

**AGREEMENT
BETWEEN
THE CITY OF SAN JOSE AND THE CITY OF SANTA CLARA
FOR THE CONSTRUCTION OF
THE SILICON VALLEY ITS – ENHANCEMENT PROJECT
AND OTHER IMPROVEMENTS**

THIS AGREEMENT (“AGREEMENT”) is made and entered into this _____ day of _____ 2010, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter “CITY”) and the CITY OF SANTA CLARA, a municipal corporation of the State of California (hereinafter “SANTA CLARA”), and.

WITNESSETH:

WHEREAS, the Silicon Valley Intelligent Transportation System (SV-ITS) – Enhancement Project (hereinafter “PROJECT”) builds upon the existing Silicon Valley Smart Corridor Project with the installation of additional closed-circuit television cameras, communications cables, video and communications equipment in both the field and Transportation Management Centers, as well as the expansion of the existing fiber-optic cable network through multiple jurisdictions to enable effective management of non-recurring traffic congestion along Bascom Avenue and Los Gatos Boulevard; and

WHEREAS, the PROJECT includes construction elements within the CITY’s, SANTA CLARA’s, the City of Campbell’s, the Town of Los Gatos’, the County of Santa Clara’s, and Caltrans’ rights-of-way; and

WHEREAS, a total of Four Million Five Hundred Thirty-Three Thousand Eight Hundred Seventy-Seven Dollars (\$4,533,877) in grant funds were received by CITY for the PROJECT from the following sources: Transportation Equity Act for the 21st Century Deployment (\$1,187,000), Transportation Equity Act for the 21st Century Demonstration (\$2,012,377), Congestion Mitigation and Air Quality (\$500,000), and Transportation Fund for Clean Air (\$834,500); and

WHEREAS, the PROJECT elements to be installed within SANTA CLARA’s right-of-way will be funded by the above grant sources; and

WHEREAS, SANTA CLARA requests inclusion of certain additional improvements within its right-of-way which are not within the original scope of the PROJECT but will be funded entirely by SANTA CLARA and constructed by CITY as part of the PROJECT in a cooperative and cost-effective manner for the public’s benefits (hereinafter, “IMPROVEMENTS”); and

WHEREAS, CITY is the lead agency administering both the design and the construction phases of the PROJECT and IMPROVEMENTS; and

WHEREAS, SANTA CLARA and CITY (hereinafter collectively “PARTIES” or each individually “PARTY”) desire to enter into this AGREEMENT to define the roles and

responsibilities of each PARTY with respect to the PROJECT and IMPROVEMENTS and detail the scope and reimbursement of the IMPROVEMENTS.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the PARTIES hereby agree as follows:

1. **Scope of PROJECT Elements:** The PROJECT work is detailed in the approved Plans and Specifications for the PROJECT and IMPROVEMENTS (hereinafter, "PLANS AND SPECIFICATIONS"), incorporated herein by reference, and includes all work within SANTA CLARA that is identified in the PLANS AND SPECIFICATIONS, except IMPROVEMENTS as those are detailed below.
2. **Scope of IMPROVEMENTS:** SANTA CLARA acknowledges that the IMPROVEMENTS specified hereinafter are additional improvements that are not within the original scope of the PROJECT but may be constructed as part of the PROJECT at the sole cost and expense of SANTA CLARA. The scope of the IMPROVEMENTS is described as follows:

Table 1 - IMPROVEMENTS					
Install Conduit, Pull Boxes, Fiber Optic Cable, and Signal Interconnect Cable from the Intersection of San Tomas Expressway and Monroe Street to Santa Clara City Hall					
Item No.	Item Description	Approx. Qty.	Unit	Estimated Unit Price	Estimated Total
1	Furnish and Install 53 mm Galvanized Rigid Steel Conduit in Joint Trench with Project Conduit (from San Tomas/Monroe intersection to Lincoln Street in front of City Hall).	1650	M	\$170.00	\$280,500.00
2	Furnish and Install No. 6 Pull Box with Extension.	3	EA	\$2,500.00	\$7,500.00
3	Install City-Furnished Fiber Optic Pull Box.	10	EA	\$2,500.00	\$25,000.00
4	Install City-Furnished 288-strand Fiber Optic Cable (from San Tomas/Monroe to City Hall).	1725	M	\$9.00	\$15,525.00
5	Install City-Furnished 25-Pair TWP Signal Interconnect Cable (from Scott/Warburton to City Hall).	420	M	\$9.00	\$3,780.00
Subtotal					\$332,305.00
Design Costs					\$200.00
Administrative Costs to Process Cost-Sharing Agreement					\$1,000.00
Mobilization (7%)					\$23,261.35
Traffic Control (7%)					\$23,261.35
Construction Management (15%)					\$49,845.75
Change Order Contingency					\$30,126.55

TOTAL ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS FUNDED BY CITY OF SANTA CLARA	\$460,000.00
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The IMPROVEMENTS listed above will be bid by CITY as "Add Alternative" or "Revocable" items to the PROJECT, at CITY's sole discretion. SANTA CLARA shall be solely responsible for all costs and expenses associated with the IMPROVEMENTS as outlined in Section 7 of this Agreement.

