

**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 provides a 30 Day Notice to Cure to the City stating that the City has not maintained and/or operated any portion of 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 removal, or turn off power for that portion of 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

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Revised April 7, 2014



CERTIFICATE OF INSURANCE

Form 1560
(Rev. 07/12)
Previous editions of this form may not be used.
Page 1 of 2

Agents should complete the form providing all requested information then either fax or mail this form directly to the address listed on page two of this form. 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: _____

Street/Mailing Address: _____

City/State/Zip: _____

Phone Number: () - _____

WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone #: () -	
Address:			City, State, Zip:	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation				Not Less Than: Statutory - Texas

COMMERCIAL GENERAL LIABILITY INSURANCE:

Carrier Name:			Carrier Phone #: () -	
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Commercial General Liability Insurance				Not Less Than: \$ 600,000 each occurrence

BUSINESS AUTOMOBILE POLICY:

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

Address

City, State, Zip Code

() -

Authorized Agent's Phone Number

Authorized Agent Original Signature

Date

The Texas Department of Transportation is not responsible for the accuracy of the information provided. If you are informed about the information and review the information. U.

ons, you are entitled on request to be Code, you also are entitled to receive nation about you that is incorrect.

Exhibit A

NOTES TO AGENTS:

Agents must provide all requested information then either fax or mail this form directly to the address listed below.

Pre-printed limits are the minimum required; if higher limits are provided by the policy, enter the higher limit amount and strike-through or cross-out the pre-printed limit.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day** prior to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

List the contractor's legal company name, including the DBA (doing business as) name as the insured. If a staff leasing service is providing insurance to the contractor/client company, list the staff leasing service as the insured and show the contractor/client company in parenthesis.

The TxDOT certificate of insurance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing business as) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

This form may be reproduced.

DO NOT COMPLETE THIS FORM UNLESS THE WORKERS' COMPENSATION POLICY IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF TxDOT.

The **SIGNATURE** of the agent is required.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word **STATUTORY**, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or **ACCIDENT INSURANCE** is not an acceptable substitute for Workers' Compensation.

COMMERCIAL GENERAL LIABILITY INSURANCE:

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

BUSINESS AUTOMOBILE POLICY:

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$500,000 each occurrence
	\$100,000 each occurrence
Property Damage	\$100,000 for aggregate

PRIVATE AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for a Business Automobile Policy.

MAIL ALL CERTIFICATES TO:

Texas Department of Transportation
CST – Contract Processing Unit (RA/200 – 1st Fl.)
125 E. 11th Street
Austin, TX 78701-2483
512/416-2540 (Voice), 512/416-2536 (Fax)