



Council Meeting: December 1, 2009

SUBJECT: Transportation Fund for Clean Air Funds for Light Rail Intersection Traffic Signal Controller Replacement Project – Cooperative Agreement with the City of San Jose and Approval of Budget Modification No. 13

DISCUSSION

The cities of Sunnyvale and San Jose have been awarded funding from the Bay Area Air Quality Management District Transportation Fund for Clean Air for replacement of traffic signal controllers along various light rail corridors. Traffic signal controllers are in need of replacement due to operational and reliability problems with the original equipment. Staff of the two cities have negotiated a cooperative agreement outlining roles and responsibilities for the project. Staff is recommending that the City Council authorize the City Manager to execute the cooperative agreement with San Jose, and to approve Budget Modification No. 13 to appropriate \$15,600 in grant revenue to fund a new project, Tasman Light Rail Corridor Traffic Signal Controller Replacement, with the awarded funding from the Bay Area Air Quality Management District Transportation Fund for Clean Air.

BACKGROUND

Traffic signal controllers at signalized intersections with light rail tracks running through them feature a proprietary controller that was developed especially for the Santa Clara Valley Transportation Authority (VTA) light rail system. The VTA installed this equipment, and then turned the equipment over to cities along the light rail lines for maintenance and operations. The equipment has not operated well, and being a one-time proprietary acquisition, is no longer being manufactured. Sunnyvale and San Jose co-sponsored an application for Transportation Fund for Clean Air grant application to replace the original controllers with state of the art controllers on a standardized platform. The grant will allow the replacement of controllers in San Jose and Sunnyvale, as well as implement a new protocol for communications on signal operations between jurisdictions.

EXISTING POLICY

Land Use and Transportation Element C3.4, Maintain roadways and traffic control devices in good operating condition.

Fiscal Sub-Element 7.1B.4d; Pursue and use intergovernmental assistance for projects in the Ten-Year Capital Improvement Plan.

FISCAL IMPACT

This project provides funding for the replacement of poorly operating and unsupported traffic signal equipment. Approval of this budget modification does not have a fiscal impact to the City, as purchase of the equipment will be covered by the awarded funding from the Bay Area Air Quality Management District Transportation Fund for Clean Air, and the installation and ongoing maintenance costs will be absorbed into the Public Works operating budget.

Budget Modification No. 13 has been prepared to appropriate \$15,600 in grant revenue to fund a new project, Tasman Light Rail Corridor Traffic Signal Controller Replacement, with the awarded funding from the Bay Area Air Quality Management District Transportation Fund for Clean Air.

**Budget Modification No. 13
 FY 2009/2010**

	Current	Increase/ (Decrease)	Revised
Capital Projects Fund			
<u>Revenues:</u>			
Bay Area Air Quality Management District Transportation Fund for Clean Air Grant	\$0	\$15,600	\$15,600
<u>Expenditures:</u>			
New Project – Tasman Light Rail Corridor Traffic Signal Controller Replacement	\$ 0	\$15,600	\$15,600

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Authorize the City Manager to execute the Cooperative Agreement with the City of San Jose for light rail traffic signal controller replacement funding.
2. Approve Budget Modification No. 13 to appropriate \$15,600 in grant revenue to fund a new project, Tasman Light Rail Corridor Traffic Signal Controller Replacement, with the awarded funding from the Bay Area Air Quality Management District Transportation Fund for Clean Air.
3. Do not take action at this time and forfeit Transportation Fund for Clean Air funding for light rail corridor traffic signal controller replacement.

RECOMMENDATION

Staff recommends Alternatives No. 1 and No. 2: Authorize the City Manager to execute the Cooperative Agreement with the City of San Jose for light rail traffic signal controller replacement funding; and, approve Budget Modification No. 13 to appropriate \$15,600 in grant revenue to fund a new project, Tasman Light Rail Corridor Traffic Signal Controller Replacement, with the awarded funding from the Bay Area Air Quality Management District Transportation Fund for Clean Air.

Approval of these actions will allow clean air funding to be utilized to replace operationally deficient and unsupported traffic signal control equipment with new state of the art, standardized equipment, and to upgrade communications protocols for monitoring and operating traffic signals along the Tasman light rail corridor.

Reviewed by:

Marvin A. Rose, Director of Public Works

Prepared by: Jack Witthaus, Transportation and Traffic Manager

Reviewed by:

Mary J. Bradley, Director of Finance

Approved by:

Gary M. Luebbbers, City Manager

ATTACHMENT

A. Cooperative Agreement

**FUNDING AND OPERATIONS & MAINTENANCE AGREEMENT
BETWEEN THE CITY OF SAN JOSE
AND THE CITY OF SUNNYVALE FOR
THE LIGHT RAIL TRANSIT – CONTROLLER UPGRADE PROJECT, PHASE II**

THIS AGREEMENT (“AGREEMENT”) is made and entered into this _____ day of _____ 2009, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter “CITY”) and the CITY OF SUNNYVALE, a municipal corporation of the State of California (hereinafter “SUNNYVALE”), and.

