

MEMORANDUM

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to Dan Mallie
Sent 5/21/90
SGF

S.D.H.P.T.
Received
MAY 14 1990
District 14
Austin, Texas

TO: Mr. William C. Garbade

DATE: May 8, 1990

FROM: Gary K. Trietsch, P.E.

Originating Office
D-18STO

SUBJECT: Continuous Illumination Agreement

Attached for your file and distribution are 2 signed copies of the subject agreement executed between the State and the City of San Marcos.

The original agreement is being retained for the files of the Safety and Traffic Operations Section of the Maintenance and Operations Division.

HHW:cm
Attachments

*Gary K. Trietsch, P.E.
For BGH*

*Sent copy to
Hank Goss 5/4/90*

Debby [unclear]

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FILE COPY

AGREEMENT FOR CONSTRUCTION, MAINTENANCE
AND OPERATION OF CONTINUOUS HIGHWAY ILLUMINATION
SYSTEM WITHIN THE CITY OF SAN MARCOS

STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF TRAVIS

THIS AGREEMENT dated this 10th day of April,
1990, by and between the State of Texas, hereinafter referred to as
the "State", party of the first part, and the City of San Marcos, Hays
County, Texas, acting by and through its duly authorized officers under
an ordinance or resolution passed the 9th day of April,
1990, 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 State Highway and Public Transportation
Commission; and,

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 construct said highway illumination
system, conditioned that the City, as provided in Highway Commission
Minute Order No. 82420, will maintain and operate said illumination
system.

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 CONTINUOUS HIGHWAY ILLUMINATION SYSTEM WITHIN THE CITY OF SAN MARCOS, 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. The State will assume maintenance of the concrete traffic barrier, associated anchor bolts, nuts, washers and conduit.

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 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 written approval of the Engineer-Director before making any 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 supersedes and cancels any and all prior maintenance and/or operation agreements for lighting between the State and the City.

b. 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.

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

d. 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.

e. 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.

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 San Marcos on the 10 day of April, 1990 and the State Department of Highways and Public Transportation on the 10 day of May, 19 90.

ATTEST:

Janis K. Womack
CITY SECRETARY

CITY OF SAN MARCOS

BY Larry D. Gilley
Larry D. Gilley, City Manager

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:

APPROVED:

By: Maynard L. Tuck
Traffic Operations Engineer

DATE: 5-10-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN THE CITY AND THE STATE OF TEXAS FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A CONTINUOUS HIGHWAY ILLUMINATION SYSTEM ON IH 35 WITHIN THE CORPORATE LIMITS OF SAN MARCOS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of San Marcos desires to enter into an agreement with the State of Texas for the construction, operation and maintenance of a continuous highway illumination system on IH 35 within the corporate limits of the City of San Marcos; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. That the terms and conditions of an agreement between the State of Texas and the City of San Marcos for the construction, operation and maintenance of a continuous highway illumination system, a copy of which is hereby attached hereto and made a part hereof for all intents and purposes, are hereby approved.

PART 2. That the City Manager, Larry D. Gilley be, and he is hereby authorized to execute the agreement on behalf of the City.

PART 3. That this Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 9th day of April , 1990.

Kathy M. Morris
Kathy M. Morris
Mayor

Attest:

Janis K. Womack

Janis K. Womack
City Secretary

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN THE CITY AND THE STATE OF TEXAS FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A CONTINUOUS HIGHWAY ILLUMINATION SYSTEM ON IH 35 WITHIN THE CORPORATE LIMITS OF SAN MARCOS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of San Marcos desires to enter into an agreement with the State of Texas for the construction, operation and maintenance of a continuous highway illumination system on IH 35 within the corporate limits of the City of San Marcos; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. That the terms and conditions of an agreement between the State of Texas and the City of San Marcos for the construction, operation and maintenance of a continuous highway illumination system, a copy of which is hereby attached hereto and made a part hereof for all intents and purposes, are hereby approved.

PART 2. That the City Manager, Larry D. Gilley be, and he is hereby authorized to execute the agreement on behalf of the City.

PART 3. That this Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 9th day of April , 1990.

Kathy M. Morris
Kathy M. Morris
Mayor

Attest:

Janis K. Womack

Janis K. Womack
City Secretary



Office of the City Secretary

April 18, 1990

Mr. Harold D. Cooner
State Department of Highways
and Public Transportation
Building 3, Suite 140
1120 Capital of Texas Highway
Austin, Texas 78746

Dear Mr. Cooner,

Enclosed herewith is a copy of the Resolution that was adopted by the City Council of the City of San Marcos, Texas, April 9, 1990. Also enclosed are the Agreements between the City and the State of Texas for the construction, operation and maintenance of a Continuous Highway Illumination System on IH 35 for your execution.

Please complete and execute these agreements and return one of the original agreements to me at your earliest convenience. Thank you for your immediate attention in this matter.

Very truly yours,

Janis K. Womack
City Secretary

Enclosures

JKW/kam