

FUNDING AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And CITY OF SAN JOSE
For REGIONAL SIGNAL TIMING PROGRAM
ON VARIOUS CORRIDORS

THIS AGREEMENT is made and entered into as of the 3rd day of April, 2009, by and between the Metropolitan Transportation Commission (herein called "MTC"), a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq.*, and the City of San Jose (herein called "RECIPIENT").

W I T N E S S E T H

WHEREAS, MTC has determined that retiming traffic signals would benefit the Bay Area by providing improved mobility, safety and air quality; and

WHEREAS, MTC has determined to undertake the Regional Signal Timing Program (RSTP) to obtain those benefits; and

WHEREAS, RECIPIENT applied for, and was awarded, a 2009 Cycle RSTP grant to retime 318 traffic signals within the City of San Jose; and

WHEREAS, MTC has agreed to provide funding from the RSTP to cover a portion of RECIPIENT's staff time for the review of timing plans prepared by the consultants, for implementing and fine tuning the timing plans ("the Project");

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF WORK

RECIPIENT agrees to perform the Project activities described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. RECIPIENT agrees, in addition, to provide all necessary staff supports to deliver the activities in Attachment A.

2. TIME OF PERFORMANCE

The activities funded by this Agreement shall commence on or after May 1, 2009 and RECIPIENT shall complete them by June 30, 2010, unless earlier terminated as hereinafter provided.

3. FUNDING AND METHOD OF PAYMENT

A. MTC agrees to provide RECIPIENT up to forty-seven thousand seven hundred dollars (\$47,700) from RSTP funds for the purpose of funding the Project described in Attachment A.

B. Payment to RECIPIENT shall be due in the amounts indicated below, upon acceptance by the MTC Project Manager of the following Project deliverables set out in Attachment A:

Deliverable (#)	MTC Payment
A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for various corridors in Group 1 as described in Attachment B. (#1)	\$10,650
A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for various corridors in Group 2 as described in Attachment B. (#2)	\$14,850
A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for various corridors in Group 3 as described in Attachment B. (#3)	\$10,050
A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for various corridors in Group 4 as described in Attachment B. (#4)	\$12,150
TOTAL	\$47,700

C. Payment shall be made within thirty (30) days after receipt by MTC of an acceptable invoice, which shall be subject to the review and approval of MTC's Project Manager. RECIPIENT shall deliver or mail invoice to MTC, as follows:

Accounting Department
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 -- 8th Street
Oakland, CA 94607-4700

D. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid under this Agreement exceed the sum of forty seven thousand seven hundred dollars (\$47,700).

4. AMENDMENTS

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the MTC Executive

Director or a designated representative and RECIPIENT. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

5. TERMINATION

MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, RECIPIENT will be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If RECIPIENT fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and RECIPIENT will be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

6. RETENTION OF RECORDS

RECIPIENT agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years following final payment to RECIPIENT or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles.

7. AUDITS

RECIPIENT agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to RECIPIENT's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 6.

8. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects, RECIPIENT agrees that it will not, on the grounds of race, religious creed,

color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

9. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. RECIPIENT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by RECIPIENT to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

RECIPIENT agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

11. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

RECIPIENT agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

12. STATE ENERGY CONSERVATION PLAN

RECIPIENT shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

13. LOBBYING

RECIPIENT agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

14 DEBARMENT

RECIPIENT certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

15. INDEMNIFICATION

RECIPIENT shall indemnify and hold harmless MTC, its Commissioners, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of RECIPIENT, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and RECIPIENT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

16. MEETINGS

RECIPIENT agrees to invite MTC to participate in all meetings held in connection with this project, including public meetings and project team meetings.

17. COMPLIANCE WITH LAWS

RECIPIENT shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, which relate to or in any manner affect the performance of this Agreement.

18. NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC: Attention: Vamsi Tabjulu
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607-4700
Email: vtabjulu@mtc.ca.gov
Fax: 510.817.5848

To RECIPIENT: Attention: Ray Cunanan
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905
Email: ray.cunanan@sanjoseca.gov
Fax: 408.292.6093

19. GOVERNING LAW

 This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

20. RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR

 RECIPIENT will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MTC. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement.

21. ENTIRE AGREEMENT.

 This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

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IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of
the day and year first written above.

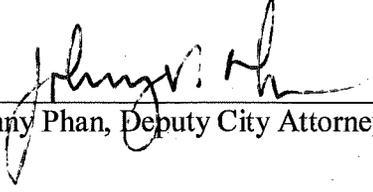
METROPOLITAN TRANSPORTATION
COMMISSION

CITY OF SAN JOSE

Steve Heminger, Executive Director

Lee Price, City Clerk

Approved as to Form and Legality:



Jhonny Phan, Deputy City Attorney

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ATTACHMENT A

SCOPE OF WORK

1. RECIPIENT shall assign and deploy qualified traffic and signal technicians to review the timing plans proposed by RSTP consultants, input the timing plans into traffic signal controllers on the Various Corridors, work with the RSTP consultants to define appropriate changes to fine tune the timing plans and implement the defined changes. The implementation, fine-tuning, and evaluation of timing plans for each of the City Corridors will occur during Tuesdays, Wednesdays or Thursdays. The signals in Groups 1 – 4 are defined in Attachment B, Signal Groups, attached hereto and incorporated herein by this reference.
2. RECIPIENT shall determine the sequence for implementing the timing plans on the various Corridors, and will determine at its sole discretion whether a timing plan is properly fine-tuned and whether traffic conditions are appropriate for conducting fine-tuning.
3. RECIPIENT shall submit the following as deliverables to the MTC Project Manager:

Deliverable #	Description
1.	A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for Various Corridors in Group 1 as described in Attachment B.
2.	A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for Various Corridors in Group 2 as described in Attachment B.
3.	A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for Various Corridors in Group 3 as described in Attachment B.
4.	A letter from the RECIPIENT confirming the implementation and fine tuning of timing plans for Various Corridors in Group 4 as described in Attachment B.

