

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 3<sup>rd</sup> day of August, 2007 (the "Effective Date"); by and between petitioner and plaintiff PACIFIC BELL TELEPHONE COMPANY, doing business in California as AT&T California ("AT&T"), and respondents and defendants THE CITY OF WALNUT CREEK and THE CITY COUNCIL OF THE CITY OF WALNUT CREEK (collectively, "the City"), on the following terms and conditions:

WHEREAS, in 2004, AT&T announced a capital improvement program ("Lightspeed") to make modifications to its network to improve existing services and to provide new Internet Protocol ("IP")-based services, including an IP-video service ("Video Service");

WHEREAS, in June 2005, AT&T applied for an encroachment permit to perform certain work related to placement of nodes and facilities within the public rights-of-way in the City;

WHEREAS, in June 2005, the City issued Encroachment Permit #EP05-0434, subject to a condition requiring AT&T to obtain a local cable or video franchise prior to providing video programming to subscribers in the City over facilities located in the City's rights-of-way (the "Franchise Condition");

WHEREAS, the City contends that as part of its Lightspeed initiative, AT&T is constructing a "cable system" to provide "cable services" as those terms are used in federal, state and City law; and AT&T disputes these contentions and contends that its Video Service is not a "cable service" and that AT&T has the right under Public Utilities Code section 7901 to transmit video transmissions without any additional franchise;

WHEREAS, on November 17, 2005, AT&T filed a civil action in the United States District Court for the Northern District of California, entitled *Pacific Bell Telephone Company vs. The City of Walnut Creek, et al.*, Case No. C05-4723 MMC, challenging, *inter alia*, the Franchise Condition (the "Federal Action");

WHEREAS, on April 13, 2006, the district court dismissed, stayed, abstained from, or declined to exercise jurisdiction over the claims asserted in the Federal Action;

WHEREAS, on May 3, 2006, AT&T filed a First Amended Complaint in the Federal Action;

WHEREAS, on May 3, 2006, AT&T filed a Verified Petition for Writ of Mandamus in the Superior Court of the State of California, County of Contra Costa, entitled *Pacific Bell Telephone Company v. The City of Walnut Creek, et al.*, Case No. 06-00850, challenging the Franchise Condition (the "State Action");

WHEREAS, AT&T alleges in the State and Federal Actions that the Franchise Condition is contrary to federal and state law; the City denies AT&T's claims and contends the Franchise Condition is lawful and proper;

WHEREAS, on December 11, 2006, the court in the State Action granted AT&T's Motion for Judgment on Peremptory Writ and, on December 26, 2006, entered Judgment on Peremptory Writ in favor of AT&T;

WHEREAS, on March 9, 2007, the City filed a Notice of Appeal in the State Action;

WHEREAS, in August 2006, the State Legislature enacted the Digital Infrastructure and Video Competition Act of 2006, effective January 1, 2007 ("DIVCA" or the "Act"), which establishes, among other things, a procedure for the issuance of a video provider franchise by the California Public Utilities Commission ("CPUC") for the provision of video services;

WHEREAS, on October 17, 2006, the City Council withdrew the Franchise Condition;

WHEREAS, in October 2006, AT&T submitted four (4) additional applications to the City for encroachment permits for the Lightspeed facilities in the public rights-of-way (the "2006 Applications");

WHEREAS, on December 27, 2006, the City Attorney sent a letter to AT&T denying the 2006 applications as, among other things, incomplete;

WHEREAS, in 2007 AT&T has submitted thirty-six (36) additional encroachment permit applications to the City for Lightspeed facilities, with two applications having now been consolidated to one, resulting in thirty-five (35) pending applications (the "2007 Applications");

WHEREAS, on June 11, 2007, the City sent a letter to AT&T indicating that that the 2007 applications are incomplete;

WHEREAS, on March 30, 2007, AT&T obtained a franchise under the Act from the CPUC (the "CPUC Franchise") for a service territory including Walnut Creek (the "CPUC Franchise") and intends to provide Video Service in the City in compliance with the terms and conditions of the Act and the CPUC Franchise, and both parties agree that the Video Service is a video service as that term is used in the Act; and

WHEREAS, the parties now wish to resolve all of their disputes and to enter into an agreement that will provide for the installation of AT&T's facilities and the provision of Lightspeed services in the City in a timely manner, subject to lawful regulation by the City.

NOW THEREFORE, the Parties agree as follows:

A. Issuance of Permits to AT&T Without a Franchise Condition

1. The City agrees that in issuing encroachment permits and any other permits necessary for AT&T to construct, install, maintain and/or repair its Facilities (defined as all additions or upgrades to AT&T's existing telephone network as part of Lightspeed, including additions and upgrades intended to enhance the network's broadband and video capabilities) within the public rights-of-way, the City will not impose a condition or otherwise require that AT&T must obtain a local cable franchise, or any other franchise prior to construction, installation, maintenance and/or repair of said Facilities.

2. Without limiting the City's rights, AT&T agrees that, so long as DIVCA remains in effect in its current form, AT&T will comply with all federal and state laws,

rules, regulations, orders and decrees applicable to AT&T's rights to provide video services in Walnut Creek.

3. Without limiting the City's rights, AT&T agrees that, so long as DIVCA remains in effect, DIVCA will apply to the City in the same manner as it applies to all other municipalities in California (excepting those cities where a separate local franchise agreement was executed prior to the Effective Date).

4. In the event that DIVCA is no longer in effect for any reason (including, without limitation, repeal, invalidation or preemption), AT&T agrees to negotiate with the City in good faith regarding an agreement for the provision of video services.

5. AT&T agrees that it will bring no lawsuit seeking to set aside or invalidate DIVCA for a period of one year from the Effective Date.

