TO: AC Transit Board of Directors  
FROM: Michael A. Hursh, General Manager  
SUBJECT: Update on Line 19 Funding Agreements with City of Alameda and Alameda Transportation Management Association (ATMA)

RECOMMENDED ACTION(S):

Consider authorizing the General Manager to negotiate and execute funding agreements with the City of Alameda and the Alameda Transportation Management Association (ATMA) to maintain supplemental 20-minute weekday peak headways on Line 19.

BUDGETARY/FISCAL IMPACT:

The proposed funding agreements will allow the District to continue providing the existing 20-minute weekday peak headways without incurring any additional costs. However, should the Board choose not to adopt this item, the District could incur additional net operating costs of up to $456,802 through FY 2020-21 to maintain the 20-minute weekday peak headways. The City will contribute $356,802 for the designated period and ATMA will contribute $100,000.

BACKGROUND/RATIONALE:

The District currently operates 20-minute weekday peak frequencies on Line 19 due to an October 2016 agreement with the City of Alameda, ATMA, and developers along Alameda’s Northern Waterfront. Without this agreement in place, Line 19, which connects downtown Oakland, Alameda, and the Fruitvale BART station via Buena Vista Avenue, would operate less frequently on weekdays based on the Service Expansion Plan (now ACGo) originally adopted by the AC Transit Board in February 2016.

The Service Expansion Plan identified the Line 19 alignment as a candidate for 30-minute frequency from 6:00 a.m. to 10:00 p.m. on weekdays, Saturday, and Sunday. However, prior to the rollout of the second package of ACGo improvements, discussions between District staff, the City of Alameda, and the West Alameda Transportation Demand Management Association (WATDMA), the precursor organization to the new Alameda Transportation Management Association (ATMA), revealed interest among their members in providing supplemental funding to support 20-minute weekday peak frequency on Line 19. This additional frequency – provided from 6:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 7:00 p.m. – supports existing and planned future development along Alameda’s Northern Waterfront and was a condition of approval required by the City.
The District initially intended to execute an agreement to fund the service with either WATDMA or ATMA. Because of delays in ATMA’s formation and the urgent desire for additional peak service on the part of the Marina Shores and Del Monte Warehouse project developers, the District entered into a six-year agreement directly with developers Lennar Homes (Marina Shores) and Tim Lewis Communities (Del Monte Warehouse) to provide the funding in October 2016. All participants entered into the agreement with the intent that ATMA would eventually assume financial responsibility for the agreement, which has since occurred.

There are terms in the interim agreement between the District and the developers that require the developers to reimburse the District for service operated to date, and for the successor agreement between the District and ATMA to ensure the District is reimbursed accordingly for future service. However, in January 2018, ATMA notified the District and the City of Alameda that due to delays with Tim Lewis Communities’ Del Monte Warehouse project, ATMA would be unable to maintain its full financial commitment to the District after May 31, 2018. ATMA notified AC Transit that given the Del Monte Warehouse delays it would only be able to make an annual contribution of $40,000, which is substantially less than the $177,000 annual contribution specified in the original agreement. On March 6, 2018, the Alameda City Council approved an allocation of up to $491,215 as a stopgap to support Line 19 peak service levels for 30 months from June 1, 2018 through December 31, 2020, until ATMA can fund the additional service on its own through the developers. This will prevent the need to reduce peak frequencies to 30 minutes.

With the Board’s approval, the General Manager will negotiate and enter into new agreements with ATMA and the City that reflect ATMA’s new financial situation and the City’s continuing commitment to ensure that peak service levels remain consistent with the original October 2016 agreement.

Since implementation, Line 19 weekday ridership has increased by 56 percent, rising from 513 average weekday boardings in winter 2016 to 804 average weekday boardings in the fall 2017 sign-up. Saturday ridership increased by an average of 33 percent during the same period, while Sunday ridership increased by an average of 22 percent. Staff expects continued ridership growth as forecast developments along Alameda’s Northern Waterfront are completed and the market for transit matures further.

ADVANTAGES/DISADVANTAGES:

The advantage to entering into new agreements with the City of Alameda and ATMA is that the District could maintain current service frequency on Line 19 without increasing net operating expenses.

There is no disadvantage to entering into new agreements with the City of Alameda and ATMA.

