

STAFF REPORT

SUBJECT: Funding Agreement with Alameda County for Construction of  
Dublin/Pleasanton BART Parking Garage

FROM: Jennifer Yeamans, Senior Grants & Management Specialist

DATE: June 8, 2020

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**Action Requested**

Approve Resolution 13-2020 ([Attachment 1](#)), authorizing the Executive Director to execute a Funding Agreement with Alameda County to pass through state Transit and Intercity Rail Capital Program (TIRCP) grant funds to construct a new, multi-level parking structure at the Dublin/Pleasanton BART station on County-owned land.

**Background**

In January 2018, the Board of Directors authorized the Executive Director to submit an application on behalf of Alameda County to the California State Transportation Agency (CalSTA) for \$20 million in state Transit and Intercity Rail Capital Program (TIRCP) funds for construction of a new, multi-level parking structure at the Dublin/Pleasanton BART station on County-owned land (Project), as shown in [Attachment 2](#). LAVTA agreed to serve as project sponsor due to state program requirements that only public transit agencies are eligible to apply for and receive TIRCP program funds. Accordingly, the project application identified LAVTA as the project sponsor and Alameda County as the co-sponsor and lead agency. In addition to the \$20 million request to the state, the project application identified \$14 million in local matching funds for the Project, for a total project budget of \$34 million.

In April 2018, CalSTA announced LAVTA was awarded \$20.5 million in TIRCP funding, of which \$20 million was programmed to the Project for garage construction using a design-build methodology. TIRCP program funds that CalSTA awards to recipients are subsequently administered by the California Department of Transportation (Caltrans). In December 2018, the Board of Directors approved Resolution 30-2018, authorizing the Executive Director to execute a Master Agreement and Program Supplement with Caltrans for the purpose of receiving state TIRCP funds.

In June 2019, the Alameda County Board of Supervisors as Lead Agency adopted the Dublin Transit Center Parking Garage Project EIR Addendum, certifying the Project's CEQA requirements had been satisfied. In October 2019, the California Transportation Commission (CTC) allocated \$20 million in programmed TIRCP funds for the construction of the Project, with concurrent approval of the environmental clearances for the Project to proceed to the construction phase.

**Discussion**

In May 2020, LAVTA received the Project’s Program Supplement Agreement from Caltrans, outlining terms and conditions for use of the TIRCP funds to implement the Project. Accordingly, LAVTA’s Legal Counsel and staff in consultation with County staff prepared a draft Funding Agreement to pass through the relevant terms and conditions of both the TIRCP Master Agreement and Program Supplement Agreement to the County as Lead Agency (Attachment 3). The proposed Funding Agreement also requires County to provide secure ground-floor storage and charging facilities for LAVTA vehicles as part of the Project.

**Budget**

The proposed project budget consists of both state and local sources, with Alameda County Transportation Commission serving as project sponsor for all local sources, as follows:

<b>Funding Source</b>	<b>Amount</b>
TIRCP (via LAVTA)	\$20,000,000
MTC Regional Measure 2 (via Alameda CTC)	\$7,000,000
Alameda CTC Measure BB	\$7,000,000
<b>Total</b>	<b>\$34,000,000</b>

All sources of local-matching funds for the project have been secured and the project is ready to begin immediately. Alameda CTC allocated its Measure BB funds for the project in June 2019. MTC allocated the RM2 funding to Alameda CTC in July 2019. LAVTA’s share of the project funding is included in the FY 2021 capital budget.

**Recommendation**

Staff recommends the Board of Directors approve Resolution 13-2020, authorizing the Executive Director to execute a Funding Agreement with Alameda County to pass through Transit and Intercity Rail Capital Program funds for the construction of a new, multi-level parking structure at the Dublin/Pleasanton BART station on County-owned land.

Attachments:

1. Resolution 13-2020
2. Project information from Dublin Transit Center EIR Addendum (approved June 2019)
3. Draft Funding Agreement

Approved: \_\_\_\_\_

**RESOLUTION NO. 13-2020**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY  
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FUNDING  
AGREEMENT WITH ALAMEDA COUNTY FOR USE OF TRANSIT AND  
INTERCITY RAIL CAPITAL PROGRAM (TIRCP) GRANT FUNDS**

**WHEREAS** in January 2018 the Board of Directors authorized the Executive Director to submit an application on behalf of Alameda County for state Transit and Intercity Rail Capital Program (TIRCP) funds to construct a new, multi-level parking structure at the Dublin/Pleasanton BART station on County-owned land (Project) known as the Dublin/Pleasanton Capacity Improvement and Congestion Reduction Program; and

**WHEREAS** in April 2018 the California State Transportation Agency (CalSTA) programmed \$20.5 million in TIRCP funding to the Dublin/Pleasanton Capacity Improvement and Congestion Reduction Program, including \$20 million for construction activities to implement the Project, to be administered by the California Department of Transportation (Caltrans); and

