

OPEN SPACE LICENSE AGREEMENT
FOR
DUE DILIGENCE STUDIES

THIS **OPEN SPACE LICENSE AGREEMENT FOR DUE DILIGENCE STUDIES** ("License") is made and entered into as of the date of signature by the Director of Aviation, by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city situated in Harris, Fort Bend and Montgomery Counties ("City"), by and through its department, **HOUSTON AIRPORT SYSTEM** (HAS) whose address is P.O. Box 60106, Houston, Texas 77205, Attention: Mario C. Diaz, Director, and **WALLER COUNTY, TEXAS**, a political subdivision of the State of Texas, ("County"), whose address for purposes hereof is 425 FM 1488, Suite 106, Hempstead, Texas 77445, Attention: County Judge.

WITNESSETH:

WHEREAS, the City is the owner of George Bush Intercontinental Airport/Houston ("Airport" or "IAH"), which is managed and operated by the City's Houston Airport System ("HAS") as an enterprise fund, whose functions are public and governmental, exercised for a public purpose, and matters of public necessity; and

WHEREAS, the City, acting through HAS, is the holder of a Clean Water Act dredge and fill permit No. 21948(01) (the "Permit"), issued under cover of letter dated April 8, 2002, by the U.S. Army Corps of Engineers, Galveston Branch, authorizing the City to construct and operate certain facilities at IAH; and

WHEREAS, the facilities authorized by the Permit are described in a document issued by the United States Department of Transportation, Federal Aviation Administration August 2000 Record of Decision, regarding the George Bush Intercontinental Airport Runway 8L-26R and Associated Near-Term Master Plan Projects and Associated Federal Actions; and

WHEREAS, the Permit and Record of Decision required the City to, among other things, to secure a conservation easement on the 915-acre tract of land in Montgomery County ("Bahr Woods Preserve") and construct wetlands and preserve a 600-acre parcel out of a 1,400-acre tract in Waller County in the Katy Prairie ("West Houston Mitigation Site"); and

WHEREAS, on May 19, 2021, Waller County adopted a Parks, Trails, & Open Space Master Plan in an effort to ensure that the County grows responsibly while retaining its natural legacy, the County desired to examine opportunities to formalize a plan for County-operated parks, trails, and other open space facilities through the development of a formal parks system; and

WHEREAS, the City and County desire to work collaboratively to use approximately 173.5 acres out of the 800-acre portion of the West Houston Mitigation Site that is not encumbered with restrictions pursuant to the Permit for low-impact nature trails and open space uses compatible with the Permit ("Premises"); and

WHEREAS, HAS determined that the use of the Premises by County constitutes a community purpose which will maintain or enhance positive community relations in support of HAS; is consistent with the HAS Airport Layout Plans and all other legal requirements; and, will not impact the aeronautical use of HAS lands; and will not be in violation of the Permit; and,

WHEREAS, HAS determined that the Premises is not needed for aeronautical purposes; and, is not currently nor will be needed in the near term for producing revenue; and,

WHEREAS, County has requested HAS's permission to enter the Premises to conduct inspections, examinations, land surveying, environmental surveys, and other pre-development site evaluations to determine if the Premises is suitable for their needs and desired uses ("Due Diligence Studies"); and

WHEREAS, recognizing the need for immediate occupancy, the Director is authorized by the City's Code of Ordinances to allow County's entry into the Premises while awaiting formal approval by the City of a long-term agreement if desired upon the completion of County's Due Diligence Studies; and

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the City and County hereby covenant and agree as follows:

- (a) "Premises" shall mean a certain parcel being approximately 173.5 acres of undeveloped land out of the H. & T.C.R.R. Surveys, Section 79, Abstract 157 and Section 81, Abstract 158 and the J. G. Bennett Survey, Section 82, Abstract 290 in Waller County, Texas, and being more particularly shown by the drawing attached hereto as Exhibit "A", and incorporated herein for all purposes. Waller County Appraisal District Property ID: 10918.
- (b) "Non-exclusive Access Easement", shall mean a certain parcel being approximately 6.027 acres of land out of the H. & T.C.R.R. Survey, Section 79, Abstract 157 in Waller County, Texas, and being more particularly shown by the drawing attached hereto as Exhibit "A", and incorporated herein for all purposes. Waller County Appraisal District Property ID: 10919

