

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

CONSENT AGENDA

ITEM NO. 17

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

SUBJECT: Agreement for Furnishing and Installing of Traffic Signal Equipment with Texas Department of Transportation (TxDOT)

DATE: November 18, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the Interim City Manager or his designee to execute an "Agreement for Furnishing and Installing of Traffic Signal Equipment by a Municipality" with the Texas Department of Transportation (TxDOT) in connection with the Southcross Blvd. – New Braunfels to Presa project, an authorized 1999-2004 General Obligation Street Improvement Bond and Metropolitan Planning Organization (MPO) project located in Council District 3.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The Southcross Blvd. – New Braunfels to Presa project will provide for the reconstruction of the existing 4-lane roadway to an approximately 46-foot, 4-lane roadway with 5-foot sidewalks at the curb, driveway approaches, an underground storm drain and traffic signal upgrades. Construction of this project is ongoing and is anticipated to be completed in January of 2005.

This construction contract is being managed by TxDOT, and the original plans called for the installation of in-ground traffic detection loops at the street intersections. As part of the City's initiative to replace traffic loops with Video Imaging Vehicle Detection Systems (VIVDS), the Public Works Traffic Engineering Division requested that the plans be altered to provide for VIVDS.

This ordinance will authorize the City Manager or his designee to execute an "Agreement for Furnishing and Installing of Traffic Signal Equipment by a Municipality" with the Texas Department of Transportation (TxDOT) to allow the City's Traffic Operations Division to furnish and install VIVDS at the intersections of Southcross Blvd. with S. New Braunfels Ave. and South Hackberry Street. The acquisition and installation of the VIVDS by City Forces rather than the TxDOT construction contractor will result in significant project savings.

This agreement will provide that TxDOT shall reimburse the City in the amount of \$23,297, which is the total estimated cost for the VIVDS and installation by City Forces. A copy of this agreement is included herein as Attachment 2.

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to participate in the development and construction of City selected and approved MPO projects, which are approved annually by City Council.

FISCAL IMPACT

This item has no financial impact to the FY05-10 Capital Improvement Budget.

COORDINATION

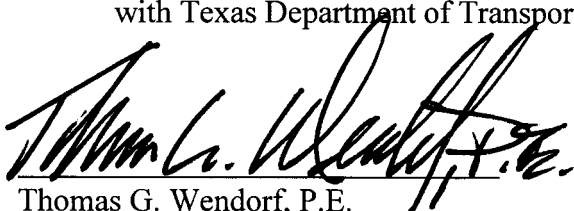
This request for ordinance has been coordinated with the Office of Management and Budget, the Finance Department, the City Attorney's Office and TxDOT.

SUPPLEMENTARY COMMENTS

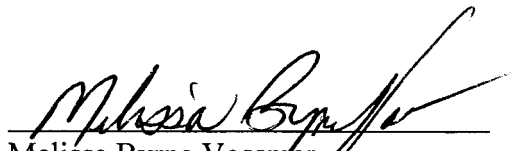
The Discretionary Contracts Disclosure Form required by the Ethics Ordinance is not required.

ATTACHMENTS

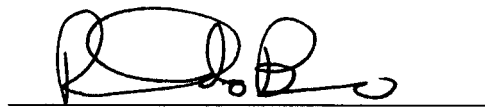
1. Project Map
2. "Agreement for Furnishing and Installing of Traffic Signal Equipment by a Municipality" with Texas Department of Transportation (TxDOT)



Thomas G. Wendorf, P.E.
Director of Public Works



Melissa Byrne Vossmer
Assistant City Manager



J. Rolando Bono
Interim City Manager

SOUTHCROSS - NEW BRAUNFELS TO PRESA



Legend

- Southcross
- Streets
- Railroads
- Parcels



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 San Antonio, Bexar County, Texas, hereinafter called the "City," acting by and through its duly authorized officers as evidenced by Resolution/Ordinance No. _____, hereinafter acknowledged by reference.