B. Issuance of Encroachment Permits.

AT&T represents that its contemplated work related to Lightspeed within the public rights-of-way in the City consists generally of the following: (a) conditioning work on existing lines (e.g., the removal of line taps); (b) installation of a number of Lightspeed cabinets (estimated to involve between 84 and 120 locations) that are generally 63" high by 49" wide by 21" deep, including an integrated power source whenever possible; placed as closely as possible (generally, within 10 to 25 feet) to an existing Serving Area Interface ("SAI"), except where a different location is required by the City at a greater distance from the SAI, provided that if a different location is required by the City, City and AT&T shall agree upon the specific different location. In some locations, the existing SAI also may require augmentation. The Lightspeed cabinets and existing SAI's will be the same colors, except that existing SAI's already painted green may be kept in a green color at the City's discretion. AT&T will provide adequate information to the City showing that the equipment within each Lightspeed cabinet will not generate noise that exceeds 65 dBA immediately outside of the cabinet; and (c) trenching and excavation to install, replace and repair conduit, including trenching to install new conduit between each Lightspeed cabinet.

and each respective SAI, and other trenching as necessary to complete the Lightspeed upgrades, including, where necessary, installing new optical cable in AT&T's backbone routes.

C. Submission and Approval of Permits.

AT&T shall submit individual applications for each Lightspeed cabinet installation, or for any trenching work associated with Lightspeed apart from a Lightspeed cabinet installation. The City will timely process these applications in accordance with section 5885 of the Act, and shall make every reasonable effort to approve or deny permits as soon as possible following submission of the complete application; however, in no instance shall the City exceed 60 days after AT&T's submission of a complete application to either approve or deny any permit. The physical issuance of approved permits shall be in accordance with Condition 18 of the Conditions of Approval ("Conditions of Approval") attached hereto as Exhibit A. In addition to the 2007 Applications already under submission to the City, AT&T commits to make a good faith effort to submit up to twenty (20) additional complete permit applications per month in the months of August, September and October; and the City commits to make a good faith effort to process and approve or deny those permits, subject to the terms and conditions of this Agreement, as soon as possible and within sixty (60) days of their submittal. A permit application shall be deemed complete if AT&T has provided substantially the same information that AT&T has provided for the 2007 applications (once those applications are found complete). In the event that the City deems an application is not complete, it shall so advise AT&T as soon as possible but no later than thirty (30) days after submission. The City shall issue the permits based on the exemptions contained in sections 15301-15305 or section 15061(b)(3) of the California Environmental Quality Act ("CEQA") Guidelines or section 21080(b) of the Public Resources Code, and shall file an appropriate notice of exemption, based upon compliance with this Agreement, including the following provisions:

1. AT&T will be required to make reasonable efforts to locate Lightspeed cabinets in unobtrusive locations, depending on surrounding land uses. Detailed specifications and locations of each Lightspeed cabinet shall be submitted by AT&T as part of any encroachment permit application to ensure minimal impact on surrounding properties. Pedestals and similar structures visible to the public shall be located and/or screened with landscaping and/or fencing where required to address concerns, whenever reasonably feasible, provided that City and AT&T shall cooperate in order to determine the extent of any reasonably required landscaping and/or fencing. AT&T shall notify City upon installation of all pedestals and similar cabinets.

2. Trees shall be addressed in accordance with the Conditions of Approval attached hereto as Exhibit A.

3. The proposed Lightspeed cabinets and other facilities will meet applicable federal, state, and local requirements regarding the placement of utilities. The telecommunications lines will be installed primarily on existing utility poles and underground within existing utility easements. AT&T shall incorporate erosion and sedimentation control measures in construction plans and contracts for excavation, trenching or grading activities.

4. Issuance of encroachment permits will specify acceptable hours for noise-generating activities, which may vary depending on the project's location, such as in noise-sensitive residential areas. Noise producing construction activities shall be limited to Monday through Friday (except holidays) between 8:00 a.m. and 5:00 p.m. unless otherwise approved in advance by the Public Services Director, or as a condition of approval of a traffic control plan or encroachment permit. The nature of the project will limit noise increases. All construction equipment shall be in proper operating condition and standard factory silencing features shall not have been removed. Power supply cabinets shall be sited and designed to minimize noise impacts consistent with noise thresholds in the General Plan (Table 6-5). Power supplies shall be located at least 20 feet from the wall

of any dwelling unit wherever possible. Power supplies that require periodic testing for emergency preparedness shall be programmed for testing only on weekdays between 8:00 a.m. and 5:00 p.m.

5. AT&T shall obtain encroachment permits for any work within the public right-of-way and, where required, City approval of a traffic control plan, prior to any work on City streets. The Engineering Division may impose reasonable conditions that ensure protection of existing utilities; regulate timing of construction activities on City streets; and require resurfacing of streets to their pre-construction conditions. If requested by AT&T in order to ensure that the speed of construction is not limited by the availability of City inspectors, the City may also include temporary supplemental site inspection assistance, funded by AT&T, in order to insure compliance with the encroachment permit and traffic control plan. If the parties agree to the provision of such inspection assistance, the agreement may include assurances that this site inspection assistance shall not perform duplicative work and provisions regarding costs. Following construction, AT&T shall return City streets, sidewalks, bicycle paths and trails and other public land and improvements to pre-construction conditions to the reasonable satisfaction of the City, and the City shall advise AT&T of its determination regarding the satisfactory completion of each site within one business day after AT&T advises City of the completion of all construction and restoration.

6. The encroachment permits shall, where required, include measures to minimize the disruption of pedestrian and vehicular traffic, protect emergency access, and address line-of-site concerns. During construction, public sidewalks, walkways and open space trails shall be kept open to the public, and in a clean and safe condition, whenever reasonably feasible. Whenever trenching or other activities are proposed that would temporarily disrupt pedestrian access, AT&T shall include provisions in construction plans for managing safe and convenient pedestrian access. Property owners within 300 feet of the proposed construction site shall be given advanced notice of construction activity.

7. To the extent the City reasonably determines, applying its ordinances and rules in a non-discriminatory manner, that AT&T's Lightspeed cabinets should be subject to design review as set forth below, the City may perform a limited, staff-level design review as part of the encroachment permit process. Any such design review shall focus on the reasonable time, place and manner of construction and placement of the cabinets as requested in the encroachment permit applications. Such design review has been delegated to staff and shall not require a public or private hearing (unless appealed), and shall be completed within the required period for the review and issuance of the encroachment permits (as referenced and set forth in section D, above). Such encroachment permit applications shall include substantially the same City application forms (i.e. the pre-printed forms supplied by the City) submitted as part of the 2007 Applications.