SANTA CLARA shall furnish, at its own expense, 1725 meters of 288-strand fiber optic cable (valued at \$10,300) to be installed by the PROJECT's construction contractor from the intersection of Monroe Street and San Tomas Expressway to the City of Santa Clara City Hall and SANTA CLARA shall also furnish, at its own expense, 420 meters of 25-Pair TWP signal interconnect cable (valued at \$4,500) to be installed by the PROJECT's construction contractor from the intersection of Scott Avenue and Warburton Avenue to the City of Santa Clara City Hall. In addition, SANTA CLARA shall also furnish, at its own expense, ten (10) fiber optic pull boxes (valued at \$27,000) to be installed by the PROJECT's construction contractor from the intersection of Monroe Street and San Tomas Expressway to the City of Santa Clara City Hall. SANTA CLARA shall make this material available to the PROJECT's construction contractor for installation upon award of the Construction Contract by the CITY for the PROJECT.

- 3. **Design Administration:** CITY shall administer the design of the PROJECT and IMPROVEMENTS. The PLANS AND SPECIFICATIONS, and estimates for said PROJECT and the IMPROVEMENTS, shall be submitted by the CITY to SANTA CLARA for review and approved by each PARTY.

- 4. **Construction Administration and Inspection:**
 - A. CITY shall administer the construction contract of the PROJECT and IMPROVEMENTS. CITY shall provide construction services such as construction administration, construction engineering, inspection, and coordination with SANTA CLARA's inspection team for installation of PROJECT elements and IMPROVEMENT elements and restoration of existing facilities affected by the PROJECT or the IMPROVEMENTS in SANTA CLARA during and through the completion of the construction of said PROJECT and IMPROVEMENTS.

 - B. SANTA CLARA shall provide inspection services when necessary, as mutually determined by both PARTIES, to support the CITY's inspection effort for construction of the PROJECT and the IMPROVEMENTS in SANTA CLARA during and through the completion of the construction of said PROJECT and IMPROVEMENTS. SANTA CLARA shall also provide any inspection services related to permits issued by SANTA CLARA for the PROJECT and IMPROVEMENTS.

 - C. Each PARTY shall perform their inspection and acceptance of work in accordance with the approved PLANS AND SPECIFICATIONS and in a cooperative and diligent manner. The PARTIES shall utilize the "Draft Silicon-Valley ITS Construction Communication and Management Policies and Procedures," dated July 28, 2002, attached hereto as "Exhibit A" and incorporated herein, as a general guideline for construction of the PROJECT and IMPROVEMENTS and acceptance of the work.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

5. **PROJECT Manager:** The designated manager for SANTA CLARA for the duration of the construction of the PROJECT and IMPROVEMENTS is Mr. David Morrison at (408) 615-3000. SANTA CLARA's manager shall review, approve and accept technical and professional work within the scope of this AGREEMENT and shall serve as the principal point of contact with CITY. The designated manager for the CITY, or "Lead Design Agency" project manager as defined in "Exhibit A," for the duration of the construction of the PROJECT and IMPROVEMENTS is Mr. Kenneth Jung at (408) 975-3262. CITY's project manager shall have all the necessary authority to review, approve and accept technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with SANTA CLARA. At any time during the term of this AGREEMENT, if either party designates a manager different than listed herein, the designating PARTY shall notify the other PARTY in writing within five (5) working days.
6. **Permits:** SANTA CLARA agrees to issue, at no cost to the CITY or to CITY's Contractor, all necessary encroachment permits and inspections required for the construction of said PROJECT and IMPROVEMENTS within SANTA CLARA's jurisdiction, if any, in accordance with the PLANS AND SPECIFICATIONS and subject to the normal business practices of SANTA CLARA.
7. **Payment of Costs:**
- A. If bids received for the PROJECT indicate that the total construction cost of the IMPROVEMENTS does not exceed the "TOTAL ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS FUNDED BY CITY OF SANTA CLARA" detailed in Section 2 of this AGREEMENT, CITY shall forward an invoice to SANTA CLARA upon construction contract award for the cost of IMPROVEMENTS based on actual, contract prices. SANTA CLARA shall pay entire invoice within sixty (60) calendar days of receipt. This invoice shall include the costs for Construction, Design, Administration, Management, and Change Order Contingency directly related to the IMPROVEMENTS.
- B. If bids received for the PROJECT indicate that the total construction cost of the IMPROVEMENTS exceeds the Engineer's estimated total construction cost for these IMPROVEMENTS as indicated hereinabove, CITY shall notify SANTA CLARA and provide a copy of the apparent lowest bid. Within fourteen (14) calendar days of receiving such notice, SANTA CLARA shall respond in writing to either 1) reject the total cost of IMPROVEMENTS or 2) proceed with construction of the IMPROVEMENTS with an adjustment to the quantities of each line item detailed in Table 1 above so that the total actual cost of the IMPROVEMENTS does not exceed the Engineer's Estimate indicated in Section 2 of this AGREEMENT.
- a. If SANTA CLARA rejects the total cost of IMPROVEMENTS, CITY will not award the IMPROVEMENTS as a part of the construction contract for the PROJECT or revoke the IMPROVEMENTS from the construction contract. SANTA CLARA shall still be responsible for reimbursement to the CITY of the incurred "Design Costs" and "Administrative Costs to Process Cost-Sharing Agreement" as detailed in Section 2 of

