

**CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2005 SEP 15 PM 4:23

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: September 20, 2005

RE: **SUPPLEMENTAL REPORT-RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND ENTER INTO A COOPERATIVE AGREEMENT WITH THE ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY FOR DESIGN, CONSTRUCTION AND ADMINISTRATION OF THE RAPID BUS PROJECT COMPONENT OF THE EAST BAY SMART CORRIDORS PROGRAM TO PROVIDE FOR TRANSPORTATION IMPROVEMENTS IN OAKLAND WITH AN ESTIMATED VALUE OF NINE MILLION DOLLARS (\$9,000,000.00)**

SUMMARY

At their September 13, 2005 meeting, the Public Works Committee requested that staff provide a copy of the draft Cooperative Agreement between the City of Oakland and the Alameda County Congestion Management Agency (CMA) for design, construction and administration of the Rapid Bus Project component of the East Bay SMART Corridors Program. The draft agreement is being planned by City staff and CMA staff, and it is being reviewed by the City Attorney. The draft agreement is attached as Exhibit A. In addition a copy of the project schedule was requested. The project schedule was provided by CMA and is attached as Exhibit B.

The project schedule indicates a construction starting date of October 1, 2005. The October 1 construction starting date is necessary so the project can be completed and operational by June 2006, and meet the funding deadline of June 26, 2006. This project will significantly benefit the City of Oakland because of the emergency response system component, and its overall components comply with the City's Intelligent Transportation System (ITS) Master Plan.

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ACTION REQUESTED OF THE CITY COUNCIL

Approval of the resolution authorizing the City Administrator, or her designee, to negotiate and enter into a Cooperative Agreement between the City of Oakland and the Alameda County Congestion Management Agency (CMA) for design, construction and administration of the Rapid Bus Project component of the East Bay SMART Corridors Program.

Respectfully submitted,

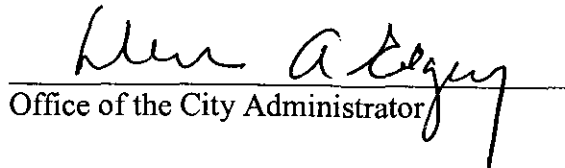

for **RAUL GODINEZ II, P.E.**
Director, Public Works Agency

Reviewed by:
Michael J. Neary, P.E.
Assistant Director, Public Works Agency
Design & Construction Services Department

Prepared by:
Wladimir Wlassowsky, P.E.
Transportation Services Manager

Ade Oluwasogo, P.E.
Supervising Transportation Engineer

APPROVED AND FORWARDED TO THE
CITY COUNCIL:


Office of the City Administrator

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Exhibit A

**E. 14TH STREET/INTERNATIONAL BOULEVARD/TELEGRAPH AVENUE
RAPID BUS PROJECT
COOPERATIVE AGREEMENT
FOR DESIGN, CONSTRUCTION AND ADMINISTRATION**

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into as of _____, 2005, by and between the **ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY** ("CMA") and the **CITY OF OAKLAND**, a municipal corporation of the State of California ("Participating Agency").

RECITALS

A. CMA and Participating Agency, in cooperation with other agencies, cities and counties, and the State of California, Department of Transportation ("**Caltrans**") contemplate the installation and implementation of the E. 14th Street/International Blvd/Telegraph Avenue Rapid Bus Project ("**INTEL Rapid Bus Project**"); and

B. The **INTEL Rapid Bus Project** extends from E. 14th Street/Bayfair Drive to the University of California at Berkeley Campus, along the following roadways: E. 14th Street, International Blvd, 11th Street, 12th Street, Broadway, 20th Street, Telegraph Avenue, Bancroft Way, Shattuck Avenue, University Avenue, Oxford Avenue, Center Street, and Durant Avenue; and

C. The **INTEL Rapid Bus Project** entails signal and advanced transportation management system improvements, including optical detection system, signal upgrades, detection system, pedestrian push button, signal interconnect, signal timing and other improvements, (collectively, hereinafter the "**Project**"); and

D. CMA and Participating Agency desire to specify the terms and conditions under which the **Project** is to be advertised, bid, administered, constructed, and implemented.

**SECTION I
PROJECT DESIGN, CONSTRUCTION AND ADMINISTRATION**

A. **CMA AGREES:**

1. To provide all necessary conceptualization, planning, design, engineering, contract administration, procurement, construction supervision and administration services for the **Project**.
2. To apply for necessary encroachment and other permits for the required work within Participating Agency's jurisdiction or rights-of-way, in accordance with such Participating Agency's standard permit procedures.

