

AN ORDINANCE 2008-05-15-0385

**APPROVING A CONTRACT WITH SIEMENS ENERGY & AUTOMATION, INC., TO PURCHASE SOFTWARE AND EQUIPMENT TO UPGRADE THE CITY'S ADVANCED TRANSPORTATION MANAGEMENT SYSTEM, IN CONNECTION WITH THE TRAFFIC SIGNAL SYSTEM MODERNIZATION PROGRAM, IN THE AMOUNT OF \$4,847,730.93.**

\* \* \* \* \*

**WHEREAS**, on September 13, 2007, the San Antonio City Council approved the Traffic Signal Modernization System (TSSM) as part of the FY 2007-2008 budget; and

**WHEREAS**, the TSSM is a 33 million dollar traffic signal system improvement that will establish a communications network, upgrade hardware and software, and develop optimal timing plans for traffic signals; and

**WHEREAS**, this contract will purchase equipment necessary to upgrade the City's Advanced Transportation Management System, a component of TSSM, for an amount of \$4,847,730.93, **NOW THEREFORE**;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** A contract with Siemens Energy & Automation, Inc., to purchase software and equipment to upgrade the city's advanced transportation management system, is hereby approved. A copy of the contract is attached hereto and incorporated herein as Attachment 1.

**SECTION 2.** A contract with Siemens Energy & Automation, Inc., in the amount of \$4,847,730.93 has been authorized for project 23-01085 Traffic System Modernization/Synchronization from previously appropriated funding on ordinance Ord. No. 2008-03-20-0209, dated March 20, 2008.

**SECTION 3.** Payment in the amount up to \$4,847,730.93 is authorized and should be encumbered with a purchase order and made payable to Siemens Energy & Automation, Inc.

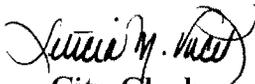
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal

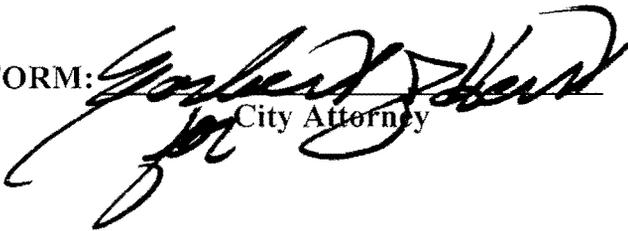
Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 15<sup>th</sup> day of May, 2008.

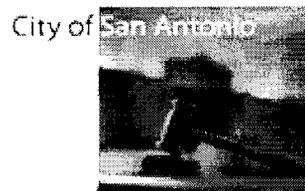
  
M A Y O R for  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney



Request for  
**COUNCIL**



### Agenda Voting Results - 6

<b>Name:</b>	6, 7, 8, 9, 10, 16A, 16B, 16C, 17, 19, 22, 23, 25, 26, 27, 29, 30A, 30B, 30C, 30D, 30E						
<b>Date:</b>	05/15/2008						
<b>Time:</b>	05:01:17 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance approving a contract with Siemens Energy & Automation, Inc. to purchase software and equipment to upgrade the City's Advanced Transportation Management System, in connection with the Traffic Signal System Modernization Program, in the amount of \$4,847,730.93. [Sharon De La Garza, Assistant City Manager; Majed A. Al-Ghafry, Director, Public Works]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x			x	
John G. Clamp	District 10		x				

## CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, A.D., by and between the City of San Antonio with offices at 131 W. Nueva, Suite 175, San Antonio, Texas 78204, hereafter termed "Buyer" and Siemens Energy & Automation Inc., a Delaware corporation, with offices at 8004 Cameron Road, Austin, Texas 78754, hereinafter termed "Seller".

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned and to be made and performed by the Buyer, and under the conditions expressed in the General Terms and Conditions for Services attached hereto and made an irrevocable part of this Agreement, the said Seller hereby agrees with the Buyer to commence work as outlined below, and as defined in detail in the RFCSP 08-022-DB, entitled "Advanced Transportation Management System" (RFCSP), excluding the RFCSP exceptions outlined in Attachment A, Exceptions to Scope of Services.