WITNESSETH:

WHEREAS, the Santa Clara Valley Transportation Authority (VTA) has been designated by the cities within Santa Clara County and by the County of Santa Clara as the Program Manager for the Transportation Fund for Clean Air (TFCA) County Program Manager Fund under the State of California Health and Safety Code Section 44241; and

WHEREAS, pursuant to that designation, VTA is responsible for administering TFCA Program Manager funds to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District (BAAQMD): and

WHEREAS, CITY and SUNNYVALE as a co-project sponsor, have secured a total of \$545,450 in TFCA grant for the Light Rail Transit – Controller Upgrade Project, Phase II (hereinafter “PROJECT”) from VTA in August 2008; and

WHEREAS, the PROJECT consists of replacing forty (40) Light Rail Transit (LRT) signal controllers along Guadalupe, Tasman, and Vasona corridors within the CITY and an additional thirteen (13) controllers along the light rail corridor within SUNNYVALE (hereinafter “SUNNYVALE LRT CORRIDOR”), attached hereto and marked as Exhibit “A”, to address the critical shortcomings of the existing controllers; and

WHEREAS, SUNNYVALE is entitled to a maximum of \$15,600 in reimbursement of deployment costs from the \$545,450 TFCA grant for the implementation of the PROJECT within SUNNYVALE’s jurisdiction; and

WHEREAS, SUNNYVALE 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, reimbursement of costs, and operations and maintenance; and

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained in this AGREEMENT, the PARTIES agree as follows:

1. SUNNYVALE'S Role and Responsibilities:

SUNNYVALE shall perform and complete the following:

- A. Work cooperatively with CITY to complete the work described in this AGREEMENT
- B. Replace thirteen (13) existing Vector traffic controllers with thirteen (13) 2070 Advanced Traffic Controllers (ATC) located at the thirteen (13) intersections indicated in Exhibit "A" to this AGREEMENT.
- C. Convert the existing Vector signal timing plan to Fourth Dimension signal timing plan to be implemented on the new controllers.
- D. Configure thirteen (13) 2070 ATC, and deploy and connect to the thirteen (13) CITY supplied Actelis ML688 network devices.
- E. Configure and deploy the 13 Actelis ML688 for the purpose of maintaining communications between the controllers.

2. CITY's Role and Responsibilities:

CITY shall perform and complete the following:

- A. CITY shall work cooperatively with SUNNYVALE to complete the work described in this AGREEMENT.
- B. CITY shall provide Internet Protocols (IP) addresses for each controller and network device at each of the thirteen (13) intersections along the SUNNYVALE LRT CORRIDOR. Once the controllers and network devices are configured with the appropriate IP addresses, the controllers and network devices shall be able to communicate on the CITY's field DOT network.
- C. CITY shall pay a one-time licensing fee for SUNNYVALE to use the Transsuite TCS Advanced Traffic Management System (ATMS) application. This fee shall permit SUNNYVALE full access to Transsuite TCS to control and monitor the thirteen (13) intersections along the SUNNYVALE LRT CORRIDOR.

3. Reimbursement of Costs: SUNNYVALE shall submit a one-time detailed invoice on

SUNNYVALE’s letterhead for reimbursement of deployment costs to the CITY for the expenses specified below. SUNNYVALE shall provide supporting documentation detailing the labor and period spent deploying the new controllers with the reimbursement request. Any expenses not listed below are not eligible for reimbursement.

	REIMBURSABLE ITEM	ESTIMATED COST
a.	Field Equipment Installation (SUNNYVALE Maintenance Staff)	\$13,000
b.	Timing Plan Conversion (SUNNYVALE Operations Staff)	\$2,600

City shall review the invoice submitted by SUNNYVALE for the eligible expenditures incurred to implement the PROJECT as described in this AGREEMENT. Upon review and approval of the invoice, CITY shall reimburse SUNNYVALE within 30 days up to the maximum amount \$15,600 for the eligible expenditures and only as they are incurred.

4. Operations and Maintenance:

- A. During the implementation of the PROJECT, each PARTY shall continue to operate and maintain the existing facilities within its own jurisdiction as occurred prior to the implementation of said PROJECT.
- 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 PROJECT:
 - a. Each PARTY agrees that elements installed by the PROJECT are for the sole purpose of improving the efficiency and effectiveness of vehicular, LRT, and pedestrian traffic flow and safety at all LRT intersections.
 - 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.
 - d. Each PARTY shall fully maintain the PROJECT elements within its own jurisdiction.
- C. CITY shall maintain a Virtual Private Network (VPN) connection, to allow SUNNYVALE to remotely access the CITY’s Transsuite TCS to control and monitor the thirteen (13) intersections along the SUNNYVLE LRT CORRIDOR. VPN access is provided on an annual basis and shall be renewed by CITY upon SUNNYVALE’s request.

