

**Council Meeting: June 19, 2012****SUBJECT: Authorization for the City Manager to Execute a Homestead Road Traffic Signal Maintenance and Operations Agreement Between the City of Sunnyvale and the City of Cupertino****DISCUSSION**

The City boundary between Cupertino and Sunnyvale runs roughly along the centerline of Homestead Road between Barranca Drive/Belleville Way west of Highway 85, to Swallow Drive east of Tantau Avenue. Along this segment are fourteen traffic signals, of which seven are operated and maintained by the City of Sunnyvale, one by Caltrans, and six by the City of Cupertino under past written agreements from 1980, 1991 and 2001.

The cities of Sunnyvale and Cupertino mutually desire to supersede all previous written agreements and replace these with a single written agreement (Attachment A) incorporating the thirteen traffic signals owned and operated by the two jurisdictions (Caltrans-owned signal excluded). Under the new agreement, the City of Sunnyvale will operate and maintain all traffic signals west of and including Stelling Road/Hollenbeck Avenue (excluding the Caltrans-owned signal at Maxine Ave/Highway 85), and the City of Cupertino will operate and maintain all traffic signals east of and including Franco Court. The purpose for grouping the traffic signals in this manner is to facilitate traffic flow along the corridor by having only one jurisdiction responsible for all signals in a consecutive group.

As a result of the new agreement, the City of Cupertino will take over operation and maintenance responsibilities from Sunnyvale for the Homestead Road/Heron Avenue traffic signal. The operation and maintenance responsibilities for all other signals will remain the same. The agreement contains provisions for the mutual review and concurrence of traffic signal timing plans. The agreement also establishes responsibilities for any traffic signal interconnect systems that may be installed or operated on Homestead Road.

FISCAL IMPACT

The cost for operating and maintaining this traffic signal is approximately \$591.00 annually for scheduled maintenance, and approximately \$490.00 annually for electricity. A total of approximately \$1,081.00 annually will be saved. No significant fiscal impact is expected to result from this change. Abdicating responsibility for this signal will also relieve Sunnyvale from the

responsibility for replacement of outmoded and non-standard signal infrastructure over the long term, which could constitute a significant savings.

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 an agreement between the City of Sunnyvale and the City of Cupertino regarding the operation and maintenance of traffic signals on Homestead Road.
2. Do not take action at this time

RECOMMENDATION

Staff recommends Alternative No. 1, Authorize the City Manager to execute an agreement between the City of Sunnyvale and the City of Cupertino regarding the operation and maintenance of traffic signals on Homestead Road.

Reviewed by:

Kent Steffens, Director of Public Works
Prepared by: Carmen Talavera, Senior Traffic Engineer

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft Homestead Road Operations and Maintenance Agreement

AGREEMENT BETWEEN
CITY OF CUPERTINO, CALIFORNIA
AND
CITY OF SUNNYVALE, CALIFORNIA
RESPECTING THE OPERATION AND SHARING OF COSTS
PERTAINING TO TRAFFIC SIGNALS
IN THE VICINITY OF HOMESTEAD ROAD

This agreement (“Agreement”) is made and entered into on this ____ day of _____, 2012 (“Effective Date”) by and between the City of Sunnyvale, a chartered California municipal corporation (“Sunnyvale”) and the City of Cupertino, a chartered California municipal corporation (“Cupertino”). This agreement is for the purpose of assigning responsibility and costs for the operation and maintenance of various traffic signals, safety lighting and related equipment at various intersections in the subject jurisdictions. (Cupertino and Sunnyvale may be referred to individually as a “Party” or collectively as the “Parties.”)