**GENERAL PROJECT DESCRIPTION** -- The Contractor shall furnish, install, integrate, test, and/or make operational all hardware and software necessary for a fully functional and operational distributed traffic control system in the City of San Antonio. This hardware and software consists, but is not limited to the Central System Software; the associated computer servers, workstations, mobile maintenance units, printers, and network interface; 1275 Model 2070L traffic signal controllers; local traffic signal controller firmware/software site license for up to 2000 intersections; 1275 conflict monitors; 25 traffic signal controller assembly cabinets; and system support equipment. The Contractor shall furnish, install, integrate, and/or test all Central hardware and software necessary for the full integration into the City-constructed communications network.

The Seller agrees to supply the products and services described above in accordance with the detailed Scope of Work shown in the RFCSP excluding the exceptions outlined in Attachment A, Exceptions to Scope of Services.

Seller agrees to supply the products and services defined in the RFCSP in accordance with the Project Schedule shown in Attachment B which forms a part of this contract.

The Buyer agrees to pay the Seller the price or prices shown in Attachment C which forms a part of this contract, such payments to be subject to the General Terms and Conditions for Services attached hereto.

## ATTACHMENT 1

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day as written above.

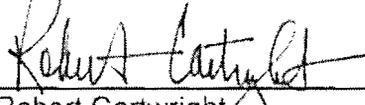
CITY OF SAN ANTONIO

SIEMENS ENERGY & AUTOMATION, INC.

Buyer

Seller

By: \_\_\_\_\_

By:  \_\_\_\_\_  
Robert Cartwright

Title: \_\_\_\_\_

Title: Director of Sales and Marketing

SIEMENS ENERGY & AUTOMATION, INC.

*CERTIFIED COPY OF  
DELEGATION OF AUTHORITY*

I hereby certify that the following is a true copy of a resolution duly adopted on December 16, 1977 by the Board of Directors of Siemens Energy & Automation, Inc., a Delaware corporation, and that the same is still in full force and effect:

“RESOLVED, That the President, each elected Vice President and each General Manager for one or more Divisions of the Corporation, is each authorized to execute, in the name and on behalf of the Corporation, any bids, proposals, contracts, agreements, guarantees, bonds, certificates or affidavits in connection with the sale or lease by the Corporation of goods or services, and any releases, compromises or settlements in connection with claims arising out of any such sale or lease, and to file any actions or proceedings in connection with such claims.

“FURTHER RESOLVED, That the President, each such Vice President and each such General Manager is authorized to delegate such authority in whole or in part, generally or in particular instances, to any person who is an employee of the Corporation or of any wholly owned subsidiary of the Corporation, or to any attorney-at-law retained by the Corporation, and is further authorized to confirm such delegation by granting and executing a formal power of attorney to such person.

“FURTHER RESOLVED, That the Secretary or an Assistant Secretary of the Corporation is authorized to issue certifications attesting to the incumbency, authority and status of any of the persons referred to in this resolution.”

I hereby further certify that Robert Cartwright has the power and authority, by virtue of said resolution, or due delegation thereunder, to execute in the name and in behalf of Siemens Energy & Automation, Inc., any and all of the documents described in said resolution.

IN WITNESS WHEREOF, I have hereto signed my name and affixed the seal of Siemens Energy & Automation, Inc. by authority of my office this 24<sup>th</sup> day of April, 2008.

  
Assistant Secretary

**Siemens Energy & Automation, Inc. ("Seller")**

**Terms and Conditions of Sale ( April 25, 2008 )**

1. **WARRANTY** - (a) Seller warrants that on the date of shipment the goods are of the kind and quality described herein and are free of non-conformities in workmanship and material. This warranty does not apply to goods delivered by Seller but manufactured by others.