ALTERNATIVES ANALYSIS:

Staff considered an option to continue providing 20-minute peak frequency on Line 19 without support from ATMA or the City of Alameda. Staff does not recommend this option as the District would incur additional total net operating costs of up to $456,802 from FY 2018-2019 through FY 2020-21.
Staff also considered the option to discontinue 20-minute peak frequency on Line 19 with the August 2018 sign-up. Service would revert to 30-minute all-day weekday frequencies. Staff does not recommend this option as it requires the District to cover operating costs until August 12, 2018, after which point costs would revert to baseline levels.

**PRIOR RELEVANT BOARD ACTION/POLICIES:**

15-218c – Service Expansion Plan Adoption

16-120 – June 2016 Sign-up and AC Go Update

16-194 – December 2016 Sign-up Report

17-065 – March 2017 Sign-up Update

17-169 – AC Go Performance Report

**ATTACHMENTS:**

1. Draft Funding Agreement with City of Alameda
2. Draft Funding Agreement with ATMA

**Approved by:** Ramakrishna Pochiraju, Executive Director of Planning & Engineering

**Reviewed by:**
- Robert del Rosario, Director of Service Development and Planning
- Denise Standridge, General Counsel
- Chris Andrichak, Director of Management and Budget
- Claudia L. Allen, Chief Financial Officer
- Salvador Llamas, Chief Operating Officer

**Prepared by:**
- Michael Eshleman, Manager, Service Planning
- David Berman, Transportation Planner
THIS SERVICE PROVIDER AGREEMENT ("Agreement") is entered into this 7th day of March, 2018, by and between CITY OF ALAMEDA, a municipal corporation (the "City"), and ALAMEDA-CONTRA COSTA TRANSIT DISTRICT, a special district whose address is 1600 FRANKLIN STREET, OAKLAND, CA 94612 (the “Provider”), in reference to the following:

RECITALS:

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. The City is in need of the following services: More frequent public transportation bus service in the Northern Waterfront area during the peak travel times from 30-minute headways to 20-minute headways and during the weekday peak hour periods of 6 a.m. and 9 a.m. and 4 p.m. and 7 p.m. This more frequent peak service is over and above the available resources of the Provider.

C. The Provider was selected on a sole source basis because the Provider is the public transit entity for the City, and already is operating the restored and reconfigured Line 19 at 30-minute frequencies between 6 a.m. and 10 p.m. as of December 18, 2016. The Provider is specially trained, experienced and competent to perform the special services that will be required by this Agreement. The Provider functions for the benefit of the general public as well as community members affiliated with new developments.

D. On September 21, 2016, the Provider and two Northern Waterfront developments – Lennar and Tim Lewis Partners (TLP) – signed an agreement to provide increased service frequencies from 30 minutes to 20 minutes during the weekday peak periods of 6 a.m. to 9 a.m. and 4 p.m. to 7 p.m. on Line 19. The agreement was established such that the Alameda Transportation Management Association (Alameda TMA), upon its formation and receipt of funds, would assume the obligation to fund the increased frequency service.

E. In February 2017, the City provided a one-time payment of $50,000 to AC Transit to assist in the first year of Line 19 operations for more frequent peak period service as pass through funding from the Wind River development, which benefits from the additional peak service.

F. In January 2018, Alameda TMA informed AC Transit and the City that due to delays with the Del Monte project, the Alameda TMA will not be able to continue to contribute funds for the enhanced service until such time that the Del Monte project is occupied.

G. The City desires to contribute a payment for 30 months as a stop gap measure to continue the 20-minute frequency during the peak periods for Line 19 so as not to disrupt peak period service.

H. In future years beyond this 30-month stop gap measure, Alameda TMA cannot guarantee a future public-private partnership, especially since the Del Monte development currently is
delayed due to construction cost inflation. Nevertheless, the Del Monte development is required to provide peak-period bus service and it is the intent of the Alameda TMA to collaborate with AC Transit in the future as the Provider.

I. The City and the Provider desire to enter into an agreement for a 30-month payment, upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

   The term of this Agreement shall commence on the 1st day of July 2018, and shall terminate on the 31st day of December 2020, unless terminated earlier as set forth herein. At least six months prior to the end of the agreement, the Provider and the City shall determine the ongoing funding source for the expanded service levels on Line 19.