this AGREEMENT. SANTA CLARA agrees to pay CITY for any such costs within sixty (60) days of receiving notice of the apparent lowest bid from CITY.

- b. If SANTA CLARA desires to proceed with the construction of the IMPROVEMENTS with an adjustment to the quantities of each line item detailed in Table I above so that the total actual cost of the IMPROVEMENTS does not exceed the Engineer's Estimate indicated in Section 2, SANTA CLARA shall provide proposed quantity adjustments in writing to the CITY within fourteen (14) calendar days of receiving a copy of the apparent lowest bid. CITY shall proceed with construction of the quantity-adjusted IMPROVEMENTS list by awarding those items as a part of the construction contract or revoke the items that are not part of the quantity-adjusted IMPROVEMENTS list, and forward an invoice for the revised items to SANTA CLARA for reimbursement as detailed in Section 7(A) above.
 - c. If SANTA CLARA does not provide written response within fourteen (14) calendar days after receiving a copy of the apparent lowest bid, CITY will not award the IMPROVEMENTS as part of the construction contract for the PROJECT or will revoke the IMPROVEMENTS from the construction contract. SANTA CLARA shall still be responsible for reimbursement to the CITY of the incurred "Design Costs" and "Administrative Costs to Process Cost-Sharing Agreement" as detailed in Section 2 of this AGREEMENT. SANTA CLARA agrees to pay CITY for any such costs within sixty (60) days of receiving notice of the apparent lowest bid from CITY.
- C. If during construction of the IMPROVEMENTS, the CITY receives Contract Change Order (CCO) requests due to unforeseeable conditions that cause the total cost of work directly related to IMPROVEMENTS to exceed the SANTA CLARA approved total cost of IMPROVEMENTS as determined by the provisions stated in Section 7(A) and 7(B) above, CITY shall notify SANTA CLARA in writing within forty-eight (48) hours of receiving such CCO requests. After consulting with SANTA CLARA, CITY shall negotiate a CCO with the CITY's contractor consistent with direction provided by SANTA CLARA. The CITY shall notify SANTA CLARA of the additional cost for approval. If SANTA CLARA approves the additional cost within seven (7) calendar days of receiving notice of the additional cost, SANTA CLARA shall provide payment to CITY for the full amount of the additional cost within thirty (30) days of receiving notice from CITY of the additional cost. CITY is not obligated to proceed with any CCO work related to IMPROVEMENTS that SANTA CLARA has not approved and agreed to fund. If SANTA CLARA does not approve the additional cost within seven (7) calendar days of receiving notice of the additional cost, CITY shall not approve the CCO and shall direct its contractor to cease further work on the IMPROVEMENTS. CITY shall coordinate with SANTA CLARA to direct CITY's contractor to return both the public right of way and the incomplete IMPROVEMENTS to a safe and secure condition, including restoration of the pavement surface to the same condition as existed prior to the start of construction. SANTA CLARA shall be solely responsible for the costs of returning both the SANTA CLARA public right of way and the incomplete IMPROVEMENTS to a safe and secure condition. Any remaining funds already provided by SANTA CLARA under Section 7 shall be applied towards the cost of any required restoration work that is above and beyond restoration work already paid for and identified under the construction contract schedule of quantities line items. If the total cost of any additional

required restoration work exceeds the remaining funds already provided by SANTA CLARA and upon completion of all restoration work, CITY shall submit an invoice to SANTA CLARA for the cost difference. SANTA CLARA shall pay entire invoice within sixty (60) calendar days of receipt.

8. **Change Orders:** All requests for CCOs related to both the PROJECT and the IMPROVEMENTS shall be forwarded to SANTA CLARA for review and approval pursuant to the process detailed in "Exhibit A." The "Change Order Contingency" amount indicated in Table 1 in Section 2 of this AGREEMENT shall be used to pay for CCOs directly-related to IMPROVEMENTS. SANTA CLARA's individual or cumulative obligation to pay for any CCOs related to the IMPROVEMENTS shall not exceed the amount set forth under "Change Order Contingency" in Table 1 of Section 2 of this AGREEMENT. CCOs related to the PROJECT work shall be funded by the grant sources.