3. To apply for necessary encroachment permits for Project work within Caltrans' rights-of-way, in accordance with standard permit procedures, if applicable.
4. To pay all required fees in connection with the Project, including but not limited to utility connection fees, communication installation fees, and all other fees associated with the permitting and installation of the equipment in the Project. Any permit, inspection or similar fees to Participating Agency, if not waived by the Participating Agency, shall be paid for out of the project funds or other funds available to CMA for the Project. AC Transit has agreed to provide up to \$48,000.00 to CMA for such purposes.
5. To advertise, bid, award, contract and administer the procurement of the Project components and construction of the Project.
6. To provide funding for one hundred percent (100%) of the Project design, construction, equipment procurement, and bidding and advertising costs, based on the Design Concept Report submitted to the Technical Advisory Committee, and subject to the funding limit set forth in the agreement (hereinafter "AGREEMENT") between CMA and AC Transit for Project design, construction and administration.
7. To advertise, award and administer the Project in accordance with Caltrans' Local Assistance Procedures Manual, when applicable, except as otherwise provided in this Agreement.
8. To provide project procurement, management and construction administration services for the Project on behalf of the Participating Agency.
9. To construct the Project in accordance with plans and specifications approved by the Participating Agency, to the satisfaction of, and subject to the reasonable approval of Participating Agency, and Caltrans, if applicable.
10. To provide for the integration and implementation of the Project.
11. To, upon completion of Project, furnish Participating Agency a complete set of Record Drawings, and electronic copies as requested.
12. To retain or cause to be retained for audit by State of California 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.
13. To, upon completion of all work under this Agreement, transfer to Participating Agency ownership to all Project materials, equipment and appurtenances located within the jurisdiction of said Participating Agency. Title will automatically be vested in Participating Agency upon Participating Agency's acceptance of the Project pursuant to the procedures described below, and no further agreement will be necessary to transfer ownership to Participating Agency upon acquisition, construction, and installation of such facilities.

14. To develop and maintain a communications process, which allows Participating Agency's Project Manager to participate in inspections of Project to assure Participating Agency that the work performed by CMA'S Project contractor conforms to the Project plans and specifications. CMA will provide Participating Agency's Project Manager copies of all contract change orders and materials testing data promptly upon issuance or receipt for work to be performed within the Participating Agency's jurisdiction or rights-of-way. CMA shall make the final decision regarding all contract change orders, however, CMA will provide Participating Agency five (5) business days to review, comment upon and approve change orders involving changes to or introduction of new materials, equipment or design that may, in Participating Agency's reasonable judgment, adversely affect the long-term operations or maintenance of the Project work to be performed within the Participating Agency's jurisdiction or rights-of-way, or those items involving deletions or additions of \$10,000 (ten thousand dollars) or more, before CMA authorizes said change order. However, after five (5) business days of the change order request, if the Participating Agency has not responded, the request will be deemed approved and CMA can respond to the request as deemed approved. If CMA issues change orders that have been expressly disapproved by Participating Agency, then Participating Agency may pursue its remedies as described in this Agreement.
15. To complete restoration of the Participating Agency's rights-of-way, in accordance with the plans and specifications, or to the same or better condition as of the date work commenced in Participating Agency's right of way.
16. To ensure that any indemnification, insurance, guarantees and warranties provided by Project contractors, in favor of CMA, will also name Participating Agency, its officers, agents, governing body and employees as additional insureds or protected parties. The CMA will provide copies of all such indemnification, insurance, guarantees and warranties, language or documents to Participating Agency. CMA will provide Participating Agency with proposed Project bid document language to effectuate this section and Participating Agency will approve or propose alternate language to CMA. CMA will incorporate into its Project bid documents the agreed upon language.

B. PARTICIPATING AGENCY AGREES:

1. To designate a Project Manager for the Project upon the execution of this Agreement.
2. In order to minimize delays in the Project schedule, and subject to CMA providing adequate lead-time, to promptly review and approve the plans and specifications, permit applications, and requests for information.
3. To issue, upon submission of complete applications, all necessary encroachment and other permits required for work within the Participating Agency's jurisdiction or rights-of-way.
4. To provide, upon five (5) business days advance notice, all necessary inspection services for improvements completed within the Participating Agency's jurisdiction or rights-of-way, and all necessary review, commentary, and approval of submittals to

minimize delays in the Project schedule. Any fees that the Participating Agency has not received a waiver for shall be paid for out of the project funds or other funds available to CMA for the Project. CMA and AC Transit have agreed to provide up to \$48,000.00 for such purposes.