2. **SERVICES TO BE PERFORMED:**

   Provider agrees to continue to operate service according to the route map in Exhibit A, and provide increased service headways from 30 minutes to 20 minutes during the weekday peak periods of 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. on Line 19. Standards for service will include buses to be used for the service that will be comparable to the standards of other AC Transit buses with the maximum number of bike racks that are feasible to accommodate bicycle commuters where possible.

3. **COMPENSATION TO PROVIDER:**

   a. Provider shall submit to the City an invoice according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference.

   b. The total compensation from the City for their portion of the work under this Agreement is not to exceed $356,802. The first 12 months totals $137,000. The subsequent 1.5 years are not allowed more than a four percent increase, and total $144,080 (second year) and $75,722 (remaining six months). The remainder of the funding for this service will be provided by another party, the Alameda Transportation Management Association (ATMA).

4. **TIME IS OF THE ESSENCE:**

   Provider and City agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

   Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel.
6. **INDEPENDENT PARTIES:**

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. **NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

a. Provider shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Provider's actual negligent act or omission, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, but no negligence of City, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the negligence or willful misconduct of Indemnitees.

b. Provider's obligation to indemnify, defend and hold harmless Indemnitees shall expressly survive the expiration or early termination of this Agreement.
10. **INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda. Attention: Risk Manager or ten (10) days if for non-payment of premium."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

A. **COVERAGE:**

Provider shall maintain the following insurance coverage:

1. **Workers’ Compensation:**
   
   Statutory coverage as required by the State of California.

2. **Liability:**

   Commercial general liability coverage in the following minimum limits:
   
   **Bodily Injury:**
   
   $2,000,000 each occurrence
   
   $2,000,000 aggregate - all other
   
   **Property Damage:**
   
   $1,000,000 each occurrence
   
   $2,000,000 aggregate

   If submitted, combined single limit policy with aggregate limits in the amounts of $2,000,000 will be considered equivalent to the required minimum limits shown above.

3. **Automotive:**

   Comprehensive automobile liability coverage (any auto) in the following minimum limits:

   **Bodily injury:** $1,000,000 each occurrence
   
   **Property Damage:** $1,000,000 each occurrence

   or

   **Combined Single Limit:** $2,000,000 each occurrence
B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery unless due to City’s negligence, wholly or in part. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker’s compensation and professional liability insurance, for claims, lawsuits and judgments arising out of services provided under this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement requires Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager or her/his designee. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer.
The City Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

c. The requirements in this Section 13 shall apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee except for public records requests.

b. Provider shall, at such time and in such form as City Manager or his/her designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

Alameda-Contra Costa Transit District

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16. **RECORDS:**

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents, and data in sufficient detail to permit an evaluation of the Provider’s performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the “Records”).

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts thereof as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by City’s preliminary examination or audit of records, and the City’s supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. **NOTICES:**

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party’s respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda
Base Reuse and Transportation Planning Department
City Hall
2263 Santa Clara Avenue, Room 130
Alameda, CA 94501
ATTENTION: Gail Payne, Senior Transportation Coordinator
Ph: (510) 747-6892 – gpayne@alamedaca.gov
e. All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

AC Transit
1600 Franklin Street
Oakland, CA 94612
ATTENTION:
Robert del Rosario, Director of Service Development and Planning Services
Ph: (510) 891-4734 - rdelrosa@actransit.org

18. SAFETY:

a. The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Provider’s failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. The Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Through the General Counsel’s Office, the Provider shall promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report should include but not be limited to the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider’s employee(s) involved in the incident; (iii) name and address of Provider’s liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement unless it is deemed the failure occurred due to reasons beyond the Provider’s control. If such default is not cured within two (2) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default; City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving one-hundred and eighty (180) days’ prior written notice to Provider as provided herein in order to allow for adjustments to the service, accordingly.
c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEY'S FEES:

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney and AC Transit General Counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's or AC Transit General Counsel's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's or AC Transit General Counsel's Office.

21. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the Term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

22. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

23. WAIVER:

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. INTEGRATED CONTRACT:

The Recitals and Exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements
of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

25. **CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

*Signatures on next page*
IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
A Municipal Corporation

Michael Hursh
General Manager

CITY OF ALAMEDA
A Municipal Corporation

Elizabeth D. Warnerdam
Acting City Manager

APPROVED AS TO FORM AND CONTENT:

Denise Standridge
General Counsel

RECOMMENDED FOR APPROVAL:

Jennifer Ott
Acting Assistant City Manager

APPROVED AS TO FORM:
City Attorney

Andrico Q. Penick
Assistant City Attorney
POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES or PROVIDERS FORM B

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Alameda
Public Works Department
Alameda Point, Building 1
950 West Mall Square, Room 110
Alameda, CA 94501-7558

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF:
The City of Alameda, its City Council, boards and commissions, officers & employees are additional insured for work done on their behalf by the named insured.

PRIMARY INSURANCE:
IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS INSURANCE.

SEVERABILITY OF INTEREST:
IT IS AGREED THAT EXCEPT WITH RESPECT TO THE LIMIT OF INSURANCE, THIS COVERAGE SHALL APPLY AS IF EACH ADDITIONAL INSURED WERE THE ONLY INSURED AND SEPARATELY TO EACH INSURED AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT.

WAIVER OF SUBROGATION:
IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED (S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

NOTICE OF CANCELLATION:
IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.
POLICY NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provisions of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<table>
<thead>
<tr>
<th>Endorsement Effective:</th>
<th>Countersigned By:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Authorized Representative)</td>
</tr>
</tbody>
</table>

SCHEDULE

Name of Person or Organization:
City of Alameda
Public Works Department
950 West Mall Square, Room 110
Alameda, CA 94501-7558

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF:
The City of Alameda, its City Council, boards and commissions, officers, employees and volunteers are additional insured for work done on their behalf by the named insured.

NOTICE OF CANCELLATION:
IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.
Exhibit A - Line 19 Route Map
Exhibit B – Schedule of Fee

City Cost Schedule to Fund 20-minute Peak Frequency
1st Year: $177,000 - $40,000 from Alameda TMA contract = $137,000
2nd Year: $184,080 - $40,000 from Alameda TMA contract = $144,080
6th months: $95,722 - $20,000 from Alameda TMA contract = $75,722
City of Alameda Total: $356,802
DRAFT TRANSIT SERVICE
AGREEMENT BETWEEN ALAMEDA-
CONTRA COSTA TRANSIT DISTRICT,
CITY OF ALAMEDA AND
ALAMEDA TRANSPORTATION MANAGEMENT ASSOCIATION FOR
PUBLIC TRANSIT SERVICE BETWEEN THE CITY OF ALAMEDA AND OAKLAND

This funding agreement by and between the Alameda-Contra Costa Transit District (District) and the City of Alameda, a municipal corporation (the "City"), and Alameda Transportation Management Association ("ATMA"), a California non-profit corporation, (each a "Party", and collectively the "Parties"), for the provision of transit service is made this XX day of March, 2018, and extends and replaces an agreement originally executed on the 21st day of September 2016.

RECITALS

A. District is a public transit entity formed pursuant to Public Utilities Code section 24501 and is empowered to provide public transportation services. ATMA is a transportation management association in Alameda, California. The City is a municipality.

B. The City and ATMA desire to have the District continue to provide increased service on Line 19 in Alameda which began in December, 2016. This "Increased Service" is defined as: an increase in service frequencies from regular 30-minute headways to 20-minute headways, during the weekday peak hour periods of 6:00 AM to 9:00 AM and 4:00 PM to 7:00 PM, on the specific route identified in Exhibit A.

C. The District desires to provide the Increased Service improvements.

D. The District had intended to execute an agreement with ATMA in advance of provision of the Increased Service, but the ATMA was not formed until mid-2017. The District and Lennar Homes of California, Inc., a California corporation and developer of Marina Shores ("Lennar") and TL Partners I LP, a California limited partnership and developer of the Del Monte Warehouse project ("TLC"), had executed an agreement to provide funding for the Increased Service ("Interim Agreement"). The Interim Agreement served as a temporary agreement to provide funding to the District to cover the cost of Increased Service for the initiation of the Increased Service. Once ATMA was formed, the Interim Agreement was to be terminated and a new successor agreement would replace the Interim Agreement and fully fund the Increased Services for the duration of the time period of the Interim Agreement. This agreement succeeds the Interim Agreement and TLC and Lennar are no longer parties to this agreement.
NOW THEREFORE, in consideration of the faithful continuing performance of the terms, conditions and promises in this Agreement, the parties agree as follows:

1. Operating Expenses and Compensation

A. Although the planned cost of providing Increased Services is $199,016 (see Exhibit B), the District agrees to receive an annual payment of $40,000 covering the partial cost of this Increased Service through December 31, 2020. ATMA shall pay the invoices within thirty (30) days of their transmittal.

