STAFF REPORT

TO: Planning Committee
AC Transit Board of Directors
FROM: Michael A. Hursh, General Manager
SUBJECT: South County Corridors Transit Performance Initiative (TPI) Project Memorandum of Understanding (MOU) and Funding Agreement

ACTION ITEM

RECOMMENDED ACTION(S):

Consider authorizing the General Manager to execute a Memorandum of Understanding (MOU) with the cities of Hayward, San Leandro, Union City, the Metropolitan Transportation Commission (MTC), Caltrans, and the County of Alameda, and a funding agreement with MTC for the South County Corridors Project.

EXECUTIVE SUMMARY:

In September 2014 AC Transit received $5.0 million in grant funds through the MTC Transit Priority Initiative (TPI) Investment program. MTC also assigned $500,000 of Federal funds under their control through the Next Generation Arterial Operation Program (NGAOP) to be used for preliminary systems engineering for the project. The District, Union City, and the Alameda County Public Works Agency (ACPWA) were subsequently awarded $228,000 in Transportation Fund for Clean Air (TFCA) funding through the Alameda County Transportation Commission (ACTC) to offset the local match the District is contributing to the project. The entire project budget is estimated to be $6.2 Million.

To be able to execute the design and construction of the project, the District needs to have MOUs in place with the cities, Alameda County, MTC, and Caltrans to identify roles, responsibilities, and expectations for the project. In addition to the MOU with MTC, the District needs to execute a funding agreement with MTC to be able to receive the $140,000 in NGAOP funds that are remaining. These funds will be used for the procurement of the Adaptive Traffic Control System (ATCS) which is a key component of the project.

BUDGETARY/FISCAL IMPACT:

Executing the MOUs will have no direct impact on the District budget, but will help the District and its agency partners to control the scope, schedule and budget for the project. The project funds, including the local match required by the District, are included in the capital budget. The funding agreement with MTC will allow the District to utilize the $140,000 remaining from the preliminary systems engineering phase for the ATCS procurement. Overall, the project will not require use of District funds to execute.
BACKGROUND/RATIONALE

In September 2014, the District, along with its partners the cities of San Leandro, Hayward, Union City, and the Alameda County Public Works Agency (ACPWA), was awarded $5.0 million through the MTC Transit Performance Initiative (TPI) Investment program. The award included an additional $500,000 in funding from the Next Generation Arterial Operations (NGAOP) program that is controlled by MTC through consultant assistance. In addition, AC Transit along with the ACPWA and Union City received $228,000 in TFCA funding through the Alameda County Transportation Commission to offset the need for District matching funds. The cities along the corridor have also agreed to support our efforts to improve the corridor and deliver this project. The entire project is estimated to cost a total of $6.2 million including local match.

The $500,000 of NGAOP funding that MTC controls was planned to pay for preliminary systems engineering and development of the specifications for the ATCS RFP. With most of the systems engineering completed and the specifications development underway, the consultant costs have ended up less than estimated. As a result, MTC will transfer the remaining $140,000 to the District to help fund the ATCS purchase. The attached funding agreement with MTC will allow the District to utilize these funds directly for the procurement.

The South County Corridors TPI Investment project will enhance corridor traffic and transit operations on and along Hesperian Boulevard, Union City Boulevard, Alvarado Boulevard, Dyer Street, Alvarado-Niles Road, and Decoto Road (AC Transit Line 97). The Corridor is approximately 12.5 miles long and is the major travel corridor between the Bay Fair BART Station in the City of San Leandro and the Union City BART Station in the City of Union City via the Union Landing Transit Center. The Project will install transportation infrastructure improvements to decrease travel delay and increase operational reliability for buses along the length of the Corridor. Generally, improvements include: 1) Adaptive Traffic Control System (ATCS) along Hesperian Boulevard in San Leandro, unincorporated Alameda County and Hayward, 2) Corridor-wide Transit Signal Priority (TSP), signal coordination, and 3) relocation of key bus stops from near side to far side.

District staff together with its agency partners has developed an MOU which compiles the goals, policies, and procedures to be adopted by all parties to facilitate working together in a coordinated manner for the success of this project. This MOU is presented to the partner agencies and their governing bodies for their review following executive approval by AC Transit. Subsequent approvals of additional partnering agreements shall include: Cooperative Agreements, Maintenance Agreements, and Transfer Agreements all of which are cited in the MOU.

The intent of the MOU is to acknowledge the agreement of all partnering agencies to commit to work cooperatively to improve the management and operation of the Corridor’s transportation and transit systems. The MOU is not a legally binding contract — it is solely a guide to the intentions and policies of the partnering agencies for planning and project delivery purposes. No party shall be entitled to any damages or injunctive relief as a remedy for breaching this MOU. Commitments for funds, supporting services, authorization of specific work phases, operations, and maintenance will be governed by one or more separate agreements.
In summary, the MOU will:

- Confirm commitment for project support from all partnering agencies;
- Articulate key operations and maintenance (O&M) principles for project development;
- Outline the framework for multi-agency cooperation, collaboration, and conflict resolution; and
- Clarify ownership, operation, and maintenance in preparation for future agreements.

ADVANTAGES/DISADVANTAGES:

The advantage of entering into an MOU with our partnering agencies is that roles, responsibilities and expectations are clearly defined for all agencies to avoid any future misunderstandings.

