

***AGREEMENT FOR THE FURNISHING, INSTALLING AND MAINTENANCE OF
TRAFFIC SIGNAL PREEMPTION EQUIPMENT***

THIS AGREEMENT is made by and between Travis County Emergency Services District No. 5 (Manchaca Fire/Rescue), hereinafter called "ESD#5", and the City of Austin, hereinafter called the "City", acting by and through its duly authorized officers.

WHEREAS, the City maintains the traffic signals located within the City and the City also maintains traffic signals in certain unincorporated areas of Travis County, through an interlocal agreement, at locations listed in Exhibit A;

WHEREAS, ESD#5 or its contractor wishes to install an emergency vehicle preemption system at the locations within the City and within the unincorporated area of Travis County listed in Exhibit B;

WHEREAS, pursuant to the provisions of Texas Government Code Chapter 791 and other applicable law, the City and ESD#5 are in agreement that the proposed systems will be installed at the locations listed in Exhibit B:

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 City and ESD#5 and shall automatically renew from year to year unless terminated as provided herein.

ARTICLE 2. TERMINATION

This agreement may be terminated by one of the following conditions:

- 1) By mutual agreement of both parties;
- 2) By the City giving written notice to ESD#5 or its contractor as consequence of failure by ESD#5 or its contractor to satisfactorily perform the services and obligations set forth in this agreement, with proper allowances being made for circumstances beyond the control of ESD#5 or its contractor;
- 3) By either party upon thirty (30) days written notice to the other.

ARTICLE 3. COMPENSATION

ESD #5 shall pay to the City \$300.00 per intersection listed in Exhibit "B," per year. Payment shall be made within 60 days after the installation of a preemption system.

ARTICLE 4. PERSONNEL, EQUIPMENT, AND MATERIAL

- A. ESD#5 or its contractor will use labor and supervisory personnel employed directly by ESD#5's contractor, and use contractor owned machinery, equipment and vehicles necessary for the work.
- B. No reimbursement shall be paid by the City for any materials supplied by ESD#5 or its contractor. All materials shall be new and undepreciated stock.
- C. If it becomes necessary to adjust, replace, or reinstall the preemption system due to reconstruction of the intersection or upgrading of the signals, it shall be done by ESD#5 or its contractor, at ESD#5 or its contractor's sole expense. The City shall provide notice of any reconstruction of the intersection or upgrading of the signals to ESD#5 at least thirty (30) days prior to the commencement of any such reconstruction of the intersection or upgrading of the signals.
- D. The Director of the City's Transportation Department will act on behalf of the City hereunder. The Director may designate a Project Manager to serve as a point of contact for the administration of this agreement and communication between the parties.
- E. The Fire Chief of ESD#5, or his designee, will act on behalf of ESD#5 hereunder. The Fire Chief may designate a Project Manager to serve as a point of contact for the administration of this agreement and communication between the parties.

ARTICLE 5. INSPECTION OF WORK

- A. The City shall be able to make complete inspections of all materials, equipment, and the work of installation to determine and permit certification that the components meet all applicable requirements and are in suitable condition for operation and maintenance by ESD#5 or its contractor after its completion. All components of the system will be subject to random testing and inspections by the City.
- B. ESD#5 or its contractor will provide opportunities, facilities and representative samples, as may be required, to enable the City to carry on initial and random inspections of all materials and applications methods; sufficient to afford determination and certification by the City that all parts of the installation and component materials comply with the City standards and specifications. The City will promptly notify ESD#5 or its contractor of any failure of materials, equipment or installation methods, and ESD#5 or its contractor will take such measures necessary to obtain acceptable systems components and installation procedures without delay.