**WHEREAS** in December 2018 the Board of Directors authorized the Executive Director or his designee to execute the Caltrans Master Agreement, all Program Supplements, and any amendments thereto, with the California Department of Transportation, for projects funded through the Transit and Intercity Rail Capital Program, and requiring LAVTA to comply with all conditions and requirements set forth in the Master Agreement and applicable statutes, regulations, and guidelines for all TIRCP-funded projects; and

**WHEREAS** in October 2019 the California Transportation Commission approved Resolution TIRCP-1920-03, allocating \$20,000,000 in state funding to LAVTA for the Project; and

**WHEREAS** in May 2020 LAVTA executed a Program Supplement Agreement with Caltrans governing use of TIRCP funding for the Project; and

**WHEREAS** LAVTA and County mutually desire to have LAVTA as Project Sponsor pass through the TIRCP funding to the County as Lead Agency in order to implement the Project; and

**WHEREAS** staff at LAVTA and Alameda County have agreed to terms of a Funding Agreement that outlines the Project scope of work and how the funds will be utilized to implement the Project; and

**WHEREAS** the LAVTA Board of Directors wishes to delegate the authority to execute this Agreement and any amendments thereto to the Executive Director or his/her designee;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Livermore Amador Valley Transit Authority that the Executive Director may enter into a Funding Agreement with Alameda County governing use of TIRCP funding to construct

a new, multi-level parking structure in support of the Dublin/Pleasanton Capacity Improvement and Congestion Reduction Program, and execute any amendments thereto.

**PASSED AND ADOPTED** this 8th day of June 2020.

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David Haubert, Chair

**ATTEST:**

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Michael Tree, Executive Director

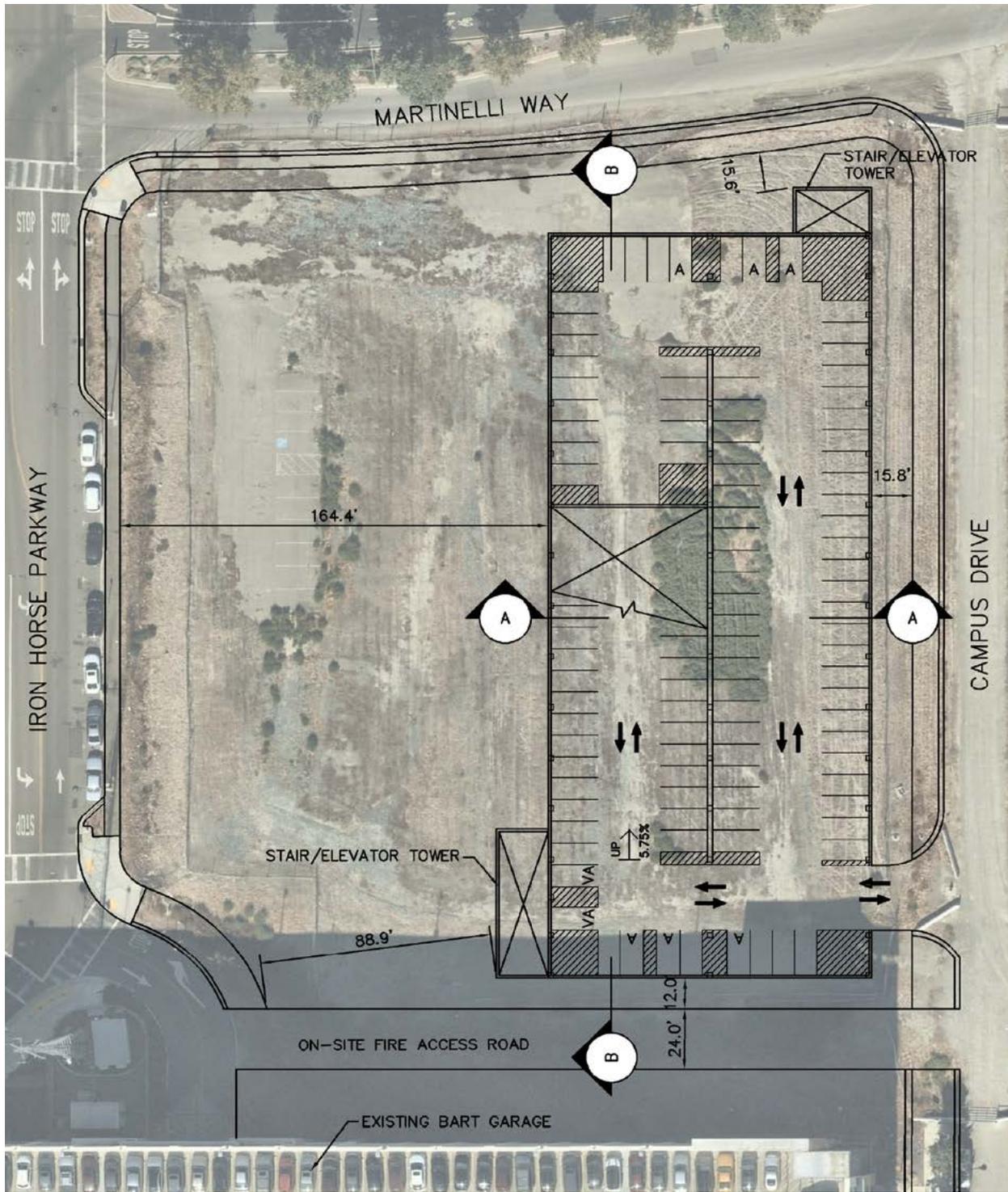
**APPROVED AS TO FORM:**

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Michael Conneran, Legal Counsel