There are no disadvantages associated with this MOU.

ALTERNATIVES ANALYSIS:

An alternative to executing the MOU is to proceed to develop the project without an MOU in place until all roles and responsibilities can be clearly/completely defined for all parties. This would ultimately result in a delay to the project during project development when contracts have been awarded and programming commitments have been established.

PRIOR RELEVANT BOARD ACTIONS/POLICIES:

SR 14-116 MTC's FY 2013-14 Transit Performance Initiative – Investment Grant Application

ATTACHMENTS:

1: Memorandum of Understanding for South Alameda County Major Corridors Project
2: Funding Agreement with MTC

Department Head Approval: Michael A. Hursh, General Manager

Reviewed by:
- Denise Standridge, District General Counsel
- Claudia Allen, Chief Financial Officer
- Jon Medwin, Procurement and Materials Director
- Chris Andrichak, Manager, Capital Planning & Grants
- Robert del Rosario, Director of Service Development and Planning

Prepared by: Wil Buller, Traffic Engineer
MEMORANDUM OF UNDERSTANDING (MOU)

For
South Alameda County Major Corridors Travel Time Improvement Project (AC Transit Line 97 TPI)

December 1, 2015

Partnering Agencies:
Alameda-Contra Costa Transit District (AC Transit)
City of Hayward
City of San Leandro
City of Union City
County of Alameda
California Department of Transportation (Caltrans) District 4
Metropolitan Transportation Commission (MTC)
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I. PROJECT DESCRIPTION

The Corridor is approximately 12.5 miles long and is the major travel corridor between the Bay Fair BART Station in the City of San Leandro and the Union City BART Station in the City of Union City via the Union Landing Transit Center. The Corridor primarily operates along Hesperian Boulevard (San Leandro, unincorporated Alameda County, and Hayward), Union City Boulevard (Union City), and Alvarado-Niles Road (Union City). The Project will install transportation infrastructure improvements to decrease travel delay for automobiles and increase operational reliability for buses along the length of the Corridor.

Generally, improvements include: Adaptive Traffic Control System (ATCS) along Hesperian Boulevard in San Leandro, unincorporated Alameda County and Hayward, Corridor-wide Transit Signal Priority (TSP), signal coordination, relocation of key bus stops from near side to far side, and installation of a real-time passenger information digital displays. In addition, the Project includes upgrades to traffic signal hardware and software, and signal interconnect enhancements. System integration provides for coordinated operations between all project components, coordination with interconnected signals at the jurisdictions' borders, and sharing of transit information among various agencies.

This Project has been developed in partnership with the Alameda-Contra Costa Transit District (AC Transit), cities of San Leandro, Hayward, and Union City, County of Alameda, California Department of Transportation (Caltrans) District 4, and the Metropolitan Transportation Commission (MTC). There are 61 signalized intersections along the Corridor from the Bay Fair BART station to the Union City BART station. The technology implemented by this Project seeks to improve the performance of the current transportation systems by promoting the effective use of existing roadway and transit systems.

The Project provides tools for AC Transit and local agencies to manage transit and traffic which include:

- Communication links to central locations via fiber signal interconnect lines
- Advanced traffic control devices;
- Real-time monitoring/reporting software for traffic signal systems
- Intelligent Systems to respond to changing traffic conditions along Hesperian Blvd.
- Tools to communicate real-time transit information to transit passengers.

The Project benefits include:

- More reliable and efficient transit service within the existing transportation network by optimizing the use of existing capacity;
- Reduced transit travel time;
- Improved safety and operation of transit;
- Improved air quality associated with reduced traffic congestion; and
- Enhanced transit real-time traveler information.
II. PURPOSE OF MOU

This MOU serves the following purposes:

- Confirm commitment for project support from all partnering agencies;
- Articulate key operations and maintenance (O&M) principles for continuing project development;
- Outline the framework for multi-agency cooperation, collaboration, and conflict resolution; and
- Clarify ownership, operation, and maintenance in preparation for separate agreements.

III. PROJECT GOALS & OBJECTIVES

The Project strategies pursued herein shall:

1. Reduce overall transit travel time along the Corridor during peak period operation.
2. Enhance trip reliability by providing consistent and predictable travel and layover times on the Corridor.
3. Cooperatively operate, manage and maintain all elements installed as part of the Project in an integrated and coordinated manner.
4. Develop and maintain a seamless and coordinated signal timing for the Corridor.
5. Cooperatively identify and address any adverse impacts in a timely fashion.
6. Implement methods to mitigate and respond to adverse impacts, including local controller reversion and override capabilities, working collaboratively with the project partners.
7. Ensure ongoing communication among partnering agencies for timely review and proactive/appropriate communication with the public, media, and elected officials.
8. Monitor, evaluate, and report on project performance to ensure compliance with goals and objectives.
9. Facilitate cooperative activities that ensure sustaining benefits from the Project.

IV. RESPONSIBILITIES

This MOU sets forth the roles and responsibilities of the partnering agencies in the development, delivery, implementation and operations/maintenance of the Project.