5. To provide, upon reasonable notice storage space or facilities as may be reasonably necessary to facilitate the installation of Project components or construction of the Project within the Participating Agency's jurisdiction or rights-of-way. To the extent that such space is available to the Participating Agency at no cost to the Participating Agency for such use, it shall be provided for CMA's use in the Project at no cost to CMA
6. To provide, at no cost, a designated representative to coordinate the Participating Agency's participation in the Project and all construction or installation work to be performed within the Participating Agency's jurisdiction or rights-of-way.
7. To accept the Project after completion upon Participating Agency's reasonable determination that the Project substantially conforms to the plans and specifications.

SECTION II MISCELLANEOUS PROVISIONS

A. THE PARTIES MUTUALLY AGREE:

1. All obligations of CMA under the terms of this Agreement are subject to the limits of the grant funds or such other funds received by the CMA as set forth by the separate agreement between CMA and AC Transit regarding the Project. Subject to such funding conditions and limitations, the parties agree that CMA's services under this Agreement are intended to encompass all aspects of development and delivery of the Project.
2. The Participating Agency may add additional components to the project, beyond the requirements of the Project, if the Participating Agency provides 100% funding for planning, design, construction, construction management and CMA administration for each extra work item.
3. Construction by CMA of any improvements referred to herein which lie within Participating Agency's jurisdiction or rights-of-way, shall not be commenced until:
 - a. Plans and specifications involving such work have been reviewed and approved in writing by Participating Agency's Engineer, or designated representative;
 - b. All required permits are issued by Participating Agency authorizing such work within Participating Agency's jurisdiction or rights-of-way.

4. Participating Agency shall issue all aforesaid permits to CMA, or its designated contractors, agents, and representatives through Participating Agency's Department of Public Works, or other appropriate department. Any permit fees, if not waived by the Participating Agency, shall be paid for out of the project funds or other funds available to CMA for the Project. CMA and AC Transit have agreed to provide up to \$48,000.00 for such purposes. Application(s) will be accompanied by five (5) sets of construction plans, five (5) sets of specifications, proof of insurance, and proof that payment and performance surety bonds covering construction of Project have been issued to CMA's contractor(s). Following Participating Agency's issuance of such permits CMA reserves the right to make changes to the construction plans and specifications as permitted under Section I.A.14 of this Agreement provided that such revisions do not materially increase the scope of work or modify the nature of the work to be performed under the permits in an amount in excess of Ten Thousand Dollars (\$10,000).
5. Receipt by CMA of the necessary approvals and permits shall constitute CMA's authorization from Participating Agency to proceed with work to be performed by CMA or its designated contractors, agents, and representatives under this Agreement within the Participating Agency's jurisdiction or rights-of-way, or which affects the Participating Agency's facilities. However, CMA's authorization to proceed with said work shall be contingent upon CMA's compliance with all provisions set forth in this Agreement and said permits.
6. Except as provided by law, CMA may advertise for bids to procure Project components or construct the Project prior to the issuance of any applicable permits, but shall not commence construction until after the issuance of applicable permits by Participating Agency. CMA may administer the procurement of the Project components in one, or multiple phases, and jointly, or separately from the construction of the Project.
7. In the construction of said work, CMA will furnish a designated representative to perform the functions of a Resident Engineer, and Participating Agency may, at no cost to CMA, furnish a representative, if it so desires, to ensure conformance of work to Participating Agency's standards.
8. Prior to award of the construction contract for Project, Participating Agency may terminate this Agreement by prior written notice, provided that Participating Agency pays CMA for all approved Project related costs incurred by CMA resulting from Participating Agency's participation in this Agreement prior to termination. Participating Agency may terminate its participation in, and withdraw from, this Agreement for a material breach of this Agreement by providing CMA with written notice to Dennis Fay, CMA's Executive Director, at 1330 Broadway, Suite 220, Oakland, CA 94612 of said termination and withdrawal and thirty (30) days to cure such breach. During the thirty-day cure period, the parties shall meet and confer in good faith to resolve the breach issues as required below. If the parties cannot satisfactorily resolve the breach issues, such termination and withdrawal shall become effective ten (10) days after the expiration of the thirty-day cure period. The parties shall work together in the spirit of good faith and cooperation to successfully implement this Agreement. To the extent there are any disagreements among

parties, those disagreements shall immediately be raised between Participating Agency and CMA. Prior to initiating any legal action, the parties hereto agree to meet in good faith to attempt to resolve any dispute. In the event the parties cannot resolve the dispute, they will make a thorough good faith effort to resolve such issues through a mediation process conducted by an impartial third party. If the issue still remains unresolved, either party may bring a legal action seeking resolution of the disagreement. However, any and all legal actions may only be brought if the preceding dispute resolution process has been satisfied.