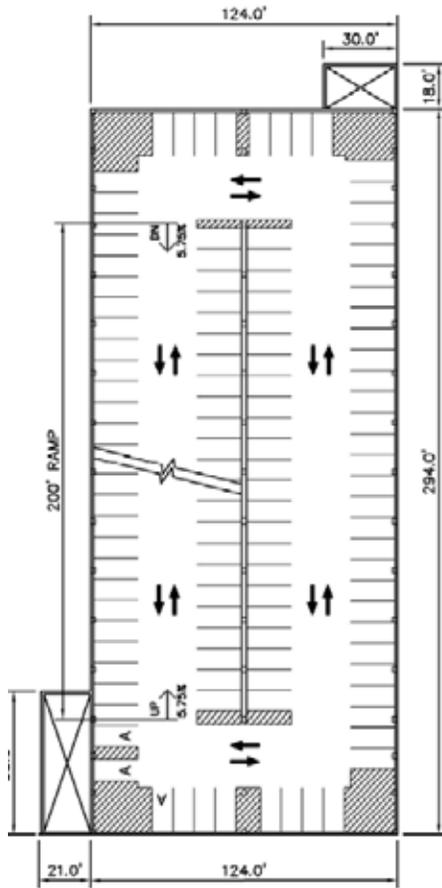
Figure 5  
Site Context



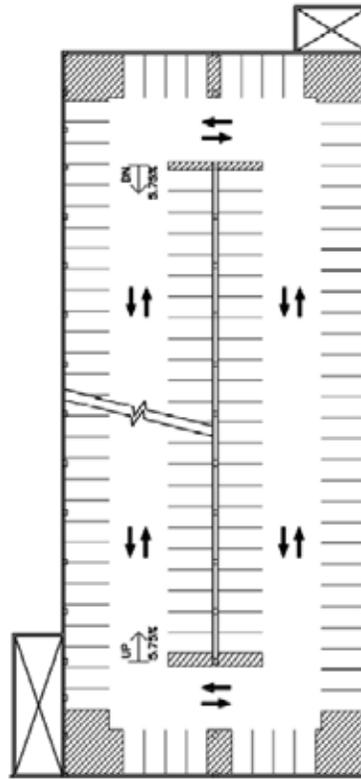
**Figure 6**  
**Project Site Plan (Preliminary)**



Source: Alameda County GSA



SECOND LEVEL PLAN



THIRD & FOURTH LEVEL PLAN



SECTION A-A



SECTION B-B

PARKING STALL COUNT					
LEVEL	STANDARD SPACES (8'-6"X18")	ADA SPACES	TOTAL SPACES	AREA (SF)	EFFICIENCY (SF/STALL)
GROUND	96	8	104	34016	327
LEVEL 2	116	3	119	36456	306
LEVEL 3	120	0	120	36456	304
LEVEL 4	120	0	120	36456	304
LEVEL 5	107	0	107	33970	317
<b>TOTAL</b>	<b>559</b>	<b>11</b>	<b>570</b>	<b>177354</b>	<b>311</b>

- NOTE:
1. PARKING STALL COUNTS HAVE NOT BEEN REDUCED TO ACCOUNT FOR LOSS OF SPACES DUE TO BICYCLE/MOTORCYCLE PARKING, OR THE PLACEMENT OF MECHANICAL/UTILITY ROOMS.
  2. ADJACENT BART GARAGE UTILIZES 8'-4" X 19' STALLS.

Insert Figure Label Here

**Figure 7**  
**Garage Plans, Sections and Parking Space Calculations**



Source: Alameda County GSA

**LAVTA / Alameda County  
TIRCP Funding Agreement**

This Agreement, effective as of June 2, 2020, (Effective Date), (“Funding Agreement” or “Agreement”), made and entered into by and between the **Livermore Amador Valley Transit Authority** (LAVTA), a joint powers authority established pursuant to California Government Code § 6500 *et seq.*, and the **County of Alameda** (County), collectively referred to herein as the Parties

**WITNESSETH**

WHEREAS, County desires to increase transit ridership through construction of a new, multi-level parking structure to create over 500 additional parking spaces, including prioritized vanpool parking, at the Dublin/Pleasanton Bay Area Rapid Transit (BART) station (the “Project”); and

WHEREAS, grant funds are available from the State of California’s (State) 2018 Transit and Intercity Rail Capital Program (TIRCP) administered by the California Department of Transportation (Department) to implement said Project; and

WHEREAS, under applicable TIRCP grant requirements, only an eligible applicant may serve as the Recipient of TIRCP funds and enter into a formal grant agreement with the Department; and

WHEREAS, County is not an eligible Recipient of TIRCP grant funds and has requested LAVTA act as the primary Recipient of Department funds for County; and

WHEREAS, on December 1, 2018, LAVTA entered into Master Agreement No. 64LAVTAMA with the Department to receive TIRCP funds for the Project; and

WHEREAS, LAVTA and County desire to enter into a formal contract pursuant to which the aforementioned Department grant funds for implementation of the Project will be passed through LAVTA to County.

