

Texas Department of Transportation

TECHNICAL PROVISIONS

FOR

LOOP 1604 WESTERN EXTENSION

Design-Build Project

ATTACHMENT 5-2

MUNICIPAL MAINTENANCE AGREEMENT

HIGHWAY LIGHTING

April 26, 2013



Texas Department of Transportation

P.O. BOX 29928 • SAN ANTONIO, TEXAS 78229-0928 • (210) 615-1110

December 21, 2011

New Agreement for Highway Lighting Within the City of San Antonio

Mr. Majed Al-Ghafry, P.E.
Director of Public Works
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Dear Mr. Al-Ghafry:

As per our meeting on December 12, 2011, this letter is sent to explain the need for execution of a new agreement for highway lighting between the City of San Antonio (CSA) and TxDOT. Attached are three (3) originals of the "Agreement for Construction, Maintenance, and Operation of Highway Lighting Within a Municipality" for your review. This agreement is intended to replace or supercede the attached agreement, dated May 27, 1976.

As we discussed, CPS Energy provides all maintenance and electrical service of the highway lighting for the City of San Antonio within its city limits. CPS also continues to bill the City for maintenance and electrical service for these lights. The new agreement is necessary to update and clarify the highways where the City has maintenance and electrical service responsibility. All other locations are under responsibility of other cities or TxDOT. This new agreement will define construction, maintenance, and operation of lighting systems on any controlled access or partially controlled access highway within the City of San Antonio. Controlled access highways include, but are not limited to, all Interstate Highways, US 90, SH 151, controlled access portions of US 281 and Loop 1604, and Wurzbach Parkway (PA 1502). Thus, the new agreement will clarify the lighting systems currently maintained by the City.

If you concur with this new agreement, please make arrangements for the City Council to pass an ordinance to allow execution of this agreement. After a City ordinance is passed, please provide the appropriate City signatures on each of the three (3) originals, and return the ordinance and all originals to this office for final approval. If you or your staff have any questions, or wish to discuss this matter in more detail, please contact John Bohuslav, P.E. (210-615-6476) or Rick Castaneda, P.E. (210-615-6134).

Sincerely,

Ricardo Castaneda, P.E.
Director of Operations

Attachment

cc: Mr. John Bohuslav, P.E.
Mr. Clay Smith, P.E.
Mr. Gregg Granato, P.E.
Mr. Roy McCue

D:\lightagrenew.doc

THE TEXAS PLAN

REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY
PRESERVE THE VALUE OF TRANSPORTATION ASSETS

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**AGREEMENT FOR CONSTRUCTION, MAINTENANCE
AND OPERATION OF HIGHWAY LIGHTING
SYSTEMS WITHIN A MUNICIPALITY**

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT, dated this _____ day of _____
20____, by and between the State of Texas, hereinafter referred to as the "State," party of the
first part, acting by and through the Texas Department of Transportation, and the City of San
Antonio, Bexar County, Texas, acting by and through its duly authorized officers under an
ordinance or resolution passed the _____ day of _____ 20____,
hereinafter called the "City," party of the second part, is made to become effective when fully
executed by both parties.

WITNESSETH

WHEREAS, the City has requested the State to contribute financial aid in the
construction, maintenance and operation of a highway lighting system on controlled access or
partially controlled access highways as defined in Section 25.11, Texas Administrative Code.
Within the City, said lighting system hereinafter referred to as the "lighting system" is to consist
of lighting to be built in sections as financed and designated by the Texas Transportation
Commission; and

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation
Commission, has made it known to the City that the State will construct said highway lighting
system, conditioned that the City, as provided in Section 25.11, Texas Administrative Code and
V.T.C.A., Transportation Code §221.002, will maintain and operate said lighting system.

AGREEMENT

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:

1. CONSTRUCTION RESPONSIBILITIES

A. The State will prepare or provide for the plans and specifications, advertise for bids, let the construction contract, or otherwise provide for the construction, and will supervise construction, reconstruction, or betterment work as required by said plans and specifications. As a project is developed to construction stage, either as a unit or in increments, the State will submit plans and specifications of the proposed work to the City and will secure the City's consent to construct the lighting system prior to awarding the contract; said City consent to be signified by the signatures of duly authorized City officers in the spaces provided on the title sheet of plans containing the following notation:

“Attachment No. _____ to special AGREEMENT FOR CONSTRUCTION, MAINTENANCE, AND OPERATION OF HIGHWAY LIGHTING SYSTEMS WITHIN A MUNICIPALITY, dated _____. The City-State construction, maintenance and operation responsibilities shall be as heretofore agreed to, accepted, and specified in the Agreement to which these plans are made a part.”

B. All costs of constructing the lighting system will be borne by the State, and the lighting system as constructed will remain the property of the State.

2. MAINTENANCE AND OPERATION RESPONSIBILITIES

A. The City hereby agrees to furnish, at its expense, the electrical energy required for proper

operation of the lighting system, such electrical energy to be provided at points on the lighting system as designated by the State. The City further agrees to maintain and operate the lighting system in an efficient and sightly condition, including the furnishing of all equipment and labor and making any replacements which may become necessary, without cost to the State.

