

TRAFFIC SIGNAL MAINTENANCE SERVICE AGREEMENT

Effective _____, 2016 (“Effective Date”), this Traffic Signal Maintenance Agreement (“Agreement”) is entered into by and between the County of Contra Costa, a political subdivision of the State of California (hereinafter called “County”), and the City of Concord, a municipal corporation in the County (hereinafter called “City”). The County and City are sometimes referred to together as the “Parties,” and each a “Party.”

Recitals

- A. The County and the City entered into the Traffic Signal Maintenance Service Agreement, dated January 14, 2014 (“Prior Agreement”), under which the County provides the City traffic signal maintenance services at intersections located entirely within the City’s right of way (“City Intersections”), and at intersections located partially within County rights of way and partially within City rights of way (“Shared Intersections”)
- B. The City and the County desire to enter into this Agreement to terminate the Prior Agreement, and to apportion the cost of maintaining traffic signals and lighting, and electricity costs at City Intersections and Shared Intersections.

Agreement

NOW, THEREFORE, the Parties agree as follows:

- 1. **Term.** The term of this Agreement commences on the Effective Date and continues until this Agreement is terminated in accordance with Section 10, below.
- 2. **Maintenance Work.**
 - A. At the direction of the City, the County will perform, at City Intersections, the maintenance work and other services described in Exhibits A, B, and C attached to this Agreement, including any modifications approved by the Parties pursuant to Section 7 of this Agreement. After consulting with the City, the County will perform, at Shared Intersections, the maintenance work and other services described in Exhibits A, B, and C attached to this Agreement, including any modifications approved by the Parties pursuant to Section 7 of this Agreement.
 - B. The County will perform timing adjustments at City Intersections only as directed by the City. The County will perform timing adjustments at Shared Intersections after consulting with the City.
 - C. If traffic signal equipment or facilities at City Intersections are damaged, the County will replace the equipment or facilities at the City’s direction. If traffic signal equipment or facilities at Shared Intersections are damaged, the County will consult with the City before it replaces the equipment or facilities.

- D. Engineering services, equipment upgrading, and detector loop replacement and installation are not covered by this Agreement, but may be requested as additional services pursuant to County Board of Supervisors Resolution No. 77/944 and the provisions of Section 8 of this Agreement.

3. Compensation and Accounting.

- A. Subject to the Payment Limit in Section 3.B., as compensation for the County's performance of the maintenance work described in Section 2, the City shall pay (i) the County's actual costs for labor, including applicable overhead charges authorized by the County's Auditor-Controller, at the rates listed in Exhibit D, attached hereto, and (ii) the actual cost of all equipment and materials furnished by the County (together, "Labor and Materials"), calculated as follows:
- i. The City shall pay 25% of the costs for Labor and Materials that the County provides at the intersection of Concord Avenue and New Drive;
 - ii. The City shall pay 32.3% of the costs for Labor and Materials that the County provides at the intersection of Concord Avenue and Diamond Boulevard;
 - iii. The City shall pay 25% of the costs for Labor and Materials that the County provides at the intersection of Concord Avenue and Meridian Park Boulevard;
 - iv. The City shall pay 75% of the costs for Labor and Materials that the County provides at the intersection of Concord Boulevard and Ayers Road; and
 - v. The City shall pay 100% of the costs for Labor and Materials that the County provides at City Intersections.
- B. The City's total payments to the County under this Agreement shall not exceed \$49,900 ("Payment Limit").
- C. The County will bill the City for all Labor and Materials it provides under this Agreement in accordance with Section 5.A. The County shall maintain cost records for all Labor and Materials it provides under this Agreement.

- 4. Electricity Costs.** The City shall pay its proportionate share of all electricity delivered to City Intersections and Shared Intersections based on the same percentage allocations that apply to reimbursement for Labor and Materials at those intersections, as set forth in Sections 3.A.i. through 3.A.v. The City shall be responsible for paying the appropriate utility for the electricity delivered to City Intersections. The County will pay the appropriate utility for electricity delivered to Shared Intersections. The City shall

reimburse the County for the City's share of electricity costs for electricity delivered to Shared Intersections in accordance with Section 5.B.

5. Billing.

- A. Labor and Materials. The County will provide the City a bill for the City's share of Labor and Materials provided under this Agreement after the end of the calendar month in which the Labor and Materials are provided. Within 30 days after receiving a bill from the County, the City shall remit payment to the County for the City's share of the Labor and Materials.
- B. Electricity at Shared Intersections. The County will provide the City a bill for the City's share of electricity delivered to Shared Intersections after the end of the calendar month in which the electricity charge is incurred by the County. Within 30 days after receiving a bill from the County, the City shall remit payment to the County for the City's share of the electricity costs.

