

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR PAINTING/WRAPPING OF
TRAFFIC SIGNAL CONTROLLER CABINET
FOR GOVERNMENTAL ENTITIES**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State" or "TxDOT," and the City of Fulshear Texas acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapter 201 and Transportation Code, Chapter 221 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, the State, allows local governments an opportunity to support the aesthetic improvement of the state highway system by donating the project development, establishment, and maintenance of decorating a traffic signal controller cabinet on a section of the state highway system upon approval of the State.

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding the improvement described as decorating the traffic signal controller cabinet, hereinafter called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State; and

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, the State and the Local Government do agree as follows:

AGREEMENT

ARTICLE 1. TIME PERIOD

- A.** This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed and shall terminate on **the fifth anniversary of the agreement becoming effective** or unless terminated in accordance with Article 8. This agreement may be renewed in writing by mutual agreement of the parties for two additional five-year terms after the expiration of the initial term of the contract.
- B.** At the end of the agreement, the Local Government shall restore the State's property to that of its previous condition unless mutually agreed otherwise. The cost of restoring the property shall be borne by the Local Government and meet standards in accordance with Article 7.

ARTICLE 2. PROJECT

- A.** The Local Government agrees to have the work performed as described in Attachment A, Painting/Wrapping Plan, , and in Attachment B, Work Responsibilities. The plan shall be subject to the review and satisfactory approval by the State prior to Painting/Wrapping. No modification to the approved plan may be made without the prior written approval of TxDOT's local District Engineer.
- B.** Unless otherwise specifically stated in Attachment B, the State may supervise and inspect all work performed and provide such engineering inspection services as may be required to ensure that the project is accomplished in accordance with Attachment A.
- C.** The Local Government agrees to maintain the Painting/Wrappings to the State's satisfaction for the period of this agreement in accordance with Attachment C, Project Work Schedule.
- D.** The Local Government shall provide, erect, and maintain to the satisfaction of the State any barricades, signs, and traffic handling devices necessary to protect the safety of the traveling public while performing any work on the project.
- E.** The Local Government shall be responsible for any additional exhaust fan, or fans, should the equipment in the traffic signal controller cabinets included in the Painting/Wrapping plan not have a second fan already present. The fans should be inspected to ensure full functionality.

- F. Traffic Signal Controller cabinets included in the Painting/Wrapping plan shall be evaluated by the State on a case by case basis for suitability. Cabinets more heavily populated with equipment will have higher temperatures than those less populated with equipment, and will be more likely to approach the rated temperature and may be excluded from the plan by the State.
- G. The Local Government shall consult with the manufacturers of the Traffic Signal Controller cabinet to identify paint types/Wrapping Material that will adhere to aluminum and use the recommended products.
- H. All aspects of the project shall be carried out in compliance with applicable federal and state laws and regulations. The project shall be designed in accordance with Attachment A and with TxDOT's latest policies, procedures, standards, and guidelines. The Local Government shall award and manage all work.
- I. It is expressly understood that the State does not purport hereby to grant any right, claim, title or easement in or upon this State property.

ARTICLE 3. PROJECT FUNDING

- A. The Local Government is responsible for 100% of the cost of designing, decorating and maintaining the project. State funds shall not be made available to contribute to the design, Painting/Wrapping, or maintenance of this project under any circumstances.
- B. Any costs incurred by the State for repairs to the State Property, for removal of debris or any other necessary restoration work as a result of the project shall be billed to the Local Government at cost. The Local Government shall make full and complete payment to the State within thirty (30) days from receipt of State's written notification.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

- A. The Local Government represents and warrants that it has unrestricted and full use of any materials and items described in Attachment A and that by signing this agreement it relinquishes and transfers all rights and interest in and use to the State.
- B. The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

ARTICLE 5. MAINTENANCE

- A. Upon completion of the Project, the Local Government will assume responsibility for the maintenance of the Painting/Wrapping.
- B. If the State requires to perform maintenance work on the decorated Traffic Signal Controller Cabinet it shall, and if there is any damage to the Painting/Wrappings the Local Government will be responsible for 100% of the cost of the repair to the Painting/Wrapping

ARTICLE 6. RIGHT OF ACCESS

- A. The State shall permit the Local Government access to the site to perform any activities required to execute the work.
- B. Ingress and egress shall be allowed at all times for Federal and Highway Administration personnel and state employees and equipment when highway maintenance operations are necessary and for inspection purposes.
- C. This agreement does not give the Local Government any right to display or permit any other party to display literature, memorabilia, artifacts, or anything else in or around the Painting/Wrapping project, with the exception of the project itself. The Local Government shall follow all current TxDOT rules, policies, procedures, and regulations, which may be modified by TxDOT at any time without notice.