ARTICLE 6. RESPONSIBILITIES OF THE PARTIES

The parties agree that neither party is an agent, servant, or employee of the other party and each agrees it is solely responsible for its individual acts or omission, and, to the

extent permitted by law, the acts or omissions of its contractors, employees, representatives and agents. The City shall not be held responsible for the operation (or non-operation) of the preemption equipment, or for any effect it may have on emergency vehicle response. ESD#5 will be fully responsible, to the extent allowed by Texas law and to the exclusion of any such responsibility of the City, for any and all claims or causes of action for property damage or personal injury or death, arising out of or connected in any way to the subject of this agreement, it being specifically agreed that ESD#5 is responsible for the operation (or non-operation) of the preemption equipment, or for any effect it may have on emergency vehicle response or otherwise.

ARTICLE 7. DE-ACTIVATION OF THE PREEMPTION SYSTEM

The City reserves the right to disconnect the preemption system from the traffic signals should any problem arise affecting the traffic signals. The City will notify ESD#5 of any problems of the preemption system that may affect the signals or equipment with which they are incorporated. ESD#5 shall take immediate steps to correct any problems with the preemption system. If the problem cannot be corrected, then the City may, in its reasonable discretion, disconnect the preemption system from the signals or equipment without advance notice to ESD#5, but notice of any disconnection shall be provided by the City to ESD#5 as soon as reasonably possible thereafter. Upon correction of the problem the preemption system shall be re-connected.

ARTICLE 8. PREEMPTION INSTALLATION REQUIREMENTS

ESD#5 or its contractor may use existing equipment cabinets and infrastructure or shall furnish and install an aluminum lockable cabinet for the preemption system equipment. The City will provide access to 120 volts AC power to the preemption cabinet for all auxiliary equipment. All transformation of power shall take place within the preemption cabinet. The City will allow the preemption equipment to monitor all outgoing green traffic signal indications. The preemption equipment will supply a maximum of four (4) preemption inputs.

ARTICLE 9. REPORTS

Upon written request, ESD#5 will be required to supply the City with a list of preemptions. The list shall show date, time, intersection, direction, and duration of each preemption and vehicle identification information of the emergency vehicle requesting each preemption.

ARTICLE 10. REMEDIES

Violation or breach of contract terms by ESD#5 or its contractor shall be grounds for termination of the agreement.

If at any time, ESD#5 or its contractor fails to assume the maintenance and operation responsibilities for the preemption systems in a satisfactory manner as determined by the City within five (5) business days after providing notice to ESD#5 of such failure, the City reserves the right to arrange for maintenance and operations at the expense of

ESD#5 or its contractor. The City shall contact the appropriate ESD#5 representative, in writing, prior to the arrangement of such maintenance by the City.

ARTICLE 11. INSURANCE

ESD#5's construction contractor shall provide necessary safeguards to protect the public, including adequate insurance for payment of any damages which might result during the construction and/or maintenance of the preemption system. Prior to beginning work, ESD#5's construction contractor shall submit to the City a completed insurance certificate, evidencing the coverages set forth in attached and incorporated **Exhibit C** and naming the City of Austin as an additional insured on such policies, and shall maintain the required coverage during the construction of all work associated with this agreement. To the extent legally required, ESD#5 will require that its contractor provide performance and payment bonds, as specified in Exhibit C, for the benefit of the ESD#5 and the City. In the event such bonds are not required, then ESD#5 will be responsible to the exclusion of any such responsibility of the City for any claims, liens, or causes of action asserted by any contractor, subcontractor, or supplier against the subject of this agreement or connected in any way to the subject of this agreement or the City and its property and traffic control system.

ARTICLE 12. SUBLETTING

ESD#5 or its contractor shall not sublet or transfer any portion of its responsibilities and obligations under this agreement unless specifically authorized in writing by the City. In the event ESD#5 or its contractor enters into subcontracts, the subcontractors must adhere to the provisions of this agreement.

ARTICLE 13. SUCCESSORS AND ASSIGNS

ESD#5 or its contractor shall not assign or otherwise transfer its rights or obligations under this agreement except with the prior written consent of the City.