B. The City shall assume maintenance and operation responsibilities on a date to correspond with the date construction of the lighting system is completed and accepted by the State. The State will provide written notification to the City of such acceptance. The City hereby agrees to furnish at its expense the electrical energy consumed by the system during the period of trial operation prior to acceptance by the State. If the lighting system is constructed by sections, this provision shall apply to each such separately constructed section.

C. The City shall obtain approval of the San Antonio District Engineer before making any major changes in the design and/or operation of the lighting system as designed and constructed by the State or before the removal of any part of the installation except for the purpose of replacement where identical or accepted equivalent equipment to that originally installed is used.

3. GENERAL

A. This Agreement shall remain in force for a period of two years from the date that maintenance and operation responsibilities are first assumed by the City and shall be automatically renewed for two-year periods unless modified by mutual agreement of both parties.

B. The State will not incur any financial obligation to the City as a result of this Agreement.

C. This Agreement may be terminated sixty (60) days after the filing of a written notice by either party of a desire for cancellation. The State reserves the right to remove the lighting system or turn off power for the lighting system upon cancellation of the Agreement.

D. If, at any time, the State notifies the City in writing that the City has not maintained and/or operated the lighting system in a satisfactory manner and the City has failed to properly correct its performance as required, the State reserves the right to either arrange for maintenance, or remove the lighting system, or turn off power for the lighting system. Thereafter, the State may, at its sole discretion, request reimbursement or contribution from the City for any reasonable costs incurred by the State to arrange for maintenance, or removal of the system, or to turn off power for the lighting system.

E. This Agreement shall not be considered as specifying the exclusive remedy for any dispute, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

F. The City shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations affecting its performance in this Agreement.

G. Changes in time frame, character, cost, or obligations authorized herein shall be enacted by written amendment. Any amendment to this Agreement must be executed by both parties within the agreement period.

H. This Agreement shall bind, and shall be for the sole and exclusive benefit of the respective parties and their legal successors. The City shall not assign or transfer its interest in this Agreement without written consent of the State.

I. In case any 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 provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

J. This Agreement constitutes the sole and only agreement for highway lighting system construction, maintenance, and operation at the location described herein of the parties hereto and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter.

4. INDEMNIFICATION

A. The City acknowledges that it is not an agent, servant, or employee of the State and, thus, is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work defined in this Agreement. The parties agree that the Texas Tort Claims Act pertaining to governmental liability for tortious conduct and/or property damage shall apply to this Agreement.

B. The City and State further acknowledge that nothing contained in this Agreement will be construed to (a) give either party the power to direct and control the day-to-day activities of the other, or (b) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (c) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

5. USE OF CONSULTANTS, CONTRACTORS, AND/OR PERSONS

A. In the event the City or its agent engages consultants, contractors and/or persons, other than its employees, for any of its responsibilities set forth in this Agreement, the City shall ensure that said entity shall indemnify the State for any and all damages and claims for damages by third parties, including any claims resulting from bodily injury or death to third parties, or for loss of or damage to property to third parties, arising out of, incident to, or in any manner connected to this Agreement, and for any or all liability arising from the negligent acts or omissions of the

consultant, contractor, or person. However, the City will continue to remain responsible to the State to ensure performance of all its duties and responsibilities specified in this Agreement.

B. Prior to commencement of any work or service, the City shall require the consultant, contractor, or person to submit proof of insurance using the State's "Certificate of Insurance, Form 1560," as currently revised and attached as **Exhibit A**. The limits of the insurance policy shall remain in effect for the duration of the work or service performed. The State shall be named as an Additional Insured with a Waiver of Subrogation in favor of the State.

6. NOTICES

All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective address:

STATE:

Texas Department of Transportation
San Antonio District
Attention: Director of Maintenance
4615 N.W. Loop 410
P.O. Box 29928
San Antonio, Texas 78229-0928

CITY:

City of San Antonio
Director of Public Works
P.O. Box 839966
San Antonio, Texas 78283-3966

IN WITNESS WHEREOF, the parties have thereunto affixed their signatures, the City of San Antonio on the _____ day of _____, 20____, and the Texas Department of Transportation, on the _____ day of _____, 20_____.

ATTEST:

CITY OF SAN ANTONIO

By: _____

(Title of Signing Official)

(Date)

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission under the Authority of Minute Order 100002 and Stand Alone Manual Notice 96-6, for the purpose and effect of activating and/or carrying out the orders, established policies or work programs by the Texas Transportation Commission.

APPROVED:

By: _____
District Engineer

_____ District

Date: _____

List of Exhibits:

- A. Certificate of Insurance for City's Consultant, Contractor, or Person

AGREEMENT FOR MAINTENANCE AND OPERATION OF EXPRESSWAY
ILLUMINATION SYSTEM WITHIN MUNICIPALITY

STATE OF TEXAS I

COUNTY OF TRAVIS I

This agreement made this 27th day of May, 1976,
by and between the State of Texas, hereinafter referred to as the "State", party
of the First part, and the City of San Antonio, Bexar County, Texas, acting by
and through its duly authorized officers under an ordinance passed the 27th day
of May, 1976, hereinafter called the "City", party of the Second
part.