(b) Buyer's exclusive remedy for a nonconformity in any item of the goods shall be the repair or the replacement (at Seller's option) of the item and any affected part of the goods. Seller's obligation to repair or replace shall be in effect for a period of two (2) years from initial operation of the goods but not more than thirty-six (36) months from Seller's shipment of the goods, provided Buyer has sent written notice within that period of time to Seller that the goods do not conform to the above warranty. Repaired and replacement parts shall be warranted for the remainder of the original period of notification set forth above, but in no event less than 12 months from repair or replacement. At its expense, Buyer shall remove and ship to Seller any such nonconforming items and shall reinstall the repaired or replaced parts. Buyer shall grant Seller access to the goods at all reasonable times in order for Seller to determine any nonconformity in the goods. Seller shall have the right of disposal of items replaced by it. If Seller is unable or unwilling to repair or replace, or if repair or replacement does not remedy the nonconformity, Seller and Buyer shall negotiate an equitable adjustment in the contract price, which may include a full refund of the contract price for the nonconforming goods.

(c) SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THAT OF TITLE. SPECIFICALLY, IT DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

(d) Buyer and successors of Buyer are limited to the remedies specified in this article and shall have no others for a nonconformity in the goods. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or its successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, installations, or non-conformities from any cause.

(e) Note: This article 1 does not apply to any software which may be furnished by Seller. In such cases, the attached Software License Addendum applies.

2. **INTELLECTUAL PROPERTY** - Seller shall pay all royalties and licensing fees. Seller shall hold the Buyer harmless and indemnify the Buyer from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. Seller shall defend all suits for infringement of any Intellectual Property rights. Further, if Seller has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the Buyer.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Seller will immediately:

Either:

- a. obtain, at Sellers' sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated,

Seller further agrees to:

- a. assume the defense of any claim, suit, or proceeding brought against the Buyer for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the Buyer against any monetary damages and/or costs awarded in such suit;

Provided that:

Seller is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Siemens agrees to consult with the Attorney of the Buyer during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the Buyer, that the Software or the equipment is used by the Buyer in the form, state, or condition as delivered by Seller or as modified without the permission of Seller, so long as such modification is not the source of the infringement claim, that the liability claimed shall not have arisen out of the Buyer's negligent act or omission, and that the Buyer promptly provide Seller with written notice within 15 days following the formal assertion of any claim with respect to which the Buyer asserts that Seller assumes responsibility under this section.

**3. INTELLECTUAL PROPERTY INFRINGEMENT** - Seller agrees to indemnify and hold Buyer's affiliates, public officials, officers, directors, employees, attorneys, agents and clients harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with a claim alleging that the services provided or material used in development of the website infringes the Intellectual Property rights of a third party, including but not limited to Patents, Copyrights, Trademarks, Service Mark and Trade Secrets, *except* infringement occurring as a result of incorporating a design or modification made by the Buyer without Seller's approval.

**4. PERFORMANCE; DELAYS** - Timely performance by Seller is contingent upon Buyer's supplying to Seller, when needed, all required technical information and data, including drawing approvals, and all required commercial documentation. If Seller suffers delay in performance due to any cause beyond its reasonable control, the time of

performance shall be extended a period of time equal to the period of the delay and its consequences. Seller will give to Buyer notice within a reasonable time after Seller becomes aware of any such delay.

5. **TAXES** - Any applicable duties or sales, use, excise, value-added or similar taxes will be added to the price and invoiced separately (unless an acceptable exemption certificate is furnished).

6. **TERMS OF PAYMENT** - (a) Unless otherwise stated, all payments shall be in United States dollars, and a pro rata payment shall become due as each shipment is made. If shipment is delayed by Buyer, date of notice of readiness for shipment shall be deemed to be date of shipment for payment purposes.

(b) On late payments, the contract price shall, without prejudice to Seller's right to immediate payment, be increased by 1 1/2% per month on the unpaid balance, but not to exceed the maximum permitted by law.

(c) If any time in Seller's judgment Buyer is unable or unwilling to meet the terms specified, Seller may require satisfactory assurance or full or partial payment as a condition to commencing or continuing manufacture or making shipment, and may, if shipment has been made, recover the goods from the carrier, pending receipt of such assurances.

7. **TERMINATION RIGHTS AND REMEDIES:** Both parties shall be entitled at any time to terminate the Agreement for good cause (defined below) upon written notice to the other. Termination for "good cause" shall include: (a) insolvency proceedings which have been or will be instigated with respect to the other party's assets; or (b) a material breach of this Agreement which has not been cured by the breaching party within a reasonable period of time including Buyer's obligation to pay.