8. The City will not impose conditions on such permits, as a part of design review or otherwise, other than those reasonable time, place and manner conditions permitted under Public Utilities Code sections 7901 and 7901.1 including, but not limited to, the Conditions of Approval. Nothing in this Agreement shall be deemed to limit or expand the City's authority to impose permit conditions relating to time, place and manner pursuant to sections 7901 and 7901.1.

D. Litigation; Release of Claims.

1. Provided that the City issues in final form encroachment permits for thirty-one (31) of the 2007 Applications in accordance with this Agreement and the attachments hereto, AT&T shall dismiss the Federal Action with prejudice no later than August 23, 2007. The City shall issue encroachment permits for thirty-one (31) of the 2007 Applications on or before August 9, 2007. In the event that encroachment permits for thirty-one (31) of the 2007 Applications are not issued in accordance with this paragraph, neither party will have any obligations under this Agreement and the Agreement shall terminate forthwith. Pending dismissal of the Federal Action under this paragraph, the parties agree to refrain from taking any action to prosecute or defend the Federal Action.



and shall cooperate in seeking continuances of any court-imposed deadlines in order to avoid the expenditure of attorneys' fees. In the event of a dismissal of the Federal Action under this paragraph, each party will be responsible for its own attorney's fees and costs of any kind in connection with the Federal Action.

2. Upon the dismissal of the Federal Action, AT&T on behalf of itself and its officers, directors, employees, assignees, successors, and subsidiaries (collectively "AT&T Parties"), hereby releases and forever discharges the City and its officers, council members, employees, agents, and representatives from and against any and all allegations, complaints, claims, demands, obligations, damages, causes of action of any kind whatsoever, for any relief whatsoever, on any basis whatsoever, whether known or not, whether foreseen or not, whether asserted or not, whether fixed or contingent, whether patent or latent, arising out of, connected with, or in any way relating to the Subject Matter of Federal Action Claims (defined as all claims made, or that could have been made, in the Federal Action with regard to the matters alleged in those actions, but excluding therefrom the claims actually asserted in the State Action), and with regard to said Subject Matter of Federal Action Claims, hereby expressly waives the application of California Civil Code section 1542.

3. AT&T, on behalf of itself and all AT&T Parties, certifies that it has read the following provision of section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

AT&T, on behalf of itself and all AT&T Parties understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if any of the AT&T Parties should eventually suffer additional damages arising out of or relating to the Subject Matter of Federal Action Claims, none of the AT&T Parties will be able to make any claim for those damages. Furthermore, AT&T, on behalf of itself and all AT&T Parties, acknowledges that it intends these consequences even as to claims

for damages that may exist as of the date of this Agreement but which AT&T or the AT&T Parties do not know exist, and which, if known, would materially affect its decision to execute this Agreement, regardless of whether this lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

4. The Parties represent and warrant that they have not sold, assigned, transferred, hypothecated, pledged or encumbered or otherwise disposed of or set over to any person or entity, in whole or in part, voluntarily or involuntarily, any claim or demand covered by this Agreement or relating to the Subject Matter of Federal Action Claims or the Subject Matter of State Action Claims.

5. The parties intend and agree that the dismissal of claims provided for herein extends only to the Subject Matter of Federal Action Claims and has no application or any effect as to any future encroachment permit applications and/or disputes.

E. No Admissions.

This Agreement is a result of a compromise and nothing contained in this Agreement shall be construed as an admission of liability, responsibility, or wrongdoing by any party hereto. It is agreed that all statements contained herein and the conduct of any party made in connection with this Agreement shall be inadmissible as evidence under California Evidence Code section 1152(a), except that the statements contained herein shall be admissible in any action to enforce or interpret this Agreement.

F. Entire Agreement.

This Agreement supersedes all prior and contemporaneous agreements, representations, and understandings of the parties with respect to the subject matter hereof. This Agreement may be amended or modified by the parties, provided that no supplement, modification or amendment shall be binding unless executed in writing by both of the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement

shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar; nor shall any waiver constitute a continuing waiver.

G. Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

H. Successors and Assigns Bound.

The terms of this Agreement shall be binding and inure to the benefit of the parties hereto and their successors, assigns, heirs, and representatives of the Parties.

I. Interpretation.

This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions.

J. Enforcement of Agreement.

If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs in connection with that action, arbitration, or proceeding, in addition to any other relief to which it or they may be entitled.

K. Authority of the Parties to Enter Into This Agreement.

Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

L. Counterpart Execution.


This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

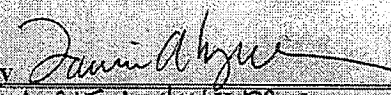
M. Indemnity.

AT&T agrees to indemnify, hold harmless and assume defense of, in any actions of law or in equity, the City, its officers, employees, agents, officials and volunteers from all claims, losses, damages, including property damages, personal injury, including death, and liability of every kind, nature and description (collectively, "Claims") arising out of AT&T's work or in any way connected with (a) the construction, installation, maintenance, and/or repair of the Facilities, or the performance of any other act under this Agreement, by AT&T, its officers, employees, agents, officials, and volunteers, or any contractor or subcontractor, (b) the validity of this Agreement, and (c) the City's compliance with CEQA or any provisions of the Municipal Code in connection with the construction, installation, maintenance, and/or repair of the Facilities; provided, however, that AT&T's obligations under this paragraph shall not extend to Claims arising from the sole or active negligence or willful misconduct of the City. This indemnification shall extend to claim losses, damage, injury and liability for injuries occurring after completion of permitted operations, as well as during the work's progress.

