

AGREEMENT NO. C0892
BETWEEN THE ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY
AND
FAYE BUSINESS SYSTEMS GROUP, INC.

THIS AGREEMENT ("Agreement") is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority ("ACTA"), acting by and through its Governing Board ("Board") and FAYE BUSINESS SYSTEMS GROUP, INC., a California corporation, whose address is 5950 Canoga Avenue, Suite 615, Woodland Hills, CA 91367 ("Consultant").

WHEREAS, ACTA requires technical and creative website programming, design, development and maintenance support services; and

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary and occasional basis to update its website and provide on-going support of the website; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to ACTA;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to ACTA, as an independent contractor, certain professional, technical and expert services as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between ACTA and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, city, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's Chief Executive Officer ("ACTA's

CEO”) or his or her designee, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted (“Subconsultants”). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to ACTA and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon ACTA’s CEO’s written request, Consultant shall supply ACTA with all agreements between Consultant and its Subconsultants.

II. SERVICES TO BE PERFORMED BY ACTA

A. ACTA shall furnish Consultant, upon its request, all documents and papers in possession of ACTA which may lawfully be supplied to Consultant and which are necessary for Consultant to perform its obligations.

B. ACTA’s CEO or his or her designee is designated as the contract administrator for ACTA and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article IX (Termination) hereof.

C. Consultant shall provide ACTA’s CEO with reasonable advance written notice if it requires access to the premises of ACTA or of the Alameda Corridor. Access rights, if any, shall be granted to Consultant at the sole reasonable discretion of ACTA’s CEO, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or contractors of ACTA and that access rights granted by ACTA to Consultant shall be consistent with any such occupancy or use.

III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. The effective date of this Agreement shall be the date of its execution by ACTA’s CEO or his designee upon authorization of the Board.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days’ notice in writing of its election to cancel and terminate this Agreement.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

Pursuant to Section 5 of ACTA's Amended and Restated Joint Exercise of Powers Agreement, ACTA shall be restricted in its powers in the same manner as the City of Los Angeles is restricted in its exercise of similar powers. Therefore, this Agreement is subject to the provisions of the Los Angeles City Charter Section 320 which precludes ACTA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

ACTA, its board, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ACTA shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum amount payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Seventy Five Thousand Dollars (\$75,000).

C. Consultant shall submit invoices in duplicate to ACTA monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

“I certify under penalty of perjury that the above invoice is true and just, in accordance with the terms of Agreement No. C0892, that payment of this invoice has not been received and that none of the items contained in the invoice have been submitted to any other agency.

”
(Consultant’s Signature)

D. All invoices shall be approved by ACTA’s CEO or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of ACTA business, the same may be approved, audited and processed.

Invoices shall include the Agreement number, employee name, title/classification, hourly rate, hours worked, current charges and cumulative charges. Subconsultant invoices shall be in a similar format. Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. ACTA may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Where applicable, Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Department
Alameda Corridor Transportation Authority
3760 Kilroy Airport Way, Suite 200
Long Beach, California 90806

VI. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records

shall be readily accessible to and open for inspection and copying at Consultant's premises by ACTA, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, ACTA may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to ACTA. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ACTA at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ACTA. ACTA's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to ACTA, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article V shall constitute a material breach of this Agreement and shall entitle ACTA to withhold any payment due under this Agreement until such breach is cured.

VII. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ACTA. Consultant shall not represent itself as an agent or employee of ACTA and shall have no power to bind ACTA in contract or otherwise.

VIII. INDEMNIFICATION

Except for the sole negligence or willful misconduct of ACTA, its Board or any of its Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless ACTA, its Board and any of its Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by ACTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its Subcontractors of any tier. Rights and remedies

available to ACTA under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California.

IX. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VIII, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as additional insureds.