**NOW, THEREFORE**, the Parties hereto agree as follows:

**1. TERMS AND CONDITIONS**

- A. The Project shall be undertaken and accomplished in accordance with the terms and conditions specified herein or contained in the Appendices named below, which are attached hereto and by reference incorporated herein. Appendix A contains general provisions applicable to this Agreement. Appendix B identifies the scope of work, benefits, and budget for the Project and identifies the funding source(s). State funds not to exceed Twenty Million Dollars (\$20,000,000) are currently available for expenditure under this Agreement and may not be expended until issuance of a Notice to Proceed by LAVTA. State approval of these funds requires an additional Fourteen Million Dollars (\$14,000,000) in local matching funds; therefore, the total Project budget under this Agreement is Thirty-Four Million Dollars (\$34,000,000). LAVTA will pass through Twenty Million Dollars (\$20,000,000) for the Project from Department’s TIRCP grant funds. The County will provide the local match of Fourteen Million Dollars (\$14,000,000) via

separate agreements with other funding agencies. Neither party shall be obligated to expend any funds in excess of the amounts stated, absent an executed amendment to this agreement.

- B. County shall design the garage to provide for secure storage areas and appropriate three-phase electric-charging facilities for a minimum of six (6) Shared Autonomous Vehicles on the ground floor of the garage for LAVTA's exclusive use.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

**LIVERMORE AMADOR VALLEY  
TRANSIT AUTHORITY**

**COUNTY OF ALAMEDA**

\_\_\_\_\_  
Michael Tree, Executive Director

\_\_\_\_\_  
Richard Valle, President  
Board of Supervisors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael N. Conneran, Hanson Bridgett LLP  
Attorney for the Authority

\_\_\_\_\_  
Audrey A. Beaman  
Deputy County Counsel  
County of Alameda

## APPENDIX A

### GENERAL PROVISIONS & STATE REQUIREMENTS

#### 1. GENERAL

County shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, which relate to or in any manner affect the performance of this Agreement. Among other requirements, County agrees to comply with all applicable requirements of the California Public Contract Code, the California Labor Code, including prevailing wage provisions, and the Global Warming Solutions Act of 2006 (the "Act") (Assembly Bill [AB] 32, Nunez, Chapter 488). Agency shall comply with all applicable requirements of the TIRCP Program Guidelines, the California Department of Transportation Master Agreement Form "Master Agreement No. 64LAVTAMA," December 1, 2018 (Master Agreement), and any project-specific subcontract to the Master Agreement, in the form of the California Department of Transportation "Program Supplement No. 04LAVTAPS-01A1" ("Program Supplement"), as may be amended, that falls within the boundary of the "Parking Garage Structure Construction" task and is a deliverable of the Construction Project, all of which are each incorporated herein by reference as though set forth in full, and shall govern this Agreement except as otherwise provided herein. County's failure to so comply shall constitute a material breach of this Agreement. Those requirements imposed upon LAVTA as "grantee" are hereby imposed upon County, and those rights reserved by the California State Transportation Agency (CalSTA) or the California Department of Transportation are hereby reserved by LAVTA.

#### 2. ACCOMPLISHMENT OF THE PROJECT

County shall accomplish the Project in a timely and satisfactory manner, in conformance with the work program and Project budget contained in the appendices hereto, and in compliance with the terms and conditions contained herein. County shall ensure that all such subcontractors comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state or local government, and any agency thereof, which relate to or in any manner affect the performance of this Agreement.

#### 3. PROJECTS ACCOUNTS, FUNDS AND COSTS

- A. **Accounts.** In conducting accounting activities, County and all contractors and subcontractors shall comply with all applicable provisions contained in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. **Funds.** County will contribute in cash and/or professional services such amounts or percentages of the expenses incurred in the performance of this Agreement as are specified in Appendix B.
- C. **Allowable Costs.** LAVTA shall reimburse County up to Twenty Million Dollars (\$20,000,000) for those services and expenses required to perform the work in accordance with the Project budget set forth in Appendix B. Reimbursement shall be in accordance with the cost principles set forth in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards. County agrees to use funds received pursuant to this Agreement only for costs directly related to the Project as described in this Appendix A. Any Project costs for which County has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by County to LAVTA and the State. Should County fail to reimburse moneys due within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State and the State is authorized to intercept and withhold future payments due County from the State or any third-party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller and the CTC.

**4. REQUISITIONS**

County shall prepare requisitions for reimbursement for services performed and/or expenses incurred under this Agreement. Such requisitions shall be signed by the County Administrator or a designated representative thereof. County shall maintain records of payroll distribution, receipted bills, and such other documentation as may be reasonably required by LAVTA. Requisitions shall be accompanied by supporting documentation. If a requisition includes payment for work performed under subcontract, copies of the contractor invoices and proof-of-payment shall be enclosed.