If Seller defaults in the performance of any of its material obligations under the Agreement (other than its obligations under Warranty provisions) and if Seller has not cured the default or implemented a plan to cure the default in a diligent manner within thirty (30) days after Buyer shall have given Seller written notice of the default, or such other time period as mutually agreed upon, Buyer shall have the right to terminate the Agreement upon written notice to Seller. In the event of such termination, Buyer shall (i) pay to Seller the reasonable value of Goods and services already provided to Buyer, or (ii) complete the work specified in the Agreement.

If Buyer elects to complete the work and the reasonable costs of completion exceed the unpaid balance of the Agreement price, Seller shall pay the difference to Buyer. If Buyer elects to complete the work and the unpaid balance of the purchase price exceeds the reasonable cost of completion, Buyer shall pay the difference to Seller.

Seller shall have the right to (i) suspend performance of its obligations under the Agreement until the default is cured; (ii) terminate the Agreement, and/or (iii) exercise any other right or remedy provided for in the Agreement, or available to Seller under applicable law if: (a) Buyer fails to pay the purchase price, or any

installment thereof, within ten (10) days after it is due; or (b) Buyer defaults in the performance of any of its other obligations under the Agreement and such default continues for thirty(30) days after

**Seller gives Buyer written notice thereof, or such other time period as mutually agreed upon.**

8. **NUCLEAR** - Buyer represents and warrants that the goods covered by this contract shall not be used in or in connection with a nuclear facility or application. If Buyer is unable to make such representation and warranty, then Buyer agrees to indemnify and hold harmless Seller and to waive and require its insurers to waive all right of recovery against Seller for any damage, loss, destruction, injury or death resulting from a "nuclear incident", as that term is defined in the Atomic Energy Act of 1954, as amended, whether or not due to Seller's negligence.

9. **INSURANCE** – Seller will adhere to the provisions as specified in Exhibit E entitled "Insurance Requirements" of the Buyer's Advanced Transportation Management System RFCSP.

10. **LIMITATION OF LIABILITY** – CONTRACTOR shall not be entitled to and neither CITY nor its designated representatives will be liable to CONTRACTOR or its Contractors, subcontractors/sub-subcontractors in tort (including negligence), or contract except as specifically provided in this Agreement. CONTRACTOR'S maximum liability under this contract shall be Five Million Dollars (\$5,000,000).

11. **GOVERNING LAW AND ASSIGNMENT** - The laws of the State of Texas shall govern the validity, interpretation and enforcement of this contract, without regard to its conflicts of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded. Assignment may be made only with written consent of both parties; provided, however, Seller may assign to its affiliate without Buyer's consent.

12. **DISPUTES** - Either party may give the other party written notice of any dispute arising out of or relating to this contract and not resolved in the normal course of business. The parties shall attempt in good faith to resolve such dispute promptly by negotiations between executives who have authority to settle the dispute.

13. **PRICES** - In the event of a price increase or decrease, the price of goods on order will be adjusted to reflect such increase or decrease. This does not apply to a shipment held by request of Buyer. Goods already shipped are not subject to price increase or decrease. Orders on a bid or contract basis are not subject to this article. Seller's prices include the costs of standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, will result in extra charges. To determine such extra charges, consult Seller's sales offices. Orders of less than \$400 will be charged a \$25 handling fee.

14. **ADDITIONAL TERMS OF PAYMENT** - Invoice payment terms are as shown on latest discount sheets as issued from time to time. Cash discounts are not applicable to notes or trade acceptances, to prepaid transportation charges when added to Seller's invoices or to discountable items if there are undisputed past due items on the account. Portions of an invoice in dispute should be deducted and the balance remitted with a

detailed explanation of the deduction. Cash discounts will only be allowed on that portion of the invoice paid within the normal discount period.

15. **CHANGES IN LAWS AND REGULATIONS** - Seller's prices and timely performance are based on all applicable laws, rules, regulations, orders, codes, standards or requirements of governmental authorities effective on the date of Seller's proposal. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the prices and any time of performance.