RECITALS

- A. There exist along the common boundary between Cupertino and Sunnyvale certain intersections where traffic signals, interconnect systems and highway safety lighting have been established and there is joint jurisdiction as to various street approaches to these intersections. Several such intersections are located in the vicinity of Homestead Road. In addition, several intersections located entirely within Sunnyvale are in close proximity to such shared-jurisdiction intersections.
- B. Cupertino and Sunnyvale do mutually desire to cooperate and jointly participate in and thereby share the operation, maintenance, repair and improvement of the traffic signals, interconnect systems and highway safety lighting described herein and desire to specify herein the terms and conditions under which said systems are to be maintained, repaired and/or improved.
- C. Prior written agreements have been executed over time by and between the Parties, i.e. agreements dated October 6, 1980, May 28, 1991 and June 2001. The Parties hereby seek to replace, supersede, incorporate, and expand these prior agreements by the subject Agreement and reduce their present shared responsibilities concerning the subject intersections to a single agreement.
- D. It is in the public interest to assign to the respective Parties responsibility for maintenance and control of the traffic signals and related equipment at the subject intersections, in order to allow for sharing of costs and responsibilities

and to facilitate the creation of a continuous grouping of signals for coordination purposes.

In consideration of the foregoing recitals and the following mutual covenants, commitments, and obligations of the Parties, Cupertino and Sunnyvale do hereby agree as follows:

AGREEMENT PROVISIONS

1. DESCRIPTION

This agreement describes the Parties' determination of an appropriate accord for the sharing, division and allocation of responsibilities and costs relating to control and maintenance of the traffic signals and related equipment presently existing in the vicinity of the common boundary between Cupertino and Sunnyvale along or near Homestead Road.

If either party determines that interconnection of signals within its jurisdiction requires installation or construction of facilities to be located within the other Party's jurisdiction, the requesting Party shall follow the procedure set forth in Paragraph 4 below.

DEFINITIONS

- A. The term "Intersection" shall refer to any of the intersections of Homestead Road included in this Agreement.
- B. The term "Traffic Signal System" shall refer to and include any traffic signal facilities, interconnect systems and appurtenant intersection street or safety lighting existing at any Intersection referenced herein.
- C. The terms "Operate and Maintain," and/or "Operation and Maintenance" mean providing services and payment of capital and labor costs for repair, replacement, upgrades, inspections, adjustments, and electrical power associated with the operation and maintenance of the Traffic Signal at the Intersection.

2. RESPECTIVE OBLIGATIONS OF THE PARTIES

Cupertino Agrees:

- A. To Operate and Maintain the Traffic Signal System within the following Intersections along Homestead Road and bear all costs associated therewith:

Franco Court/Forge Way
De Anza Boulevard
Blue Jay Drive
Blaney Avenue
Wolfe Road
Tantau Avenue
Heron Avenue

- B. To review with counterparts in Sunnyvale the operation and timing of traffic signals enumerated above and make changes in hours of operation and timing as may be deemed necessary by mutual agreement of the Parties and in such a manner as is consistent with sound traffic engineering practices.

Sunnyvale Agrees:

- A. To Operate and Maintain the Traffic Signal System within the following Intersections along Homestead Road and bear all costs associated therewith:

Barranca Drive/Belleville Way
Bernardo Avenue
Wright Avenue
Mary Avenue
Kennewick Drive
Stelling Road/Hollenbeck Avenue

- B. To review with counterparts in Cupertino the operation and timing of traffic signals enumerated above and make changes in hours of operation and timing as may be deemed necessary by mutual agreement of the Parties and in such a manner as is consistent with sound traffic engineering practices.

3. PERFORMANCE OF CONTRACT OBLIGATIONS

The Parties shall perform the duties and obligations set forth herein by means of their own forces or through the services of third parties retained under contract after public bidding. The use of such third parties or contractors shall not in any way diminish or replace the responsibilities owed by the Parties hereunder.

4. LICENSE/RIGHT OF ENTRY/INTERCONNECTION PERMITS

The Parties hereby confer upon one another for the life of this Agreement a continuous and uninterrupted license/right of entry pursuant to which the

Parties and/or their agents may access and perform work required hereunder within the jurisdictional boundaries of the other Party.

If any Party determines that it is necessary to install or construct interconnection facilities and wires within the other Party's jurisdiction, the applicant Party shall file an application for an Encroachment Permit, and provide submittals as are reasonably required by the permitting Party, including but not limited to traffic management plans, permit plans and other documentation. The permitting Party shall assist the applicant Party concerning waiver of application fees if allowed for by the permitting Party.

