

CSJ:
District
Code Chart 64:
NBI #:

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

**UTILITY ATTACHMENT AGREEMENT
FOR ON-SYSTEM BRIDGES**

THIS AGREEMENT BY AND BETWEEN the State of Texas, acting by and through the Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701 hereinafter called the “State”, and _____ having its principal business address at _____, hereinafter called the “Company”.

WITNESSETH

WHEREAS, Transportation Code, Chapter 203, Subchapter E, Transportation Code §227.015, Transportation Code, §203.092 authorizes the State to regulate the placement of public utility facilities along a state highway; and,

WHEREAS, the State owns a bridge on _____ in _____ County, Texas, and the Company desires to use the bridge for the purpose of installing, attaching thereto, and supporting _____ (“the Installation”); and

WHEREAS, it would be difficult and costly for the Company to carry its facilities on an independent structure; and

WHEREAS, the bridge is capable of supporting the load imposed by the Installation when carried as indicated on Exhibit A, attached and incorporated into this agreement.

NOW, THEREFORE, the State and Company agree as follows:

A G R E E M E N T

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and Company will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided. This agreement is to continue in force for as long as the Company, its successors or assignees maintain and operate the Installation attached to said bridge, in actual use or in reserve for future use, unless terminated sooner pursuant to terms of this agreement.

Article 2. Project Funding and Work Responsibilities

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The Company will, as stated in Exhibit A of the project utility agreement, be required to provide the necessary conduit, fittings, brackets, plates, and/or other materials for the Installation. All labor, tools, equipment and incidental items shall be furnished by the Company, as stated in Exhibit A of the project utility agreement, which shall assume the entire cost of the work authorized hereunder, to the extent permitted by law.

Any future relocation of the Installation due to highway construction or reconstruction shall be made without cost to the State.

The Company also agrees to install and maintain its facilities so as not to inconvenience or interfere with highway traffic and shall comply with governing laws and the policies and procedures of the State. Traffic control measures shall be in accordance with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways. The Company shall notify the State at least 48 hours prior to the commencement of the Installation or maintenance activity in the event inspection by State forces is considered necessary. Should the Company fail to maintain its facilities in a condition acceptable to the State, the State, after notifying the Company, will perform the required maintenance and bill the Company for the cost thereof or take other appropriate action to ensure the safety and convenience of motorists.

Article 3. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein
- ◆ by the State if it determines that the performance of the Project or utility work is not in the best interest of the State.

If the agreement is terminated in accordance with the above provisions, Company will be responsible for the payment of Project costs incurred by the State on behalf of Company up to the time of termination.

Article 4. Right of Access

The State hereby grants to the Company the right, privilege and authority to install, operate and maintain the Installation as shown on Exhibit A of the project utility agreement.

It is expressly understood that the State does not purport hereby to grant any right, title, or easement in or upon this highway. It is further understood that the State may require the Company, at the entire cost of the Company, and to the extent permitted by law, to temporarily or permanently remove the Installation made by virtue of this agreement, subject to the provisions of governing laws, by giving written notice, when such removal is necessary to repair, construct, reconstruct, and/or make changes in said bridge, provided reasonable time shall be allowed the Company to secure the materials and make necessary changes. It is understood and agreed, however, that in the event of

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abandonment by the State or the destruction of all or a part of said bridge by flood, fire, or other causes, the State shall be under no obligation to furnish any facilities to the Company under this agreement.

Article 5. Responsibilities of the Parties and Indemnity

Company acknowledges that it is not an agent, servant, employee of the State, nor is it engaged in a joint enterprise, and it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work under this agreement.

To the extent permitted by law, Company agrees to indemnify and hold harmless the State, its agents and employees, from all suits, actions or claims and from all liability and damages for any and all injuries or damages sustained by any person or property in consequence with the performance of design, construction, installation, existence, use, maintenance, operation, or removal of the utility facility and does hereby agree to indemnify the State against all court costs, attorney fees and all expenses in connection with suits for damage and shall, if so requested in writing, assist or relieve the State from defending any such suits brought against it. Such indemnity includes but is not limited to any claims or amounts arising or recovered under the "Worker's 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.

The Company also agrees to pay all damages accruing to the State, to the extent permitted by law, by reason of injuries to the right of way, roadbed, pavement and/or bridge owned by the State, when such damages are caused by the Installation, existence, use, maintenance, or removal of the Company's facilities from the property of the State.

Article 6. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

Article 7. Successors and Assigns

The State and Company each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 8. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

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Article 9. Inspection and Conduct of Work

The State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All work will be performed in accordance with the *Utility Accommodation Rules* as set forth in 43 *Texas Administrative Code* §21.31 et. seq. adopted by the State and incorporated herein by reference, or special specifications approved by the State.

Article 10. Maintenance

Upon completion of the Project, the Company will assume responsibility for the maintenance of the completed utility facility on the bridge.

Article 11. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Name of Entity	State
	Texas Department of Transportation
	7600 Washington Avenue
	Houston, TX 77007
	Attn: District Engineer

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 12. State Auditor's Provision

The State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT 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.

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Article 13. Signatory Warranty

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

IN WITNESS WHEREOF, THE STATE AND THE COMPANY have executed duplicate counterparts to effectuate this agreement.

INSERT COMPANY NAME

By _____ Date _____

Typed or Printed Name and Title

ATTEST _____ Date _____

Typed or Printed Name and Title

FOR THE STATE OF TEXAS

Executed for the Executive Director 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 _____ Date _____

Graham Bettis, P.E.
Director, Bridge Division

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EXHIBIT A

Details for attachment of utility to bridge.