W I T N E S S E T H

WHEREAS, the State owns and maintains a system of highways and roadways, including Southcross Blvd. in the City of San Antonio; and

WHEREAS, the City has requested the State to reimburse the cost of furnishing and installing traffic signal equipment at the intersection(s) of Southcross Blvd. at S. New Braunfels Ave. and Southcross Blvd. at S. Hackberry St., 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, on this 25th day of January, 2001, the Texas Transportation Commission passed Minute Order No. 108410 approving the Project; and

WHEREAS, the Project has been designated as a federal-aid project and thus this agreement shall be made in accordance with Federal Highway Administration (FHWA) procedures and regulations; 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:

A G R E E M E N T

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 \$ 23,297.00.
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.
- D. The City shall comply with the cost principles established in OMB Circular A-87, "Cost Principles for State and Local Governments."

Article 4. PAYMENTS

- A. The City shall submit the State's Form 132, Billing Statement, or other type of invoice acceptable to the State upon completion of the Project and the State's acceptance thereof.
- B. An original and four (4) copies of the Billing Statement should be submitted to the following address: Mr. David R. Balli, P.E., Area Engineer
Texas Department of Transportation
P.O. Box 29928
San Antonio, Texas 78229-0928
- C. All billing statements shall be properly documented, summarizing the costs and description of work performed, quantity of materials and devices, unit price, labor costs, and extensions.
- D. 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.
- E. 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 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 20.102, 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 20.102, 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:
Mr. Thomas G. Wendorf, P.E.	Mr. Marc S. Jacobson, P.E.
Director of Public Works, City of San Antonio	Assistant District Traffic Engineer
P.O. Box 839966	P.O. Box 29928
San Antonio, TX 78283-3966	San Antonio, TX 78229

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 relating to costs incurred under this contract and shall make such materials available to the State, Federal Highway Administration (FHWA) 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, FHWA 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.

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.

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.

Article 20. OMB 1-128 AUDIT REQUIREMENTS

The City shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in paragraphs 6, 8, and 9 of OMB Circular No. A-128.

Article 21. PROCUREMENT STANDARDS

The City shall adhere to the procurement standards set forth in Title 49 CFR Part 18.32.

Article 22. PROPERTY MANAGEMENT STANDARDS

The City shall adhere to the property management standards set forth in Title 49 CFR Part 18.36.

Article 23. COMPLIANCE WITH LAWS

The City shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court, administration bodies, or tribunals in any matter affecting the performance of the agreement, including without limitation worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws, permits, and regulations. When required, the City shall furnish the State with satisfactory proof of compliance.

Article 24. CIVIL RIGHTS COMPLIANCE

The City shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR 21 and 23 CFR 710.405 (B)); also Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor regulation (41 CFR 60).

Article 25. MINORITY BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

The City agrees to comply with the requirements set forth in Exhibit B, "Minority Business Enterprise Program Requirements."

Article 26. DEBARMENT CERTIFICATIONS (Applicable to agreements which exceed \$100,000)

The City is prohibited from making any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The City shall require any party to a subcontract or purchase order awarded under this contract as specified in Title 49 of the Code of Federal Regulation, Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

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

THE CITY OF _____

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 _____
District Engineer

COST ESTIMATE
FOR
CITY OF SAN ANTONIO FORCE ACCOUNT WORK

Control: 0915-12-281
Highway: Intersection of Southcross Boulevard at S. New Braunfels Avenue
Intersection of Southcross Boulevard at S. Hackberry Street

Furnish and Install VIVDS at 2 Intersections	\$23,297.00
TOTAL	\$23,297.00

Exhibit A

SPECIAL PROVISION

MINORITY BUSINESS ENTERPRISE REQUIREMENTS

It is the policy of the Department of Transportation that Minority Business Enterprises as defined in 49 CFR Part 23, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the Minority Business Enterprise requirements of 49 CFR Part 23, exclusive of Subpart D, apply to this contract as follows.

The County agrees to ensure that Minority Business Enterprises, as defined in 49 CFR Part 23, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the County shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, exclusive of Subpart D, to ensure that Minority Business Enterprises have the Maximum opportunity to compete for and perform contracts.

The County and any of its subcontractors shall not discriminate on the bases of race, color, national origin or sex in the award and performance of contracts funded in whole or in part with Federal funds.

These requirements shall be physically included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of the Department, may result in termination of the contract by the State or other such remedy as the State deems appropriate.