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Alameda Corridor Transportation Authority

June 11, 2020

To:	Governing Board
From:	Michael C. Leue, Chief Executive Officer 
Subject:	<i>Approve Annual Contract Work Orders, Change Orders 69 and 51 and Extension of Agreement No. C0027 with Alameda Corridor Engineering Team (APPROVAL)</i>

Recommendation:

Approve the following Contract Work Orders (CWOs), Change Orders (COs) and Agreement extension and authorize the Chief Executive Officer or Chief Financial Officer to execute said CWOs and reallocate funding amounts as discussed herein:

1. Approve Contract Work Orders (CWOs) through corresponding Change Orders (COs) to First Amended Agreement No. C0027 with the Alameda Corridor Engineering Team (ACET) for FY21 in the aggregate amount of \$2,389,909 allocated as follows: \$1,880,048 for ACTA Support (Change Order No. 69 for ASA CWO as presented in Transmittal 1) and \$509,861 for the SR-47 Project (Change Order No. 51 for SR-47 CWO as presented in Transmittal 2);
2. Extend the term of the First Amended Agreement No. C0027 for one additional year through June 30, 2021 (via Change Orders No. 69 and 51); and
3. Authorization to reallocate the FY21 CWO amounts amongst the ASA CWO and SR-47 CWO during the fiscal year provided the approved aggregate total amount is not exceeded.

Discussion:

In February 2014, the Board expressed its preference to extend the ACET contract on a year-by-year basis until ACTA's unfinished capital support obligations are complete. For each subsequent fiscal year, the Board has reaffirmed its preference for one-year extensions. In February 2020, the Board approved the inclusion of ACET in the FY21 Budget.



ACET staff has been as high as about 170 full time equivalent (FTE) positions in FY00 at the height of corridor construction. ACET staff size was significantly reduced to 16 by FY07 and remained relatively constant through FY10. ACET staffing gradually reduced to 5 FTEs by FY16. The number of FY21 FTE positions remains at 5, excluding subconsultants.

The ACET budget also includes specialized technical services provided by subconsultants through the ACET contract. The proposed number of ACET positions may increase if additional ACTA project development tasks are identified during the fiscal year, in which case Governing Board approval for such Change Orders would be sought at the appropriate time.

The Amended Agreement with ACET, effective January 1, 1996, requires that an annual CWO be submitted to the Governing Board for approval prior to the beginning of each fiscal year on July 1. For budget purposes, separate CWOs and corresponding COs are required for ACTA Support (ASA CWO) and the SR-47 Project (SR-47 CWO). In prior years, there was also a CWO for the PCH Project, which is no longer required.

In FY21, the ACTA Support CWO will be funded by the Administrative Operating Budget that is paid from ACTA revenue, and the M&O Budget that is paid directly by the railroads or through the Reserve Account. The SR-47 Project CWO is funded entirely from Caltrans sources.

The original FY20 CWO aggregate amount approved by the Board in June 2019 was \$2,448,122. It included \$1,941,595 for ACTA Support and \$506,527 for the SR-47 Project. A final FY20 closeout CO for both CWOs will be brought to the Board for approval in September or November 2020.

The proposed FY21 aggregate CWO is \$2,389,909, as presented in Transmittal 3, which is - 2.4% less than the FY20 budget of \$2,448,122. Note that the CWO amount is exclusive of amounts related to the Dominguez Channel Oil Release EPA Matter (EPA). The ACTA Support CWO and SR-47 Project CWO are described in more detail below.

1. ACTA SUPPORT CWO (Operating)

The ACTA Support CWO covers the following three areas:

A. Base Program Closeout (Operating, previously Capital)

This effort includes:

- Transferring ACTA-acquired property to the ports, municipalities and others;
- Concluding utility replacement rights agreements, licenses, franchises, and easements.

The proposed FY21 budget for this item is \$364,821, which is 0.4% more than the FY20 budget of \$363,463. This item is charged to the Administrative Operating Budget and paid from ACTA Use Fees and Container Charges.