(2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(3) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions

of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against ACTA in any circumstance in which it is alleged that actions or omissions of ACTA contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

B. Insurance Procured by Consultant on Behalf of ACTA

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VIII, and where Consultant is required to name ACTA, its Board, officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause ACTA to be named as an additional insured on all policies it procures in connection with this Article IX. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that ACTA, its Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. C0892, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by ACTA is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to ACTA's CEO with copies sent to ACTA's Co-General Counsel at the following addresses; 1) Office of the Long Beach City Attorney, 411 West Ocean Boulevard, 9th Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article IX shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Consultant's insurance broker or agent shall submit to ACTA the appropriate proof of insurance on Consultant's behalf.

Upon request by ACTA, Consultant shall furnish full copies of certified policies of any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ACTA.

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice to ACTA.

(4) Modification of Coverage

ACTA's CEO, at his sole reasonable discretion, based upon recommendation of independent insurance consultants to ACTA, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to ACTA a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, ACTA's CEO may, at his or her own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, ACTA requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to ACTA.

D. Accident Reports

Consultant shall report in writing to ACTA's CEO within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon any Alameda Corridor property if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

X. TERMINATION PROVISION

The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of ACTA to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

XI. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of ACTA's CEO where the work may conflict with the interests of ACTA.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on ACTA to such Subconsultant(s) or give the Subconsultant(s) any rights against ACTA.

XII. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded shall contain a like nondiscrimination provision.

XIII. SMALL BUSINESS ENTERPRISE PROGRAM

It is the policy of ACTA to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all ACTA contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist ACTA in implementing ACTA's Small Business Program attached hereto as Exhibit D, and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement.

XIV. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of ACTA. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ACTA relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, ACTA may immediately terminate this Agreement by giving written notice thereof.

XV. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of ACTA's CEO.

XVI. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts

located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify ACTA, its Board and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ACTA of any materials supplied by Consultant in the performance of this Agreement.

XVIII. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ACTA as soon as they are developed, whether in draft or final form. ACTA has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ACTA at all times owns rights provided for in this Article free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ACTA the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ACTA, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to ACTA, its Board, officers, agents or employees, is not given in confidence. Accordingly, ACTA or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, ACTA shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by ACTA. Upon ACTA's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to ACTA. It is expressly understood and agreed that, as between ACTA and Consultant, the referenced license shall arise for ACTA's benefit immediately upon the production of the work product, and is not

dependent on the written license specified above. ACTA may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by ACTA.

XIX. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

XX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice ACTA shall be addressed to its Chief Executive Officer, Alameda Corridor Transportation Authority, 3760 Kilroy Airport Way, Suite 200, Long Beach, California 90806, and notice to Consultant shall be addressed to it at Consultant's address set forth in the opening paragraph of this Agreement. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XXI. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

XXII. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then

such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXIII. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

XXIV. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XV. MODIFICATION IN WRITING

This Agreement may be modified, amended or changed only by written agreement of all parties, said agreement duly executed and delivered by both parties. Any such modifications are subject to all applicable approval processes required by ACTA.

XVI. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XVII. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

XVIII. COUNTERPARTS

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY

Date: _____

By: _____

Michael C. Leue, P.E.
Chief Executive Officer, P.E.

Attest: _____

Secretary

FAYE BUSINESS SYSTEMS
GROUP, INC.

Date: 9/3/2020

DocuSigned by:
By: Jason Green
44ECBB15047D4AA

Name: Jason Green

Title: President

DocuSigned by:
Attest: Sarah Hurd
00009F2BF13D43B...

9/3/2020

Name: _____

Title: VP, Digital Services

APPROVED AS TO FORM

_____, 2020
MICHAEL N, FEUER, Los Angeles City Attorney

By _____
Heather M. McCloskey
ACTA Co-General Counsel



Exhibit A

SCOPE OF WORK

Project Overview

Alameda Corridor Transportation Authority (ACTA) requires assistance to provide technical and creative support for its internet website.