16. **PERFORMANCE AND PAYMENT BONDS** - Seller will adhere to the provisions as specified in Section 10, "Performance and Payment Bonds" of the Buyer's Advanced Transportation Management System RFCSP.

17. **INDEMNIFICATION** –

**SELLER** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all third party costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **SELLER'S** activities under this Agreement, including any acts or omissions of **SELLER**, any agent, officer, director, representative, employee, consultant or subcontractor of **SELLER**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT SELLER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **SELLER** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **SELLER** known to **SELLER** related to or arising out of **SELLER'S** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **SELLER'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **SELLER** of any of its obligations under this paragraph.

**SOFTWARE LICENSE / WARRANTY ADDENDUM -  
SIEMENS ENERGY & AUTOMATION, INC. ("SELLER")  
STANDARD TERMS & CONDITIONS OF SALE (1/1/2000)**

**This Article 1 Addendum replaces Article 1 ("Warranty") of Seller's Standard Terms and Conditions of Sale, and applies to software furnished by Seller. All other Articles contained in Seller's Standard Terms and Conditions of Sale are incorporated herein by reference.**

1. **Software License, Warranty, Fees.** (a) Seller hereby grants to Buyer: a non-exclusive, non-transferable right to use the computer software program licensed under this Contract in machine-readable, object code form and any modifications made by Seller thereto ("Software"), but only in connection with the configuration of the goods and operating system for which the Software is ordered and for the end-use purpose stated in the related Seller operating documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, without Seller's prior written consent, except for making a single copy for backup or archival purposes in accordance with the related Seller operating documentation, and provided that Seller's confidential and proprietary legend is included. Except to the extent that the parties otherwise agree in writing, Buyer's license to use the copy of such Software shall terminate upon breach of this license or the Contract by Buyer, including, without limitation, breach of payment or confidentiality obligations. All copies of the Software are the property of Seller, and all copies for which the license is terminated shall be returned to Seller promptly after termination.

(b) Seller may authorize Buyer (such as a Seller distributor or original equipment manufacturer) to transfer this software license and warranty to a third party ("Seller-authorized transferee"). Such authorization to transfer shall be in writing and signed by a Seller authorized representative. Seller-authorized transferee shall have the same rights and obligations as Buyer, except it shall not have the right to transfer such license.

(c) Seller warrants that on the date of shipment of the Software only to Buyer or Buyer's Seller-authorized transferee hereunder that: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) Seller has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Seller operating documentation. Seller disclaims any warranty that the operation of the Software will be uninterrupted or error free. This warranty does not apply to software delivered by Seller but produced by others. The warranty for software produced by others shall be the warranty as stated by the software producer.

(d) If within one (1) year from date of final acceptance of Software or within one (1) year from delivery of Firmware, Buyer or its Seller-authorized transferee hereunder discovers that the Software or Firmware is not as warranted above and promptly notifies Seller in writing, within this period of time, of the nonconformity, and if Seller cannot correct the nonconformity or deems correction to be commercially impracticable or prohibitively expensive, Buyer's and Buyer's Seller-authorized transferee's exclusive remedies, at Seller's option and expense, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of an equitable, pro rata share of the Contract price or license fee paid.

(e) This warranty will apply for the period specified in (d) above, provided that: (1) the Software is not modified, changed, or altered by anyone other than Seller or its suppliers, unless authorized by Seller in writing; (2) there is no change by anyone other than Seller to the goods for which the Software is ordered; (3) the goods are in good operating order and are installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer, Buyer's Seller-authorized transferee, or any of their agents, servants, employees, or contractors, or any third party; (5) Buyer or Buyer's Seller-authorized transferee promptly notifies Seller in writing, within the period of time set forth in (d) above, of the nonconformity after it is discovered; and (6) all fees for the Software due to Seller have been paid. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

(f) Buyer and successors of Buyer are limited to the remedies specified in this Article 1 and shall have no others for a nonconformity in the Software. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, operating documentation, installations, or non-conformities from any cause.

(g) Unless otherwise provided in this Contract, the fees for this Software license are included in the purchase price of the goods. Any subsequent modifications or enhancements to the Software made by Seller are, at Seller's option, subject to a fee.