ARTICLE 7. CONDITION OF THE PROPERTY

- A. The Local Government shall complete the project in strict conformity to the plan as approved by the State. The Local Government shall not deposit any waste products on the premises and shall remove any materials and debris from the premises at the end of the project. The Painting/Wrapping project shall pose no danger or interfere to the traveling public. The State may halt the project at any time if, in its sole judgment, construction is posing a danger to the traveling public.
The Local Government shall avoid damage on or outside the State property. At the State's request, the Local Government shall, at its own expense, restore or repair damage due to the project occurring on or outside State property, including but not limited to roadway and drainage structures, overhead signs, signs, traffic signals, pavement markings, and pavement to a condition equal to that existing before the project, and restore the natural and cultural environment in accordance with federal and state laws, including landscaping and historical features.

ARTICLE 8. TERMINATION

- A.** This agreement may be terminated by: mutual written agreement and consent of both parties; the State upon the Local Government's violation of contract terms or failure to fulfill the obligations of this agreement; or the State if it determines that the performance of the project is not in the best interest of the State.
- B.** If the Local Government fails to maintain the project in accordance with Attachment C, Maintenance Schedule, the project shall be subject to removal at the State's discretion and at the Local Government's expense.
- C.** If the project is not completed within one year of the date of execution of this agreement, this agreement shall be terminated.

In the event the Project is not completed, the State shall seek reimbursement from the Local Government for repairs to the State Property, for removal of debris or any other necessary restoration work as a result of the project. The State shall bill the Local Government at cost and the Local Government shall make full and complete payment to the State within thirty (30) days from receipt of State's written notification.

ARTICLE 9. 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 or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
City of Fulshear PO Box 279 Fulshear, TX 77441-0279	<i>Mail To:</i> District Engineer Texas Department of Transportation, Houston District 7600 Washington Avenue Houston, Texas 77007

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

ARTICLE 10. SOLE AGREEMENT

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

ARTICLE 11. AMENDMENTS

By mutual written consent of the parties, this contract may be amended prior to its expiration.

ARTICLE 12. EMPLOYEES NOT TO BENEFIT

Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

ARTICLE 13. DISPUTES

In the event of disputes as to obligations under the agreement, the State's decision shall otherwise be final and binding.

ARTICLE 14. ORDER OF DOCUMENT PRECEDENCE

In the event of any conflict among the elements of this agreement, they should prevail in this order

- A.** This Agreement,
- B.** Attachment A, Painting/Wrapping Plan,
- C.** Attachment B, Work Responsibilities,
- D.** Attachment C, Project Work Schedule.

ARTICLE 15. CONFIDENTIALITY

The Local Government shall not disclose information obtained from the State under this contract without the express written consent of the State. Consent of the State may be given in the form of a decision of the attorney general rendered in accordance with Section 552.306, Government Code.

ARTICLE 16. ASSIGNMENTS OR SUBCONTRACTS

The Local Government shall not assign or otherwise transfer their obligations under this agreement except with prior written consent of TxDOT. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. A copy of the subcontract must be sent to TxDOT immediately following execution.

ARTICLE 17. INDEMNIFICATION

A. Errors, Omissions, Negligent Acts. To the extent permitted by law, the Local Government shall indemnify and save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, which are performed under this contract and which are caused by or result from error, omission, or act of the Local Government, its agent, or any person employed by the Local Government.

B. Attorney Fees. The Local Government shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees, which may be incurred by the State in litigation or otherwise resisting a claim or liabilities that may be imposed on the State as a result of error, omission, or act of the Local Government, its agents, or its employees.