Work will be authorized on a task order basis. Consultant shall work directly with the Public Affairs Office. Each task order requires an estimate to be submitted and approved by the Public Affairs Office to proceed with work. Costs associated with hosting, plugins, themes, and/or other third-party programs approved by ACTA are not included and must be covered in full by ACTA. Consultants shall direct all questions, concerns, and comments to the Public Affairs Office.

The scope of work includes all work required to conduct a website redesign of the ACTA website and provide on-going support for the ACTA website, including, but not limited, to the actions items to follow. Faye Business Systems Group's (FayeBSG) comprehensive website redesign process is composed of many action items, each with their own set of specific deliverables, that build upon one another and ultimately lead to creation of new website. Collaboration is key – both FayeBSG and ACTA will work together throughout the project SOW listed below.

Scope of Work

As we collaborate through each phase of the project, we will work to deliver each of the following phases and deliverables described below. An estimate for time budgeted for each section is represented as a blended rate based on expected resources. As the project progresses, ACTA and FBSG may reallocate time between phases to ensure the project goals are met.

Kickoff Meeting

This meeting between ACTA and FayeBSG will be used to kick start the project. Discussion topics include, but are not limited to, team member roles and responsibilities, project background and details, branding guideline review, stakeholders, project plan and timeline, etc.

- The final deliverable for this is an introduction between the two teams and a high-level gameplan of next steps.
- The estimated time for this item is 2 hours.



Project Plan

FayeBSG will create a plan outlining the key actions items, meetings, and milestones needed for a successful website launch. Each one of these elements includes respective owners, deliverables, due dates, etc. This plan will be reviewed with you and revised as needed to ensure it aligns with your goals, expectations, and availability.

- The final deliverable is a Project Plan document along with appropriate next steps.
- The estimated time for this item is 4 hours.

Hosting Requirements

As discussed, ACTA will be responsible for all hosting and SSL requirements, thus, FayeBSG will need the appropriate access in order to setup/configure WordPress for this hosting environment.

- The final deliverable is the appropriate access and a strategy in terms of how FayeBSG can successfully setup/configure WordPress using this hosting environment.
- The estimated time for this item is 4 hours.

Content Analysis & Website Strategy

The architecture and flow of your website is integral to both user experience (UX) and search engines, though the latter is not a priority for ACTA currently. FayeBSG and ACTA will collaborate to create a sitemap that reflects the new navigational structure and linear flow of the website. During this time, we'll also work to consolidate pages, remove unnecessary ones, and even plan for new content – all of which will be reflected on the sitemap. Towards the latter stages of the project, this sitemap will serve as a guide for both content migration and creation as it will provide information such as pages to be migrated, URL structures, meta data, etc.

- The final deliverable is a sitemap document.
- The estimated time for this item is 60 hours.

Theme Selection

A theme is a collection of design elements that define the appearance and display of your WordPress powered website. Before selecting one, we'll collaborate to define branding and design aesthetics specific to ACTA such as web fonts, colors, personality traits, likes/dislikes, and other critical UI/UX elements. Then, based on our expert advice and what was discovered through our design collaboration, we'll present you with three themes that best encompass ACTA. As needed, we'll continue to work with you to refine this list and ultimately select a single theme that will represent the foundation of your website design. Note, custom development to modify a theme beyond its original design/capabilities is not included in the Website Redesign agreement.

- The final deliverable is the selection of a theme that will be used for the website design.
- The estimated time for this item is 40 hours.



Core Plugins

Plugins are software that can easily be uploaded in your WordPress environment that can extend functionality and/or add new features. Best of all, they typically require no custom development and can be managed by content editors themselves. However, it's important to be cognizant of the number of plugins being installed, where they come from, and who developed them. To that end, FayeBSG will work with ACTA to select a core set of reputable plugins that will enhance security and assist with content creation requirements. We'll also identify plugins needed for specific features / 3rd party tools we discussed on the call such as one for iContact, Weebly, and a large file transfer program. Note, should the need arise for FayeBSG to custom develop a plugin, this is an option available to ACTA, though, it's not included and will require additional costs outside the Website Redesign agreement.