As the Project Sponsor and the lead design agency, AC Transit will be responsible for the following functions:

1. Project delivery, program administration and management,
2. Grant management,
3. Overall design, engineering, construction, and contract management for the ATCS and TSP systems,
4. Developing a corridor-wide signal timing plan,
5. Promoting efficient and effective system operations and management,
6. Environmental review,
7. Project public outreach and stakeholder coordination,
8. Coordination of the Technical Advisory Committee and Technical Coordinating Committee,
9. Developing necessary agreements which will, where appropriate, list agencies as third party beneficiaries, e.g., as to any warranties. (See matrix on p. 8). AC Transit will assist Caltrans in developing necessary agreements, as needed,
10. Construction management,
11. Managing the delivery of capital project elements of the program,
12. Providing staff and funding to facilitate proactive management of the Project,
13. Operations and maintenance of all TSP components on AC Transit buses (Union City Transit bus maintenance plan to be developed), and
14. Development of operation and maintenance plan for ATCS and all field TSP components.

General coordination among all partner agencies. Cities of Hayward, Union City, and San Leandro, Alameda County and Caltrans are expected assume the following responsibilities for the Project:

1. Timely design and engineering review,
2. Timely approval of final design package,
3. Cooperation with all partnering agencies to develop traffic operations strategies to efficiently and effectively move traffic along the corridor and develop cost-effective signal systems,
4. Participation in corridor-wide timing plan development and timely review of final timing plans,
5. Implementing timing plans and periodically reviewing changes when updates are made within the agency’s own jurisdiction,
6. Providing for effective ATCS operations that will encourage and facilitate coordination across jurisdictional boundaries,
7. Providing for effective Transit Signal Priority (TSP) operations and maintain transit preferential treatments along the Corridor,
8. Cooperation in the development of Operations and Maintenance plans for all field traffic systems within the agency’s own jurisdiction,
9. Cooperation in maintaining central systems to be hosted by the cities of Hayward and San Leandro, with cost-sharing details to be included in the maintenance agreements,
10. Sharing the use of interconnect cable and communications equipment with nearby jurisdictions to provide cost-effective signal system communications,
11. Notifying all participating agencies when service interruptions occur that could affect system operations,
12. Implementation and maintenance the Corridor-wide signal timing plan to promote effective transit and traffic operations,
13. Cooperating in good faith with partner agencies as to issuing timely authorizations needed, such as encroachment permits for construction, rights of entry, or no-cost license,
14. Granting AC Transit or its contractor all appropriate construction permits and/or encroachment permits to perform all construction,
15. Providing on-going operations and maintenance activities for equipment deployed by the Project within the agency’s right-of-way, and
16. Support Construction management and/or inspection, and provide final punch-list signoff for timely project closeout.

As the funding agency and Program Manager of the joint Transit Performance Initiative/Next Generation Arterial Operations Program (TPI/NGAOP), MTC will be responsible for the following:

1. Overall oversight of TPI/NGAOP Program,
2. Systems Engineering,
3. Oversight of the ATCS deployment, and
4. General coordination among all partner agencies.

V. OWNERSHIP AND MAINTENANCE

a. Ownership of Project Components

AC Transit will transfer ownership of all assets constructed, installed or integrated, to the jurisdiction within respective rights-of-way, or otherwise installed in, or upon such, partnering agency’s real or personal property. Exceptions include: AC Transit shall be responsible for the ownership, operation, maintenance and repair of all TSP components on AC Transit buses. AC Transit will develop plans for long-term operations and maintenance of TSP field equipment within separate jurisdictions and TSP components on Union City Transit buses.

AC Transit will transfer ownership of the ATCS to the jurisdiction of the assets constructed, installed or integrated within its respective jurisdiction and rights-of-way, or otherwise installed in, or upon such, partnering agency’s real or other physical property.

b. Disposition of Federally Funded Assets

AC Transit is responsible for ensuring “Satisfactory Continuing Control” of assets funded with Federal Transit Administration (FTA) dollars. This means in effect that as the primary grantee, AC Transit is responsible for the assets regardless of possible transfer of ownership. AC Transit must have plans or agreements for continued operation and maintenance of FTA funded assets throughout their useful life, particularly if ownership or oversight is transferred to a different local government agency. It also means that the assets must continue to be used to benefit public transit operations throughout their useful life. Any destruction, disposal, significant modifications to, or changes in use of FTA funded assets must be reported to AC Transit and the FTA. Requirements for management and disposition of assets are described in FTA Circular 5010.1D, Chapter 4, Section 3 “EQUIPMENT, SUPPLIES, AND ROLLING STOCK”.

c. Ownership of Data

Each partnering agency will own any and all data collected by components installed within its respective equipment or located within its respective jurisdiction or rights-of-way. Each partnering agency will grant all other parties a nonexclusive license to use, reproduce, distribute, display, and create derivative works based upon such data for any non-commercial governmental function to the extent possible with the traffic control systems.
d. **Operational Expenses**

AC Transit will develop Operation and Maintenance agreements between all partnering agencies to incorporate maintenance of all TSP and ATCS components into their regularly scheduled maintenance programs. Each partnering agency’s responsibilities will be defined in the Operations and Maintenance agreements related to the maintenance, repair, replacement, and operating expenses of any kind associated with ownership of its respective components after the launch date.