B. Effective January 1, 2021 through December 31, 2022, the District agrees to receive an annual payment at a renegotiated rate covering the full cost of this Increased Service to be mutually agreed upon by the District and ATMA. Should an agreement not be reached, the District will reduce service levels on Line 19 to 30-minute headways all day.

C. The parties acknowledge and agree that the payment is “all inclusive” and ATMA shall not be obligated to pay additional costs of any kind.

D. Unless it is of no fault of the District, if the District misses an Increased Service trip entirely or an Increased Service trip enters service late by more than half the regular headway due to equipment failure or labor shortage, ATMA will be entitled to one half of the cost of the missed trip, in the form of a payment reduction on the next quarterly invoice. Regular headway is defined as 30 minutes and the hourly rate defined as $99. A missed trip is calculated as the hourly rate multiplied by the in-service runtime of the trip.

2. Provision of Services

A. The District will operate service according to the preliminary route map in Exhibit A. Standards for service will include buses to be used for the service which will be comparable to the standards of other AC Transit buses that operate in Alameda, with all of the conveniences provided to other AC Transit riders, including web access for schedules, NextBus programming, etc. Where possible, District shall provide buses with the maximum number of bike racks that are feasible to accommodate bicycle commuters.

B. District will provide on-time performance reports; ridership data by stop, direction, and day of week; and customer service complaints reports related to the bus service, with each quarterly invoice. Each quarterly invoice will be accompanied by the most recent performance reports, although these performance reports may not necessarily include statistics from the same period as the invoice, due to the time it takes for vehicle statistics to be recorded and compiled.
C. ATMA can request changes to the schedule and route in Alameda up to one-hundred and twenty (120) days prior to the next closest sign-up date. District sign-ups occur in March, June, August, and December of each year. The change request must be submitted in writing to the District’s Project Manager, or as otherwise mutually agreed upon by the parties' authorized representatives.

D. District shall provide contact information for a Project Manager to work with ATMA on operating, performance, and customer service issues.

3. **Term of Agreement**

A. The term of this Agreement is six (6) years from the date of commencement of service, which commenced in December, 2016, and it is the intent of the parties to this Agreement that said service shall remain in effect through at least December 2022, provided the District and ATMA reach an agreement prior to December 31st, 2020 regarding the future of the expanded service.

B. District or ATMA may terminate this Agreement for any reason by sending written notice to the other parties one-hundred eighty (180) days prior to the proposed date of termination by that party.

4. **Notices**

Notices given pursuant to this Agreement shall be in writing and shall be deemed duly served and given by deposit in the United States mail, certified first class, postage prepaid and addressed as follows:

**For the District:**
Mr. Robert del Rosario  
Director of Service Development and Planning  
AC Transit  
1600 Franklin St.  
Oakland, CA 94612  
Email: rdelrosa@actransit.org  
(510) 891-4734

**For ATMA:**
John Atkinson  
Executive Director  
Alameda Transportation Management Association
5. **Entire Agreement**

This Agreement, consisting of the following Documents, constitutes the entire understanding between the parties:

- This Agreement
- Exhibit A – Increased Service Costs
- Exhibit B – Line 19 Preliminary Route Map and Alameda Bus Stops

6. **Agreement Amendments**

This Agreement may be changed, modified or extended by the parties provided that any such change is recorded in writing, via an amendment to this Agreement, which shall be countersigned by the authorized representatives of the parties, subject to prior approval and/or ratification by the District’s Board of Directors.

7. **Governing Law**

This agreement is executed in Alameda County, California and shall be governed by the laws of the State of California, and the venue shall be considered proper in Alameda County.

8. **Compliance with Americans with Disabilities Act**
District acknowledges that pursuant to the Americans with Disabilities Act (ADA) and applicable state law, the provision of accessible transit vehicles and services are the responsibility of the District.

9. Attorney’s Fees

In the event either party to this agreement institutes any action, suit, or arbitration against the other party arising from this Agreement, the prevailing party shall be entitled to receive from the other party all costs or expenses of suit or arbitration, including reasonable attorney’s and expert witness fees as awarded by the court.