- The final deliverable is an approved set of plugins that will be uploaded into the ACTA WordPress environment during the setup/configuration phase of WordPress.
- The estimated time for this item is 30 hours.

WordPress Setup & Configuration

FayeBSG will setup and configure your WordPress environment based on your hosting requirements. Furthermore, we will implement the selected theme, upload and configure the approved list of plugins, and build out the final sitemap within WordPress.

- The final deliverable is a fully functional WordPress instance that's primed and ready for content migration.
- The estimated time for this item is 30 hours.

Content Migration

FayeBSG will programmatically migrate over selected content from the previous website to your new WordPress environment. In doing so, this content is merged into the appropriate new pages and theme, thus, removing the need to manually build out content for each page.

- The final deliverable is an updated WordPress environment that contains all required content migrated over from the previous website.
- The estimated time for this item is 110 hours.

Training

Three training sessions will be conducted by FayeBSG to educate ACTA on how to build out content and use standard features in WordPress following web best practices – essentially, the role of a Content Editor. A user in this role is typically responsible for creating and updating content on the site along with other minor up-keep tasks such as ensuring plugins are up to date for example. Lastly, the training will be conducted by either the Project Manager or a Senior Level Manager that



has also been involved in the project from the start. Each training session is expected to have 2-3 ACTA users but can accommodate up to 10 users without requiring additional sessions.

- The final deliverables:
 - Session 1 - Overview Training – All Content Editors
 - Session 2 - Content Editor – Hands-on Changes
 - Session 3 – Technical Hand-off/Best Practices
 - QuickStart Training Guides for Content Editors
 - QuickStart Training – IT Guide Maintaining WP Site
- The estimated time for this item is 32 hours.

Content Revisions

With the content successfully migrated and the ACTA content creators trained on how to use WordPress, ACTA will have a chance to make additional revisions to their content before the site is eventually launched. FayeBSG will take a consultative/strategic role in this phase to ensure ACTA is comfortable and able to make the revisions needed for the site to launch.

- The final deliverable is a website that is ready for launch.
- The estimated time for this item is 24 hours.

Launch

FayeBSG will make configuration and DNS updates to point the new WordPress website to the appropriate final domain.

- The final deliverable is the new WordPress website available via to the public via the final domain.
- The estimated time for this item is 8 hours.

Post-Launch Support

Once the website launches, FayeBSG will provide 30 days of post-launch support. During this period, we will be available for on-call technical support with 4-8 hour initial response times (within FayeBSG business hours) to ensure the success of the launch. Requests may be sent via email or you may simply call Project Manager. Should the volume of requests become high, a help desk solution may be implemented (see **Website Maintenance & Support** for more info). Lastly, weekly calls will be setup throughout the duration with focus placed on planning, troubleshooting specific issues, and/or creating action plans as needed.

- For this particular action item, there's no deliverable besides us being here for you to ensure a successful post-launch of your site!
- The estimated time for this item is 35 hours.



On Call As Needed Services

Additional services and projects may be provided under this contract, based on the hourly rates listed in Exhibit B, and shall be approved in advance by the Public Affairs Office through the issuance of a new task order. So long as total compensation amount is not exceeded without written amendment.

Project Milestones

Please note, many of these objectives are completed simultaneously thus effectively compressing this timeline considerably – for example, the initial meetings. We also expect variability in the case of Content Migration as it is further defined. Thus, this provides an overall general project plan with time estimates (calendar time). Lastly, this schedule can easily be compressed/accelerated, or extended based on ACTA's needs and requirements. We are expecting this engagement to be completed in about 3-4 months.