B. Maintenance and Operations (Direct Railroad Cost)

This item supports rail maintenance and is directly reimbursed by the Railroads. **The FY21 budgeted amount is \$503,078**, which is -1.6% less than the FY20 budget of **\$511,309**.

C. ACTA General Administrative Support (Operating)

This effort includes general ACTA technical and administrative support and staff augmentation for other ongoing ACTA activities including:

- Computer and network systems support;
- Grant reimbursement, contract administration, planning, environmental coordination, document control, graphics, accounts payable, and other general support.

The proposed FY21 allocation for this item is \$1,012,149, which is -5.1% less than the FY20 budget of **\$1,066,823**. This item is charged to the Administrative Operating Budget and paid from ACTA Use Fees and Container Charges.

The aggregate total for the three parts of the ACTA Support CWO is \$1,880,048.

2. SR-47 PROJECT CWO (Public Benefit Project only)

The proposed FY21 budget for the SR-47 Project CWO is \$509,861 (Segment 1 only, as Segment 2 is on indefinite hold), which is 0.7% more than the FY20 budget of \$506,527. It includes final design support, design support during construction, and ROW/utility support during construction for the SR-47 Project as detailed below.

SR-47 Project Background:

Through four separate agreements with Caltrans, the SR-47 Project has progressed in four phases: the Feasibility Phase, the Environmental Document Phase, the Final Design and ROW Phase, and the Construction Phase. The cost for Phase 1 was \$1,502,221, of which ACTA funded \$1,013,416 (67%). The Phase 2 cost was approximately \$14.4 million, of which ACTA funded \$9.55 million (66%).

The draft EIS/EIR documents were publicly reviewed in the fall of 2007. ACTA also completed a Health Risk Assessment, which was publicly reviewed in January 2009. Litigation regarding the validity of the EIR/EIS for the project was first filed in late 2009. A court approved stipulation agreed to by all parties allowed Segment 1 (the Heim Bridge Replacement) to proceed, but postponed Segment 2 (the Expressway extension) until the litigation was resolved. Favorable rulings on the EIR were received in state court and the final federal ruling confirming the adequacy of the EIS was issued by the court in November 2014, exactly five years after the litigation was filed.

The design for Segment 1 was completed, and the construction was bid in FY11. In FY12, design work for two drainage pump stations (also part of Segment 1) was performed. In June 2011, the Board gave approval to enter into a fifth cooperative

agreement for ACTA's administration of the pump station construction contract. However, at this time it is unlikely that ACTA will execute the fifth agreement and perform those services on behalf of Caltrans due to cost exposure risk to ACTA. Pump station construction involves many risks of cost overruns and delays caused by unforeseen environmental conditions and mechanical/electrical system issues. Caltrans wants to fix its budget for the work thus exposing ACTA to funding costs for additional work beyond its control.

Caltrans' current estimate for completion of construction is September 2020. ACTA will continue to provide the required services through two separate Cooperative Agreements between the parties through that date and the following six to twelve months to complete project close-out tasks.

If the FY21 ACET CWOs are approved, the not-to-exceed total contract value will be increased by \$2,389,909 from \$247,135,819 to \$249,525,728 exclusive of oil release matter amounts.

Budget Impact:

The \$2,389,909 aggregate CWO amount is included in the FY21 Program Budget. Sources include \$509,861 in Caltrans funds for SR-47 in the Operating Budget as an Expense for Public Benefit; \$503,078 in Railroad M&O funds paid directly by the Railroads or from the Reserve Account; and \$1,376,970 from ACTA revenue sources in the Operating Budget.

Co-General Counsel:

ACTA's Co-General Counsel has reviewed and approved the proposed change orders as to form.

Transmittals:

- Transmittal 1: Change Order No. 69 to ACET (ASA CWO) Agreement No. C0027
- Transmittal 2: Change Order No. 51 to ACET (SR47 CWO) Agreement No. C0027
- Transmittal 3: CWO FY21 ACET Cumulative Contract Values