

Save RGV
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Luis V. Saenz, Cameron County District Attorney
Eddie Trevino, Jr. Cameron County Judge
1100 E. Monroe St.
Brownsville, Texas 78520

Re: Contract No. 2013CO853 and GLO Contract No. 13-447-000-7916 of Memorandum of Agreement dated September 1, 2013

Dear District Attorney Saenz and Judge Trevino,

This letter is on behalf of Save RGV, a Texas non-profit organization, part of whose mission is to promote the conservation of the remaining natural areas of eastern Cameron County. We want to call to your attention the multiple and egregious violations of the 9/1/13 Memorandum of Agreement (MOA) between Cameron County and the General Land Office. That MOA details the conditions whereby the public is to be denied access to Boca Chica beach to benefit the activities of a private corporation, SpaceX. Among the violations of the MOA are the following.

1. Closures of State Highway 4, which is the only ingress and egress to Boca Chica beach, have not been done with proper notice. The MOA states, "Each request will be considered "timely" if submitted to the county, with a copy to the GLO, at least 14 days prior to the earliest proposed Primary or Back-up Closure Date." In actuality, the 14-day requirement is ignored and the closure hours are often changed, canceled, or added to/subtracted from, with barely a few hours' notice, and sometimes with no notice at all.
2. Frequently the County's published hours of closure orders are changed (reduced or extended) by SpaceX, essentially closing a state highway without state or county authorization. This is illegal.
3. The MOA requires that closure announcements be accompanied by a "beach mitigation plan." We have never seen such a plan. Nor have we seen the MOA-specified documents stating "identify areas where alternative public beach access will be available..." We are requesting copies of these documents.
4. The MOA acknowledges the county's right to close access to the public beach for "emergencies related to public safety." SpaceX is a private business, not an emergency. Furthermore the MOA states the County's requirement in "preserving the public right of access to the public beach" but in fact it has been taking that right away. Not just beach-goers are affected; access is also being denied to state park (Brazos Island State

Park & Boca Chica State Park) visitors and staff, federal wildlife refuge visitors and staff (Boca Chica Unit of the Lower Rio Grande Valley NWR), scientists doing wildlife census and survey work, birdwatchers and naturalists, and visitors to Palmito Ranch National Battlefield Site. The Texas State Constitution, Article 1, Bill of Rights, Section 3, Section 17(b), Section 19 and Section 33(d) are being violated. Further, the Texas Open Beaches Act, passed in 1959, assures that the public has the “free and unrestricted right of ingress and egress to and from” public beaches, defined as the area between the line of vegetation and the mean low tide line. It also prohibits the construction of an “obstruction, barrier, or restraint of any nature which would interfere with the free and unrestricted right of the public” to access the beach.

5. SpaceX security personnel have denied public access to Remedios Avenue and Joanna Street, county roads off SH 4. In the absence of the county officially and legally relinquishing this road to a private company by a process that would require public comment and a documented county commission vote, such access denial is clearly illegal.
6. The closure hours in 2020 and 2021 exceed the number of hours allowed in the FAA’s 2014 Record of Decision(ROD), which is referenced as follows in the MOA between the GLO and the County: “The number of Space Flight Cycles is limited to the number of launches permitted under a Record of Decision issued by the FAA Office of Commercial Space Transportation.” That ROD (attached) limits the number of Cycles to 12 per year and the closure hours to 180 per year. We understand the County and the General Land Office have not amended the MOA. The MOA states that “Anything not otherwise specifically addressed in this Agreement is not authorized or otherwise approved by this Agreement. No amendment, change, or modification to this Agreement may be made except in a formal written amendment signed by both Parties to the Agreement.” As the MOA specifically refers to the ROD and not any subsequent FAA Reevaluation, how can the County authorize over 180 hours of closures per year without a formal written amendment to the MOA?
7. These closures by the County and the GLO may be in violation of the Public Trust Doctrine that specifically and strongly supports the State protecting natural resources and public land access. It clearly states that all natural resources (open bodies of water, wildlife, air, and tidelands) belong to all and must be protected by governments and agencies put “in trust” of those resources belonging to the public, and therefore must be managed and protected in perpetuity by the government.
8. While not reflected in any revision of the MOA, the FAA did issue a Written Reevaluation on 12-2-20 that increased the allowed closure hours to 300 hours per year. The attached closure log, documented by the U.S. Fish & Wildlife Service and the Coastal Bend Bay & Estuary Program, not only shows that closures have already exceed 300 hours in less than 5 months, but that the actual closure hours (385) have exceeded the County-published closure announcements by 50 hours (335). There appears to be no attempt whatsoever by either Cameron County or the GLO to abide by or enforce the closure limits.

Since SpaceX has already exceeded its FAA-authorized 300 hour closure limit for 2021, we ask Cameron County and the GLO to cease issuing any further closure orders for the rest of this year. To do otherwise is to continue to knowingly and willingly violate the Memorandum of Agreement.

Sincerely,

Bill Berg,
Agent, Save RGV

CC: Daniel Lopez, Cameron County Litigation Counselor
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