OBJECTIVE	DESCRIPTION	DELIVERABLES	OWNERS	TIMING
Kickoff Meeting	Initial kick off meeting to discuss scope, project objectives/goals, stakeholders, points of contact, and initial schedule review.	<ul style="list-style-type: none"> - Meeting Agenda - Project Goals - Project Requirements - Branding Guide - Roles & Responsibilities 	FBSG / ACTA	1 Week
Project Plan	FBSG will create a plan outlining the key actions items, meetings, and milestones needed for a successful website launch. Each one of these elements includes respective owners, deliverables, due dates, etc.	<ul style="list-style-type: none"> - Project Plan (v1) - Project Next Steps 	FBSG	1 Week
Project Plan Revisions & Approval	ACTA will take some time to review the Project Plan to ensure it aligns to their expectations and scheduling needs. FBSG and ACTA will work together to update the Project Plan as needed until a final, approved version is created.	<ul style="list-style-type: none"> - Project Plan (Final) 	FBSG / ACTA	1 Week
Hosting Requirements	FBSG and ACTA will work together to validate the hosting requirements, solution, and requirements needed to setup a WordPress site.	<ul style="list-style-type: none"> - Hosting Strategy 	FBSG / ACTA	1 Week
Content Analysis & Website Strategy Discovery	Initial meeting between FBSG and ACTA stakeholders to discuss likes, dislikes, value, etc. when it comes to the current site. Information gathered here will flow into the	<ul style="list-style-type: none"> - Stakeholder feedback 	FBSG / ACTA	1 Week



OBJECTIVE	DESCRIPTION	DELIVERABLES	OWNERS	TIMING
	sitemap creation, theme selection, and content migration.			
Sitemap Review	An initial presentation and review of our first version of the sitemap and strategy will be discussed. Furthermore, we will discuss website theme and branding requirements in preparation for the theme selection process.	- Sitemap (v1) - Sitemap Feedback from ACTA - Theme & Branding Requirements	FBSG / ACTA	2 Weeks
Theme Selection (RD1)	We will review a set of themes based on ACTA theme and branding requirements in conjunction with FBSG's expert advice. This will ultimately lead to the selection of the theme to be used for the website.	- Final Theme selection	FBSG / ACTA	2 Weeks
Sitemap Feedback Due	Sitemap feedback due; ACTA will provide any additional sitemap feedback not provided during the initial review.	- Remaining Sitemap Feedback	ACTA	1 Week
Content Migration Strategy (RD1)	Though the final version of the Sitemap is not complete, we will have a good idea of what the foundation of the website will look like. FBSG and ACTA will create the content migration strategy using the Sitemap as the foundation. This will be a more granular approach at all website content to define what will be migrated over, consolidated, removed, etc.	- Content Migration Strategy Doc	FBSG / ACTA	1 Week
Core Plugin Selection	FBSG and ACTA will review recommended core plugins for WordPress. The plugins discussed typically involve security, architecture, or general web best practices. Note, FBSG will eventually set these up during the setup / configuration of WordPress.	- Core Plugin list	FBSG / ACTA	1 Week
Theme Selection (RD2)	This is a continuation of the original discussion around selecting a theme. Additional themes can be reviewed with the end goal being the selection of a theme to be used for the website.	- Final Theme selection	FBSG / ACTA	1 Week
Sitemap (Final)	The final version of the sitemap will be provided. This will include feedback provided by ACTA implemented.	- Sitemap (Final)	FBSG	1 Week
Content Migration Strategy (RD2)	At this point, the Sitemap will be finalized, thus, the foundation fully defined. This discussion is intended to be a continuation of the original one with the goal being to complete the Content Migration Strategy document.	- Content Migration Strategy Doc	FBSG / ACTA	1 Week
WordPress Setup & Configuration	FBSG will setup and configure your WordPress environment based on your hosting requirements. Furthermore, we will implement the selected theme, upload and	- WordPress Site (Alpha)	FBSG	2 Weeks