REVIEWED AND APPROVED AS TO  
FORM FOR AT&T BY PILLSBURY  
WINTHROP SHAW PITTMAN LLP

AT&T CALIFORNIA

By   
Ronald E. Van Buskirk

By   
LAURIE A. MILLETT  
for BYRON McDAWNEY Insert VICE PRESIDENT  
CONSTRUCTION + ENGINEERING

REVIEWED AND APPROVED AS TO  
FORM FOR THE CITY BY MILLER,  
OWEN & TROST

THE CITY OF WALNUT CREEK  
THE CITY COUNCIL OF THE CITY OF  
WALNUT CREEK

By \_\_\_\_\_  
Kirk E. Trost

By \_\_\_\_\_  
[Insert]

REVIEWED AND APPROVED AS TO  
FORM FOR A&T BY PILES BURY  
WINTER OF SHAW PUEMAN LLP

By Ronald E. Van Butkirk

REVIEWED AND APPROVED AS TO  
FORM FOR THE CITY BY MILLER  
OWEN & TROST

By Kirk E. Frost

AT & T CALIFORNIA

By Insert  
Insert

THE CITY OF WALNUT CREEK  
THE CITY COUNCIL OF THE CITY OF  
WALNUT CREEK

By Insert

REVIEWED AND APPROVED AS TO  
FORM FOR AT&T BY PILLSBURY  
WINTHROP SHAW PITTMAN LLP


AT&T CALIFORNIA

By \_\_\_\_\_  
Ronald E. Van Buskirk

By \_\_\_\_\_  
[Insert]  
\_\_\_\_\_ [Insert]

REVIEWED AND APPROVED AS TO  
FORM FOR THE CITY BY MILLER,  
OWEN & TROST

THE CITY OF WALNUT CREEK  
THE CITY COUNCIL OF THE CITY OF  
WALNUT CREEK

By  \_\_\_\_\_  
Kirk E. Trost

By \_\_\_\_\_  
[Insert]

**EXHIBIT A**  
**CONDITIONS OF APPROVAL**



## AT&T Conditions of Approval – Walnut Creek

1. AT&T shall pay all plan checking and inspection fees associated with Lightspeed. These fees shall be based on the City's standard charge for these services, which is currently \$115/hour for inspection fees and \$125/hour for plan checking fees. All overtime work will be billed at 1-1/2 times the standard fee. City inspections will include, but are not limited to the following:
  - Traffic control set-ups
  - Temporary detours of pedestrians/vehicles
  - Condition of haul routes
  - Dust/mud control
  - Maintenance of tree fencing
  - Temporary restoration at the end of each working day (safety)
  - Erosion control
  - Protection, relocation and replacement of existing utilities and drainage facilities
  - Equipment/vehicle staging areas
  - Hours of work (that they are off the road or completed construction at required time)
  - Issuance of after hours work
  - Response to complaints received by the City
  - Permanent restoration of curb, gutter, sidewalk and pavement
  - Compliance with encroachment permit conditions
- (a) The City will invoice AT&T monthly using City's standard format for all city expenses related to AT&T Lightspeed permits, including documented labor charges on an hourly basis, with charges identified by permit/location.
2. Encroachment Permit/Liaison
  - (a) City's permit shall not satisfy the permitting or legal requirements of other legal entities not under the City's jurisdiction. AT&T shall be responsible to such entities for obtaining any permits and for compliance with requirements of such entities.
  - (b) AT&T shall provide a single point of contact as liaison for communications, other than those communications identified in paragraph 2(c) below, concerning Lightspeed issues. The liaison will be responsible for responding and taking the necessary steps to resolve all complaints.
  - (c) AT&T shall provide the City with a list of personnel with the authority to stop or modify work in the event the City needs to contact such a person. AT&T shall identify which of these personnel will be the 24-hours emergency contact(s).
  - (d) When contractors are being utilized, an AT&T representative must be available within the area and respond (in person where reasonably necessary) to any situation within approximately one hour following City notification.
3. Notification / Public Outreach
  - (a) Notification of construction shall be sent to residents within 300' of the construction site.
  - (b) The City shall approve the content of the notification to residents concerning construction. The City shall approve the content once, unless there are mutually agreed upon changes to notification language.
  - (c) AT&T shall provide a contact telephone number that is printed on the notification to residents.
  - (d) AT&T shall provide 48-hours advance notification to all property owners and residents adjacent to any construction area. The advance notification shall be provided using door hangers. The notification shall include the contact telephone number. Work without notification will only be permitted when an unforeseeable emergency occurs, and then AT&T shall provide as much advance notice as is feasible to

the City, property owners, and residents adjacent to construction areas.

- (e) AT&T shall establish procedures to receive and respond to complaints and will keep a log of those complaints by type of complaint (noise, traffic, etc.) and indicate the resolution of each complaint. The City will refer any complaints they receive to AT&T for resolution. AT&T and the City shall meet regularly to review the log and any complaints the City has received that have not been transferred or complaints the City deems significant enough to warrant further discussion. If significant complaints arise and require immediate attention, the City and AT&T agree to meet on an emergency basis to address them.
- (f) AT&T shall coordinate proposed construction activities with public service and utility providers as needed, including the Central Contra Costa Solid Waste Authority, Contra Costa Transit Authority, PG&E, Comcast, Contra Costa Water, Contra Costa Sanitary District, EBMUD, Seren Innovations, and the U.S. Mail Service to ensure adequate solid waste collection, mail service, transportation, and utility service is maintained in areas experiencing temporary road construction.
- (g) Where necessary, AT&T shall coordinate with local transit services for the temporary relocation of routes or bus stops in work zones.
- (h) AT&T and the City staff shall have weekly or bi-weekly meetings to coordinate construction activities.

#### 4. Days and Hours of Work

- (a) AT&T shall limit all construction activities in residential areas between the hours of 7:00 a.m. to 6:00 p.m. weekdays. Lane closures on arterials will only be permitted weekdays between the hours of 9:00 a.m. & 3:00 p.m. No work shall be permitted on City holidays listed in the City's Municipal Code. Working hour limitations include all construction-related activities, including but not limited to, mobilization and demobilization.
- (b) Construction or hauling during hours other than those specified above shall not be permitted unless authorized by an after hours work permit issued by the City. The City shall not unreasonably deny an after hours work permit if and to the extent such a permit is necessary due to an emergency. An emergency shall be a situation, which poses an imminent threat to the public health or safety, including service outages that affect resident's ability to access 911. The City shall have no obligation to issue an after hours work permit for any other reason, including but not limited to efficiencies, time savings or cost savings that would result from an extension of work hours. An after hours work permit shall only permit work to the extent necessary to remedy the emergency.
- (c) No work is permitted within the Downtown Core Area or on Ygnacio Valley Road between Thanksgiving and New Years (see attachment "Exhibit A").