**ATTACHMENT A**  
**Exceptions to Scope of Services**

The Scope of Work for this project is defined in the Siemens Proposal Response to the City of San Antonio dated March 4, 2008 which included the exceptions below:

The RFCSP was developed with the intent to provide the City with a central software system that not only offered features necessary to operate the traffic signal system, but that included features that would assist in managing the day-to-day operations in a more efficient manner. Due to the extensive list of desired features and the desire to obtain a commercially off the shelf (COTS) software package, it was understood that procuring a central software system that provided all features might not be possible. Due to this, respondents were given the opportunity to identify any features that were not currently available in their software and/or to provide an alternative solution to meeting these tasks/features if available.

Siemens disclosed that the following tasks/features requested on the RFCSP for the Advanced Transportation Management System were not provided through the commercially off the shelf (COTS) i2 Software that their firm submitted:

Requirement No.	Requirement	Comments
2.1	The CSS shall allow enhancement to individual modules without impacting other modules	See Below
2.2	The CSS shall allow new modules to be installed without impacting other modules	See Below
5.2	15,000 System Detectors	i2 provides 9,999 system detectors.
11.3	The system operator shall be able to import timing data from an Excel compatible format.	See Below
21.4	The System Administrator shall be able to define time limits for User passwords	i2 does not support this function.
22.7.7	Controller Keyboard Press	i2 does not support this function.
32	All system configuration changes shall be achievable without restarting the system	i2 does not support this function.
37.5	Custom Reports shall be savable to the standard reports list	i2 does not support this function.
39.3	The GUI shall provide hot keys for commonly used functions	See Below
39.4	The GUI shall provide right-click menu options for links to commonly used functions	i2 does not support this function.
41.3	The CSS shall support the City's ESRI GIS system map.	See Below
41.6.2.1	The search tool shall use intersection 6-digit numeric identification number.	See Below
43.2.3	The CSS shall transmit a clock update in conjunction with the command for the implementation of a different timing plan	i2 does not support this function.
44.3	The CSS shall support the ability to move a device from one control section to another control section by time of day.	i2 does not support this function.
48.3.4	If communications is re-established, the CSS shall log the event and clear the alarm	i2 does not support this function.

Requirement No.	Requirement	Comments
50.2	The Remote laptops shall synchronize their database with the Central database upon next connection to the LAN.	i2 does not support this function.
54	The CSS shall display the percentage of time that the phase terminates following the completion of the minimum time	i2 does not support this function.
55	The CSS shall have the ability to export the split monitor report to an Excel compatible file.	i2 does not support this function.
56.4	The CSS shall export the geo-reference data as used in the GIS coordinate system that is consistent with the Synchro intersection location referencing system.	i2 does not export this function.
56.6	Synchro 7 shall be supported	i2 currently supports Synchro 6

The City has negotiated for future software development of various task/functions from the list above that are most needed. This includes:

1. Support for GIS Mapping
2. Hot Key Support
3. 6 Digit Intersection Identifiers
4. Export Split Monitor Report
5. TxDOT Center-to-Center Interface
6. Time/Space Diagram
7. Alarm For Signal Not Running the Correct Plan
8. Context Sensitive Intersection Graphic
9. CCTV Module Auto-Presets
10. Timing Plan Diagnostics
11. Consolidated NextPhase Data and Editing

