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**CITY OF PORT LAVACA**

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**MEMO**

**MEETING DATE:** 03-13-23

**TO:** JODY WEAVER, INTERIM CITY MANAGER  
MAYOR WHITLOW AND CITY COUNCIL MEMEBERS

**FROM:** TANIA FRENCH

**SUBJECT:** COUNCIL AGENDA – IGUANA FEST

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After being the first community event canceled during 2020 as a result of COVID-19, Iguana Fest makes its return this year on Saturday, April 1.

As in previous years, council approval is required to make application to Texas Department of Transportation (TxDOT) for temporary closure of Main Street between Virginia and Commerce Streets for the Iguana Fest, from 6:00 a.m. Saturday, April 01, 2023 to Noon on Sunday, April 02, 2023.

While the event is from 4 p.m. to 11 p.m. on the first the additional time requested allows for us to safely bring in the stage and set up and also break down the event before reopening the street.

Additionally, we request temporary closure of Colorado and Guadalupe streets between Railroad and Live Oak streets on Saturday, April 01, 2023 as needed for the event.

STATE OF TEXAS       §

COUNTY OF TRAVIS     §

**AGREEMENT FOR THE TEMPORARY CLOSURE  
OF STATE RIGHT OF WAY**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of \_\_\_\_\_ Port Lavaca \_\_\_\_\_, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

**W I T N E S S E T H**

**WHEREAS**, the State owns and operates a system of highways for public use and benefit, including \_\_\_\_\_ U.S. 87 \_\_\_\_\_, in \_\_\_\_\_ Calhoun \_\_\_\_\_, County; and

**WHEREAS**, the local government has requested the temporary closure of \_\_\_\_\_ U.S. 87 \_\_\_\_\_ for the purpose of \_\_\_\_\_ a community event \_\_\_\_\_, from \_\_\_\_\_ 4/1/23 \_\_\_\_\_ to \_\_\_\_\_ 4/2/23 \_\_\_\_\_ as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

**WHEREAS**, the Event will be located within the local government's incorporated area; and

**WHEREAS**, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

**WHEREAS**, on the \_\_\_\_\_ 13th \_\_\_\_\_ day of \_\_\_\_\_ March \_\_\_\_\_, 2023 \_\_\_\_\_, the \_\_\_\_\_ City Council passed Resolution / Ordinance No. \_\_\_\_\_ see attached \_\_\_\_\_, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

**WHEREAS**, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

**WHEREAS**, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

**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:

**A G R E E M E N T**

**Article 1. CONTRACT PERIOD**

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.



## **Article 2. EVENT DESCRIPTION**

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

## **Article 3. OPERATIONS OF THE EVENT**

**A.** The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

**B.** The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.

**C.** The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.

**D.** The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

**E.** The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.

**F.** The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be

able to meet its requirements.

**G.** The local government hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

**H.** The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

#### **Article 4. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

#### **Article 5. TERMINATION**

**A.** This agreement may be terminated by any of the following conditions:

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

**B.** The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

#### **Article 6. DISPUTES**

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

#### **Article 7. RESPONSIBILITIES OF THE PARTIES**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### **Article 8. INSURANCE**

**A.** Prior to beginning any work upon the State's right of way, the local government and/or its



contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period that the local government and/or its contractors are encroaching upon the State right of way.

**B.** In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

#### **Article 9. AMENDMENTS**

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

#### **Article 10. COMPLIANCE WITH LAWS**

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

#### **Article 11. 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 other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### **Article 12. NOTICES**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

<b>Local Government:</b>	<b>State:</b>
<u>City of Port Lavaca</u>	Texas Department of Transportation
<u>202 N. Virginia St.</u>	<u>Traffic Engineer</u>
<u>Port Lavaca, TX 77979</u>	<u>403 Huck St.</u>
	<u>Yoakum, TX 77979</u>

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

#### **Article 13. SOLE AGREEMENT**

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

Agreement No. \_\_\_\_\_

Each party is signing this agreement on the date stated beside that party's signature.

**THE CITY OF** PORT LAVACA

Executed on behalf of the local government by:

By \_\_\_\_\_ Date \_\_\_\_\_  
City Official

Typed or Printed Name and Title Jack Whitlow  
Mayor

**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 \_\_\_\_\_  
District Engineer







## CERTIFICATE OF INSURANCE

Form 1560  
(Rev. 8/18)  
Previous editions of this form may not be used.  
Page 1 of 2

Agents should complete this form by providing all requested information, then either email, fax, or mail this form as noted at the bottom of page two. Copies of endorsements listed below are not required as attachments to this certificate.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the policies referenced in this certificate control over the terms of the certificate.

Insured: Port Lavaca

Street/Mailing Address: 202 N Virginia St

City/State/Zip: Port Lavaca, TX 77979-3431

Phone Number: ( 361 ) 552 - 9793

### WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name: The Texas Municipal League Intergovernmental Risk Pool			Carrier Phone #: ( 800 ) 537 - 6655	
Address: 1821 Rutherford Lane			City, State, Zip: Austin, TX 78754	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation	9059	10-1-2022	10-1-2023	Not Less Than: Statutory - Texas

### COMMERCIAL GENERAL LIABILITY INSURANCE:

Carrier Name: The Texas Municipal League Intergovernmental Risk Pool			Carrier Phone #: ( 800 ) 537 - 6655	
Address: 1821 Rutherford Lane			City, State, Zip: Austin, TX 78754	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Commercial General Liability Insurance	9059	10-1-2022	10-1-2023	Not Less Than: \$ 600,000 each occurrence

### BUSINESS AUTOMOBILE POLICY:

Carrier Name: The Texas Municipal League Intergovernmental Risk Pool			Carrier Phone #: ( 800 ) 537 - 6655	
Address: 1821 Rutherford Lane			City, State, Zip: Austin, TX 78754	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Business Automobile Policy	9059	10-1-2022	10-1-2023	Not Less Than: \$ 600,000 combined single limit

### UMBRELLA POLICY (If applicable):

Carrier Name:			Carrier Phone #: ( ) -	
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Umbrella Policy				

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named are in full force and effect. If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

Agency Name

TMLIRP

Address

1821 Rutherford Lane

City, State, Zip Code

Austin, TX 78754

( 800 ) 537 - 6655

Authorized Agent's Phone Number

Authorized Agent Original Signature

7/11/2022  
Date

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.