SUBJECT: Consider Approval of Memorandum of Understanding With The City Of San Leandro For The Construction Of The Estudillo Plaza Transit Improvements.

RECOMMENDED ACTION:

☐ Information Only  ☐ Briefing Item  ☒ Recommended Motion

Authorize the General Manager to enter into a Memorandum Of Understanding with the City of San Leandro for the Construction of the Estudillo Plaza Transit Improvements using Regional Measure 2 Funds (RM-2) allocated to AC Transit for the Telegraph/International Bus Rapid Transit (BRT) Project.

Fiscal Impact: No additional out-of-pocket cost to the District’s operating budget. District staff will provide project consultation and grant administration services in coordination with the implementation of the Telegraph/International/E.14th project.

Background/Discussion:
AC Transit is the lead sponsor of the Telegraph/International BRT project and is responsible for ensuring the delivery of the RM-2 project.

BOARD ACTION:  Approved as Recommended  [x]  Other  [ ]

Approved with Modification(s)  [ ]

MOTION: BISCHOEFBERGER/JAQUEZ to approve the report as presented (7-0-0-0).

Ayes: Directors Bischofberger, Jaquez, Kaplan, Hayashi, Peeples, Vice President Harper, President Wallace - 7
Nees: None - 0
Abstain: None - 0
Absent: None - 0

The above order was passed on March 2, 2005.

Rose Martinez, District Secretary

By ___________________________
In September 2004, the Board adopted Resolution No. 2146 that authorized the General Manager to execute all agreements for the allocation of Regional Measure 2 funds for the District’s Enhanced Bus-Phase 1- International/Telegraph Corridor-Project Segment 24. The Board was also presented with the Initial Project Report (IPR) that outlined the District’s preliminary allocation recommendations. Included in the IPR was a request for funds to complement other related projects in the corridor that would benefit the BRT project.

In December, the Metropolitan Transportation Commission (MTC) allocated $600,000 to AC Transit for the completion of the Estudillo Pedestrian Plaza improvements.

The City of San Leandro is currently preparing bid documents for the pedestrian plaza that links the San Leandro BART station with East 14th Street at Estudillo. This project improves regional connectivity and links the downtown and the BRT project with BART. The RM-2 funds would be used to improve the design of the plaza to better accommodate transit. A portion of the funds would go to construct the plaza itself and a portion to improving the adjacent bus stops (shelters, bulbs, amenities). The improvements would be functional for all the BRT options currently under study and for all phases of the project.

The attached Memorandum of Understanding will provide the mechanism to pass through the funds to the City of San Leandro to complete the construction of the Estudillo Pedestrian Plaza while retaining the necessary review rights to ensure that the plaza meets AC Transit’s standards.

Prior Relevant Board Actions/Policies:
GM 04-124a: Approve Resolution 2127 in support of RM 2 projects
GM 04-294: Approve Resolution 2146 for Telegraph/International RM-2 funds

Attachments: Attachment A: Draft Memorandum of Understanding

Approved by: Rick Fernandez, General Manager

Prepared by: Tina Spencer, Manager of Long Range Planning

Date Prepared: February 5, 2005
This AGREEMENT, is made and entered into this ______day of ______________, 2005, by and between the ALAMEDA-CONTRA COSTA TRANSIT DISTRICT, a mass transit operator (hereinafter “AC Transit”) and the CITY OF SAN LEANDRO, a municipal corporation (hereinafter “COSL”).

RECITALS

A. COSL and AC Transit, in cooperation with other local, state and federal agencies, intend to renovate a bus transit shelter and surrounding pedestrian transit area. Project is located near the southwestern corner of the intersection of East 14th and Davis Streets in San Leandro, CA, in front of the Washington Plaza Shopping Center.

B. The objective of this project is to improve regional connectivity and links the downtown and AC Transit’s Bus Rapid Transit (BRT) project with San Francisco Bay Area Rapid Transit District (BART). The City of San Leandro is currently preparing bid documents for a pedestrian plaza linking East 14th Street at Estudillo with the San Leandro BART station. Regional Measure 2 (RM-2) funds would be used to improve the design of the Plaza to better accommodate transit. A portion of the funds would go to construct the Plaza itself and a portion to improving the adjacent bus stops (shelters, bulbs, amenities). The improvements would be functional for all the BRT options currently under study and for all phases of the project.

C. The parties mutually agree that this Corridor is a prime candidate for capital funding from the jointly sponsored project identified in Regional Measure 2 (Streets and Highway Code Section 30914 (c) (29)), and that as a result the Project will be designed and operated as an integral, comprehensive and direct program to reduce congestion on the Bay Bridge in a Corridor distinct and separate from BART.

D. The parties hereto mutually desire to cooperate in project development activities and intend to define herein the terms and conditions under which the Project is to be implemented.

SECTION I.
PROJECT DESIGN, CONSTRUCTION AND ADMINISTRATION

A. COSL AGREES:

1. To provide all necessary conceptualization, planning, design, coordination, contract administration, procurement, construction supervision and administration services for the Project.
2. To apply for necessary encroachment and other permits for the required work in accordance with applicable California Department of Transportation (“Caltrans”) and/or local agencies’ standard permit procedures.

3. To advertise, bid, award, contract and administer the procurement of the Project components and construction of the Project. COSL will be responsible for ensuring that all bonds and insurance required of the contractor for this project (per COSL standard contract provisions) is provided; including labor and material bonds, compliance with all applicable work and labor codes / rules, acceptance of the Project and the retention and release of bonds and insurance requirements. AC Transit shall also be listed as an additional insured on said project insurance.

4. To complete all improvements, as funding is available, for reconstruction of the existing bus shelter, renovation of the surrounding pedestrian transit area, and other amenities associated with the Project.