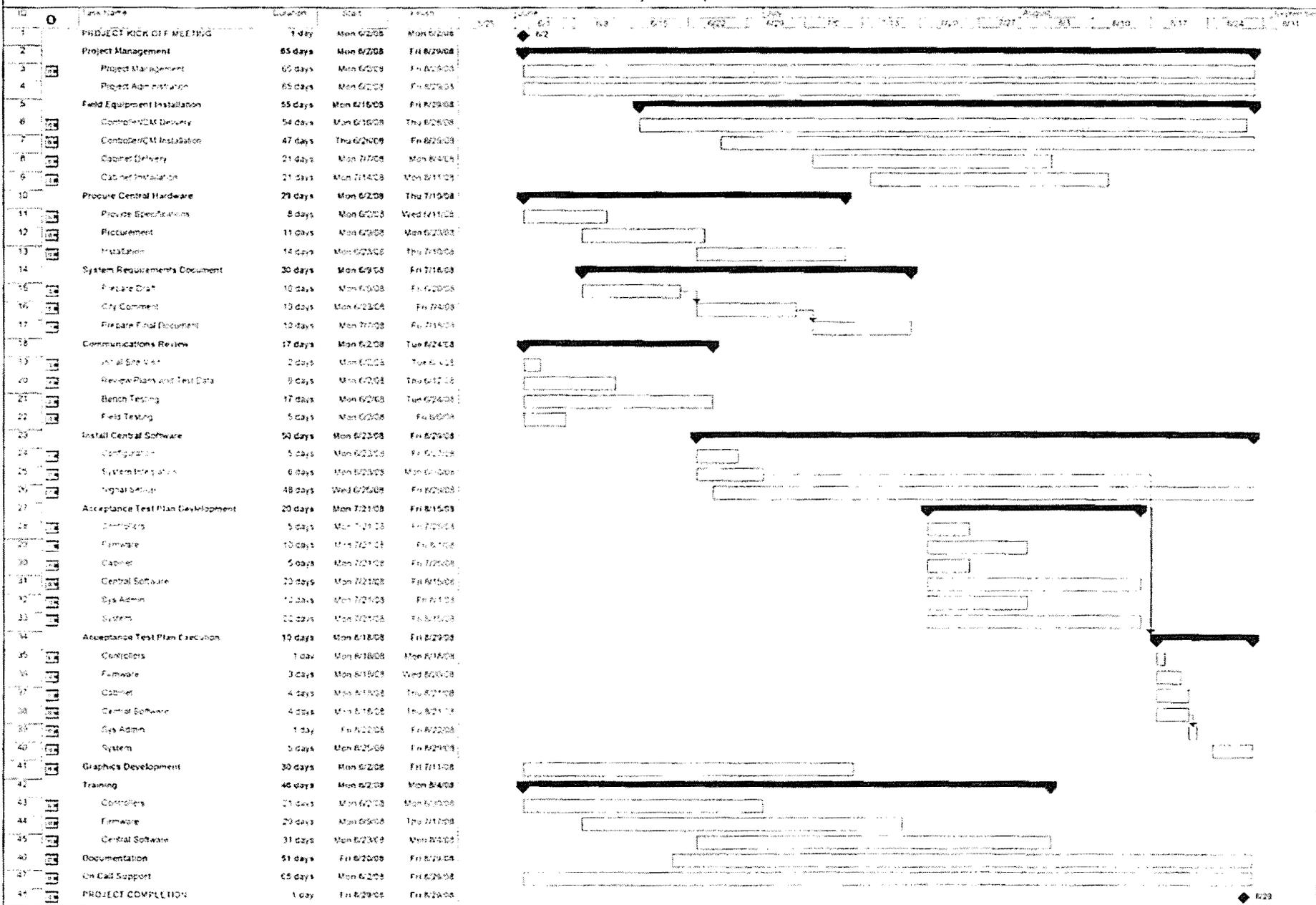
Preliminary estimates for the development of these tasks are \$300,000.00 – \$650,000.00.

After the i2 Software has been installed and City staff has become familiar with the available software features, the City will work with Siemens on the development of additional features that will be able to accommodate the tasks listed above. The City has budgeted \$300,000.00 for future software development.

**ATTACHMENT B**  
**Schedule**

The Project Schedule on the following page is amended from the schedule included in the Proposal Response.

San Antonio ATMS Project – Proposed Schedule V.3



Project: San Antonio\_V3.rpp  
Date: Tue 6/16/08

Task: [ ] Progress: [ ] Summary: [ ] External Task: [ ] Deadline: [ ]  
Milestone: [ ] Project Summary: [ ] External Milestone: [ ]

ATTACHMENT C  
Cost

The cost listing on the following page defines the project pay items and prices.

