

**Metro ExpressLanes
Operations and Maintenance Contract
Modifications - Option Year 3**

**Ad Hoc Congestion Reduction
November 18, 2015**



Recommendation

- **Authorize Option Year 3 of 5 one-year options for \$3,072,000**
- **Authorize additional modifications:**
 - **O & M Support Costs of \$10,383,408**
 - **Additional Transponders in the amount of \$3,240,000**
 - **Contract Modification Authority for recommended pending and future expenditures totaling \$17,203,063**
- **Total contract value increases from \$118,991,335 to \$135,686,743**

O & M Contract and Work Performed

- **Atkinson is the prime contractor and was responsible for design and construction of the ExpressLanes**
- **Xerox is a subcontractor and is responsible for operations and maintenance of the tolling equipment on freeways and all customer service-related activities**
 - **Account Support (base contract and additional accounts)**
 - **Phone calls, correspondence, customer inquiries, mailing, postage and processing transactions**
 - **Transponder Distribution**
 - **Violation Processing**
 - **License plate image review, postage, mailing, phone calls and online inquiries**

Patent Infringement Lawsuit

- **August 2015 lawsuit filed by Transport Technologies LLC against Metro for patent infringement**
 - **Alleges system used to monitor occupancy on ExpressLanes (includes transponders, toll equipment and back office system) infringes its patent**
- **Atkinson refuses to indemnify Metro and defend us in the lawsuit stating that indemnification does not apply “to any Goods manufactured to the detailed design of Metro”**
- **Atkinson did agree to submit a pre-trial motion on Metro’s behalf seeking dismissal of the lawsuit**
- **Metro recently filed a third party complaint against Atkinson for breach of contract and requested that Atkinson indemnify Metro and pay all costs and expenses incurred in its defense of the patent infringement lawsuit**



Alternatives for Continued O & M

- Re-procurement of a new O & M contract is at least 18 -24 months away
- To ensure there is no interruption in ExpressLanes operation these are the following alternatives:
 - Continue with the Atkinson/Xerox contract until such time as a new contract can be issued
 - Award a sole source emergency contract for the remaining option years to Xerox
 - It is likely Xerox would want to re-negotiate rates and pricing if they were to assume the remainder of the contract