**VI. GOVERNANCE**

In general, the project management activities will be directed through a Technical Coordinating Committee (TCC). Technical and operational matters should be resolved among partnering agencies at the lowest working level possible. The TCC will help in resolving all issues, review of plans and documents circulated through the partnering agencies. However, should the need arise on an issue, a Technical Advisory Committee (TAC) is proposed to help resolve the issue. The following offers a framework of committees for this purpose.

**Technical Advisory Committee (TAC):** The TAC will consist of executive managers of the partnering agencies (Cities’ and County’s Public Works Director, AC Transit Planning & Engineering Chief, Caltrans District 4 Division Chief of Traffic Operations, MTC’s Director of Operations). The TAC is responsible for formulating policy and institutional issues pertaining to the Corridor and specifically approved transportation projects and updating the members’ governing boards on the status and issues of the Project. The TAC will direct the TCC. The TAC will meet on an as-needed basis to fulfill its responsibilities.

**Technical Coordinating Committee (TCC):** The TCC will be comprised of technical staff from the partnering agencies responsible for day-to-day transportation service, operations and management of their respective systems within the Corridor. The TCC will develop traffic and transit operational strategies needed to reduce the travel time along the Corridor. The TCC will be responsible for making sure that partners are performing their due diligence in delivering whatever documents are circulated through the partnering agencies. The TCC will assist in resolving any technical / operational, design, public issue that may delay the delivery of the Project. Each partnering agency will nominate a designee to participate in the TCC. The TCC will meet on quarterly or as-needed basis to fulfill its responsibilities.

**VII. PROJECT DELIVERY**

AC Transit will lead overall project delivery, including design, engineering, and construction. MTC will lead the Concept of Operations Report and Implementation & Initial System Evaluation. All other activities will be led by AC Transit.

The Project will use a Design-Bid-Build delivery method. The partnering agencies will collaborate with AC Transit to develop and implement a successful project. Additionally, the partnering agencies will provide input at critical stages throughout the Project. The following outline summarizes how the Project will be fully developed and critical stages when comments will be solicited from the partnering agencies.
Concept of Operations Report: As part of the Systems Engineering process, a report will outline the concept of how the proposed system will operate. A user-oriented operational description will outline operational needs, system overview, operational and support environment, operational scenarios, and a summary of impacts. The development of this document will be led by MTC’s Systems Engineering consultant and prepared through a close collaboration with the project partners.

Public Outreach Plan: In coordination with the partnering agencies, AC Transit will develop a communication plan to solicit input from the public and stakeholders and to disseminate periodic project information.

Preliminary Engineering: Conceptual plans of all capital improvements will be developed based on input from the partners. The proposed capital improvements will be presented to the public and elected officials for their comments and approval.

Environmental Document: This Project requires official federal, state, and environmental approvals as well as consensus from all the partnering agencies and the public. The Project will prepare supporting documentation to claim a categorical exemption under the California Environmental Quality Act (CEQA) and a categorical exclusion under the National Environmental Quality Act (NEPA). The Project meets the requirements of the categorical exemption and categorical exclusion because the proposed improvements include only minor alterations to existing roadway and transit features along an existing bus corridor within existing roadway right-of-way.

Traffic Studies: Traffic studies summarizing existing traffic conditions, proposed alternatives, traffic forecasts, and modeling results will be prepared as part of the project development process. The partnering agencies will participate in reviewing, commenting and recommending approval of these documents.

System Integration Plan (SIP): A plan that specifies the procedures, methods and strategies to implement the required project elements based on project documents and system requirements. According to the final System Engineering Management Plan, the ATCS vendor will develop this SIP.

Design Plans and Bid Package: Once the Preliminary Engineering, Traffic Studies, and Environmental Documents are completed and fully vetted, the Project will move forward to the design phase. The design plans will be submitted to the partnering agencies for review and input at the following stages: 65% and 100%. The partnering agencies will provide expeditious review of submittals at each stage in the Project.

Construction: AC Transit will advertise, award, and administer the construction contract of this Project.

Pre-construction: AC Transit will work with all partnering agencies in final approval of design, construction, and signal timing. A contractor awarded for construction will obtain encroachment permits from Alameda County, cities of San Leandro, Hayward, and Union City, and Caltrans, which will allow construction within each jurisdictional boundary.
Implementation: A vendor will develop software model to integrate all equipment and provide revised signal timing plans incorporating signal priority to buses that are equipped with TSP devices all along the corridor.

Evaluation: MTC will be conducting a comprehensive evaluation to assess the impacts/benefits of the Project, including traffic operations, system operation, and maintenance, and project deployment.

Operations and Maintenance (O&M) Plan: The plan will provide operational scenarios with cost of operations, maintenance, and management for each agency along the Corridor. This information will then be used to help develop final agreements with each partnering agency.

All regular operations and maintenance will be in accordance with the Project O&M Plan with input provided by the TCC. The O&M Plan addresses standard operation policies and procedures for the Project with respect to: day-to-day operation, coordinated signal timing, incident detection, system management and response, maintenance schedules, transit signal priority, equipment and hardware maintenance, transit and traveler information system, staffing, training performance monitoring/reporting, data ownership, and any other topics necessary for the ongoing operation and maintenance of the project components.

The partnering agencies acknowledge the mutual goal of continued operation of the ATCS and will endeavor to effectuate ongoing and continual operation of the ATCS. As such, if a partnering agency feels the portion of the ATCS that is within its jurisdiction is ineffective and not meeting its needs, these issues must be discussed and resolved by the TCC before the ATCS is operated in non-adaptive mode (barring any emergency or safety-related issues). If no resolution can be reached by the TCC, the issues would be escalated to the TAC.