1. Agreement for Access. HAS hereby grants County a license to enter the Premises subject to the terms of this License from time to time during the Term (hereinafter defined) for purposes of performing Due Diligence Studies. County's License shall also include the right to allow its employees, agents, contractors and consultants to enter the Premises and perform the Due Diligence Studies. County, its employees, agents, and contractors will have the non-exclusive right of ingress and egress over and across the Premises and Non-exclusive Access Easement.
2. Costs and Expenses. County shall bear any and all costs and expenses associated with their Due Diligence Studies.
3. Term. The License granted pursuant to this Agreement shall have a term (the "Term") commencing on the Effective Date and ending at the expiration of one hundred-eighty (180) calendar days thereafter, unless sooner terminated for convenience by either party by providing no less than 48 hours' prior written notice to the other party.
4. Limitation on Permitted Activities. County agrees that it and its employees, contractors and agents shall conduct all Due Diligence Studies on the Premises in compliance with all applicable federal, state and local rules, laws, ordinances, codes, policies and guidelines, including, without limitation, all safety, health and environmental laws. County shall have no right to enter the Premises except for the purposes expressly provided for in this Agreement. County shall be solely responsible for obtaining any and all necessary permits, licenses and other authorizations required by law in connection with the Due Diligence Studies. If County desires to conduct test borings or other invasive environmental survey tests of the Premises,

County shall request permission from HAS to perform the proposed work and provide the identity of the consultant proposed to be used and the dates proposed for entry onto the Premises. County, at its sole, cost is required to return the Premises to its original condition, or as close as is feasible to its original condition, at the conclusion of the Due Diligence Studies.

5. **INDEMNIFICATION AND RELEASE OF CITY.** Intentionally left blank

6. **Insurance.** County shall provide and maintain in full force and effect during the Term of this License and all extensions and amendments thereto, at least the following insurance:

- (a) Worker's Compensation at statutory limits;
- (b) Employer's Liability, including bodily Injury by accident and by disease, for \$500,000 combined single limit per occurrence and a twelve (12)-month aggregate policy limit of \$1,000,000;
- (c) Commercial General Liability Coverage, including blanket contractual liability, products and completed operations, personal injury, bodily injury, broad form property damage, operations hazard, pollution, explosion, collapse and underground hazards for \$1,000,000 per occurrence and a twelve (12) month aggregate policy limit of \$2,000,000;
- (d) Automobile Liability Insurance (for automobiles used by County in the course of its performance under this License, including employer's non-ownership and hired auto coverage) for \$1,000,000 combined single limit per occurrence; and The insurance coverages required hereunder may be represented in one (1) or more certificates of insurance, which shall be provided to HAS at the address set forth above.

The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance and a rating of at least B+ and a financial size of Class VI or better in the most current edition of Best's Insurance Reports. Each issuer must be responsible and reputable and must have financial capability consistent with the risks covered.

County shall be entitled to purchase and maintain the insurance required under this License under so-called blanket policies, provided the coverage thereunder is at least at the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

7. **Governing Law.** This License shall be governed by, and construed in accordance with, the laws of the State of Texas.

8. **Severability.** If any provision of this License is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

Signature page to follow.

IN WITNESS WHEREOF, this License has been entered into and effective as of the Effective Date. The Parties have executed this License in multiple copies and/or counterparts, each of which is an original. Each person signing this License represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this License. Each Party represents and warrants to the other that the execution and delivery of this License and the performance of such Party's obligations hereunder have been duly authorized and that this License is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

HAS

CITY OF HOUSTON

By: HOUSTON AIRPORT SYSTEM

By: _____
Mario C. Diaz
Director of Aviation

Effective Date

COUNTY

WALLER COUNTY, TEXAS

By: _____
Carbett "Trey" J. Duhon III
Waller County Judge

Date: _____

Exhibit "A"

Premises

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