ARTICLE 18. COMPLIANCE WITH LAWS

The Local Government performance shall be in compliance with all federal, state, and local laws, ordinances, and regulations including but not limited to:

- ◆ the Endangered Species Act of 1973, 16 USC Section 1531 et seq., and the regulations there as amended;
- ◆ TxDOT erosion and sedimentation control standards and TxDOT Vegetation and Management Standards, which may in any way regulate or control the activity; and
- ◆ all state and federal environmental laws and any conditions required by the State to protect the environment.

ARTICLE 19. STATE AUDITOR

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 20. INSURANCE

If the Local Government or its subcontractors shall perform work on the State's right of way, the Local Government or its subcontractors shall maintain insurance on file with Contract Services of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 1560, Certificate of Insurance, as required by the State. No other proof of insurance is acceptable to the State. The Local Government or its subcontractors certifies that it shall keep current insurance on file with that office for the duration of the contract period. If insurance lapses during the contract period, the Local Government or its subcontractors must stop work until a new certificate of insurance is provided.

ARTICLE 21. SIGNATORY WARRANTY

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

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.

County _____
Location _____

_____, P. E.
Eliza C. Paul, P.E, District Engineer

Date _____

THE LOCAL GOVERNMENT

Name of the Local Government _____

By _____ Date _____

Typed or Printed Name and Title _____

Attachments

- A. Painting/Wrapping Plan**
- B. Work Responsibilities**
- C. Project Work Schedule**

County _____
Location _____

Attachment A Painting/Wrapping Plan

The project solicited artists to design artwork to 'wrap' around traffic boxes. Artists submitted designs and the City of Fulshear Parks & Recreation Commission selected the artwork for each location. The wraps will be fabricated and installed by a professional company.

This project will be administered by the City of Fulshear, with assistance provided by The Fulshear Arts Alliance with all contracts through the City.

The goal of the project is to create an art project that:

- Beautifies the rights-of-way
- Provides a memorable welcome for visitors to Fulshear
- Enhances areas within Fulshear by infusing our community with appealing and memorable art
- Developing and implementing public art projects to enhance Fulshear's civic pride and identity
- Providing opportunity and inspiration for local and regional artists
- Providing creative outlets for the people of Fulshear including children, the special needs community and the economically challenged

Attachment B

Work Responsibilities

City of Fulshear Responsibilities Include:

- The Local Government will develop a Traffic Signal Controller Cabinet Wrap Plan including locations.
- The Local Government will select art for specified boxes and submit plans to TXDOT for review and approval.
- The Local Government will hire a subcontractor to install traffic signal controller cabinet wraps.
- The Local Government agrees to maintain the wraps to the State's satisfaction for the period of this agreement
- The Local Government shall provide, erect, and maintain to the satisfaction of the State any barricades, signs, and traffic handling devices necessary to protect the safety of the traveling public while performing any work on the project.
- The Local Government shall be responsible for the cost of materials for the wrap.
- Traffic Signal Controller cabinets included in the wrap plan shall be evaluated by the State on a case by case basis for suitability.
- The Local Government is responsible for 100% of the cost of designing, wrapping and maintaining the project.
- Upon completion of the Project, the Local Government will assume responsibility for the maintenance of the wrap.
- The Local Government shall not remove or cover the TxDOT Logo and telephone number as it must remain for the public's use in reporting issues.
- If the Local Government or its subcontractors shall perform work on the State's right of way, the Local Government or its subcontractors shall maintain insurance on file with Contract Services of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 1560, Certificate of Insurance, as required by the State.

TxDOT Responsibilities Include:

- The State shall ensure each Traffic Signal Controller Cabinet is standing upright.
- The State shall permit the Local Government access to the site to perform any activities required to execute the work.
- The State shall inform the Local Government when submitted wrap designs are approved.
- The State will not be responsible for any costs associated with maintenance and repair to the wrap.
- The State will notify the Local Government if required maintenance, or replacement, is needed for the wrap.

County _____
Location _____

Attachment C
Project Work Schedule

Upon final approval and execution of the agreement, the below schedule is proposed.

<i>Traffic Cabinet Art Wrap Work Schedule</i>	
Notify the Artists	1 week
Develop Solicitation for Wrap Installation	1-2 weeks
Solicitation for Wrap Installation and Award	4 weeks
Wrap Installation	8-12 weeks
* This schedule is a projection and subject to change	