#### 5. Noise Mitigation

- (a) AT&T shall comply with established best management practices for controlling noise and vibration levels associated with their activities.
- (b) Equipment and trucks used for construction will utilize noise control techniques (including mufflers, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds) in order to minimize construction noise impacts.
- (c) Impact equipment (e.g., jack hammers, pavement breakers, and rock drills) used for construction will be hydraulically or electrical powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatically powered tools is unavoidable, an exhaust muffler on the compressed air exhaust would be used. External jackets on the tools themselves would be used where feasible. Quieter procedures will be used such as drilling rather than impact equipment whenever feasible.
- (d) Stationary noise sources will be located as far from sensitive receptors as reasonably possible. If they must be located near existing receptors, they will be adequately muffled to the extent reasonably possible.
- (e) AT&T shall use construction techniques that minimize vibration levels, particularly during construction in proximity to sensitive receptors.

- (f) AT&T shall locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as practicable from residential receptors.
- (g) All construction within 100-feet of a restaurant shall cease between the hours of 11:30 a.m. – 1:30 p.m.
- (h) If either the City or AT&T determine that after hours work is necessary, AT&T will be subject to additional mitigation measures and requirements.

#### 6. Protection of Trees

- (a) AT&T shall comply with the City's Tree Preservation Ordinance (Walnut Creek Municipal Code section 3-8.01 et seq.).
- (b) If any cutting (including trenching and boring), filling, or compacting within the dripline of any tree (as defined in 3-8.02.j of the Ordinance) is anticipated, AT&T shall hire a certified arborist, at its own expense, to prepare a tree preservation report. The tree preservation report shall include mitigation requirements for any construction related impacts to be reviewed and approved by the City.
- (c) AT&T does not anticipate removing any trees and no trees shall be removed without a Tree Removal Permit from the City.
- (d) The pruning of any tree shall be performed when and only when specified in the tree preservation report or as may otherwise be approved in writing in advance by the City's Public Services Director. Any pruning must be consistent with good pruning practice outlined by the International Society of Arboriculture Tree-Pruning Guidelines or the A-300 Standard of the American National Standards Institute and not harm the Tree, structurally or aesthetically.
- (e) No oils, gas, chemicals, liquid waste, solid waste, heavy construction machinery or other construction materials shall be stored or allowed to stand within the dripline of any tree.
- (f) AT&T shall notify the City's Public Services Director of any damage that occurs to a tree during construction. The repair of the damage shall be at the expense of AT&T, and shall be by professional standards, approved by the Director. Failure to comply will result in a stop work order.
- (g) AT&T shall guarantee the health of all trees impacted by Lightspeed construction as required by the City's Tree Preservation Ordinance.

#### 7. Contractor Equipment / Truck Travel

- (a) No queuing of trucks shall occur on City streets without the prior written approval of City.
- (b) Trucks shall be loaded in such a manner as to prevent dropping materials or debris on streets; trim loads and remove all material from shelf areas of vehicles to prevent spillage and take precautions to avoid creating dust and litter by watering the load after trimming and by promptly sweeping the pavement to remove dirt and dust.
- (c) AT&T shall have the streets swept with a broom sweepers daily along haul routes and work areas or as directed by the City.
- (d) All construction equipment and vehicles shall be in compliance with applicable California emissions requirements.
- (e) For no reason shall any piece of equipment be set on private property without written permission from homeowner.

#### 8. Traffic / Pedestrian Control (see attachment "Exhibit B")

It is mandatory for AT&T to submit site-specific traffic control plans for work on all main arterials and within the downtown core area. The City reserves the right to require additional site-specific traffic control plans at any time based on the nature or location of the work.

- (a) AT&T shall submit traffic control plans in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) standards to show specific methods for maintaining traffic flows on roadways, sidewalks and trails directly affected by the Lightspeed construction, as well as those roadways

indirectly affected by shifts in traffic flow.

- (b) The City's Traffic Engineer and City Engineer shall approve all Traffic Control Plans (TCP's) before any TCP can be implemented.
- (c) All work shall be phased to minimize traffic flow interference.
- (d) All devices must meet standards specified by the Manual of Uniform Traffic Control Devices (MUTCD).
- (e) The contractor shall modify the TCP should the City find potential safety hazards.
- (f) AT&T shall incorporate into the traffic control plans detours for bicyclists and pedestrians in areas potentially affected by Lightspeed construction.
- (g) Plans to reroute or detour any pedestrian pathway shall be approved by the City. The Contractors shall provide Title 24/ADA standards for access around or through any relocated pedestrian pathway.
- (h) Access to fire hydrants shall be maintained at all times. Access to adjacent property shall be provided as directed by the City inspector.
- (i) Thermo plastic and buttons and / or pavement marking shall be replaced in accordance to the City Standards. Temporary reflective tape and or floppies shall be utilized if the street markings are not restored by the end of the work shift.
- (j) Damaged traffic signal loops must be reinstalled to the nearest connection point. Damaged traffic signal interconnect cable must be reinstalled from signal controller to signal controller with no splices.
- (k) Any damaged traffic detector loops and signal interconnect cable shall be repaired within 48 hours.
- (l) Only reflective traffic cones shall be left overnight with lighted barricades, with City approval.
- (m) Flaggers shall wear reflective vests and have radios on site.
- (n) All sidewalks that are obstructed shall be properly signed for pedestrian safety, or as directed by the City inspector.
- (o) City approved traffic control plans shall be on site.

#### 9. Safety

- (a) If the City inspector finds a situation unsafe to the general public, the inspector can require the contractor to make necessary safety modifications. The inspector may stop all work until the site is made safe. If modifications are required for safety, a safety follow-up meeting may be scheduled to address the situation and potential preventive measures.
- (b) Construction work areas will be secured such that the public is not endangered as a result of the construction activities.
- (c) Contractors must follow the Underground Service Alert (USA) procedures.
- (d) All utility line breaks shall be reported to the City's Construction Coordinator or City Inspector immediately after notifying the proper utility company.
- (e) When plywood is being used to cover open holes cutback (cold patch) shall be used at each end of the plywood to avoid tripping hazards.
- (f) All contractors are required to wear highly visibility safety vest.
- (g) All employees must wear safety gear when working within the public right of way.
- (h) All underground utility crossings shall be exposed prior to drilling and observed while the back reamer passes through.
- (i) Cones are recommended in driveways to minimize damage to vehicles that may back into safety items.
- (j) Contractor will be responsible to maintain all traffic control and safety devices.
- (k) AT&T shall ensure all work areas are inspected for safety, prior to departing for the day.