VIII. COSTS & FUNDING

The MOU is not intended to authorize funding. Commitments providing for the payment of funds or authorizing specific work phases will be covered by a binding cooperative agreement with each partnering agency. Upon executing all cooperative agreements, the final design phase of the Project will be completed. Funding commitments may take into account improvements made by a partnering agency that directly benefit the Project.

IX. TERM

This MOU is in effect as of December 1, 2015 and will terminate on January 1, 2025, unless the terms are modified by the respective participating City Councils or Governing Boards. The TCC will make recommendations as to the changes in terms of this MOU, as needed.
X. **NEED FOR ADDITIONAL AGREEMENTS**

Various binding agreements are anticipated to be developed and executed to address implementation of construction phase, and maintenance arrangements, liabilities, or any other legal issues.

**Table 1: Summary of Agreements**

<table>
<thead>
<tr>
<th>Execution Order</th>
<th>Agreement</th>
<th>MTC</th>
<th>AC Transit</th>
<th>Caltrans</th>
<th>Alameda County</th>
<th>San Leandro</th>
<th>Hayward</th>
<th>Union City</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MOU - general consensus of project scope, establish roles and responsibilities of each agency, etc.</td>
<td>x</td>
<td>x</td>
<td>lead</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>2</td>
<td>Cooperative Agreement - establishes on-going O&amp;M responsibilities, provision for cost sharing, etc.</td>
<td>x</td>
<td>lead</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>2a</td>
<td>Operations Agreements establishes on-going O&amp;M responsibilities, provision for cost sharing, etc. for Caltrans intersections</td>
<td>x</td>
<td>(Assist)</td>
<td>lead</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>3</td>
<td>Encroachment Permit for Caltrans intersections</td>
<td>x</td>
<td>lead</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
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</tr>
<tr>
<td>3a</td>
<td>Maintenance Agreements - Delegation of maintenance and operation responsibilities from Caltrans to local agency for State-owned signal(s). Includes provision for cost sharing. <em>If required and feasible</em></td>
<td>x</td>
<td>(lead)</td>
<td></td>
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</tr>
<tr>
<td>4</td>
<td>Transfer Agreement - Transfer of ownership of ATCS and/or TSP equipment procured by AC Transit to local agencies</td>
<td>x</td>
<td>(lead)</td>
<td></td>
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<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>
The following agencies support the Memorandum of Understanding for the South Alameda County Major Corridors Travel Time Improvement Project:

Signed by:

AC Transit

Date

______________________________
Michael Hursh
General Manager

Approved as to form and content:

______________________________
Denise Standridge
General Counsel for AC Transit
Memorandum of Understanding for
South Alameda County Major Corridors Travel Time Improvement Project (Line 97)

City of San Leandro

Date

__________________________
Keith Cooke

Engineering & Transportation Director
Memorandum of Understanding for
South Alameda County Major Corridors Travel Time Improvement Project

City of Union City  Date

________________________________________

Antonio Acosta
City Manager
Memorandum of Understanding for
South Alameda County Major Corridors Travel Time Improvement Project (Line 97)

County of Alameda          Date

.................................................................

Scott Haggerty
President, Alameda County Board of Supervisors

Approved as to form:

.................................................................

Donna R. Ziegler, County Counsel
Deputy County Counsel
Memorandum of Understanding for South Alameda County Major Corridors Travel Time Improvement Project

City of Hayward

Morad Fakhrai
Director of Public Works
Engineering and Transportation

Date

Frances David
City Manager

Attest:

Michael Lawson
City Attorney

Date

Miriam Lens
City Clerk

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Min Y. Lee
Branch Chief of Traffic Signal System Support
Memorandum of Understanding for
South Alameda County Major Corridors Travel Time Improvement Project (Line 97)

Metropolitan Transportation Commission
Date

__________________________
Steve Heminger
Executive Director
ATTACHMENT A

GLOSSARY OF TERMS AND DEFINITIONS

AC Transit – Alameda Contra Costa Transit District

Adaptive Traffic Control System (ATCS) - A traffic management strategy in which traffic signal timing changes, or adapts, based on actual traffic demand. This is accomplished using an adaptive traffic control system consisting of both hardware and software elements.

Caltrans – the State of California Department of Transportation, District 4

CEQA – California Environmental Quality Act

Corridor – Hesperian Boulevard, Union City Boulevard, Alvarado Boulevard, Dyer Street, Alvarado-Niles Road, and Decoto Road

FTA – Federal Transit Administration

MTC – Metropolitan Transportation Commission

MOU – Memorandum of Understanding

NEPA – National Environmental Protection Act

NGAOP – Next Generation Arterial Operations Program, a program administered by the Metropolitan Transportation Commission to assist local agencies in implementing advanced technologies to better manage and operate arterial roadways, reduce travel time, enhance travel time reliability for transit and automobiles, and improve safety for all modes.

O&M – Operations and Maintenance

Project – NGAOP implementation, as described in the Project Description section

Partnering Agencies – Agencies participating in this MOU

Transit-oriented Signal Coordination – A traffic operations strategy of synchronizing traffic signal timing plans to account for transit operations along the corridor a priority over vehicular traffic.