OBJECTIVE	DESCRIPTION	DELIVERABLES	OWNERS	TIMING
	configure the approved list of core plugins, and build out the final sitemap within WordPress.			
Content Migration	FBSG will programmatically migrate over selected content from the previous website to your new WordPress environment based on the Content Migration Strategy. In doing so, this content is merged into the appropriate new pages and theme, thus, removing the need to manually build out content for each page.	- WordPress Site (Beta)	FBSG	3 Weeks
Website Beta Release	FBSG will release the Beta version of the website to ACTA. It will contain the approved theme installed/configured, plugins installed/configured, sitemap built out, and all content migrated over into the new theme/design based on the Content Migration Strategy.	- WordPress Site (Beta)	FBSG / ACTA	1 Week
Training	A training will be conducted by FBSG to educate ACTA on how to build out content and use standard features in WordPress following web best practices.	- Training w/ the ability to manage content and use standard features in WordPress	FBSG / ACTA	1 Week
Content Revisions	With the content successfully migrated and ACTA content creators trained on how to use WordPress, ACTA will have a chance to make additional revisions to their content before the site is eventually launched. FBSG will take a consultative / strategic role in this phase to ensure ACTA is comfortable and able to make the revisions needed for the site to launch.	- WordPress Site (Gold)	FBSG / ACTA	5 Weeks
Code Freeze / Launch Prep	This milestone signifies the stoppage of all content creation and updates to WordPress. This is done to ensure we have a stable / unchanging version that can be prepared for launch. Furthermore, FBSG will make the final preparations needed in order to be ready for launch.	- WordPress Site (Launch Ready)	FBSG	1 Day
Launch	FBSG will update the DNS of the consolidated website to point to the appropriate final domain.	- Launched Site!!	FBSG	1 Day
Post-Launch Support	For 30 days post-launch, FBSG will meet with ACTA on a weekly basis along with providing technical support.	- Weekly Meetings - Post-Launch Support (as needed)	FBSG / ACTA	5 Weeks



Website Maintenance & Support

At FayeBSG, we are passionate about forming successful long-term relationships with our clients. Our approach to support is a key strategic part of that success. We put the client's livelihood first, very proactively. The core of our support help desk is a Software as a Service (SaaS) helpdesk platform supported by [Zendesk](#).

We provide an ACTA-dedicated web portal free of licensing charges for you. This allows for both web and email-based ticket submission, with extensive tracking, communication history, and Service Level Agreement (SLA) management and reporting.

The support team responding to ACTA requests will be familiar with your implementation and business processes – all members of the support staff are cross-trained and able to provide high-level support when urgently needed.

Types of Support

Support requests fall into one of two categories: **Planned** or **Unplanned**.

Planned

Each month will include on-going tasks that are mutually planned and prioritized in advance. Examples of these are as follows:

- **Monthly Meetings** – Regularly scheduled one-hour meetings used for additional training, support, collaboration, and planning/prioritization of support tasks.
- **Custom Development** – tasks that require a programming resource. These follow a traditional development lifecycle methodology of scoping, implementation, testing, and publishing.
- **Administrative** – as use of the system becomes integrated into day-to-day operations, users may identify areas where minor process enhancements are needed or even additional training. These tasks typically don't require a programming resource and can usually be handled via a Project Management or Coordination resource.

Unplanned

Unplanned work is used for urgent bug fixes, system outages, or small feature requests outside of the planned support tasks. Unplanned work or support-related requests will take priority over scheduled work and the time spent will be deducted from the standard monthly time allocations.

Regardless of the categories, total cost is determined by the time spent by specific resources. Hourly rates per resource type can be found in the **Exhibit B: Compensation** rates table.

Service Level Agreements

The following are our standard Service Level Agreements (SLAs):



Urgent Issues

- *4-8 business hour initial response time*
- This category includes partial outages in the production environment and all other issues that have a major impact on ACTA operations or clients.