5. To retain or cause to be retained for audit by State or other government auditors, for a period of three (3) years from date of final approval, all records and accounts relating to construction of Project. COSL shall transfer to AC Transit all records and accounts related to the construction of the Project either upon its completion or at the end of three years after its completion at AC Transit's option.

B. AC TRANSIT AGREES:

1. To participate with COSL, Caltrans and local agencies in planning, designing and approving of the Project.

2. To provide, at no cost, a designated representative to assist with coordination of the Project and all construction or installation work.

SECTION II.
MISCELLANEOUS PROVISIONS

THE PARTIES MUTUALLY AGREE:

1. All obligations of COSL under the terms of this Agreement are subject to the limits of the funds received by the COSL and/or AC Transit specifically for the design, procurement, construction and implementation of the Project. Subject to such funding conditions and limitations, the parties agree that COSL’s services under this Agreement are intended to encompass all aspects of development and delivery of the Project.

2. The total cost for the AC Transit funded portion of Project implementation is estimated to be $600,000. Regional Measure 2 funds, allocated by Metropolitan Transportation Commission / Bay Area Toll Authority (MTC/BATA) under the authority in Streets and Highway Code Section 30914 (c) (29) will finance the Project. Funding for all elements of the Project is shown in Exhibit A.
3. The parties jointly agree that the Regional Measure 2 funds specifically allocated to these improvements will be reimbursed to COSL by AC Transit upon receipt of invoices documenting the cost. AC Transit, as a transit agency, is eligible and has been awarded RM2 funds for the project and is authorized to reimburse the COSL for costs associated with said project. AC Transit shall pay such reimbursement to COSL pursuant to periodic invoices evidencing amounts expended by COSL, and shall make such payments within 60 days of receiving an invoice and such other documentation as AC Transit may require, and having received such funds from MTC/BATA.

4. Costs for COSL external contract services; such as contractors, design consultants, or testing laboratories, shall be eligible for reimbursement. COSL will not seek reimbursement for internal city staff costs.

5. COSL may award the construction of the Project in accordance with the applicable provisions of the California Public Contract Code.

6. COSL will use its best efforts to complete the implementation of the transit priority elements of the Project prior to November 30, 2005. However, COSL shall not be responsible for any delays associated with implementation of the Project outside of COSL’s reasonable control, including but not limited to delays caused by agency reviews or approvals, utility delays or conflicts, PG&E delays or delays caused by unforeseen construction factors.

7. COSL shall provide construction administration support service for the proposed transit area improvements. In the construction of said work, COSL will furnish a designated representative to perform the functions of a Resident Engineer.

8. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties, or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the improvement or maintenance of State highways greater than the standard of care imposed by law.

9. Neither AC Transit, nor its officers and employees, shall be responsible for any damage or liability occurring by any act or omission by COSL under or in connection with any work, authority or jurisdiction delegated to COSL under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, COSL shall fully defend, indemnify and hold harmless AC Transit, and its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of any act or omission by COSL under or in connection with any work, authority or jurisdiction delegated to COSL under this Agreement.

10. Neither COSL, nor its officers and employees, shall be responsible for any damage or liability occurring by reason of act or omission by AC Transit under or in connection with any work, authority or jurisdiction delegated to AC Transit under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AC Transit shall fully defend, indemnify and hold harmless COSL, and its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in
Government Code Section 810.8) occurring by reason of act or omission by AC Transit under or in connection with any work, authority or jurisdiction delegated to AC Transit under this Agreement.

11. AC Transit acknowledges and agrees that part, or all, of the Project conceptualization, planning, design, engineering, contract administration, procurement, construction, construction supervision and administrative support services may be performed by COSL’s designated contractors, agents, and representatives.

12. COSL shall have ownership of all Project materials, equipment and appurtenances located within the jurisdiction of said agency upon completion of all work under this Agreement. Title will automatically be vested in said local agency or Caltrans and no further agreement will be necessary to transfer ownership to local agency or Caltrans upon acquisition, construction, and installation of such facilities.
IN WITNESS WHEREOF, COSL and AC Transit each have by order caused the AGREEMENT to be subscribed by the binding authority thereof.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

By: __________________________
Its: General Manager Dated: __________________________
Approved as to form and legality: ATTEST:

________________________________________
Legal Counsel

CITY OF SAN LEANDRO

________________________________________ Dated: __________________________
John Jermanis, City Manager

Attest: Approved as to Fiscal Authority:

________________________________________
Marian Handa, City Clerk Jesse S. Baloca
Finance Director

Approved as to form and legality: Account No. 961-86-045-5240

________________________________________
Legal Counsel
Exhibit A

ESTIMATE OF PROBABLE COSTS

<table>
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<tr>
<th>Item</th>
<th>Estimate of Probable Cost</th>
<th>AC Transit Contribution RM-2 Funding (Only)</th>
<th>COSL Funding Various sources</th>
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<td>Design Consultants</td>
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<td>Construction</td>
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<td>Transit Plaza</td>
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<td>Other streetscape improvements</td>
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<tr>
<td>COSL Staff</td>
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<td>Grand Total</td>
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<td>$3,665,000</td>
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</table>

AC Transit’s Share: 14% ($600,000)

COSL’s Share: 86% ($3,665,000)

Notes:

1. The City of San Leandro is not requesting any RM-2 reimbursement for ‘internal’ City Staff or personnel costs on this project; only for ‘external’ contract costs, such as for design consultants and construction contracts.

2. The dollar amounts shown in this Exhibit A are estimates only: Costs may vary based on actual construction costs. However, AC Transit’s total obligation under this Agreement is limited to the amount shown above, unless an amendment to the Agreement is executed.

3. Construction costs assume a 20% contingency to allow for cost escalation, current bidding climate, and allowance for change orders.