

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR FURNISHING AND INSTALLING OF
TRAFFIC SIGNAL EQUIPMENT BY A MUNICIPALITY**

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State," and the City of Denton, Denton County, Texas, hereinafter called the "City," acting by and through its duly authorized officers as evidenced by Resolution/Ordinance No. _____, hereinafter acknowledged by reference.

WITNESSETH

WHEREAS, the State owns and maintains a system of highways and roadways, including US 377 in the City of Denton; and

WHEREAS, the City has requested the State to reimburse the cost of furnishing and installing traffic signal equipment at the intersection(s) of US 377 at IH 35E eastbound frontage road, US 377 at Daniels Street, US 377 at FM 1830/James Street, hereinafter called the "Project," and

WHEREAS, the State and City wish to cooperate in the construction of this Project; and

WHEREAS, The City desires that equipment be provided that is compatible with standard signal operation and/or existing City equipment; and

WHEREAS, it is in the best interest of the City and the State for the City to assist the State by furnishing and installing traffic signal equipment on the Project; and

WHEREAS, the Texas Transportation Commission passed Minute Order No.117670, approving the Project; and

WHEREAS, the State is authorized to enter into an agreement with the City for the Project pursuant to Transportation Code, §221.002;

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:

AGREEMENT

Article 1. CONTRACT PERIOD

This agreement becomes effective on final execution by the State and shall remain in effect as long as said traffic signal equipment is in operation at the described location and the signal project is incomplete, or unless otherwise terminated or modified as hereinafter provided.

Article 2. CONSTRUCTION RESPONSIBILITIES

- A.** For all items of construction other than furnishing and installing specific traffic signal equipment, the State will prepare the construction plans, advertise for bids, and let the construction contract, or otherwise provide for the construction and will supervise the construction as required by said plans. The State will secure the City's approval of construction plans prior to award of contract.
- B.** The furnishing and installing of specific traffic signal equipment will be part of the construction to be undertaken by the City, and the State will reimburse the City for its contribution to the Project, as prescribed under Article 3, "Compensation."

Article 3. COMPENSATION

- A.** The maximum amount under this agreement without modification is **\$204,107.00**. A cost estimate of the work authorized under this agreement is marked "Exhibit A," attached hereto and made a part of this agreement.
- B.** The State will reimburse the City the cost of furnishing and installing the traffic signal equipment according to the location and manner of construction as shown and described in the plans and specifications.
- C.** The State will reimburse the City for properly supported costs incurred under the terms and conditions of this agreement. Costs incurred prior to the issuance of a written "Work Order" by the State will not be reimbursed. Reimbursement will be made by the State to the City for labor, equipment use, materials, supplies, travel expenses, and warehouse or material handling charges provided the City has paid from City funds their obligations covering items of costs previously billed.

Article 4. PAYMENTS

- A.** The City shall submit an invoice acceptable to the State upon completion of the Project and the State's acceptance thereof.
- B.** An original invoice should be submitted to the following address:

Texas Department of Transportation
Attn: Director of Operations
4777 E. Highway 80
Dallas, TX 75150

All billing statements shall be properly documented, summarizing the costs by description of work performed, quantity of materials and devices, unit price, labor costs, and extensions.

- C.** The State shall make payment to the City within thirty (30) days from receipt of the City's request for payment, provided that the request is properly prepared, executed, and documented.
- D.** Unsupported charges or charges after final acceptance by the State will not be considered eligible for reimbursement. The State will prepare a final audit upon completion of the work authorized or at any time an audit is deemed to be in the best interest of the State.

Article 5. PERSONNEL, EQUIPMENT, AND MATERIAL

- A.** The City will use labor and supervisory personnel employed directly by the City, and use City-owned machinery, equipment, and vehicles necessary for the work. In the event that the City does not have the necessary machinery, equipment, and vehicles necessary to perform the work, the machinery, equipment, and vehicles may be rented or leased as necessary at the low bid price submitted by at least two approved bidders.
- B.** Reimbursement for the use of materials purchased by other than competitive bid procedures will be made only if such procedures are shown to be in the public interest and provided the State shall have given prior approval for the use of said materials. All materials used for the work shall be new and undepreciated.

Article 6. INSPECTION OF WORK

- A.** The State shall make suitable, frequent, and complete inspection of all materials and equipment, and the work of installation to determine and permit certification that the Project and its components meet all applicable requirements of the plans and specifications in suitable condition for operation and maintenance by the City after its completion.
- B.** The City will provide opportunities, facilities, and representative samples, as may be required, to enable the State to carry on suitable, frequent, and complete inspection of all materials and application methods, sufficient to afford determination and certification by the State that all parts of the installation and the component materials comply with the requirements of the approved plans and specifications. The State will promptly notify the City of any failure of materials, equipment, or installation methods, and the City will take such measures as necessary to obtain acceptable systems components and installation procedures without delay.