Standard Issues

- *2-3 business day initial response time*
- This category includes all issues related to ACTA website that don't fit into the Emergency/Urgent support categories.

Initial Response times define how long it will take FayeBSG to begin investigating an issue once reported to FayeBSG via the support portal. If the issue is reported outside of normal business hours (M-F, 8am-6pm PST), FayeBSG's investigation timeframe will begin at the start of the next business day.

Time to resolution will be based on the complexity of the issue. FayeBSG will use their best efforts to resolve the issue within the above-referenced response times, subject to receiving any necessary information from ACTA and having access to the relevant infrastructure, as needed.

FayeBSG will strive to minimize support issues by permanently addressing the cause of the issue at the time of support or, if not possible/practical, by implementing a workaround to resolve the issue as quickly as possible and then working to implement a permanent fix at a later time.



Estimate by Milestone

An estimate for time budgeted for each milestone is represented as a blended rate based on expected resources in the table below.

MILESTONE	COST ESTIMATE
Kickoff Meeting	\$350
Project Plan	\$700
Hosting Requirements	\$700
Content Analysis & Website Strategy	\$8,500
Theme Selection	\$5,400
Core Plugins	\$4,250
WordPress Setup & Configuration	\$5,250
Content Migration	\$16,750
Training	\$4,000
Content Revisions	\$3,200
Launch	\$1,200
Post Launch Support	\$4,650



Exhibit B

COMPENSATION

As compensation for the satisfactory performance of the services required by this Agreement, ACTA agrees to pay and Consultant agrees to accept in full satisfaction thereof, the following:

Website Redesign & Support Services

Compensation shall be payable upon successful completion of each task order based on the hourly rates listed:

FUNCTION	DESCRIPTION	HOURLY
Quality Assurance	This role is for quality assurance testing – during agile sprints, alpha, beta, staging, and production testing.	\$75/hr.
Project Coordination	Project coordination is focused on the day to day transactional support provided to the primary Project Manager on a project or account.	\$75/hr.
Graphic Design	All graphic design for both web, mobile, and digital marketing.	\$125/hr.
Project Management	General project manager – primary point of contact for all projects.	\$125/hr.
Web/Mobile Programming	Blended rate for all programming, both web and mobile.	\$150/hr.
Senior Level Expertise	Blended rate for both senior level management involvement, senior level strategy and design, senior level subject matter expertise, etc.	\$175/hr.

EXHIBIT C MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the participation levels achieved for the month of _____ for the referenced contract number.

Contract Name and No. _____ Start Date _____ End Date _____

Committed SBE Participation Percentage _____

	Name of Subcontractor	Work Performed	Certifications:* SBE/VSBE/MBE/WBE/OBE/DVBE	PROPOSED	ACTUALS		
				Original Proposed SBE Percentage	Amount Paid This Month	Amount Paid to Date	Overall Contract Amount Percentage (Paid to Date)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

* Indicate all certifications held by each subcontractor

EXHIBIT D

SMALL BUSINESS ENTERPRISE PROGRAM

The Alameda Corridor Transportation Authority (“ACTA”) is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at ACTA. ACTA's Small Business Enterprise (SBE) Program was created to provide opportunities for small businesses to participate in professional service and construction contracts. It is the policy of ACTA to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows ACTA to target small business participation, including MBEs, WBEs, and DVBES, more effectively.

An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this Agreement, it has been determined that the percentage of required small business participation will be 0%.**

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement, where required, and for reporting to ACTA. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs.

Contractor Description Form

For the Prime Contractor and each Subcontractor, state the type of SBE certification claimed and, if available, return documentation with this form to ACTA evidencing the declared SBE certification.

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____

Contract Title: _____

Business Name: _____ Award Total: \$ _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)

If claimed, state SBE certification type: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)

If claimed, state SBE certification type: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)

If claimed, state SBE certification type: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____