Signal Interconnect – Connecting traffic signals along a corridor using copper, fiber, or wireless media to enable data transfer and communication.

Signal Timing Plans – Traffic signal operational parameters to program traffic signal controllers.

TAC – Technical Advisory Committee

TCC – Technical Coordinating Committee

TPI – Transit Performance Initiative, a program administered by the Metropolitan Transportation Commission to foster improved transit operations through investment and incentive strategies

Transit Signal Priority (TSP) – Equipment installed on transit vehicles and at the signalized intersections that communicates with the traffic signal to grant an early green or green extension.
December XX, 2015

Mr. Michael Hursh  
General Manager  
Alameda-Contra Costa Transit District  
1600 Franklin Street  
Oakland, CA 94612

RE: Funding Agreement

Dear Mr. Hursh:

This letter, effective as of December XX, 2015 ("Effective Date"), is the agreement between the Alameda-Contra Costa Transit District (AC Transit) ("RECIPIENT") and the Metropolitan Transportation Commission ("MTC") for the procurement of an Adaptive Traffic Control System (ATCS) for the Program for Arterial System Synchronization (PASS) FY 14/15 project ("the Agreement").

It is agreed that the RECIPIENT shall procure an ATCS as specified in Attachment A, Scope of Work attached hereto and incorporated by this reference. RECIPIENT shall be compensated in accordance with Attachment B, Project Budget and Schedule attached hereto and incorporated herein by this reference.

Linda Lee (herein “MTC Project Manager”) shall be responsible for the overall administration of the Agreement, including approving work products and invoices. Day-to-day technical direction shall be provided by Wil Buller (herein “RECIPIENT’s Project Manager”) or a designated representative.

Payment to RECIPIENT shall be due in the amounts indicated in Attachment B, Project Budget and Schedule upon acceptance by MTC’s Project Manager of the Project tasks, described in detail in Attachment A. RECIPIENT shall deliver or mail invoices to MTC, as follows...
Payment shall be made within thirty (30) days after receipt by MTC of an acceptable invoice, which shall be subject to the review and approval of MTC Project Manager. The invoice shall include a copy of all invoices received from the vendors or consultants engaged by the RECIPIENT to perform the project work.

Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid under the Agreement exceed the sum of one hundred forty thousand dollars ($140,000).

The Agreement is funded in whole, or in part, by Congestion Mitigation/Air Quality (CMAQ) funds allocated to MTC by the Federal Highway Administration, funds from which have been awarded to RECIPIENT by MTC. The provisions in Attachment C, Terms and Conditions, Attachment D, Fair Employment Practices Addendum, and Attachment E, Nondiscrimination Assurances, are attached hereto and incorporated herein by this reference. To the extent that they conflict with any of the above provisions, they supersede such provisions.

Performance will begin on the date this agreement is fully executed, and be completed by December 31, 2017, unless MTC terminates this agreement earlier as provided in Article 3, Termination, of Attachment C.

If you agree, please sign both copies of this letter in the space provided below and return one to us. The other copy is for your files.

Very truly yours,

Steve Heminger
Executive Director
Accepted and Agreed to this ______ day of December 2015.

Michael Hursh, General Manager
RECIPIENT received a grant under the Next Generation Arterial Operations Program (NextGen AOP) – a pilot initiative under MTC’s Program for Arterial System Synchronization (PASS) – to improve user travel experience by improving travel time and travel time reliability for autos and transit vehicles and improve safety through the implementation of an adaptive traffic signal control system along AC Transit’s Line 97 route. The Project Corridor is 13 miles long and traverses Hesperian Boulevard, Union City Boulevard, Alvarado Boulevard, Dyer Street, Alvarado Niles Road, and Decoto Road. The Project includes 61 signalized intersections, with Transit Signal Priority (TSP) technology deployed at all intersections, and Adaptive Traffic Control Systems (ATCS) deployed at the 34 intersections on the Hesperian Boulevard portion from San Leandro to Hayward. Refer to Figure 1 for the Project Corridor.

**Figure 1: Project Corridor**
RECIPIENT shall use the system procurement document prepared by MTC’s Systems Engineering consultant and prepare a procurement package. RECIPIENT shall then lead the procurement of an ATCS that meets the system requirements identified through the Systems Engineering analysis.

RECIPIENT shall be responsible for engaging a consultant/contractor to perform overall design, engineering, construction, and contract management for the adaptive traffic control and transit signal priority systems. RECIPIENT shall provide project oversight to ensure the project meets all scope requirements, is delivered on time and within budget, and is carried out in a safe manner. RECIPIENT shall provide staff support and administration required for the successful completion of the project.
## ATTACHMENT B
### PROJECT BUDGET AND SCHEDULE

Payment for RECIPENT's services shall be due upon acceptance by the MTC Project Manager of the following milestones, budget and due date, for the tasks described in Attachment A, **Scope of Work**:

<table>
<thead>
<tr>
<th>#</th>
<th>Milestones</th>
<th>Estimated Budget</th>
<th>Estimated Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Completion of the procurement of an Adaptive Traffic Control System (ATCS)**</td>
<td>$ 140,000</td>
<td>October 2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total</td>
<td>$140,000</td>
</tr>
</tbody>
</table>

