

Texas Department of Transportation
BOOK 2 – TECHNICAL PROVISIONS
FOR
LOOP 375 - BORDER HIGHWAY WEST EXTENSION
PROJECT
Design-Build Project

ATTACHMENT 5-1
AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND
OPERATION OF CONTINUOUS HIGHWAY ILLUMINATION
SYSTEMS WITHIN MUNICIPALITIES

December 20, 2013

AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF CONTINUOUS HIGHWAY ILLUMINATION SYSTEMS WITHIN MUNICIPALITIES (100% Blanket)

STATE OF TEXAS)
COUNTY OF TRAVIS)

This AGREEMENT dated this 16th day of March, 1993, 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 El Paso, El Paso County, Texas, acting by and through its duly authorized officers under an ordinance or resolution passed the 16th day of March, 1993, 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 illumination system on freeways and expressways as defined in Highway Commission Minute Order 82420. Within the City, said illumination system hereinafter referred to as the "illumination system" is to consist of continuous 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 illumination system, conditioned that the City, as provided in Highway Commission Minute

Order No. 82420 and Article 6673b, Vernon's Texas Civil Statutes, will maintain and operate said illumination system.

A G R E E M E N T

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 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 for 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 CONTINUOUS HIGHWAY ILLUMINATION SYSTEM WITHIN MUNICIPALITIES, 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 illumination system will be borne by the State, and the illumination system 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 illumination system, such electrical energy to be provided at points on the illumination system as designated by the State. The City further agrees to maintain and operate the illumination 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 will assume maintenance and operation on a date to correspond with the date construction of the illumination 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 illumination system is constructed by sections, this provision shall apply to each such separately constructed section.

c. The City will obtain approval of the Executive Director before making any major changes in the design and/or operation of the illumination 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 illumination system upon cancellation of the Agreement.

d. If, at any time, the City does not maintain and operate the illumination system in a satisfactory manner, the State reserves the right to either arrange for maintenance at the expense of the City or to remove the illumination system. Should the illumination system be removed due to lack of maintenance, the City hereby agrees to reimburse the State for the cost of removal.

e. Should disputes arise as to the parties' obligations under this Agreement, the State's decision shall be final and binding.

f. The City shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any matter affecting the performance of 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 contract 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 lighting 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

To the extent permitted by law, the City shall indemnify and save harmless the State, its agents or employees, from all suits, actions or claims and from all liability and damages for any and all injuries or damages sustained by any person or property in consequence of any neglect in the performance, or failure of performance of the City, its agents and employees under this Agreement.

IN WITNESS WHEREOF, the parties have thereunto affixed their signatures, The City of El Paso on the 16th day of March, 1993, and the Texas Department of Transportation on the ___ day of _____, 19__.

CITY OF EL PASO

By: [Signature]
Mayor Bob Stern

ATTEST:

[Signature]
Alternate City Clerk

APPROVED AS TO CONTENT:

[Signature]
Director
Traffic and Transportation

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney

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 Texas Transportation Commission under the authority of Minute Order 100002.

APPROVED:

By: [Signature]
Traffic Operations Engineer

Date: 4/15/93

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the attached and incorporated Agreement between the CITY OF EL PASO and the STATE OF TEXAS, on behalf of the Texas Department of Transportation, for the construction, maintenance and operation of a continuous highway illumination systems within the City of El Paso; and

That the Director of the Department of Traffic and Transportation be authorized to consent to the construction of the illumination systems by signing the state construction plans for the purposes of that Agreement.

ADOPTED this 16th day of March, 1993.

THE CITY OF EL PASO

David Lo
Mayor

ATTEST:

Carole Hunter
City Clerk

APPROVED AS TO FORM:

C. Stevens
Assistant City Attorney

APPROVED AS TO CONTENT;

C. Ramirez
Director, Traffic & Transportation