9. **Final Accounting:** Upon completion of the PROJECT work and the IMPROVEMENTS, CITY shall pay to the CITY's Contractor the final construction costs of said PROJECT and IMPROVEMENTS. Upon completion and acceptance of PROJECT and IMPROVEMENTS by CITY, CITY shall forward to SANTA CLARA, within thirty calendar (30) days, a final accounting of all costs related to the IMPROVEMENTS and an invoice for funds due CITY for the IMPROVEMENTS, if any. This final accounting shall list the costs of construction as set forth in Section 2 of this AGREEMENT and additional approved change orders as outlined in Section 8 of this AGREEMENT. Any unused funds deposited by SANTA CLARA for the IMPROVEMENTS will be returned to SANTA CLARA, without interest, within sixty (60) calendar days of completion of the final accounting.

10. **Operations and Maintenance:**
 - A. During construction of the PROJECT and IMPROVEMENTS, each PARTY shall continue to operate and maintain the existing facilities within its own jurisdiction as occurred prior to the implementation of said PROJECT and IMPROVEMENTS.

 - B. Upon completion and acceptance of the PROJECT, each PARTY shall own, operate, and maintain the PROJECT elements within its own jurisdiction and comply with the intent of the SV-ITS Program as follows:
 - a. Each PARTY agrees that elements installed by the PROJECT are for the sole purpose of improving the efficiency and effectiveness of the regional transportation management system installed by the SV-ITS Program.
 - b. Use of all PROJECT elements must conform to the requirements of the grant funding for the PROJECT.
 - c. The PROJECT elements shall remain at their installed locations as detailed in the PLANS AND SPECIFICATIONS.
 - d. Each agency shall fully maintain the PROJECT elements within its own jurisdiction.
 - e. Any PROJECT elements, including fiber optic cable strands not assigned to a specific communications purpose in the PLANS AND SPECIFICATIONS, shall remain available for future SV-ITS Program use, or other transportation improvement purpose as approved in writing by both PARTIES.

f. Any proposed modification of PROJECT elements or their original, intended use shall require written approval from both PARTIES.

C. Upon completion and acceptance of the IMPROVEMENTS, SANTA CLARA shall fully own, operate, and maintain the IMPROVEMENTS within SANTA CLARA's jurisdiction.

11. Insurance: In the CITY's construction contract with the CITY's contractor for the PROJECT and IMPROVEMENTS, CITY shall require the CITY's contractor to comply with City of Santa Clara Street Opening Permit Insurance Requirements attached hereto as "Exhibit B". CITY shall also require CITY's contractor to defend, hold harmless, and indemnify SANTA CLARA, its officials, employees, and agents; to provide bodily injury insurance, property damage insurance, contractual liability, worker compensation and auto coverages with such coverages to be primary and non-contributing; and to name SANTA CLARA, its officials, employees, and agents as additional insureds. SANTA CLARA shall be provided with a copy of CITY's contractor's insurance certificates and endorsements prior to commencement of construction of PROJECT and IMPROVEMENTS.

12. Hold Harmless / Indemnification: In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by either Party shall not be shared pro rata. Instead, the PARTIES agree that, pursuant to Government Code Section 895.4, each PARTY hereto shall fully defend, indemnify and hold harmless the other PARTY, its officers, council members, employees, and agents, from any claim, loss or liability arising from or as a result of the death of any person or any accident, injury, loss or damage caused to any person or property of any person occurring by reason of the willful or negligent acts (active or passive) or omissions of the indemnifying PARTY, its officers, employees or agents, arising out of or relating in any way to the indemnifying PARTY's performance of this AGREEMENT. The CITY's acceptance of the PROJECT and IMPROVEMENTS and SANTA CLARA's payment of any sum due hereunder shall not operate as a waiver of this right of indemnification. The PARTIES' obligation under this provision shall survive the expiration or sooner termination of this AGREEMENT.

13. Termination:

A. The PARTIES can terminate this AGREEMENT at any time by mutual, written agreement. Unless the PARTIES agree otherwise, the termination shall become effective thirty (30) calendar days after the written agreement to mutually terminate.

B. If either PARTY fails to perform any of its material obligations under this AGREEMENT, the PARTY failing to perform is deemed to be in breach and in default of this AGREEMENT. In addition to all other remedies provided by law; the non-breaching PARTY may terminate this AGREEMENT upon seven (7) calendar days advance written notice (hereinafter, "NOTICE PERIOD") to the defaulting PARTY and provide the defaulting PARTY with either the opportunity to cure the specified breach or, in those instances where the specified breach cannot reasonably be cured within the NOTICE PERIOD, with the opportunity to commence to cure the specified breach within the NOTICE PERIOD. In the event the defaulting

PARTY fails to cure or to commence to cure the specified breach within the NOTICE PERIOD, this AGREEMENT shall be immediately terminated.