** Note: The ATCS is being jointly funded through the Transit Performance Initiative (TPI) Program and the NextGen AOP. The final cost of the ATCS will be determined during the procurement process. The estimated budget of $140,000 represents the NextGen AOP's commitment towards the ATCS. The remaining cost for the ATCS will be funded through the TPI Program.
ATTACHMENT C
TERMS AND CONDITIONS

1. FUNDING

Funding from DOT shall be contingent upon approval by the Federal Highway Administration (FHWA) of MTC’s Overall Work Program (“OWP”). Should DOT amend the OWP after the effective date of this Agreement to reduce the amount of available Congestion Mitigation/Air Quality (CMAQ) funds, MTC will reduce RECIPIENT’s share of CMAQ funds proportionately and shall, after consultation with the RECIPIENT, amend the Scope of Work as necessary to reflect the reduced level of funding.

2. AMENDMENTS

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the MTC Executive Director or a designated representative and RECIPIENT. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

3. TERMINATION

MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, RECIPIENT will be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If RECIPIENT fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and RECIPIENT will be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

4. RETENTION OF RECORDS

RECIPIENT agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years following final payment to RECIPIENT or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles. Copies of RECIPIENT audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

5. AUDITS

RECIPIENT agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to RECIPIENT’s books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 4.

RECIPIENT further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that MTC, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of
such subcontractor, during normal business hours, for the term specified above. The term “contract” as used in this clause excludes agreements not exceeding $25,000.

6. **LICENSE TO WORK PRODUCTS**

RECIPIENT hereby grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity all drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture, and any other documents, materials, data, and products (“Work Products”) developed, prepared, or assembled by RECIPIENT or RECIPIENT’s consultant(s) or its subconsultants pursuant to this Agreement. MTC may exercise their licenses to Work Products through sublicenses to a third party, without the approval of RECIPIENT or RECIPIENT’s consultant(s) or subconsultants. FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which RECIPIENT or RECIPIENT’s consultant(s) or subconsultants purchase ownership under this Agreement.

7. **EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects, RECIPIENT agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

8. **DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC’s procurement and professional services activities. RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. RECIPIENT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by RECIPIENT to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

9. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

RECIPIENT agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

10. **ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

11. STATE ENERGY CONSERVATION PLAN
RECIPIENT shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

12. DEBARMENT
RECIPIENT certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

13. CLEAN AIR AND WATER POLLUTION ACTS
RECIPIENT agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

14. LOBBYING
RECIPIENT agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

15. INDEMNIFICATION
RECIPIENT shall indemnify and hold harmless MTC, Caltrans, their Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of RECIPIENT, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and RECIPIENT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, Caltrans, their Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

16. MEETINGS
RECIPIENT agrees to invite the MTC Project Manager to participate in all meetings held in connection with this project, including public meetings and project team meetings.

17. COMPLIANCE WITH LAWS
RECIPIENT shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not limited to MTC, the U.S. DOT, FHWA, and Caltrans, which relate to or in any manner affect the performance of this Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on RECIPIENT (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.
18. PREVAILING WAGE RATES, APPRENTICESHIP AND PAYROLL RECORDS
   As applicable, RECIPIENT agrees to comply and assures the compliance of each third party contractor at any tier of the Project with all the requirements imposed by California Labor Code Sections 1720 et seq. and Title 8 of the California Code of Regulations Sections 16000 et seq. governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations and the Federal Davis-Bacon Act. In particular, CONTRACTOR’s attention is drawn to Labor Code Sections 1770 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). Should the Federal Davis-Bacon Act governing the payment of prevailing wages apply to contract work, the higher wage rate between the federal rate and the California prevailing rate shall apply.

19. IDENTIFICATION OF DOCUMENTS
   RECIPIENT will ensure that all documents related to the project including meeting notices and reports state that the project is funded through the Metropolitan Transportation Commission. In addition, RECIPIENT will ensure that all reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

   “The preparation of this report has been financed in part by grants from the U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.” In addition, RECIPIENT certifies that the RECIPIENT and its contractors shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Section 21,000 et seq. and with the State Environmental Impact Report Guidelines (14 California Code of Regulators Section 15000 et seq.) and the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4-1 et seq. and the applicable regulations thereunder.

20. SUBCONTRACTS
   RECIPIENT must include provisions of this Agreement, as applicable, modified only to show the particular contractual relationship, in any third-party contracts funded by this Agreement.

21. PROJECT CONTACTS/NOTICES
   Except for invoices submitted by Recipient pursuant to Attachment B, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

   To MTC:  
   Attention: Linda Lee
   Metropolitan Transportation Commission
   101 – 8th Street
   Oakland, CA 94607-4700
   Email: lleec@mtc.ca.gov
   Fax: (510) 817-5825

   To RECIPIENT:  
   Attention: Chris Andruchak
   Alameda-Contra Costa Transit District
   1600 Franklin Street
   Oakland, CA 94612
   Email: candrichak@actransit.org
   Fax: (510) 891-4855
ATTACHMENT D
FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, RECIPIENT shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. RECIPIENT shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. RECIPIENT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. RECIPIENT, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the RECIPIENT'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. RECIPIENT shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. RECIPIENT shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which RECIPIENT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that RECIPIENT has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by RECIPIENT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to RECIPIENT, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure RECIPIENT's breach of this Agreement.
ATTACHMENT E