#### 10. Pavement/Pathway Protection

- (a) All work in the downtown shall be restored within 72-hours after completion of all required construction, or as approved by City Engineer.
- (b) On all haul routes, AT&T will repair any damage caused by truck traffic.
- (c) AT&T shall restore construction sites, including but not limited to any damaged curbs, gutters, sidewalks, pedestrian ramps, streets, and landscaping, within 10 working days after completion of any

work area, except where agreed to in advance with City.

- (d) No construction shall be permitted on moratorium streets without written approval of the City Engineer.
- (e) Excavation with cutback shall be maintained.
- (f) Excavations within driveway approaches must have proper backfill material to support and allow access to driveway.

#### 11. Contractor Parking / Equipment / Material Storage

- (a) All parking of equipment and materials shall be outside the dripline of all existing trees, unless within an existing public or private paved location.
- (b) If the Contractor desires to use an existing metered parking space, a City of Walnut Creek no parking sign shall be posted 24-hours prior. The contractor shall legibly write on the sign the dates and times no parking is to be enforced, and utilize a tie strap to attach the sign to the meter pole. The Contractor shall pay the City \$2.00 for each no parking sign, and the daily meter fee which is currently \$4.50 a day for the metered parking space. If the construction is to occur within 10-feet of an existing parking meter, the contractor is to notify the City inspector 72-hours in advance, so the inspector can schedule the meter for removal.

#### 12. Stormwater Pollution Prevention

*The requirements of the Storm Water Management and Discharge Control Ordinance, WC Mun. Code Sec. 9-16.101, et seq., to the extent applicable, shall apply to individual construction sites only. AT&T shall not be required to submit a storm water control plan integrating all Lightspeed sites within the City. Further, given the small size of such construction sites, it is agreed that the "C.3 provisions" of that Ordinance are not applicable.*

- (a) AT&T may be required to submit a Notice of Intent (NOI), and a Linear Construction Activity Notification (LCAN) with the Regional Water Quality Control Board (RWQCB) where applicable to a given construction site.
- (b) AT&T shall comply with applicable provisions of the City's Storm Water Management and Discharge Control Ordinance (Walnut Creek Municipal Code Section 9-16.101 et seq.) on a site-by-site basis. AT&T shall require its contractors to implement the best management practices and standards outlined in the ordinance and referenced guidance documents to prevent erosion, sedimentation and other pollutants from entering drainage facilities.
- (c) AT&T shall require its contractors to be responsible for the drainage of the entire work area and the proper management of any drainage from the work area until the site is restored. Special care shall be exercised to prevent erosion in disturbed earth areas and silt or eroded materials shall not be introduced into any storm drain system or watercourse.
- (d) Spill kits are to be kept on site.
- (e) Bio bags are to be used at all times to protect spills into storm drains.
- (f) The Contractor shall locate spoil sites such that they do not drain directly into a waterways, or storm drain system.
- (g) Bore gels must comply with material safety data sheets (MSDS) on site at all times.
- (h) Mud and dust need to be kept under control at all times.
- (i) Mud or drill fluids must be disposed in proper dumpsite locations.
- (j) Streets must be cleaned at the end of the shift.
- (k) AT&T shall comply with the City's Construction Debris Recycling Ordinance (Walnut Creek Municipal Code section 5-3.601 et seq.) to the extent applicable..

#### 13. Holidays

- (a) No work is permitted on the following holidays:
  - o New Year's Day

- M.L. King Birthday
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day
- Thanksgiving
- Day after Thanksgiving
- Christmas Eve
- Christmas Day
- New Year's Eve

(b) No work is permitted within the Downtown Core Area between Thanksgiving and New Years (see attachment Exhibit A).

14. Permanent Improvements (see City Standard Plans)

- (a) City inspector shall inspect all pipe depths, backfill, compaction, and forms prior to final restoration. If contractors complete restoration without prior City inspection, AT&T and or their contractor may be required to re-expose the excavation for City inspection.
- (b) AT&T shall review the recent changes in Title 24/ADA regulations upon engineering of each site and determine whether the proposed Lightspeed construction complies with these regulations. If compliance is not possible, AT&T shall submit their findings for significant hardship in meeting these regulations. All areas that are disturbed, which require restoration, shall be restored at AT&T's expense to the current Title 24/ADA regulations.
- (c) All construction shall be in accordance with City of Walnut Creek Standard Plans subject to the inspection and approval of the Engineering Division of the Public Services Department. The City prior to construction must approve all revisions.
- (d) If the Walnut Creek Standard Plans and recommendations by the engineer differ, the City Engineer shall determine which shall apply.
- (e) City signs, meter poles, pull boxes, street lights, street trees, underground conduit etc. shall not be removed or relocated unless approved by the City.
- (f) Sidewalk shall be removed to the nearest scoreline and replaced in kind.
- (g) Vaults located within the sidewalk shall match existing sidewalk color conditions.
- (h) USA markings shall be removed within 10 working days of all completed work, or as directed by the Engineering Inspector.
- (i) Backfill of vaults and manholes shall be compacted to 90% under the sidewalk and 95% under streets. Class II aggregate base shall be used in streets and sidewalks. Compaction tests shall be submitted to the City as required by the City inspector.
- (j) Contractors shall request inspection of pipe installations and connections and any repairs made to existing underground utilities prior to backfilling. Compaction, and concrete forms shall be inspected prior to placement of concrete.
- (k) No stockpiling of sand, gravel, soil, or equipment within public right of way is permitted without written approval from the City inspector.
- (l) Upon completion of work, all brush, timber scraps and other material / debris shall be entirely removed and the right-of-way, and left in a condition satisfactory to the City inspector.
- (m) AT&T shall perform a pre construction layout with the City inspector to ensure that there are no deviations to the City approved plans. The City is to allow AT&T to red-line changes to prints/plans as conditions arise in the field during the course of construction.

15. Dust

- (a) Bay Area Air Quality Management District best management practices shall be followed to prevent

pollution by soil particulates.

- (b) AT&T shall clean vehicles, surrounding homes and businesses in response to dust complaints. AT&T shall establish a claims process for resolving dust complaints.