5. INDEMNIFICATION/HOLD HARMLESS

- A. Neither Cupertino nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Sunnyvale under or in connection with any work, authority or jurisdiction associated with the Intersection. In addition, pursuant to Government Code §895.4, Sunnyvale shall fully indemnify and hold Cupertino harmless from any liability imposed for injury (as defined by Government Code §810.8) occurring by reason of any thing done or omitted to be done by Sunnyvale under or in connection with any work, authority or jurisdiction delegated to Sunnyvale under this Agreement.

- B. Neither Sunnyvale nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Cupertino under or in connection with any work, authority or jurisdiction associated with the Intersection. In addition, pursuant to Government Code §895.4, Cupertino shall fully indemnify and hold Sunnyvale harmless from any liability imposed for injury (as defined by Government Code §810.8) occurring by reason of any thing done or omitted to be done by Cupertino under or in connection with any work, authority or jurisdiction delegated to Cupertino under this Agreement.

6. TERM

This Agreement shall become effective upon the effective date and shall remain in force and effect for ten (10) years from the Effective Date unless amended or terminated. Thereafter, the Agreement shall be subject to automatic renewal for a like period and term unless any party hereto gives prior notice of non-renewal. Such notice shall be given in writing at least 90 (ninety) days prior to the expiration of the each term.

7. TERMINATION

Either Party may terminate this Agreement in writing for failure of the other Party to perform. Such writing shall be forwarded to the other Party pursuant to the notice provision herein. Said termination shall be effective sixty (60) days following delivery of such notice.

8. ASSIGNMENTS AND SUCCESSORS

The Parties hereby bind themselves, their partners, successors, assigns, executors, and administrators to all covenants to this Agreement. Except as otherwise set forth herein, no Party hereto may assign or transfer to a third party any right or interest in this Agreement, or any duty or obligation hereunder, absent express written consent of the other Party. However, nothing in this Agreement shall prevent either Party from entering into contracts with third parties for the performances of any obligation set forth herein or required hereunder.

9. AMENDMENTS

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid or binding unless made in writing and signed by both Parties hereto. Such writing may be in letter or other form and may be executed in counterparts. Upon execution, any such amendment shall be deemed incorporated into this Agreement.

10. INTEGRATED DOCUMENT

This Agreement embodies the totality of the agreement between the Parties and the terms thereunder. No other understanding, agreements, conversations or other communications by or between the Parties or any of their officials, agents, or employees prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained herein.

11. NO THIRD PARTY BENEFICIARIES

This Agreement shall not be deemed or construed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

12. MEET AND CONFER

In the event that a dispute does arise relating to any right, duty or obligation under this Agreement, or respecting its interpretation, the Parties shall meet to discuss resolution. Each Party shall appoint an individual to represent said Party in connection with such meeting, which may take place in person or via

telephone. Either party may provide the other Party with forty-eight hours' written or telephonic notice prior to the meeting and select a mutually convenient time and place for said meeting. The Parties shall meet and confer at such meeting in order to expend all reasonable efforts possible to resolve outstanding issues.

13. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to the respective recipients as follows:

Sunnyvale:
Transportation and Traffic Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale CA 94088
408/737-4943

Cupertino:
Traffic and Engineering Department
City of Cupertino
10300 Torre Avenue
Cupertino CA 95014-3255
408/777-3354

The Parties hereby acknowledge and accept the terms and conditions of this Agreement as evidenced by the signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SUNYVALE, CALIFORNIA
A chartered California municipal corporation

Approved as to form:

MICHAEL MARTELLO
Interim City Attorney

GARY LUEBBERS
City Manager

Attest:

KATHLEEN FRANCO SIMMONS
City Clerk

CITY OF CUPERTINO, CALIFORNIA
A chartered California municipal corporation

Approved as to form:

CAROL A. KORADE
City Attorney

AMY CHAN
Interim City Manager

Attest:

GRACE SCHMIDT
City Clerk