9. If any facility installed, used or maintained by a private or public utility conflicts with the Project construction, or violates a Participating Agency's encroachment policy, Participating Agency shall require, or work in cooperation with, the owner(s) of such facility to protect, relocate or remove such facilities in accordance with the Participating Agency's policies and procedures for such facilities located within the limits of the Participating Agency's jurisdiction. CMA will initiate and coordinate all contacts with utilities regarding such relocations but will not be responsible for any cost associated with the required protection, relocation or removal. Any relocated or new facilities shall be identified on the Record Drawings to be prepared under this Agreement.
10. Except as expressly provided, this Agreement is not 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.
11. Neither Participating Agency, nor its officers and employees, shall be responsible for any damage or liability occurring by any act or omission by CMA under or in connection with any work, authority or jurisdiction delegated to CMA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CMA shall fully defend, indemnify and save harmless the Participating Agency, 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 CMA under or in connection with any work, authority or jurisdiction delegated to CMA under this Agreement.
12. Neither CMA, nor its officers and employees, shall be responsible for any damage or liability occurring by reason of act or omission by Participating Agency under or in connection with any work, authority or jurisdiction delegated to CMA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Participating Agency shall fully defend, indemnify and save harmless the CMA, 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 Participating Agency under or in connection with any work, authority or jurisdiction delegated to Participating Agency under this Agreement.

13. Participating Agency 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 CMA's designated contractors, agents, and representatives.
14. Participating Agency hereby grants CMA and its authorized contractors, agents and representatives the non-exclusive right to enter upon Participating Agency's jurisdiction and rights-of-way, subject to the terms and conditions of this Agreement and applicable permits, for the purpose of performing CMA's obligations under this Agreement.
15. Participating Agency is expressly intended to be a third party beneficiary to any contract CMA executes to implement this Agreement with respect to Project work to be completed within its jurisdiction or rights-of way. Any and all such contracts shall expressly state such and that Participating Agency shall have the right and duty (between Participating Agency and CMA only) to enforce and seek any remedies provided for in this Agreement, the contract with CMA and in law or equity against each party to such contract with CMA. With respect to insurance and indemnification, such right commences immediately upon execution of said contract (s) and for the guarantees and warranties, such right commences upon CMA acceptance of the Project construction as complete. Nothing herein relieves CMA from its duty to enforce the terms of its contracts with its Project contractors.
16. CMA will obtain Participating Agency approval of all Project work that, in Participating Agency's reasonable judgment, adversely affects the long-term operations or maintenance of the Project work to be performed within the Participating Agency's jurisdiction or rights-of-way, or those items involving deletions or additions of \$10,000 (ten thousand dollars) or more, before CMA authorizes said change order. Participating Agency will accept control and maintenance over each of the items specified in this Agreement following written notification by CMA and determination by Participating Agency that work thereon has been completed in accordance with the Project plans and specifications, or as modified pursuant to the provisions of this Agreement. Participating Agency will notify CMA within thirty (30) days of receipt of CMA notification of any necessary corrective action by its Project contractor to meet any plans and specifications as modified with Participating Agency approval. CMA will notify Participating Agency of completion of said corrective action. Participating Agency must determine, within fifteen (15) days of said notification that said corrective action has not been completed or hereafter may not contest said completion. If CMA issues change orders that require Participating Agency approval but the change order was expressly disapproved by Participating Agency, then Participating Agency may pursue any and all of its legal remedies, including without limitation, not accepting control and maintenance over the Project.
17. The headings and captions mentioned herein are merely for reference and the convenience of the parties and do not constitute an integral part of this Agreement.

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

Dated: _____

By: _____

Dennis Fay, Executive Director

RECOMMENDED BY:

Approved as to form and legality:

Cyrus Minoofar, P.E.
Principal Transportation Engineer

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

Dated: _____

CITY OF OAKLAND, a California municipal
corporation

By: _____

Raul Godinez – Director, Public Works Agency

ATTEST:

Approved as to form and legality:

(Name/Title)

City Attorney

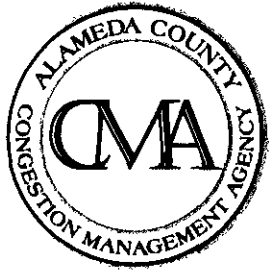


Exhibit B
ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2185
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov

**E. 14th-International-Telegraph
Rapid Bus Schedule**

Initiate Project	January 2005
Complete Design	August 2005
Begin Construction	October 1, 2005
Complete Signal Priority Construction	May 2006
Implement New Signal Timings	June 2006
Begin Rapid Bus Operation	June 26, 2006 (Funding Deadline)
Complete Smart Corridor Elements	October 2006
Complete Evaluation & Performance	November 2006
Project Completion	December 2006
Accept Project	December 31, 2006