a coastal boundary survey in the form and manner provided by Section 33.136, Texas Natural Resources Code will be performed by a Licensed State Land Surveyor ("LSLS") at TxDOT's expense.
 - b. Following execution of an Agreement, no additional permits will be required from GLO.
 - c. Any acquisition by TxDOT of additional State Property to satisfy mitigation requirements of the USACE shall be valued on a case by case basis and compensation, if any, shall be paid to GLO for the benefit of the State. GLO shall not impose mitigation requirements in excess of those mandated by USACE; provided however, if USACE has no jurisdiction over the subject State Property, any mitigation reasonably required by GLO, TNRCC or other applicable agency Rules shall be valued and paid as previously described herein.
4. New right of way and expansion of existing right of way involving State Property will be subject to compliance with the terms of this MOU. Existing TxDOT facilities that do not currently have recorded use agreements or easements over State Property will not be required to obtain further easements or permitting. Provided, however, this exception shall not apply to existing TxDOT facilities that at the time of initial construction were located on Permanent School Fund land.
5. The intent of this MOU is to cover all State owned real property under the management of the GLO to be used by TxDOT for highway purposes only.
6. This MOU shall be reviewed and updated by January 1, 2004, and by every second year from that date. Either Party may terminate this MOU, with or without cause, after 30 days written notice to the other party. Upon termination of this MOU, each Agreement will be negotiated between the parties on a case by case basis.

IN WITNESS WHEREOF this Memorandum of Understanding is entered into and shall be effective on the last date of either party's signature below.

TEXAS GENERAL LAND OFFICE

By: Larry R. Soward
Larry R. Soward
Chief Clerk, Texas General Land Office

Date: 5/2/02

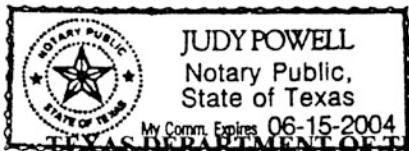
APPROVED:

Content: _____
Legal: _____
Deputy Comm: _____

ACKNOWLEDGMENT FOR TEXAS GENERAL LAND OFFICE

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 2 day of May, 2002, by Larry R. Soward, Chief Clerk, on behalf of the Texas General Land Office.



Judy Powell
Notary Public, State of Texas
My commission expires: 6-15-04

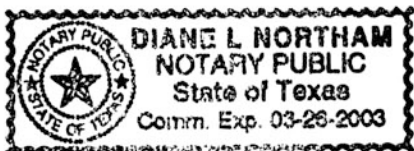
By: Michael W. Behrens
Michael W. Behrens, P.E.
Executive Director

Date: April 23, 2002

ACKNOWLEDGEMENT FOR TEXAS DEPARTMENT OF TRANSPORTATION

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 23rd day of April, 2002, by Michael W. Behrens, P.E., Executive Director, on behalf of the Texas Department of Transportation.



Diane L. Northam
Notary Public, State of Texas
My commission expires: 3-26-03