- C. The CITY's Director of Transportation is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. If this AGREEMENT is terminated, within thirty (30) calendar days of termination, CITY shall deduct all actual costs related to IMPROVEMENTS, including but not limited to accrued design and construction, authorized by SANTA CLARA and incurred by CITY up to the date of termination, in an amount not to exceed the "TOTAL IMPROVEMENTS COST FUNDED BY SANTA CLARA" specified in Table I of Section 2 of this AGREEMENT plus any approved change orders exceeding the total "Change Order Contingency" amount indicated in Table 1 of Section 2 of this AGREEMENT and any amount to restore the facilities to previous condition. Any remaining balance shall be returned to SANTA CLARA.
14. **Entire Agreement:** This AGREEMENT contains the entire agreement between the PARTIES relating to the PROJECT and IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
15. **Governing Law:** This AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit is brought by either PARTY, the PARTIES agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, if federal jurisdiction is appropriate, in the United States District Court for the Northern District of California, San Jose, California.
16. **Acquisition of Property:** It is understood and agreed that the PROJECT and IMPROVEMENTS as described herein are totally within existing rights-of-way and no property acquisition or dedication is necessary.
17. **Terms of Agreement:** The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both PARTIES and terminate upon PROJECT and IMPROVEMENTS acceptance and final payments. Warranty period shall be one (1) year from the acceptance date as specified in the City of San José Standard Specifications, Section 7-1.23.
18. **Severability:** Should any part of this AGREEMENT be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect; provided that the remainder of the AGREEMENT, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.
19. **Non Waiver:** A failure by either PARTY to require full compliance with any requirement or condition of this AGREEMENT shall not be deemed to be waiver of that requirement or condition or of any subsequent breach of the same or any other requirement or condition. Acceptance of performance or fulfillment of a requirement or a condition by the other PARTY, including CITY's payment to its CONTRACTOR, shall not be deemed to be a waiver of any preceding breach, regardless of knowledge or such preceding breach at the time of acceptance.

20. **Notices:** All notices required to be given hereunder, or which either PARTY may wish to give, shall be in writing and shall be served either by personal delivery or by mail, postage prepaid, addressed as follows, or to such other place as either PARTY may designate by written notice:

Mr. Rajeev Batra
Director of Public Works/ City Engineer
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: David Morrison

Mr. Hans F. Larsen
Acting Director of Department of Transportation
City of San José
200 East Santa Clara Street, 8th Floor Tower
San José, CA 95113
Attn: Lily Lim-Tsao

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE,
A Municipal Corporation



JOANNY V. PHAN
Deputy City Attorney

2/10/10
Date

By _____
LEE PRICE, MMC
City Clerk
200 Santa Clara Street
San José, CA 95113

Date

“SANTA CLARA”

APPROVED AS TO FORM AND LEGALITY:

CITY OF SANTA CLARA,
A Municipal Corporation



ELIZABETH H. SILVER
Interim City Attorney

1/27/10
Date

By 

JENNIFER SPARACINO
City Manager

Date

1500 Warburton Avenue
Santa Clara, California 95050
Telephone : (408) 615-2210
Facsimile : (408) 241-6771

Approved by Council: 01/26/10

ATTEST:



ROD DIRIDON, JR.
City Clerk

Date

EXHIBIT "A"

Silicon-Valley ITS

Policies and Procedures Construction Communication and Management

Effective: Draft 7-28-02

Number 302

Revised:

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PURPOSE

The purpose of this policy and procedure is to provide guidelines for all agencies during the construction phases of the projects implemented under the Silicon Valley Intelligent Transportation Systems (SV-ITS) Program.

DEFINITIONS

"Partner Agencies" means agencies that are included in the SV-ITS Program MOU.

"Lead Design Agency" means the Party that obtains funding for the Project on behalf of the Parties, and that takes the lead in managing the consultant design contract for the Project for the benefit of the Parties.

"Construction Manager" means the Party that takes the lead in implementing the public works construction elements of the Project for the benefit of the Parties.

"MOU" means the "Memorandum of Understanding among partner agencies

"Steering Committee" ("Committee") means a day-to-day policy and guidance committee formed by the Parties hereto. This Committee shall be formed according to the process outlined in the MOU for creating a "Program Steering Committee."

"Policy Advisory Board" ("Board") means a high-level policy board formed by the Steering Committee. This Board shall be formed according to the process outlined in the MOU for creating a "Program Policy Advisory Board." This Board shall address policy issues related to the overall SV-ITS Program.

BACKGROUND

The projects implemented under the SV-ITS Program are typically multi-jurisdictional projects involving three or more agencies. Given that the projects are multi-jurisdictional, there is a need for keeping channels of communication clear between agencies, and for each agency to understand their role and responsibilities relating to the construction phase of the project. Open communication between agencies and procedures in-place for handling construction issues that arise such as submittal review, change order requests, and construction cost overruns will assist in overseeing the Contractor during construction.

