

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT WITH THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION, RELATING TO FURNISHING TRAFFIC SIGNAL EQUIPMENT BY A MUNICIPALITY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City has requested the State of Texas to reimburse the City for the cost of furnishing traffic signal equipment at the intersection(s) of Exchange Pkwy. at Rivercrest Blvd. (0918-24-243), Greenville Ave. from Hightrail Dr. to E. Exchange Pkwy. (0918-24-244), McDermott Dr. at S. Watters St.(0918-24-245), McDermott Drive at Twincreek Dr./Suncreek Dr. (0918-24-246), E. Exchange Pkwy. at N. Alma Dr. (0918-24-247), and E. Exchange Pkwy. at N. Allen Heights (0918-24-248) collectively hereinafter called the “Project,” and

**WHEREAS**, the State of Texas through the Texas Department of Transportation 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**, the Texas Transportation Commission passed Minute Order No. 115291, approving the Project; and,

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

**WHEREAS**, the City Council of the City of Allen, Texas, has been presented a proposed Agreement by and between the City of Allen, Texas, and the State of Texas, acting through the Texas Department of Transportation, relating to furnishing traffic signal equipment by a municipality, a copy of which is attached hereto as Exhibit “A” (the “Agreement”); and,

**WHEREAS**, upon full review and consideration of the Agreement, and all matters related thereto, the City Council finds that the terms and conditions thereof are found to be acceptable and in the best interests of the City of Allen and its citizens;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1:** The Agreement is hereby approved, and the City Manager is hereby authorized to execute the Agreement (and any amendments thereto, including related instruments) on behalf of the City of Allen, Texas.

**SECTION 2.** This Resolution shall take effect immediately from and after its passage.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 22<sup>ND</sup> DAY OF OCTOBER 2019.**

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, CITY ATTORNEY**  
(PGS:10-9-19:TM 111417)

\_\_\_\_\_  
**Shelley B. George, TRMC, CITY SECRETARY**

**EXHIBIT “A”**

**AGREEMENT FOR FURNISHING TRAFFIC  
SIGNAL EQUIPMENT BY A MUNICIPALITY**

CSJ # 0918-24-243, 0918-24-244,  
0918-24-245, 0918-24-246, 0918-24-  
247, 0918-24-248  
District # DAL/18  
Code Chart 64 # 10850  
Project: Exchange Pkwy. at Rivercrest  
Blvd., Greenville Ave. from Hightrail  
Dr. to E. Exchange Pkwy., McDermott  
Dr. at S. Watters St., McDermott Drive  
at Twincreek Dr./Suncreek Dr., E.  
Exchange Pkwy. at N. Alma Dr., E.  
Exchange Pkwy. at N. Allen Heights  
Federal Highway Administration  
CFDA Title Hwy Planning & Construction  
CFDA No.:20.205  
Not Research and Development

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**AGREEMENT FOR FURNISHING TRAFFIC  
SIGNAL EQUIPMENT BY A MUNICIPALITY**

**THIS AGREEMENT** ("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 Allen**, 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 City owns and maintains a system of roadways, including **Exchange Pkwy. at Rivercrest Blvd.** within the **City Limit of the City**; and

**WHEREAS**, the City has requested the State to reimburse the cost of furnishing traffic signal equipment at the intersection(s) of **Exchange Pkwy. at Rivercrest Blvd. (0918-24-243)**, **Greenville Ave. from Hightrail Dr. to E. Exchange Pkwy. (0918-24-244)**, **McDermott Dr. at S. Watters St.(0918-24-245)**, **McDermott Drive at Twincreek Dr./Suncreek Dr. (0918-24-246)**, **E. Exchange Pkwy. at N. Alma Dr. (0918-24-247)**, and **E. Exchange Pkwy. at N. Allen Heights (0918-24-248)** collectively 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. **115291**, approving the Project; and

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**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 the City, and shall remain in effect until completion of the installation of the Project unless otherwise terminated or modified as hereinafter provided.