6. City Responsibilities.

- A. At the request of the County, the City shall provide the County information available to the City regarding the design, engineering, installation, modifications, and timing of traffic signals and facilities located at City Intersections and Shared Intersections. This information shall include, at a minimum:
 - 1. As-built construction drawings (2 each);
 - 2. Manufacturer's cabinet drawings (2 each);
 - 3. Manufacturer's maintenance manual and parts catalogue for the controller and related equipment; and
 - 4. Service and maintenance records.
- B. The City shall provide the County all special test equipment required to maintain signals within the City's rights of way at City Intersections and Shared Intersections. If the City does not possess the special test equipment required to maintain those signals, the County will purchase the equipment and the City will pay the County for the equipment within 30 days after the City receives a bill from the County in accordance with Section 5.A..

7. Indemnification.

- A. The County will indemnify, defend, and hold harmless the City, its officers, employees, agents, and volunteers from and against all claims for damage, injury, or death of or to any person or the property of any person, including attorney's fees and expert fees (collectively, "Claims"), to the extent that the Claims arise

out of the negligent or willful misconduct of the County, its officers, employees, agents, and volunteers in the performance of the County's obligations under this Agreement.

- B. The City will indemnify, defend, and hold harmless the County, its officers, employees, agents, and volunteers from and against all Claims, to the extent that the Claims arise out of the negligent or willful misconduct of the City, its officers, employees, agents, and volunteers in the performance of the City's obligations under this Agreement.
- C. Nothing in this Agreement is intended to affect the legal liability of either Party to third-parties by imposing any standard of care different from the standard of care imposed by law.
- D. The requirements of this Section 7 shall survive the termination or expiration of this Agreement.

8. Modification and Amendment. The County's Public Works Director and the City's Public Works Director may execute an administrative amendment to this Agreement only for the purposes of revising the information included in Exhibits A, B, and C, attached hereto. Otherwise, this Agreement may not be amended or modified except in a written instrument, signed by both Parties, after obtaining all required approvals of the Parties' governing bodies. All other attempted amendments or waivers shall be of no effect.

9. Notices. All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing and shall be delivered in person, by overnight delivery, or by U.S. Mail to:

City:

Public Works Director
City of Concord
1455 Gasoline Alley
Concord, CA 94520

County:

Contra Costa County
Public Works Department
255 Glacier Drive
Martinez, CA 94553

or to such other addresses as the City and County may respectively designate by written notice to the other. Notice shall be deemed given on the same day if it is personally delivered, on the next day if it is delivered by overnight delivery, or on the fifth day after the postmark date if it is given by U.S. Mail.

10. **Termination.** Either Party may terminate this Agreement by delivering a six-month advance written notice of termination to the other Party. The City shall pay the County for its share of the cost of all Labor and Materials provided by the County, and for its share of the cost of electricity delivered to Shared Intersections, through and including the termination date.
11. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject of this Agreement. Effective on the Effective Date, the Prior Agreement is terminated and of no further force or effect. This Agreement supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to the subject of this Agreement. The Parties acknowledge that no representations, inducements, promises, or statements, oral, or otherwise have been made by any of the parties, or by anyone acting on behalf of the Parties, that are not embodied or incorporated by reference herein, and further agree that no other covenant, representation, inducement, promise, or statement not set forth in this Agreement shall be valid or binding.
12. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the Parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both parties had prepared it. The Parties and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
13. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving Party.
14. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
15. **Governing Law.** This Agreement shall be governed and construed in accordance with California law.
16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Traffic Signal Maintenance Service Agreement to be executed effective as of the Effective Date.

[Remainder of page intentionally left blank. Signatures on next page.]

COUNTY OF CONTRA COSTA

CITY OF CONCORD

By: _____
Public Works Director

By: _____
Public Works Director

Recommended for approval:

ATTEST:

By: _____
Deputy Public Works Director

City Clerk

Approved as to form:
Sharon L. Anderson, County Counsel

Approved as to form:

By: _____
Deputy County Counsel

By: _____
City Attorney

SMS

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List of Attachments and Exhibits

- Exhibit A – Schedule of Maintenance Costs
- Exhibit B – Schedule of Equipment
- Exhibit C – Schedule of Services
- Exhibit D – County’s Hourly Rates for Labor Costs