ARTICLE 14. LEGAL CONSTRUCTION

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 by a court of competent jurisdiction, 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 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 of Austin 1501 Toomey Road Austin, Texas 78704 Attn: Brian W. Craig P.E. Engineer C	Travis County Emergency Services District Number 5 P.O. Box 1239 Manchaca, Texas 78652 Attn: Warren Hassinger, President
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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. GOVERNING LAWS AND VENUE

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

ARTICLE 17. PRIOR AGREEMENTS SUPERSEDED

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

ARTICLE 18. CURRENT REVENUE

The Party or Parties paying for the performance of governmental functions or services hereunder shall do so from current revenues available to the paying party.

ARTICLE 19 DUPLICATE ORIGINALS

ESD#5 and the City have signed duplicated counterparts of this agreement.

[SIGNATURE PAGE FOLLOWS]

CITY OF AUSTIN

Executed on behalf of the City by:

By: _____ Date: _____

Typed or Printed Name and Title: _____

TRAVIS COUNTY EMERGENCY SERVICES

DISTRICT NO. 5

Executed on behalf of ESD#5 by:

By:  _____ Date: 8/31/2010

Typed or Printed Name and Title: Warren Hassinger, president

EXHIBIT "A"

**TRAVIS COUNTY AND CITY OF AUSTIN
TRAFFIC SIGNAL MAINTENANCE LIST:**

1. Capistrano Road and Brodie Lane
2. Green Emerald Terrace and Brodie Lane
3. Brodie Lane and Indian Point Road

EXHIBIT "B"

PROPOSED INTERSECTION INSTALLATION OF GPS PREEMPTION SYSTEM

1. Capistrano Road and Brodie Lane
2. Green Emerald Terrace and Brodie Lane
3. Frate Barker Road and Brodie Lane
4. Gatling Gun Road and Brodie Lane
5. Brodie Lane and Indian Point Road

EXHIBIT C

Insurance and Bond Requirements

A. General Requirements

ESD#5 shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement of any professional or construction services hereunder, EXCEPT that ESD#5, or its contractor, shall have in place a policy of commercial general liability insurance meeting the requirements of this Agreement commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of the City.

ESD#5, through its contractor, shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of ESD#5 hereunder and is not a limitation of liability on the part of ESD#5.

ESD#5 must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of design or construction work on the Improvements and the City will review and approve the certificates, which comply with the requirements of this Agreement, within five days of receipt.

ESD#5's and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Transportation
City of Austin
P. O. Box 1088
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and ESD#5, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, ESD#5, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

ESD#5 shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

ESD#5 and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and ESD#5.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of ESD#5.

B. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

ESD#5, its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of the City:

Waiver of Subrogation, Form WC 420304

Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

The policy must contain the following provisions:

Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.

Independent contractor's coverage.

Products/completed operations liability for the duration of the warranty period.

The policy must also include these endorsements in favor of the City:

Waiver of Subrogation, endorsement CG 2404

Thirty days notice of cancellation, endorsement CG 0205

The City listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. ESD#5, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

The policy must include these endorsements in favor of the City of Austin:

Waiver of subrogation, endorsement TE 2046A

Thirty days notice of cancellation, endorsement TE 0202A

The City listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of the City's property is in the care, custody or control of ESD#5, then ESD#5 shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by ESD#5, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

Hazardous Material Insurance. If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of ESD#5 and the City.

Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other

transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

The contractor shall submit complete copies of the policy providing pollution liability coverage to ESD#5 and the City.

Performance and Payment Bonds. In substantial compliance with the applicable provisions of Texas law, including Chapter 2253 of the Texas Government Code, ESD#5 shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Additional Improvements, to furnish and deliver to the City, when required by Texas law, legally issued payment and performance bonds in a form approved by the City, with ESD#5 named as obligee and the City named as a dual obligee. When required by Texas law, the furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Additional Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Additional Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and ESD#5 will be in material default under this Agreement.

Payment Bond. When required under Texas law, ESD#5 shall require the general contractor to provide a payment surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. When required under Texas law, ESD#5 shall require contractor to provide a performance surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of the covenants and agreements contained in the contract documents.