**5. PAYMENT**

The County shall submit invoices of work completed during the previous month on the 15th of every month to LAVTA. LAVTA shall then reimburse the County for one hundred percent (100.00%) of eligible costs listed in each invoice up to Twenty Million Dollars (\$20,000,000). LAVTA's maximum contribution to the Project pursuant to this agreement is Twenty Million Dollars (\$20,000,000). LAVTA's funding commitment under this Agreement in no way establishes a right for the Agency to receive additional funding from LAVTA.

The County may not use any funds provided by LAVTA or the State for elements of the Project that do not substantially benefit transit patrons.

**6. CHANGES**

From time to time, circumstances or conditions may require changes to this Agreement. Changes which are mutually agreed upon between County and LAVTA shall be incorporated in written amendments to this Agreement.

**7. TERMINATION**

LAVTA may terminate this Agreement, in whole or in part, at any time for good cause. LAVTA shall give County thirty working days' prior written notice stating the reason for the termination and County shall have the opportunity to cure. Upon notice of termination, County shall submit a requisition to LAVTA for an amount representing the allowable costs incurred, or which a binding contract promises to incur, up to the effective date of termination, provided County has not been previously reimbursed for such costs.

Notwithstanding the foregoing, in the event that County fails to proceed with Project work in accordance with the Program Supplement, or otherwise violates the conditions of this Agreement and/or the Program Supplement or the funding allocation such that substantial performance is significantly endangered, the State reserves the right to terminate funding for any Program Supplement, subject to CalSTA approval, upon written notice to LAVTA. If LAVTA receives written notice from the State, the County agrees to cooperate with LAVTA to resolve the State's concerns in accordance with the Master Agreement. Following a fund encumbrance made pursuant to a Program Supplement, if County fails to expend GGRF or SB 1 monies within the time allowed specified in the Program Supplement, those funds may revert and be deemed withdrawn and will no longer be available to reimburse Project work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to County by State.

## **8. INDEMNIFICATION**

A. County shall defend, indemnify and hold harmless LAVTA, its board members, representatives, agents, officers and employees from and against any and all claims, actions, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), related to the Scope of Work and this Agreement, including but not limited to those arising out of any of the following: a) Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of the Project or implementation of this Agreement; or b) Any allegation that materials or services developed, provided or used for the Project infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party. County further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against LAVTA or any of the individuals enumerated above in any such action, County shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

B. In addition, neither State, nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by County, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to County under this Agreement or any Program Supplement or as respects environmental clean-up obligations or duties of County relative to Project. It is also understood and agreed that, County shall fully defend, indemnify and hold the CTC, State and its officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by County under or in connection with any work, authority, or jurisdiction delegated to County under this Agreement and all Program Supplements. County shall indemnify, defend and hold harmless State, the CTC, and the State Treasurer, relative to any misuse by County of State funds, Project property, Project generated income or other fiscal acts or omissions of County.

**9. AMENDMENTS**

Any changes to this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the designated representatives of the Parties.

**10. NOTICES**

All notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To LAVTA:

Executive Director  
Livermore Amador Valley Transit Authority  
1362 Rutan Court  
Suite 100  
Livermore, CA 94551

To County:

Hadi Hadjarzadeh, Senior Project Manager  
General Services Agency  
1400 Lakeside Drive  
10<sup>th</sup> Floor  
Oakland, CA 94612

**11. CALIFORNIA TRANSPORTATION COMMISSION RESOLUTIONS**

County shall adhere to applicable California Transportation Commission policies on "Timely Use of Funds" as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of GGRF Funds and SB 1 Funds. These resolutions, and/or successor resolutions in place at the time a Program Supplement is executed, shall be applicable to State Greenhouse Gas Reduction Funds (GGRF) and Senate Bill (SB) 1 funds, respectively.

County shall be bound to the terms and conditions of this Agreement, the Project application contained in the Program Supplement (as applicable); and CTC Resolutions G-06-04, G-09-11 and/or their respective successors in place at the time the Program Supplement is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of State and CTC shall accrue to the benefit of the CTC and shall thereafter be subject to any necessary enforcement action by CTC or State. All terms and conditions stated in the aforesaid CTC Resolutions and CTC-approved Guidelines in place at the time the Program Supplement is signed (if applicable) shall also be considered to be binding provisions of this Agreement.

County shall conform to any and all permit and mitigation duties associated with Project as well as all environmental obligations established in CTC Resolution G-91-2 and/or its successors in place at the time a Program Supplement is signed, as applicable, at the expense of County and/or the responsible party and without any further financial contributions or obligations on the part of State unless a separate Program Supplement expressly provides funding for the specific purpose of hazardous materials remediation.

## 12. AUDITS AND REPORTS

### A. Cost Principles

1. County agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
2. County agrees, and will assure that its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200.
3. Any Project costs for which County has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by County to State. Should County fail to reimburse moneys due State or LAVTA within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, State is authorized to intercept and withhold future payments due County from State or any third- party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller and the CTC.
4. The State may terminate the grant for any reason at any time if it is determined by the State, based on an audit under this section, that there has been a violation of any State or federal law or policy by the County during performance under this or any other grant agreement or contract entered into with the State. If the grant is terminated under this section, the County may be required to fully or partially repay funds.