#### 16. Landscaping / Mitigations

- (a) The City of Walnut Creek's Planning Department shall approve all landscape mitigation planting.
- (b) The City inspector shall inspect all irrigation lines prior to backfilling.
- (c) When staging equipment near any landscape, the contractor shall protect the landscaping from exhaust.

#### 17. Additional Requirements

- (a) Prior to commencement of the work, AT&T through the City's Construction Coordinator at (925) 943-5899 ext. 333 shall request a pre-construction meeting.
- (b) Approval of plans by the City of Walnut Creek shall not relieve AT&T from the responsibility of the design, and for any deficiencies resulting from the design.
- (c) AT&T must obtain consent from any other public or private agencies or individuals required to complete such work. Such consent may be required to be obtained prior to requesting a permit from the City. AT&T is required to provide the City with written owner authorization for any work on private property. If this provision is not complied with, the permit shall be void.
- (d) All permits shall be kept at the work site, and presented to any representative of the City Engineer or Law Enforcement Officer, upon request.
- (e) AT&T shall properly construct, maintain and repair any encroachment authorized herein, and shall exercise responsible care in inspecting and immediately repairing any damage to the public right-of-way and underlying utilities which occurs as a result of existence of said encroachment or as the result of any work done pursuant to AT&T's work.
- (f) All areas of excavation are subject to City inspection prior to backfill. Failure to use proper backfill materials or proper compaction will result in increased inspection fee and liability for re-work.
- (g) AT&T shall promptly make any and all repairs to public right-of-way if required by the City Engineer or designee. Time for completion of said repairs shall be as required by the City Engineer or designee.
- (h) AT&T is responsible for the materials and workmanship of this encroachment for a period of one (1) year after node acceptance by the City.
- (i) Prior to commencing work authorized by an Encroachment Permit, AT&T shall provide one (1) day notice to City of Walnut Creek Engineering Inspection Division. Notification may be faxed to (925) 256-3587, or email (preferred method) to the following email addresses:
  - o [murphyd@ci.walnut-creek.ca.us](mailto:murphyd@ci.walnut-creek.ca.us)
  - o [madsen@ci.walnut-creek.ca.us](mailto:madsen@ci.walnut-creek.ca.us)
  - o [cordeiro@ci-walnut-creek.ca.us](mailto:cordeiro@ci-walnut-creek.ca.us)
- (j) All trench plates shall have non-skid surfaces, tack welded, staked, and flush mounted, or as directed by the City Inspector.
- (k) Joint trench – Shall be coordinated with utilities. (If applicable)
- (l) When red curb is disturbed AT&T will be required to repaint the complete section, or as directed by City inspector.
- (m) No excavation shall remain open longer than is necessary to perform the work as determined by the Inspector.
- (n) All utilities shall be located and pot-holed prior to boring, or excavation, in accordance with the Underground Service Alert (USA) regulations. Pothole 24" on each side of the utility marks; if no utilities are located, document and seek further verification. If a utility is not found, the utility company is to be notified, and adequate time provided for the utility company to investigate where their facilities are located. The City inspector shall be notified of all underground utilities that are unable to be relocated.
- (o) If damage occurs to private property, AT&T is to immediately notify the property owner and the City. All damages are to be repaired immediately, not to exceed 24 hours.

- (p) AT&T is to provide the City with a list of all contractors performing work within the City of Walnut Creek and their City business license.
- (q) All Contractors working on site must have a California Contractors License, and the license numbers located on the vehicles.
- (r) Utility damage reports are to be forwarded to the City inspector weekly; regardless of who's at fault, and the number of utility hits.
- (s) All contractors and sub-contractor must have a magnet on their vehicles, support truck, and equipment identifying them as an AT&T contractor.
- (t) Contractors shall provide and maintain sanitary facilities for employees and sub-contractor employees that comply with the regulations of the local and State Department of Health. The contractors shall locate any required potable facility, away from houses and public access, and place in shaded areas during the warm season.

18 City and AT&T shall coordinate construction activities in order to avoid excessive disruption in City. The City shall continue to process permits in a timely fashion.

The City and AT&T will jointly develop a tracking mechanism to assist in coordinating construction activities, and to reflect the approval and completion status of all permits for Lightspeed nodes.

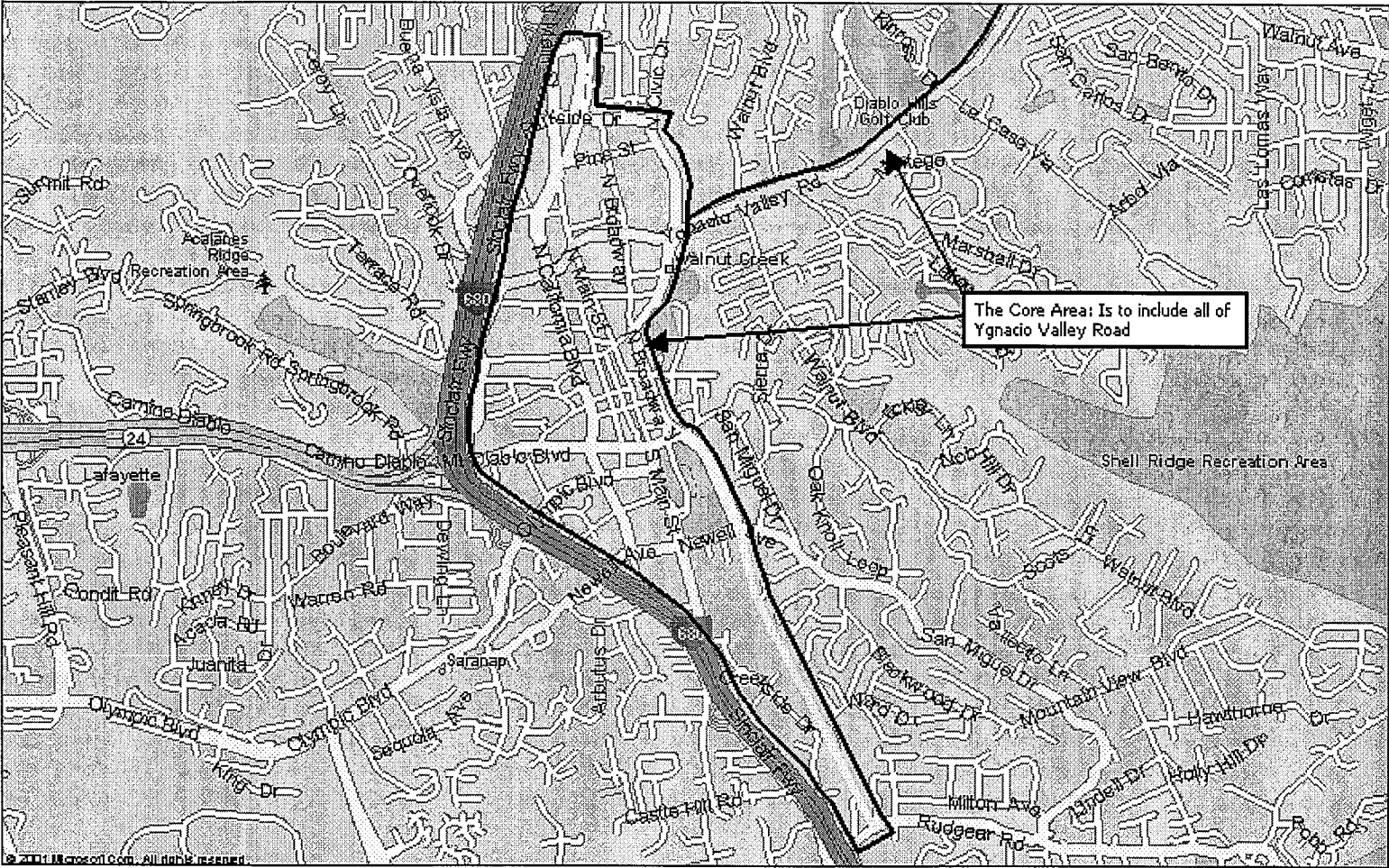
19. The process for City acceptance on all encroachment permits shall be the following:

- (a) AT&T is to first look over all completed construction for obvious punch list items and complete them prior to notifying the City for a pre-final inspection. Obvious punch-list items would include sidewalk restoration, planting mitigation, asphalt restoration, USA removals, crack sealing potholes, thermo plastic completed, etc.
- (b) AT&T will write a letter or email, addressed to the City's Construction Coordinator, requesting a pre-final inspection. There will be no excavations after this letter has been sent to the City. If there is a need for an excavation, then the pre-final may be rescheduled, or that particular site may be individually permitted.
- (c) An AT&T representative and a City inspector will schedule a date for the pre-final inspection.
- (d) The City's Planning Department will pre-final all plant mitigation.
- (e) The City will provide AT&T with a punch-list including planting mitigations and other items that failed to meet the pre-final inspection.
- (f) Once AT&T has completed all punch-list items, AT&T will write a letter or email the City's Construction Coordinator requesting a final inspection.
- (g) An AT&T representative, City inspector, and City Planner will schedule a date for the final inspection.
- (h) If all punch-list work is completed to the City of Walnut Creek's standards, the City will provide AT&T with a letter or email of acceptance.



# Exhibit "A"

## Holiday Moratorium (Thanksgiving to New Years)



## Exhibit "B"

### TRAFFIC CONTROL PLAN CHECKLIST

The following checklist is provided to assist Developers and Contractors in establishing uniformity in the development of Traffic Control Plans.

#### General Details that should be included on all Traffic Control Plans (TCP):

- Hours of Operation
  - No lane closures between 6:00 AM - 9:00 AM, and 3:30 PM - 6:30 PM, Monday - Friday. Ygnacio Valley Road hours are 9:00 AM – 3:00 PM.
  - Only one lane closed between 9:00 AM – 3:30 PM.
  - Only one lane closed Saturday and Sunday, 8:00 AM - 10:00 PM.
  - Lane closures of two or more lanes shall only occur, except for emergencies, between 10:00 PM - 6:00 AM, Monday - Thursday.
- Construction Activity
  - Show the exact location of the work zone.
  - Include details on construction activity and equipment being used as part of construction to assist in reviewing the adequacy of the proposed TCP.
  - If work is done in phases, submit a separate TCP for each phase.
- Traffic Control Devices
  - For each sign include the M.U.T.C.D. sign number, sign size, sign description and its location on the TCP.
  - For each Flashing Arrow Board include its size, panel display and location on the TCP.
  - If flaggers are used, include the number of flaggers and their location on the TCP.
  - Show size, height and location of all channelizing devices, warning lights, flag trees, portable barriers, etc. on the TCP. All devices must meet standards specified by the M.U.T.C.D.  
example: Cones no smaller than 700 mm (28 in.) and no farther apart than 12.2 m (40 ft.), include the length channelizing tapers.
- Traffic Signal Operation and Equipment
  - Include location of all traffic signals and traffic signal detection devices within the traffic control area.
  - If special signal timing is required in the TCP, specify ALL changes and their effects.
  - Consult the Traffic Engineering Staff for any signal questions at (925) 256-3529.
- Traffic Flow Interference
  - All efforts shall be considered to minimize traffic flow interference, including but not limited to phasing the construction and reducing the size of the work area.
- Pedestrian Safety
  - Be sure pedestrians have a safe route to walk and/or are protected throughout the entire traffic control area before submittal of the TCP for review.
  - Show all pedestrian entry, paths and exits on the TCP.
  - Clearly state the M.U.T.C.D. sign number, size, description, height and location of all signs and other traffic control devices, including fences and barricades, within the pedestrian's safe route to walk, on the TCP.
- Parking Restrictions
  - Parking restrictions must be posted 24 hours before work starts at the expense of the contractor.
  - Contact person for sign information: Don Murphy, Construction Coordinator (925) 943-5899, ext. 333.

**Notes:**

1. This checklist is a compliment, not a substitute, to the traffic control plan requirements outlined in *the Manual of Uniform Traffic Control Devices (M.U.T.C.D.)*. Please refer to this manual as needed in the development of TCP's.
2. For work on major arterials such as Ygnacio Valley Road, please refer to the City's Standard Plans.
3. Approval of all TCP's is required by City Traffic Engineering before any TCP can be implemented.
4. Should engineering inspectors on the job site find potential hazards towards traffic and/or pedestrian safety, they can require the contractor to modify the TCP.