NONDISCRIMINATION ASSURANCES

RECIPIENT HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964” (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which RECIPIENT receives federal financial assistance from the Federal Department of Transportation. RECIPIENT HEREBY GIVES ASSURANCE THAT RECIPIENT shall promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, RECIPIENT hereby gives the following specific assurances with respect to its federal-aid Program:

1. That RECIPIENT agrees that each “program” and each “facility” as defined in subsections 21.23 (c) and 21.23 (b) of the REGULATIONS, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That RECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: RECIPIENT hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That RECIPIENT shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where RECIPIENT receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where RECIPIENT receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.
7. That RECIPIENT shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the RECIPIENT with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates RECIPIENT for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates RECIPIENT or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which RECIPIENT retains ownership or possession of the property.

9. That RECIPIENT shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that RECIPIENT, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That RECIPIENT agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. RECIPIENT shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. RECIPIENT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to RECIPIENT by STATE, acting for the U.S. Department of Transportation, and is
binding on RECIPIENT, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.
During the performance of this Agreement, RECIPIENT, for itself, its assignees and successors in interest (hereinafter collectively referred to as RECIPIENT) agrees as follows:

(1) Compliance with Regulations: RECIPIENT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: RECIPIENT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. RECIPIENT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by RECIPIENT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by RECIPIENT of the RECIPIENT's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: RECIPIENT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to RECIPIENT's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, RECIPIENT shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts RECIPIENT has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of RECIPIENT's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to RECIPIENT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: RECIPIENT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

RECIPIENT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event RECIPIENT becomes involved in, or is threatened with, litigation
with a sub-applicant or supplier as a result of such direction, RECIPIENT may request STATE enter into such litigation to protect the interests of STATE, and, in addition, RECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.
The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that RECIPIENT shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the RECIPIENT all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit “A” attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto RECIPIENT and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on RECIPIENT, its successors and assigns.

RECIPIENT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (and) *

(2) that RECIPIENT shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (and) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.
APPENDIX C TO ATTACHMENT E

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by RECIPIENT, pursuant to the provisions of Assurance 7(a) of Attachment E.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, RECIPIENT shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, RECIPIENT shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of RECIPIENT and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.
APPENDIX D TO ATTACHMENT E

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the RECIPIENT, pursuant to the provisions of Assurance 7 (b) of Attachment E.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, RECIPIENT shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, RECIPIENT shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of RECIPIENT, and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.
## FUNDING AGREEMENT APPROVAL SHEET

### AGENCY: MTC
ConTracker #: 
Contract No. (Acctg. use only): 

### NAME OF CONTRACTOR/CONSULTANT: Alameda-Contra Costa Transit District (AC Transit)

### PROJECT TITLE: Program for Arterial System Synchronization (PASS) FY 14/15 Project

<table>
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<th>Original contract</th>
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<th>Approve by ED or Committee (specify)</th>
<th>September 12, 2014</th>
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<tr>
<td>Amend #1</td>
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<td>Committee Approval Date</td>
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<tr>
<td>Amend #2</td>
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<td>Grant/ Allocation Name</td>
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<td>Amend #3</td>
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<td>Grant No./ Allocation No. / Funding Source (Acctg.)</td>
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**WORK ITEM #: 1234**
Sole Source: Yes □ No □ N/A □

**FISCAL YEARS:** FY 2014-15

**Insurance Code:** Insurance Exceptions:

**Contractor Contact/Email:** Chris Andrichak / candrichak@actransit.org

**Contractor Address:** 1600 Franklin Street, Oakland, CA 94612

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### REVIEW LIST

<table>
<thead>
<tr>
<th>Project Manager:</th>
<th>Date:</th>
<th>Pre Award Audit Required:</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>Linda Lee</td>
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<tr>
<th>Section Director:</th>
<th>Date:</th>
<th>Public Works:</th>
<th>Yes</th>
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<tbody>
<tr>
<td>Melanie Crotty</td>
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<tr>
<th>Budget Review:</th>
<th>Date:</th>
<th>Suzanne Bode-MTC/Sonia Elsonbaty-BATA/MTC SAFE</th>
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<table>
<thead>
<tr>
<th>Contract Administration¹:</th>
<th>Date:</th>
<th>Denise Rodrigues/Alice Truong/Michael Brinton/Ryan DeCoud</th>
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<tr>
<th>IT Review:</th>
<th>Date:</th>
<th>Nick Roethel/Valerie Campbell</th>
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<tr>
<th>Office of General Counsel:</th>
<th>Date:</th>
<th>Cynthia Segal/Matt Lavrinets/Brooke Abola</th>
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<tr>
<th>Deputy Executive Director:</th>
<th>Date:</th>
<th>Andrew B. Fremier²</th>
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<th>Deputy Executive Director:</th>
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<tr>
<th>Finance Section:</th>
<th>Date:</th>
<th>Alix Bockelman³</th>
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¹ Includes DBE review for all federally-funded contracts.
² Reviews all procurements and contracts from HAO, BOO, and TCI, plus BATA, BAHA, MTC SAFE, and BAIFA-funded work.
³ Reviews all procurements and contracts from Planning, PAA, IPA and ATS.

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