### B. Record Retention

1. County agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of County, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of County, its contractors and subcontractors connected with Project performance under this Agreement and each Program Supplement shall be maintained for a minimum of three (3) years from the date of final payment to County under a Program Supplement and shall be held open to inspection, copying, and audit by representatives of State, the California State Auditor, auditors representing the federal government and LAVTA. Copies thereof will be furnished by County, its contractors, and subcontractors upon receipt of any request made by State, LAVTA or their agents. In conducting an audit of the costs and match credits claimed under this Agreement, State will

rely to the maximum extent possible on any prior audit of County pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by County's external and internal auditors may be relied upon and used by State when planning and conducting additional audits.

2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of County's contracts with third parties pursuant to Government Code Section 8546.7, County, County's contractors and subcontractors and State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such Agreement and Program Supplement materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to County under any Program Supplement. State, LAVTA, the California State Auditor, or any duly authorized representative of State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and County shall furnish copies thereof if requested.
3. County, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by State, for the purpose of any investigation to ascertain compliance with this Agreement and the Act.

C. Reporting Requirements

County shall cooperate with LAVTA in all respects necessary to allow LAVTA to meet its reporting obligations relative to the funds expended in the performance of the Project.

County shall provide LAVTA all information necessary for LAVTA to satisfy all reporting requirements included in any grant agreement between Department and LAVTA, and all applicable obligations included in any federal law, regulation, or guidelines, as exists now or as may be changed from time to time, including without limitation the requirements of the Federal Funding Accountability and Transparency Act of 2006 and its implementing regulations set forth in 2 CFR Part 170. Unless notified by LAVTA of additional reporting requirements, County shall provide the following:

1. **Financial Report.** County shall prepare a financial report covering the same reporting periods specified in the paragraph below. These reports shall include, but not be limited to, a balance sheet and a Project

expenditure statement by line item code. Financial reports shall be delivered to LAVTA five (5) calendar days after each three-month period.

2. **Narrative Progress Report.** County shall prepare a narrative progress report covering accomplishments during regular three month periods. These periodic reports shall contain the following information: a description of the work completed during the period; tasks expected to be performed during the next period, and explanations of problems or delays encountered or anticipated. The narrative progress report shall contain any other information required by LAVTA to meet any grant reporting requirements, including the requirements set forth below. The three-month reporting periods shall end March 31, June 30, September 30, and December 31. The narrative progress reports shall be delivered to LAVTA within seven (7) calendar days after the end of each reporting period.
3. Subject to the discretion of State and LAVTA, County agrees to provide on a quarterly basis, Project Progress Reports that include the following information:
  - a. Activities and progress made towards implementation of the project;
  - b. Identification of whether the Project is proceeding on schedule and within budget;
  - c. Identification of changes to the Project funding plan;
  - d. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties for either the Project or other State funded projects impacted by the Projects scope of work;
  - e. Identify metrics and benefits achieved for disadvantaged communities, low income communities, and/or low income households;
  - f. Reporting requirements per California Air Resource Board Cap and Trade Auction Proceeds Funding Guidelines for Agencies that Administer California Climate Investments which may include, continued reporting following project implementation to identify benefits achieved.
4. Reporting requirements of County will include whether reported implementation activities are within the scope of the Project Program Supplement and in compliance with State laws, regulations, and administrative requirements.
5. Within one year of the Project or reportable Project components becoming operable, the implementing agency must provide a final delivery report including at a minimum:

- a. Scope of completed Project as compared to Programmed Project;
- b. Performance outcomes derived from the project as compared to outcomes described in the Project application and shall include but not be limited to before and after measurements and estimates for ridership, service levels, greenhouse gas reductions, updated estimated greenhouse gas reductions over the life of the project, benefits to disadvantaged communities, low income communities, and/or low income households, and project co-benefits as well as an explanation of the methodology used to quantify the benefits.

**13. THIRD PARTY CONTRACTING**

County shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of State. Contracts awarded by County, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.

Any subcontract entered into by County as a result of this Agreement shall contain the provisions of Section 12, Audits and Reports, and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

In addition to the above, the preaward requirements of third party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

**14. CHANGE IN FUNDS AND TERMS/AMENDMENTS**

This Agreement and the resultant Program Supplements may be modified, altered, or revised only, with the joint written consent of County and State.

**15. PROJECT OWNERSHIP**

- A. Unless expressly provided to the contrary in a Program Supplement, subject to the terms and provisions of this Agreement, County, or a designated subconsultant acceptable to State, as applicable, shall be the sole owner of all improvements and property included in the Project constructed, installed or acquired by County or subconsultant with funding provided to County under this Agreement. County, or subconsultant, as applicable, is obligated to continue operation and maintenance of the physical aspects of the Project dedicated to the public transportation purposes for which Project was initially approved unless County, or subconsultant, as applicable, ceases ownership of such Project property; ceases to utilize the Project property for the intended public transportation purposes; or sells or transfers title to or control over Project and State is refunded the Credits due State as provided in paragraph (B) herein below.