ATTACHMENT B
SIGNAL GROUPS

Due to the large number of signals, the project will be broken into four groups. It should be noted that Group 1 and Group 2 includes all traffic signals that have LRT operation included in the analysis. LRT priority timing will be developed at those intersections noted as (LRT #). The table below outlines the proposed four groups for the analysis and implementation:

Group	Corridor	Traffic Signals
1	1 st Street from Burton Avenue to San Carlos Street (LRT-15)	15
	Hedding Street from 7 th Street to Oakland Road-Thirteenth Street	4
	Taylor Street from 5 th Street to 7 th Street	3
	Julian Street from Coleman Avenue-Market Street to 5 th Street, excluding Julian Street & 1 st Street and Julian Street & 4 th Street	4
	Saint James Street from San Pedro Street to 3 rd Street, excluding Saint James Street & 1 st Street (LRT-1) and Saint James and Market Street	3
	Saint John Street from 2 nd Street to 3 rd Street (LRT-1)	2
	4 th Street from Julian Street to Santa Clara Street	4
	Market Street from Saint James Street to Reed Street (LRT-1)	12
	2 nd Street from San Fernando Street to Reed Street (LRT-2)	5
	7 th Street from Reed Street to Virginia Street	3
	11 th Street from San Fernando Street to Sinclair Freeway SB Ramps	8
	10 th Street from San Fernando Street to Sinclair Freeway SB Ramps	8
	Subtotal	71
2	Tasman Drive from Renaissance Drive to Cisco Way (LRT-8)	8
	1 st Street from Tasman Drive to Rosemary Street, excluding 1 st Street & Montague Expressway and 1 st Street & Brokaw Road (LRT-17)	17
	Trimble Road from De La Cruz Boulevard to Junction Avenue, excluding Trimble Road & 1 st Street	4
	Brokaw Road-Murphy Avenue-Hostetter Road from 1 st Street to Sinclair Freeway Ramp, including Airport Parkway & Old Bayshore Highway, excluding Brokaw Road & 1 st Street	17
	Berryessa Road from Commercial Street to Summerdale Drive, including Hedding Street & Mabury Road	8
	Almaden Avenue from Reed Street to Goodyear Street	6
	Almaden Boulevard from San Fernando Street to Reed Street (LRT-1)	6
	Vine Street from Grant Street to Goodyear Street	5
	1 st Street-Monterey Road from Virginia Street to Plant Driveway, including Monterey Road & Montecito Drive	11
	Story Road from Remillard Court to Bal Harbor Way-McCreery Avenue, excluding Story Road & McLaughlin Avenue and Story Road & King Road	8
	McLaughlin Avenue from Story Road to Summerside Drive	6
	Senter Road at Southside Drive	1
	Coleman Avenue from Santa Teresa Street to Guadalupe Parkway	2
Subtotal	99	

Group	Corridor	Traffic Signals
3	Cottle Road from Concord Drive to Hospital Parkway	6
	Monterey Road from Blossom Hill Road to Ford Road	4
	Santa Teresa Boulevard from Steinbeck Drive to Avenida Espana	21
	Bernal Road from San Ignacio Avenue to Realm Drive	3
	Snell Avenue from Gold Run Way to Blossom Hill Road	7
	Blossom Hill Road & Kooser Road	1
	Capitol Expressway from Car Dealer Driveway to Guadalupe Freeway SB Ramp	4
	Alum Rock Avenue from Jackson Avenue to White Road	6
	White Road from East Hills Drive to Stevens Lane, including Glen Dongal Drive & Tully Road	15
	Subtotal	67
4	Oakland Road from Fox Lane to McKay Drive	2
	Montgomery Street-Bird Avenue from San Fernando Street to Minnesota Avenue, including Autumn Street & San Fernando Street	11
	The Alameda-Santa Clara Street from Stockton Avenue to Autumn Street	4
	Lincoln Avenue from Coe Avenue to Malone Road	6
	Meridian Avenue from Fruitdale Avenue to Lenn Drive, including Meridian Avenue & Drentwood Drive and Branham Lane & Dent Avenue	8
	Hamilton Avenue from Winchester Boulevard to Leigh Avenue, including Creekside Way & SR-17 NB Ramp.	9
	Southwest Expressway from Fruitdale Avenue to Stokes Street	3
	Moorpark Avenue from Monroe Street to Turner Drive	3
	Leigh Avenue from Parkmoor Avenue to Moorpark Avenue	2
	Leland Avenue from Parkmoor Avenue to Moorpark Avenue	2
	Stevens Creek Boulevard from Kiely Boulevard to Boynton Avenue	3
	Saratoga Avenue from Kiely Boulevard to Payne Avenue	8
	Curtner Avenue from General Electric Driveway to Almaden Road	9
	Camden Avenue-Hillsdale Avenue from Bascom Avenue to Ross Avenue	7
	Union Avenue & West Valley Freeway Ramps	2
Blossom Hill Road from Leigh Avenue to Hardwood Road	2	
Subtotal	81	
Total	318	