# SIEMENS

## San Antonio ATMS Costs

Rev 04.03 2008

Item No.	Description	Unit	Quantity	Unit Price	Total Price
<b>SOFTWARE</b>					
1	Local Controller Software Site License - 2000 intersections	L.S	1	\$300,000.00	\$300,000.00
2	ATMS Central Software	L.S	1	\$85,000.00	\$85,000.00
3	Additional Software Mods & Lic.	TBD			
	Synchro Module for i2	L.S	1	\$ 8,000.00	\$8,000.00
	CCTV Module for i2	L.S	1	\$ 10,000.00	\$10,000.00
	DMS Module for i2	L.S	1	\$ 10,000.00	\$10,000.00
	Symantec Backupexec 12D Software	L.S	1	\$ 2,118.00	\$2,118.00
	i2 software enhancements (scope TBD)	L.S	1	\$ 300,000.00	\$300,000.00
4	Other Required Software ( List separately)	L.S	1	\$4,050.00	\$4,050.00
	Software Escrow				
	ProComm Plus-20 Users				
5	MS Windows 2003 Server (Price included with Server)	L.S	1	0	0
6	MS SQL Server	L.S	1	\$6,335.95	\$6,335.95
<b>TOTAL SOFTWARE</b>					<b>\$725,503.95</b>
<b>CONTROLLERS</b>					
7	Model 2070L	EACH	1275	\$1,600.00	\$2,040,000.00
8	Conflict Monitors (2010)	EACH	1275	\$600.00	\$765,000.00
	332 Cabinet	EACH	25	\$7,950.00	\$198,750.00
<b>TOTAL CONTROLLERS</b>					<b>\$3,386,250.00</b>
<b>HARDWARE</b>					
9	Controller Interface Device Tester	EACH	5	\$4,908.60	\$24,544.00
10	Mobile Maintenance Unit	EACH	20	\$3,609.50	\$72,190.00
11	Operator Workstation	EACH	5	\$4,044.00	\$20,220.00
12	Printer ( Color)	EACH	3	\$10,594.66	\$31,783.98
13	Database Server	EACH	1	\$10,235.00	\$10,235.00
14	Communications Server	EACH	6	\$8,290.00	\$49,740.00
15	UPS Rack	EACH	2	\$1,394.00	\$2,788.00
16	Layer 3 Routing Switch	EACH	1	\$13,943.00	\$13,943.00
17	Video Display Unit (LED/LCD) (42")	EACH	2	\$2,488.00	\$4,976.00
18	Rack	EACH	2	\$4,850.00	\$9,700.00
18a	Application Server	EACH	1	\$9,238.00	\$9,238.00
<b>TOTAL HARDWARE</b>					<b>\$249,357.98</b>
<b>SYSTEM INTEGRATION SERVICES</b>					
19	Project Oversight (Project Management)	L.S	1	\$43,008.00	\$43,008.00
20	Provide Software/Hardware specifications	L.S	1	\$6,203.00	\$6,203.00
21	Systems Requirement Document	L.S	1	\$24,628.00	\$24,628.00
22	Approval of communication network design	L.S	1	\$20,746.00	\$20,746.00
23	Install Central System Software	L.S	1	\$61,794.00	\$61,794.00
24	Acceptance Test Plan (preliminary & final)	L.S	1	\$34,902.00	\$34,902.00
25	Execution of Acceptance Test Plan	L.S	1	\$21,356.00	\$21,356.00
26	Development of Graphics	L.S	1	\$30,673.00	\$30,673.00
27	Installation of Hardware	L.S	1	\$2,587.00	\$2,587.00
28	Training	L.S	1	\$85,194.00	\$85,194.00
29	Documentation	L.S	1	\$13,675.00	\$13,675.00
30	Maintenance	Year	3	\$20,201.00	\$60,603.00
31	Storage of Controller Units -- 500 square feet	month	5	\$1,250.00	\$6,250.00
32	On-Call Support	As authorized	1	\$ 75,000.00	\$75,000.00
<b>TOTAL SYSTEM INTEGRATION SERVICES</b>					<b>\$486,619.00</b>
<b>COST SUMMARY</b>					
	Software				\$725,503.95
	Controllers				\$3,386,250.00
	Hardware				\$249,357.98
	System Integration Services				\$486,619.00
	<b>TOTAL PRICE</b>				<b>\$4,847,730.93</b>