- B. Project right-of-way, Project facilities constructed or reconstructed on the Project site and/or Project property (including vehicles and vessels) purchased by County (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain permanently dedicated to the described public transit use in the same proportion and scope, and to the same extent as mandated in the Program Supplement, unless State agrees otherwise in writing. Vehicles acquired as part of Project, including, but not limited to, buses, vans, rail passenger equipment, shall be dedicated to that public transportation use for their full economic life cycle, which, for the purpose of this Agreement, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by reconstruction, rehabilitation or enhancements. The exceptions to this section are outlined below:
1. Except as otherwise set forth in this Section, State, or any other State-assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (collectively the Credit), at State's sole option, equivalent to the proportionate Project funding participation received by County from State if County, or a sub-Agency, as applicable, (i) ceases to utilize Project for the original intended public transportation purposes or (ii) sells or transfers title to or control over Project. If federal funds (meaning only those federal funds received directly by County and not federal funds derived through or from the State) have contributed to the Project, County shall notify both State and the original federal source of those funds of the disposition of the Project assets or the intended use of those sale or transfer receipts.
  2. State shall also be entitled to an acquisition credit for any future purchase or condemnation of all or portions of Project by State or a designated representative or agent of State.
  3. The Credit due State will be determined by the ratio of State's funding when measured against the County's funding participation (the Ratio). For purposes of this Section, the State's funding participation includes federal funds derived through or from State. That Ratio is to be applied to the then present fair market value of Project property acquired or constructed as provided in (d) and (e) below.
  4. For Mass Transit vehicles, this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by State, of the Project property acquired or improved under this Agreement.
  5. Such Credit due State as a refund shall not be required if County dedicates the proceeds of such sale or transfer exclusively to a new or replacement State approved public transit purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due State should that replacement project or those replacement

vehicles cease to be used for that intended described pre-approved public transit purpose.

i. In determining the present fair market value of property for purposes of calculating State's Credit under this Agreement, any real property portions of the Project site contributed by County shall not be included. In determining the State's proportionate funding participation, State's contributions to third parties (other than County) shall be included if those contributions are incorporated into the Project.

ii. Once State has received the Credit as provided for above because County, or a sub-Agency, as applicable, has (a) ceased to utilize the Project for the described intended public transportation purpose(s) for which State funding was provided and State has not consented to that cessation of service's or (b) sold or transferred title to or control over Project to another party (absent State approval for the continued transit operation of the Project by that successor party under an assignment of County's duties and obligations), neither County, subrecipient, nor any party to whom County or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this Agreement to continue operation of Project and/or Project facilities for those described public transportation purposes, but may then use Project and/or any of its facilities for any lawful purpose.

iii. To the extent that County operates and maintains Intermodal Transfer Stations as any integral part of Project, County shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of State, County shall also authorize State-funded bus services to use those stations and appurtenances without any charge to State or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).

**16. LABOR CODE COMPLIANCE**

County shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the County.

**17. NON-DISCRIMINATION CLAUSE**

A. In the performance of work under this Agreement, County, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and

- disability leave. County, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. County, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of County's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
- B. Each of the County's contractors, subcontractors, and/or subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. The County shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.
  - C. Should federal funds be constituted as part of Project funding or compensation received by County under a separate Contract during the performance of this Agreement, County shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.
  - D. County shall include the non-discrimination and compliance provisions of this section in all contracts and subcontracts to perform work under this Agreement.
  - E. The County shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes-Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean the County.
  - F. The County shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by Department to investigate compliance with this Section.

**18. STATE FIRE MARSHAL BUILDING STANDARDS CODE**

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, County shall request that the State Fire Marshal review Project PS&E to ensure Project consistency with State fire protection standards.

**19. AMERICANS WITH DISABILITIES ACT**

By signing this Agreement, County assures State that County shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

**20. ACCESS FOR PERSONS WITH DISABILITIES**

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. County will award no construction contract unless County's plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

**21. DISABLED VETERANS PROGRAM REQUIREMENTS**

Should Military and Veterans Code sections 999 et seq. be applicable to County, County will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or County's applicable higher goals) in the award of every contract for Project work to be performed under these this Agreement.

County shall have the sole duty and authority under this Agreement and each Program Supplement to determine whether these referenced code sections are applicable to County and, if so, whether good faith efforts asserted by those contractors of County were sufficient as outlined in Military and Veterans Code sections 999 et seq.

**22. ENVIRONMENTAL PROCESS**

Completion of the Project environmental process ("clearance" by County (and/or State if it affects a State facility within the meaning of the applicable statutes) is required prior to requesting Project funds for right-of-way purchase or construction. No State agency may request funds nor shall any State agency, board or commission authorize expenditures of funds for any Project effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied with all appropriate documentation of compliance with or exemption from the California Environmental Quality Act (CEQA) (including, if as appropriate, an environmental impact report, negative declaration, or notice of exemption) under California Public Resources Code section 21080(b) (10), (11), and (12) provides an exemption for a passenger rail project that institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

**23. FORCE MAJEURE**

Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, Acts of God (of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is

declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the party excused hereunder shall use all reasonable efforts to minimize its non- performance and to overcome, remedy or remove such event in the shortest practical time.