### **Article 2. CONSTRUCTION RESPONSIBILITIES**

- A.** For all items of construction other than furnishing specific Project 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 shall cause the Project traffic signal equipment to be installed at the Project locations. The State will secure the City's approval of construction plans prior to award of contract.
- B.** The furnishing of specific Project traffic signal equipment as part of the construction shall be the responsibility of the City subject to the State reimbursement as provided herein. The State shall 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 **\$202,075.00**. 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 the traffic signal equipment for the Project.
- 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 its obligations covering items of costs previously billed.

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#### **Article 4. PAYMENTS**

- A. The City shall submit the State's Form 2557, Billing Worksheet, or other type of 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 worksheets 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 after 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**

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 the Agreement 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 reasonable 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 Project traffic signal equipment.

#### **B. Self-Insured N/A**

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:



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 Exchange Pkwy. at N. Allen Heights  
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City:	State:
<b>City of Allen</b> <b>Allen City Hall</b> <b>305 Century Pkwy</b> <b>Allen, TX 75013</b>	<b>Texas Department of Transportation</b> <b>Attn: Director of Operations</b> <b>4777 E. Highway 80</b> <b>Mesquite, TX 75150</b>

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 of the Project, 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 Agreement termination. The City shall maintain all books, documents, papers, accounting records, and other documentation pertaining to costs incurred under this Agreement and shall make such materials available to the State or its duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final payment under this Agreement 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 Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. At the request of the State, the City 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 this Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement 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

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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.

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Each party is signing this agreement on the date stated next to that party's signature.

### THE CITY OF ALLEN, TEXAS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

### 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 \_\_\_\_\_  
Mohamed K. Bur, P.E. District Engineer

### EXHIBIT A

#### Exchange Pkwy. at Rivercrest Blvd. CSJ #0918-24-243

10" Color Monitor	\$ 425.00
Iteris Next WDR Camera	\$ 2,100.00
Iteris Hybrid Vector/Next Sensor	\$ 6,800.00
Shielded CATSE Cable 1000FT Rolls	\$ 450.00
CCU-T52	\$ 7,500.00

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**Total \$17,275.00**

**Greenville Ave. from Hightrail Dr. to E. Exchange Pkwy. CSJ #0918-24-244**

10" Color Monitor	\$ 2,125.00
Iteris Next WDR Camera	\$ 4,200.00
Iteris Hybrid Vector/Next Sensor	\$54,400.00
Shielded CATSE Cable 1000FT Rolls	\$ 2,700.00
CCU-T52	\$37,500.00

**Total \$100,925.00**

**McDermott Dr. at S. Watters St. CSJ # 0918-24-245**

10" Color Monitor	\$ 425.00
Iteris Hybrid Vector/Next Sensor	\$13,600.00
Shielded CATSE Cable 1000FT Rolls	\$ 675.00
CCU-T52	\$ 7,500.00

**Total \$22,200.00**

**McDermott Dr. at Twincreek/Suncreek CSJ # 0918-24-246**

10" Color Monitor	\$ 425.00
Iteris Next WDR Camera	\$ 2,100.00
Iteris Hybrid Vector/Next Sensor	\$ 6,800.00
Shielded CATSE Cable 1000FT Rolls	\$ 675.00
CCU-T52	\$ 7,500.00

**Total \$17,500.00**

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**E. Exchange Pkwy. at N. Alma Dr. CSJ #0918-24-247**

10" Color Monitor	\$ 425.00
Iteris Hybrid Vector/Next Sensor	\$13,600.00
Shielded CATSE Cable 1000FT Rolls	\$ 675.00
CCU-T52	\$ 7,500.00

**Total \$22,200.00**

**E. Exchange Pkwy. at N. Allen Heights CSJ #0918-24-248**

10" Color Monitor	\$ 425.00
Iteris Hybrid Vector/Next Sensor	\$13,600.00
Shielded CATSE Cable 1000FT Rolls	\$ 450.00
CCU-T52	\$ 7,500.00

**Total \$21,975.00**

**Grand Total \$202,075.00**