**AGREEMENT TO ACCEPT PARTIAL DONATION OF REAL PROPERTY**

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| **STATE OF TEXAS** | **§** |  | ROW CSJ #: |
|  | **§** |  | Parcel #: |
| **COUNTY OF** | **§** |  | Project limits: |

**THIS AGREEMENT** is entered between the Contracting Parties, as defined below.

**I. Contracting Parties:**

Donor:

State: The Texas Department of Transportation (“**State**” or “**TxDOT**”)

**II. Background:**

Texas Transportation Code §201.206 authorizes the State to accept, from any source, a donation of realty for the purpose of carrying out its functions and duties. Texas Government Code Chapter 575, requires the governing board of a state agency, not later than the 90th day after a donation valued at $500 or more is accepted, to acknowledge the acceptance of the donation by majority vote at an open meeting and prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.To provide guidance on when a donation may be accepted by the State, the Texas Transportation Commission (Commission) has adopted rules relating to the State acceptance of donations, codified as 43 TAC §§1.500-1.506. Acceptance of a donation of $500.00 or more must be acknowledged by the Commission not later than the 90th day after the date the Donation is accepted by the State.

The Donor is a property owner desiring to partially donate property described herein to the State for no benefit or gain to the Donor. The State wishes to accept the donation of property and the Donor must execute this donation agreement.

**III. Agreement:**

The Donor, being fully informed of its right to receive just compensation for the Property, agrees to partially donate the property more particularly described on Exhibit “A”, attached hereto and incorporated herein for all purposes (the “**Property**”), to the State. The State certifies that its acceptance of the Property will further the State’s abilities to meet its responsibilities.

The value of the Property as determined by (leave blank if Donor has waived) is $(leave blank if Donor has waived). The Donor has been informed of its right to conduct or waive an appraisal of the Property by a qualified appraiser. (     ) **Donor’s Initial**

The Donor desires to accept $      as full compensation for the property and desires to donate to the State any residual amount over and above said $     .

#### IV. Representations and Warranties:

1. The Donor represents and warrants that it has unrestricted fee ownership and use of the Property and that by signing the Donation Deed it is forever relinquishing and transferring all rights and interest in and to the Property to the State.
2. The Donor acknowledges that it has been fully informed of Donor’s right to receive just compensation for the Property.
3. Donor acknowledges that nothing contained in this Agreement shall be a limitation of any type on the divestment of interest by Donor to State.
4. The Donor acknowledges that there is no official relationship between the Donor and the State.
5. The Donor acknowledges that it will receive no benefit as a result of the donation of the Property.
6. The Donor is not the subject of State regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the State.
7. The State determines that acceptance of the partial donation will provide a significant public benefit and such acceptance does not influence or appear to influence the State in the performance of its duties.
8. The Donor acknowledges that TxDOT’s acceptance of the partial donation does not bind State to a course of action or promise of performance.
9. The State neither approves nor is responsible for any representations made by the Donor for tax purposes.
10. The Donor acknowledges that the State will act in reliance of and in consideration of the promises made by the Donor in this agreement.
11. The Donor acknowledges that this agreement is public information and will be furnished to a requestor pursuant to Chapter 552 of the Texas Government Code.

**V. Hold Harmless:**

The Donor shall save and hold harmless the State and its officers and employees from any and all claims and liability due to any intentional or negligent actions that are caused by or result from error, omission, or negligent act of the Donor or of any person employed by the Donor. The Donor shall also 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 Donor, its agents, or employees.

**VI. Warranty of Use:**

Donor represents and warrants to the State that Donor has no knowledge of any current or former use, generation, storage or disposal of any hazardous material on or under the Property currently or previously in violation of any federal, state or local governmental law or rule. Additionally, Donor represents and warrants to the State that Donor has no knowledge of the Property being used for a gas station, auto shop, or dry cleaning service, and has no knowledge of the presence of asbestos material on the Property. Donor has not received any notice of any action or proceeding relating to any hazardous materials or any release thereof on, in, under or about the Property.

**VII. Relocation Assistance:** *(If applicable)*

Donor acknowledges receipt of the brochure entitled *“Relocation Assistance”* and understands that relocation assistance benefits, if any, are handled entirely separate from and in addition to this transaction. Relocation benefits, if any, will be examined on a case by case basis, and will be specifically set forth in a separate agreement.

**VIII. Costs:**

1. The State, without cost to the Donor, shall pay the cost of recording all instruments conveying title to the State, and the State may, but is not obligated to, purchase an owner’s title policy at the State’s expense.
2. Donor will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the Property for use by State. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the Property to State; and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the Property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. Donor may file a written request for review if Donor believes that the State failed to properly determine the eligibility for or the amount of incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the request for review must be filed with the State within six months after you are notified of the State’s determination on any claim for reimbursement.

#### IX. Termination/Withdrawal:

If Donor withdraws from this agreement, in writing, before it is executed by the State, such withdrawal shall extinguish all rights, duties, obligations and liabilities of the State and the Donor under this agreement.

**X. Sole Agreement:**

This Agreement and the Partial Donation Deed constitute the only promises, consideration and conditions of this conveyance, and no other promises, consideration or conditions have been signified or implied, except any benefits which Donor may or may not be entitled under the State’s Relocation Assistance Program.

**XI. Notices:**

All notices to either party by the other party will be delivered personally or sent by U.S. Mail, postage prepaid, to the following addresses:

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| **Donor:**  Attn: | **State:** Texas Department of TransportationAttn: Right of Way Division P.O. Box 5075  Austin, Texas 78763-5075 |

The notice shall be received by the addressee on the date delivered or deposited in the mail. Either party may change its address by sending written notice of the change to the other in the manner provided.

**XII. Exhibits:**

1. Property Location Map or Survey
2. Partial Donation Deed

The State and the Donor have executed duplicate counterparts of this agreement.

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| **THE STATE**  Executed for the Executive Director and approved by the Texas Transportation Commission for the purpose and effect of carrying out the orders, established policies, or work programs approved and authorized by the Texas Transportation Commission. |  | **THE DONOR**  The undersigned signatory warrants that he or she is an official representative of the organization making the donation described and is authorized to make the donation and to enter into this Agreement on behalf of the organization. |
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| **Texas Department of Transportation** |  |  |
|  |  | BY: |
|  |  | Authorized Signature |
| Director, TxDOT Right of Way Division |  |  |
|  |  |  |
|  |  | Typed or Printed Name and Title |
|  |  |  |
|  |  |  |
| Date: |  | Date: |