- D. Any future enhancements made by CITY to the D4 controller firmware and/or Transsuite TCS software shall be made available to SUNNYVALE at no cost.
 - E. SUNNYVALE shall maintain the Ethernet communication link within its own jurisdiction and shall work cooperatively with CITY to operate and maintain the communication link between SUNNYVALE and CITY.
 - F. Any software fixes provided by Fourth Dimension to address bugs in the D4 controller firmware for CITY shall be made available to SUNNYVALE at no cost.
 - G. SUNNYVALE shall be responsible for all the costs of any future enhancements to the controllers requested by SUNNYVALE.
 - H. SUNNYVALE shall enter into separate agreement(s) with Fourth Dimension should SUNNYVALE choose to implement any future enhancements to the controllers beyond the version provided by CITY.
 - I. SUNNYVALE shall be responsible for all the costs in developing in the Transsuite TCS the required support for new controller software enhancements made by SUNNYVALE as indicated in item G.
 - J. SUNNYVALE shall enter into separate agreement(s) with Transcore should SUNNYVALE choose to implement any enhancements to the controllers that require additional support from the Transcore TCS.
5. **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.
6. **Insurance Requirements:** SUNNYVALE agrees to have and maintain the policies set forth in Exhibit "B", titled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

7. **Termination**: 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.
8. **Entire Agreement**: This AGREEMENT contains the entire agreement between the PARTIES relating to the PROJECT. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
9. **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.
10. **Acquisition of Property**: It is understood and agreed that the PROJECT as described herein are totally within existing rights-of-way and no property acquisition or dedication is necessary.
11. **Terms of Agreement**: The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both PARTIES. Tasks identified in section 1 through 3 of this AGREEMENT shall be completed by June 30, 2010. Items identified in section 4 shall remain in effect until the termination of this AGREEMENT by either PARTY.
12. **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.
13. **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.
14. **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. Marvin Rose
 Director of Public Works
 City of Sunnyvale
 P.O. Box 3707
 Sunnyvale, CA 94088
 Attn: Carmen Talaveras

Mr. Hans Larsen
 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

EXHIBIT A : LIGHT RAIL CONTROLLER UPGRADE LOCATIONS ALONG SUNNYVALE LRT CORRIDOR

No.	Intersection	ID#
1	Mathilda Av & Lockheed Wy	7042
2	Mathilda Av & 5th Av	7002
3	Mathilda Av & Java Dr	7043
4	Mathilda Av & Bordeaux Av	7100
5	Java Dr & Bordeaux Av	7101
6	Java Dr & Borregas Av	7044
7	Java Dr & Geneva Dr	7092
8	Java Dr & Crossman Av	7045
9	Fair Oaks Av & Fair Oaks Wy	7109
10	Fair Oaks Av & Tasman Dr	7089
11	Tasman Dr & Vienna Dr	7103
12	Tasman Dr & Adobe Wells-Birchwood	7019
13	Tasman Dr & Reamwood Dr	7020

EXHIBIT B: INSURANCE

SUNNYVALE, at SUNNYVALE'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by SUNNYVALE, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Railroad Protective Liability will be required when working within Railroad's right of way, Sunnyvale or its contractor(s) will be required to obtain Railroad Protective Liability Insurance for the project(s.)

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

SUNNYVALE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Railroad Protective Liability insurance naming Railroad and any railroad operating over its tracks as insureds with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy form shall be AAR-AASHTO with broad

form coverage for “Physical Damage to Property” (ISO Form GL 00 30) or as revised ISO-RIMA (Form CG 00 35) and include pollution arising out of fuels and lubrications brought to the job site (ISO Form CG 28 31 or equivalent). If the Lloyd’s, London policy form is used, limits shall be \$3,000,000 per occurrence with a \$9,000,000 aggregate and the Extended Claims Made Date shall be determined by adding the length of the original policy period plus one year to the policy expiration date.

This requirement may be amended to meet the current requirements set forth by the railroad upon request of the railroad.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY’s Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or SUNNYVALE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY’s Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, SUNNYVALE; products and completed operations of SUNNYVALE; premises owned, leased or used by SUNNYVALE; and automobiles owned, leased, hired or borrowed by SUNNYVALE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. SUNNYVALE’s insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of SUNNYVALE’s insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by SUNNYVALE shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that SUNNYVALE’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

SUNNYVALE shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

G. Subcontractors

SUNNYVALE shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.