The City of San Jose is the Program Manager for the entire SV-ITS Program and serves as the Project Manager for all Program projects. To date, San Jose has also been the Lead Design Agency for all of the SV-ITS projects. In the future, this role as Lead Design Agency could be filled by any one of the other partner agencies. The Construction Manager for SV-ITS Program projects is typically lead by the major project stakeholder agency.

I:\ENGINEERING\DRAFT\WPI\AGREES\San Jose SVITS Exhibit A - SV-ITS Construction Communication.pdf

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ROLES AND RESPONSIBILITIES

Construction Manager

- Advertise/bid/award the project.
- Administer the construction contract within budgetary constraints and consistent with the project's PS&E and existing funding and/or SV-ITS agreements.
- Provide inspection services for the construction elements of the project occurring within each jurisdiction – inspection related specifically to the project and consistent with the project's PS&E.
- Coordinate inspection and testing of the work with each Project Stakeholder within their respective jurisdictions.
- Provide testing services for soils, concrete, etc. to ensure compliance with specifications
- Conduct weekly construction meetings and issue meeting notes to the Project Stakeholders and Lead Design Agency.
- Process change orders/submittals/RFIs and maintain logs of their review status
- Review and process contractor requests for payment.
- Seek reimbursement for construction expenditures directly from Caltrans Local Assistance Program and in accordance with approved construction agreement.
- Maintain good construction activity records including daily inspection reports, punch lists, and issues logs.
- Furnish detailed information to the Lead Design Agency that is required to enable the Design Consultant to prepare accurate project record documents.
- Prepare and submit a final notice of completion and acceptance of the project to the Steering Committee.
- Prepare and submit a final report of construction detailing the work, issues, changes, final costs (incl. Costs for construction management), etc. to the Steering Committee.
- Review and approve completed record documents from Design Consultant.

Lead Design Agency

- Review and facilitate resolution of design issues (change orders, RFIs, submittals, etc.) in a timely manner between Construction Manager, Project Stakeholders, and Design Consultant
- Prior to project advertisement for bids, acquire all permits that are not the Contractor's responsibility and incorporate them into the construction bid documents.
- Forward required information from Construction Manager to the Design Consultant for preparation of project record documents.
- Distribute copies of completed record documents to the Project Stakeholders.
- Conduct monthly Project Stakeholder meetings.

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Project Stakeholders

- Respond to submittal/change order reviews, inspection notifications, requests for acceptance of work, information requests, and other correspondence/coordination issues within the time designated by the Construction Manager.
- Provide inspection services related to encroachment permit issuance
- Provide inspection services within its specific jurisdiction to support the Construction Manager's inspection effort for the Project and insure that the particular jurisdiction's interests are preserved. The Project Stakeholder's inspector shall coordinate all comments and observations with the Construction Manager's inspector.
- The Project Stakeholder's inspector shall use best efforts to attend weekly construction meetings
- The Project Stakeholder's engineer shall use best efforts to attend monthly stakeholder meetings

LINES OF COMMUNICATIONS AND DECISION/AUTHORIZATION

While the project is under construction, it is imperative that the affected partner agencies in the SV-ITS program have a clear line of communication to address any issues that arise in a timely manner. Identifying and utilizing the lines of decision and authorization between the Design Consultant, Lead Design Agency, Project Stakeholder, and Construction Manager will provide quick response times and minimize delays which might otherwise result in claims. Figure 1 illustrates the lines of communication and authorization channels during construction.

The Design Consultant should respond to the Lead Design Agency with recommendations and also copy the recommendations to the Construction Manager via email. If the Lead Design Agency does not respond back in-time to the Construction Manager, then the Lead Construction Manager will take the Design Consultant's recommendations into consideration in responding back to the Contractor. At a minimum, the Lead Design Agency must be copied on all communications.

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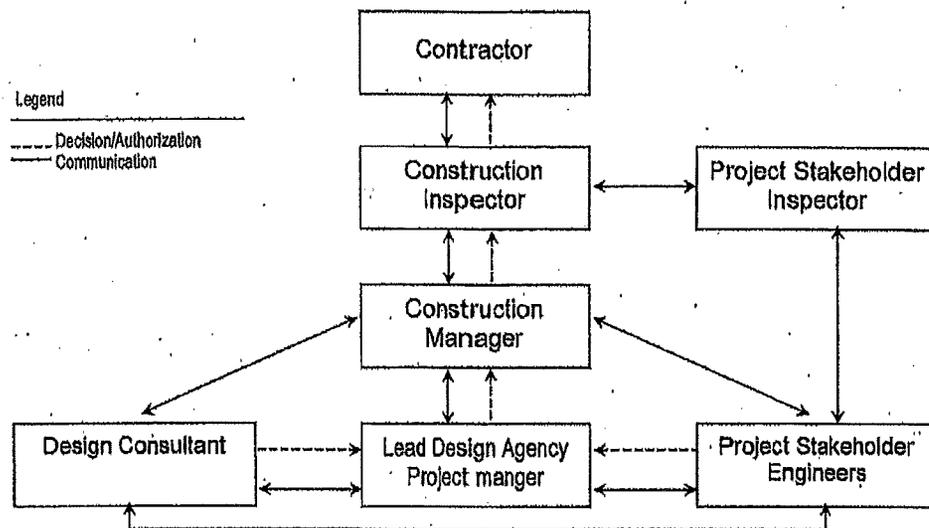