Article 7. TERMINATION

- A.** This agreement may be terminated by one of the following conditions:
 - (1) By mutual agreement and consent of both parties.
 - (2) By the State giving written notice to the City as a consequence of failure by the City to perform the services and obligations set forth in a satisfactory manner and within the limits provided, with proper allowances being made for circumstances beyond the control of the City.
 - (3) By either party, upon thirty (30) days written notice to the other.
- B.** If, at any time, the City fails to assume the construction responsibilities as prescribed herein or the maintenance and operation responsibilities for the City's portion of the traffic signal equipment in a satisfactory manner as determined by the State, the State reserves the right to assume the construction responsibilities and/or to arrange for the maintenance and operation responsibilities at the expense of the City.

Article 8. INDEMNIFICATION

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.

Article 9. REMEDIES

Violation or breach of contract terms by the City shall be grounds for termination of the agreement, and any increased cost arising from the City's default, breach of contract, or

violation of terms shall be paid by the City. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 10. DISPUTES

Should disputes arise as to responsibilities and obligations as set forth in this agreement, the State's decision shall be final and binding.

Article 11. SUBLETTING

The City shall not sublet or transfer any portion of its responsibilities and obligations under this agreement unless specifically authorized in writing by the State. In the event subcontracts are entered into by the City, the subcontractors must adhere to the provisions of this agreement.

Article 12. AMENDMENTS

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

Article 13. INSURANCE (Mark out the following paragraph that is not applicable)

A. Outside Insurance

Prior to the City performing any work on this Project, the City shall furnish to the State a completed Certificate of Insurance (Form 1560, latest version) and shall maintain the insurance in full force and effect as long as this Project lasts and the City is responsible for the furnishing, installing, maintenance, and operation of the herein mentioned traffic signal equipment.

B. Self Insured

Prior to the City performing any work on this Project, the City shall furnish to the State a completed Certificate of Insurance (Form 1560, latest version) and shall maintain its self-insurance program in full force and effect as long as this Project lasts and the City is responsible for the furnishing, installing, maintenance, and operation of the traffic signal equipment. The State understands that the City is a self-insured entity for public liability purposes.

Article 14. SUCCESSORS AND ASSIGNS

The City shall not assign or otherwise transfer its rights or obligations under this agreement except with the prior written consent of the State.

Article 15. NOTICES

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

City:	State:
City of Denton	Texas Department of Transportation
ATTN: Traffic Engineer	Attn: Director of Operations
901-A Texas Street	4777 E. Highway 80
Denton, TX 76209	Mesquite, TX 75150

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 16. INSPECTION OF CITY'S BOOKS AND RECORDS

- A.** The State shall, for purpose of termination of the agreement prior to completion, examine the books and records of the City for the purpose of checking the amount of the work performed and/or materials furnished by the City at the time of contract termination. The City shall maintain all books, documents, papers, accounting records, and other documentation pertaining to costs incurred under this contract and shall make such materials available to the State or its duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of final payment under this contract or until impending litigation is resolved. Additionally, the State and its duly authorized representatives shall have access to all records of the City which are directly applicable to this contract for the purpose of making audits, examinations, excerpts, and transcriptions. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State
- B.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 17. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall for any reason be held to be 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.

Article 18. GOVERNING LAWS AND VENUE

This agreement shall be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations under this agreement must be filed in Travis County, Texas.

Article 19. PRIOR AGREEMENTS SUPERSEDED

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

IN WITNESS WHEREOF, the State and the City have signed duplicate counterparts of the agreement.

THE CITY OF DENTON

Executed on behalf of the City by:

By _____ Date _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission 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.

By _____ Date _____
James K. Selman, P.E.
Dallas District Engineer

Exhibit A

US 377 at IH 35E EBFR

Controller and Cabinet Assembly \$17,242.00
Battery Backup Unit \$5,520.00
Communication Equipment \$2,950.00
Radar Detection Equipment \$37,698.00

Total for this intersection is \$63,410.00

US 377 at Daniels St

Controller and Cabinet Assembly \$17,242.00
Battery Backup Unit \$5,520.00
Communication Equipment \$2,916.00
Radar Detection Equipment \$41,505.00

Total for this intersection is \$67,183.00

US 377 at FM 1830/James St

Controller and Cabinet Assembly \$17,242.00
Battery Backup Unit \$5,520.00
Communication Equipment \$3,052.00
Radar Detection Equipment \$47,700.00

Total for this intersection is \$73,514.00

Grand Total \$204,107.00