WITNESSETH

WHEREAS, in Bexar County, in the City of San Antonio, expressway illumi-
nation systems on Interstate Highway 10, 35, 37, 410, and US Highway 90 have been
installed in accordance with agreements whereby the City and State share
responsibility for installation, operation, and maintenance; and

WHEREAS, the operation and maintenance has become a burden to both the
City and the State; and mutually acceptable relief can be attained if the City
will assume the State's operation and maintenance responsibility.

WHEREAS, the Engineer-Director, acting for and in behalf of the State
Highway and Public Transportation Commission, has made it known to the City that
the State will pay the City \$563,118.08 for the City's cost for installation of
the Expressway lighting system, less depreciation, conditioned that the City, as
provided for in Highway Commission Order No. 71034 will maintain and operate said
illumination system.

AGREEMENT

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:

Maintenance and Operation Responsibilities

The City hereby agrees at its expense to furnish the electric energy required for proper operation of the street illumination system. The City further agrees to maintain and operate the existing expressway illumination system in an efficient and sightly condition, including the furnishing of all materials, equipment, and labor which may become necessary to maintain the system without cost to the State.

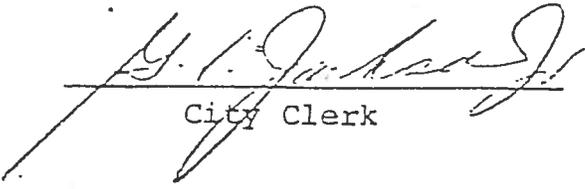
The City will obtain written approval of the Engineer-Director before making any changes in the design and operation of the illumination system as designed and constructed by the State or before removal of any part of the installation except for the replacements where identical or accepted equivalent equipment to that originally installed is used.

The City will assume maintenance and operations on June 1, 1976.

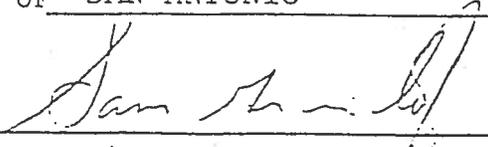
This agreement supersedes and cancels any and all prior Construction, Maintenance and Operation Agreements for expressway illumination on the above shown highways.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures
the City of San Antonio on the 27th day of May, 1976
and the State Department of Highways and Public Transportation on the 27th day
of May, 1976.

ATTEST:



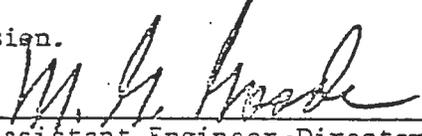
City Clerk

CITY OF SAN ANTONIO
BY 

City Manager
(Title of Signing Official)

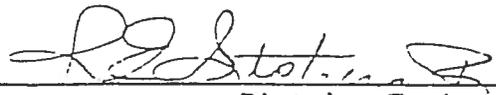
THE STATE OF TEXAS

Certified as being executed for the
purpose and effect of activating and/or
carrying out the orders, established
policies, or work programs heretofore
approved and authorized by the State
Highway and Public Transportation
Commission.

BY: 

Assistant Engineer-Director

Authorization for execution is
accomplished under Minute Order No. 70104



District Engineer



Chief Engineer of Highway Design



Chief Engineer of Maintenance Operations

AN ORDINANCE 46702

AUTHORIZING THE CITY MANAGER TO EXECUTE A MAINTENANCE AND OPERATION AGREEMENT WITH THE STATE OF TEXAS WHEREBY THE CITY OF SAN ANTONIO WILL MAINTAIN AND OPERATE THE EXPRESSWAY LIGHTING SYSTEM ON INTERSTATE HIGHWAYS 10, 35, 37, 410 AND U.S. HIGHWAY 90.

* * * * *

WHEREAS, by Ordinance No. 46478, dated April 1, 1976 the City of San Antonio accepted the terms of Minute Order No. 71034, dated March 5, 1976, thereby agreeing to operate and maintain the expressway lighting system in a manner suitable to the Texas Highway Department; and

WHEREAS, in consideration thereof the Texas Highway Department agreed to pay the City an amount equal to the City's cost for installation of the expressway lighting system, less depreciation, that is \$563,118.08; and

WHEREAS, by the terms of Ordinance No. 46478, dated April 1, 1976 the \$563,118.08, tendered to the City by said Minute Order No. 71034, was accepted and deposited in Fund 11, Object Code 020321; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

The City Manager is hereby authorized to execute the Maintenance and Operation Agreement attached hereto and incorporated herein with the State of Texas whereby the City of San Antonio shall maintain and operate the expressway lighting system on Interstate Highways 10, 35, 37, 410 and U.S. Highway 90.

PASSED AND APPROVED this _____ day of _____, 1976.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF TEXAS
COUNTY OF BEXAR
CITY OF SAN ANTONIO

SS

CERTIFIED COPY