FIGURE 1 – Lines of Communication and Decision/Authorization

The Design Consultant should respond to the Lead Design Agency with recommendations and also copy the recommendations to the Construction Manager via email. If the Lead Design Agency does not respond back in time to the Construction Manager, then the Lead Construction Manager will take the Design Consultant's recommendations into consideration in responding back to the Contractor. At a minimum, the Lead Design Agency must be copied on all communications.

SUBMITTAL REVIEW

There are submittals that the Contractor will provide to the Construction Manager for review and approval prior to construction. In addition, the Lead Design Agency, affected Project Stakeholders, and Design Consultant should address the submittals summarized in Table 1.

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TABLE 1 – Submittal Review Roles

Submittal	Construction Manager Review/Approval	Lead Design Agency Acceptance	Affected Project Stakeholder Acceptance	Consultant Review and make Re-recommendation to Constr Mgr and Lead Design Agency
Project Schedule	√	√	√	√
Traffic Control Plan	√	√	√	
Storm Water Pollution Prevention Plan	√		√	
Notice to residents (if applicable)	√		√	
Material/Equipment Specifications	√	√	Review & Approval of Substitutions Only	√
Designation of Site Safety and Health Officer OSHA	√			
Shop Drawings	√	√	Review & Approval of Substitutions Only	√
Encroachment Permits Verification	√			
Existing site condition video tape	√		√	

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Upon receipt of a submittal, the Construction Manager shall immediately forward it simultaneously to the Lead Design Agency, Design Consultant, and affected Project Stakeholders for review based upon the general parameters in the table above. The Design Consultant and affected Project Stakeholders shall provide responses to the Lead Design Agency with copies to the Construction Manager. The Lead Design Agency shall coordinate all responses and provide a recommendation to the Construction Manager. The Construction Manager will then approve/reject the submittal and distribute copies to all parties for record-keeping purposes. Any major conflicts between the parties shall be resolved by the Lead Design Agency. If the conflict involves the Lead Design Agency, it shall be brought before the Steering Committee in a special meeting, if necessary, for final resolution. If the Steering Committee cannot convene within the required response period, the Construction Manager's decision on submittals shall take precedence.

The Project Stakeholder's desire a minimum of five (5) working days to receive and return submittals to the Lead Design Agency. If no reply is received within the allotted time, the submittal is considered accepted by the Project Stakeholder with no comment. The time for submittal review depends on the urgency of the situation and must be communicated to the reviewing parties by the Construction Manager.

The Lead Design Agency shall provide a written acceptance/rejection to the Construction Manager within a reasonable amount of time (typically ten (10) working days), which is determined on a case-by-case basis according to the time designated by the Construction Manager from the date received. If no reply is received within the allotted time, the submittal is considered accepted by the Lead Design Agency with no comment.

If other Stakeholders other than the Construction Manager require approval of a submittal, the Lead Design Agency shall collect and consider all comments. The Lead Design Agency will resolve conflicting recommendations between Stakeholders and provide a written acceptance/rejection to the Construction Manager within the time period indicated above.

NOTICE OF CHANGED CONDITIONS, REQUEST FOR INFORMATION AND REQUEST FOR CHANGE ORDERS

The process for handling the notice of changed conditions, request for information, and request for change orders is similar to the review submittal process approval as follows:

1. The Contractor submits a notice of changed conditions, request for information, or request for change orders to the Construction Manager's Inspector who will pass it on to the Construction Manager.
2. Construction Manager then forwards all notices to the Lead Design Agency and simultaneously sends duplicate copies to the Design Consultant and affected Project Stakeholders within twenty-four (24) hours of receipt of change order from Contractor.

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3. The Design Consultant and affected Project Stakeholders review the requests and provide written responses to the Lead Design Agency with copies to the Construction Manager within the allotted time, as determined and communicated by the Construction Manager. Otherwise, the Lead Design Agency shall proceed with acceptance/rejection at its sole discretion. The Design Consultant desires a minimum of five (5) working days (three (3) working days for RFIs) to provide review/recommendations to the Lead Design Agency.
4. The Lead Design Agency considers all comments and provides written acceptance/rejection recommendation to the Construction Manager within forty-eight (48) hours after receipt of comments from the Design Consultant and the affected Project Stakeholders.
5. If there is a conflict in recommendations between the Lead Design Agency and the Construction Manager, then the conflict will be resolved by the Steering Committee. If they cannot convene, then the Construction Manager has the final say.