10. Successors and Assigns

All of the terms, provisions and conditions of the Agreement hereunder shall be binding upon and inure to the parties hereto and their respective successors, assigns and legal representatives. Notwithstanding the preceding sentence, neither the District nor ATMA shall assign or transfer interest in this Agreement without written consent of the other parties, via an amendment to this Agreement, which shall be countersigned by the parties.

11. Indemnification

To the extent permitted by applicable law, AC Transit shall indemnify, defend and hold harmless ATMA and their respective officers, employees, attorneys and agents, from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising in whole or in part out of any injury or death of any person, or damage to any property, including AC Transit’s employees, agents and subcontractors, if any, resulting from the sole negligence or willful misconduct of AC Transit, its employees, contractors, subcontractors, or agents.

Conversely, to the extent permitted by applicable law, ATMA shall indemnify, defend and hold harmless the AC Transit Board of Directors, its officers, employees, attorneys and agents from any and all claims, damages, costs and expenses, including reasonable attorney fees, arising in whole or in part out of any injury or death of any person, or damage to any property, including ATMA’s employees, agents, and contractors, resulting from the sole negligence or willful misconduct of ATMA and their employees, contractors, subcontractors, or agents.

12. Original and Counterpart Signatures

The parties hereby agree that facsimile signatures whether transmitted by telephonic facsimile machine or computer transmitted files will be considered original signatures for all purposes including, but not limited to, authentication of this document (or any amendment prepared and executed in accordance with the terms of this document) in any legal proceeding. This
Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document.

[SIGNATURES APPEAR ON FOLLOWING PAGE]
IN WITNESS WHEREOF, ATMA and District and District have executed this Agreement on the dates below and agree that this Agreement is effective as of the date referenced in this Agreement’s first paragraph.

AC Transit:

______________________________
General Manager
By: ____________________________
Date: __________________________

Alameda Transportation Management Association
Alameda Transportation Management Association, a California non-profit corporation

By: ____________________________
Its: ____________________________
Date: __________________________

City

By: ____________________________
Its: ____________________________
Date: __________________________

Approved as to form and content:
By: ____________________________
Date: __________________________
LINE 19 ALTERNATIVE 1
AC TRANSIT PREFERRED ALTERNATIVE

Requires near-side stop at Buena Vista/Park in Downtown Oakland direction
Requires far-side stop at Buena Vista/Park in Fruitvale direction
Detour to Broadway/Blanding to service shopping center
Exhibit B – Increased Service Costs

<table>
<thead>
<tr>
<th>Route Length</th>
<th>12</th>
<th>miles</th>
</tr>
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<tbody>
<tr>
<td>Average speed</td>
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<td>miles per hour</td>
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<tr>
<td>Cycle time (h)</td>
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<td>hour</td>
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<tr>
<td>Cycle time with layover (h)</td>
<td>1.25</td>
<td>hour</td>
</tr>
<tr>
<td>Peak vehicles: 20(m)</td>
<td>4</td>
<td>buses</td>
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<tr>
<td>Base vehicles: 30(m)</td>
<td>3</td>
<td>buses</td>
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<tr>
<td>Base service hours</td>
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<td>hours</td>
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<tr>
<td>Peak service hours</td>
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<td>Weekdays per year</td>
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<tr>
<td>Hours per year (30m all day)</td>
<td>10,200</td>
<td>hours</td>
</tr>
<tr>
<td>Hours per year (20m peak; 30m base)</td>
<td>12,170</td>
<td>hours</td>
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<tr>
<td>Cost per hour*</td>
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<tr>
<td>Cost: 30 minutes all day</td>
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<td>dollars</td>
</tr>
<tr>
<td>Cost: 20 minute peak, 30 minute base</td>
<td>1,229,216</td>
<td>dollars</td>
</tr>
</tbody>
</table>
| Difference            | $199,016 | Annual cost of providing "Increased Service"

*$101 represents fuel and operator labor hours only. The fully allocated rate of $187/hour is the true cost of providing service, and includes facility, maintenance, planning, and other administrative items. For purposes of calculating the missed trip reimbursement, the $177,000 per year equates to an hourly rate of $99; $1,030,200 plus $177,000 = $1,207,200 divided by 12,170 hours = $99).