Should a force majeure event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Business Plan or Business Plan Update to deal with such event and to seek additional sources of funding to continue the operation of the Service.

**24. SUCCESSOR ACTS**

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

**25. SUCCESSOR AND ASSIGNS TO THE PARTIES**

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the service for the provision of goods and/or services to the contracting party in the ordinary course of business.

**26. REPRESENTATION AND WARRANTIES OF THE AGENCY**

County hereby represents and warrants to LAVTA and the Department that:

- A. County is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Agreement.
- B. County has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.
- C. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated

thereby will (i) conflict with or result in a breach of any provision of any agreement to which County is a party; (ii) violate any written, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

**27. CONSTRUCTION, NUMBER, GENDER AND CAPTIONS**

The Agreement has been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

**28. PARTIAL INVALIDITY**

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

**29. CONFLICTS**

To the extent that any provision of or requirement of this Agreement may conflict with a provision or requirement of any other agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an appendix, the priority of agreements shall be employed to resolve such conflict. In the event of a conflict, the Master Agreement controls the Program Supplement and any further Amendments.

**30. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

**31. GOVERNING LAW**

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

## APPENDIX B

### PROJECT SCOPE OF WORK AND BUDGET

**Project Name:**

Dublin-Pleasanton Capacity Improvement and Congestion Reduction Program

**Project Scope:**

County will develop a multi-level parking structure that will accommodate more than 500 transit riders daily and will include electric vehicle charging stations and preferred parking to vanpools to further maximize utilization. The completed structure will be a multi-level, convertible parking garage built on a 2.46-acre parcel in the City of Dublin adjacent to the I-580 freeway and the Dublin/Pleasanton BART station. The structure location is a highly congested area and a critical transit center that includes Bay Area Rapid Transit (BART), County Connection, MAX BART Express, San Joaquin RTD, Stanislaus Regional Transit and LAVTA. This structure will facilitate commuters, a significant portion of which come to this transit center from disadvantaged communities, that are seeking to utilize these transit options, but are often denied due to a lack of parking capacity as early as 7:30am at the BART station. BART data reports that in 2015, 60% of riders that originate at the Dublin/Pleasanton station drive and park at the BART station. As the area has become more congested since that time, the need for increased parking capacity is critical. The project is a future-thinking project by design (with 60% of the ground floor convertible in future) and will incorporate new and still-developing technology to reduce GHG emissions. The parking structure will be designed in a way to keep the future conversion easier as described further below under "Special Conditions."

The parking enhancements will be constructed and operationally maintained by Alameda County (County), as the co-applicant. County will plan and manage the construction process and own and operate the garage upon completion. County will utilize a 2- Phase Design-Build project delivery system to complete the proposed parking structure in the most streamlined way.

The timeline for construction will be as follows.

- a. CEQA**
  - i. Complete CEQA – Negative Declaration – June 2019
- b. Design-Builder Pre-Construction Procurement – Alameda County**
  - i. Begin Development of Bridging Documents – January 2020
  - ii. Issue RFP for Design-Builders – July 2020
  - iii. Award Contract to Design Builder – September 2020
- c. Pre-Construction Design**
  - i. Design/Builder Begin Design – September 2020
  - ii. Design/Builder Complete Design – December 2020
- d. Design-Build Construction – Contractor to Alameda County**
  - i. Begin Sitework – November 2020
  - ii. Begin Garage Construction – January 2021
  - iii. Garage Construction Completes February 2022
- e. LAVTA Board and Alameda County Board of Supervisors Accepts Occupancy/Completion**
  - i. February 2022

**Project Funding**

Funding for this project by fund source will be as follows:

<b>Construction</b>	TIRCP	\$20,000,000
	ACTC (LPP & DLD)	\$7,000,000
	MTC (RM2)	\$7,000,000
	<b>Construction Total</b>	<b>\$34,000,000</b>

**Special Conditions**

Project activities are further clarified according to the following Special Conditions:

- a. **Useful Life:** All new capital infrastructure projects shall be maintained in a state of good repair over the useful life of 40 years.
- b. **Design and Construction Documents:** County shall provide documentation of completed design, permits, and environmental clearances through submittal of electronic (PDF) 100% plans, specifications, and estimate (PS&E) at design completion per schedule or no later than November 15, 2020, and certificate of construction completion for capital improvements (Parking Structure) funded by this Agreement within 15 days after the construction completion.
- c. **Convertibility Plan:** County shall furnish to LAVTA for submittal to Caltrans no later than August 15, 2020, a Convertibility Plan that is acceptable to the Department, consisting of a detailed scope of work for a cost-effective conversion of the parking garage to other uses. The Convertibility Plan shall include costs and escalation factors, the methodology for conversion, and steps taken in the initial design to make future conversion easier to achieve. The Plan should also include potential development scenarios (e.g. retail, housing, etc.) and quantify the benefits of potential conversions.