COST OVERRUNS

Occasionally, there are costs associated with a project that will cause the construction cost to exceed the amount budgeted. Cost overruns can arise from inadequate funds for 1.) contract change orders and 2.) construction management.

Contract Change Orders

Contract Change Orders/claims could result in cost overruns. The Supplemental Work/Construction Contingency budget amount is typically used to take care of unforeseen circumstances, such as delays, errors and omissions, or encountering differing site conditions. This amount is usually ten (10) percent of the construction contract amount. However, when the budgeted amount for Supplemental Work/Construction Contingency is depleted, then additional dollars are needed to compensate legitimate Contractor's request for Contract Change Orders.

Construction Management

The amount typically budgeted for Construction Management is 15% of the construction contract amount. This amount is for both the Construction Manager as well as the Project Manger. If the allocated budget for Construction Management is depleted and the project is still under construction, then additional dollars may be necessary to compensate the Construction Manager for their inspection time and administration of the construction contract and the Project Manager as well. The amounts budgeted for Supplemental Work/Construction Contingency will only be used to pay for costs related to the additional or unforeseen services performed by the Contractor and not for Construction Management costs incurred by the Construction Manager and/or the Program Manager.

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During the design phase of each SV-ITS project, if it is determined that a significant risk of budget shortfall for Contract Change Orders or Construction Management may exist, funds allocated for the construction contract will be reassigned to allow additional monies for Supplemental Work/Construction Contingency or Construction Management. If a budget shortfall for either type of cost overrun is determined during the construction phase, the Policy Committee shall convene to resolve the issue.

ACCEPTANCE OF WORK

Once the Contractor has completed the construction work and done all of the required acceptance testing, a final walk-through of the project shall be scheduled. The inspector of the affected project stakeholders shall attend the final walk-through. All items on the final punch list must be completed by the Contractor before the final acceptance of the project by the Construction Manager, Lead Design Agency, Design Consultant, and each affected Project Stakeholder. Each affected Project Stakeholder shall provide written acceptance of final construction work within its jurisdiction within a reasonable amount of time, as determined and communicated by the Construction Manager. The Construction Manager shall process filing of the Notice of Acceptance with the approving body and prepare and furnish a final report to Caltrans Local Assistance Program.

**CITY OF SANTA CLARA, CALIFORNIA
STREET ENCROACHMENT LICENSE INSURANCE REQUIREMENTS**

EXHIBIT B

Permittee shall purchase and maintain the insurance policies set forth below on all of its operations under this License at its/their sole cost and expense. Such policies shall be maintained for the full term of this License and the related warranty period (if applicable). For purposes of the insurance policies required under this License, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Santa Clara, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

The Applicant shall maintain following policies with insurance companies which are authorized to do business in the State of California:

a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").**

This policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

- \$1,000,000 each occurrence (combined single limit);
- \$1,000,000 for personal injury liability;
- \$1,000,000 aggregate for products-completed operations; and,
- \$1,000,000 general aggregate.

b. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").**

This policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. Applicant shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of City.

c. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL").** (A Workers' Compensation Policy is required only if Applicant has employees or volunteers.)

These policies shall include Workers' Compensation insurance as required by the laws of the State of California; and Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

2. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

- a. **Additional Insureds** The City of Santa Clara, its City Council, Commissions, officers, employees and volunteers are hereby added as additional insureds in respect to all liabilities arising out of Applicant's performance of work under this Agreement (CGL & BAL);
- b. **Notice of Cancellation** No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation at the address set forth below, except that the insurer may give ten (10) days' notice for non-payment of premium.

3. **ABSENCE OF INSURANCE COVERAGE.**

City may direct the Applicant to immediately cease all activities with respect to this agreement if it determines that the Applicant fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered the Street Opening Permit Applicant's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to the Applicant.

4. **PROOF OF INSURANCE COVERAGE AND ENDORSEMENTS.**

Prior to commencing work under this Agreement, each of Applicant's insurance companies shall provide the City with 1) a Certificate of Insurance, on an Accord or similar form indicating that the required coverage has been provided; and 2) the required specified endorsements. Such verification shall also be provided annually thereafter at least ten (10) days prior to termination of existing policies for the term of this Agreement. All of the insurance companies providing insurance for Applicant shall have, and provide evidence of, at least a Best Rating Service rate of A VI. The Certificate(s) of Insurance, endorsements and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
Attention: Engineering Department
1500 Warburton Avenue
Santa Clara, California 95050

S:\Attorney\INSURANCE\SEL Ins.Req.-Exhibit B.doc