

ORIGINAL

COOPERATIVE AGREEMENT  
FOR CITY OF ALAMEDA SUPPORT OF THE DESIGN, CONSTRUCTION, OPERATIONS  
AND MAINTENANCE OF THE  
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT LINE 51 TRANSIT PERFORMANCE  
INITIATIVE PROJECT IN ALAMEDA, CALIFORNIA

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into as of May 6, 2014, by and between the CITY OF ALAMEDA ("CITY"), a municipal corporation in the State of California, and the ALAMEDA-CONTRA COSTA TRANSIT DISTRICT ("AC TRANSIT") a special transit district established pursuant to California Public Utilities Code, Section 24501 et seq.

RECITALS

- A. CITY and AC TRANSIT, in cooperation with other local, state and federal agencies, desire to construct a transit friendly roadway improvements, and traffic signalization improvements (including all items shown on attached Exhibits A and B) along Broadway, Santa Clara Avenue, and Webster Street in the City of Alameda ("PROJECT"). The primary purpose of the PROJECT is to improve transit operations, and pedestrian access to transit for the Line 51 bus line.
- B. AC TRANSIT represents that it has \$10,500,000 in federal funds committed and available for the implementation of the PROJECT.
- C. CITY represents that it is ready and able to provide the staff time required to support the PROJECT.
- D. AC TRANSIT represents that it has federal funds committed to reimburse the CITY for its staff time during construction phase of the project. Mechanism to reimburse the city is through the encroachment permit issued by the City.
- E. AC TRANSIT represents that it will complete the design of the PROJECT and administers the construction of the PROJECT with the approval of CITY staff.
- F. The PROJECT will be implemented by AC TRANSIT. The PROJECT will install sidewalk extensions at select bus stops to facilitate pedestrian boarding of buses, and upgrade ADA ramps along the project length. The PROJECT will also upgrade traffic signals with Transit Signal Priority technology so that signals can provide transit vehicles an early green phase, or a green phase extension when needed. Other improvements to signals may include, but are not limited to, exclusive bus phases, pedestrian countdown signal heads, audio and tactile push buttons for the visually impaired, and fiber interconnect between signals.

SECTION I  
PROJECT DESIGN, CONSTRUCTION AND ADMINISTRATION

A. CITY AGREES:

- 1. To review AC TRANSIT's design documents and, if consistent with standard City details, incorporate them into encroachment permits issued for the PROJECT, and to

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1. The first part of the report is a general introduction to the project. It should include the purpose of the study, the objectives, and the scope of the work. It should also mention the date of the report and the name of the person who prepared it.

2. The second part of the report is a detailed description of the work done. It should include a list of the tasks that were completed, a description of the methods used, and a discussion of the results. It should also mention any problems that were encountered and how they were solved.

3. The third part of the report is a conclusion. It should summarize the main findings of the study and discuss their significance. It should also mention any limitations of the study and suggest areas for further research. It should also mention the date of the report and the name of the person who prepared it.

4. The fourth part of the report is a list of references. It should include a list of the books, articles, and other sources that were used in the study. It should also mention the date of the report and the name of the person who prepared it.

5. The fifth part of the report is a list of appendices. It should include a list of the tables, figures, and other material that are included in the report. It should also mention the date of the report and the name of the person who prepared it.

review resident engineering during construction, in return for reimbursement by AC TRANSIT of eligible costs as stated in the encroachment permits. All costs and invoices shall be consistent with federal audit grant reimbursement documentation.

2. To operate and maintain as installed and pay one hundred percent (100%) of the operation and maintenance costs of the signal equipment, sidewalk, curb and gutter, and drainage elements installed as part of the PROJECT.
3. To create and/or designate and permanently maintain all bus stops installed as part of the PROJECT except where maintenance is provided by another maintenance provider. These bus stops shall be designated for use solely by AC TRANSIT vehicles through the use of regulatory signs, pavement markings, and red-painted curb.
4. To grant an encroachment permit authorizing AC TRANSIT or its contractor to perform all construction activities required by the PROJECT within the CITY right of way.

**B. AC TRANSIT AGREES:**

1. To pay for CITY fees stated in the encroachment permit by way of a construction contract paid by contractor for actual expenses and costs incurred in the support, review, and approval of AC TRANSIT's design, engineering and construction of the PROJECT.
2. To make progress payments upon the CITY's submittal of progress invoices with appropriate documentation detailing costs incurred. The submittal of progress invoices and payments are not to be more frequent than one (1) per month. AC TRANSIT shall not be liable for making payments for any expenses deemed by the Federal Transit Administration or any other federal agency with appropriate jurisdiction over the PROJECT to be ineligible for federal reimbursement.
3. To cooperate with CITY and its staff, agents, in planning, designing, engineering, constructing, testing, and implementing the PROJECT.
4. To develop and implement, at its own expense, a public awareness program to inform the public regarding the PROJECT prior to its implementation.
5. To designate at its own expense, an AC TRANSIT representative to work with the CITY in coordinating all aspects of the PROJECT including planning, engineering, construction and installation work.

## SECTION II MISCELLANEOUS PROVISIONS

### THE PARTIES MUTUALLY AGREE:

1. All obligations of CITY, under the terms of this Agreement, are subject to the CITY receiving appropriate funds, through the encroachment permit to be issued by the City and paid for by AC TRANSIT or the Contractor for CITY support, review, and approval of the design, construction and implementation of the PROJECT.
2. Upon completing and accepting all work on the PROJECT under this Agreement, ownership and title to materials, equipment and appurtenances in relation to this PROJECT will automatically vest in the CITY. No further agreement will be necessary to transfer ownership as hereinbefore stated. The CITY will be the sole owner and will be responsible for operation and maintenance of all signal and communication equipment installed as a part of the PROJECT.
3. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties, or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, improvement or maintenance of State highways and public facilities different or greater than the standard of care imposed by law.
4. Neither AC TRANSIT, nor its directors, officers and employees, shall be responsible for any damage, loss, expense, costs or liability occurring by any act or omission by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AC TRANSIT, and its directors, officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of any act or omission by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
5. Neither CITY, nor its officers and employees, shall be responsible for any damage, loss, expense, costs or liability occurring by reason of any act or omission by AC TRANSIT under or in connection with any work, authority or jurisdiction delegated to AC TRANSIT under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AC TRANSIT shall fully defend, indemnify and save harmless the CITY, and its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of act or omission by AC TRANSIT under or in connection with any work, authority or jurisdiction delegated to AC TRANSIT under this Agreement.
6. The parties shall work together in the spirit of good faith and cooperation to successfully implement this Agreement. To the extent there are disagreements between the CITY and AC TRANSIT, those disagreements shall immediately be raised between the parties. Prior to initiating any legal action, the parties hereto agree to meet in good faith to attempt to resolve any dispute. In the event the parties cannot resolve the dispute, they will make a thorough good faith effort to resolve such issues through a mediation process conducted by an impartial third party. The parties shall jointly select and engage the

efforts of a mediator to help resolve the dispute. The parties shall share the costs of the mediator equally. If the issue still remains unsolved, either party may bring a legal action seeking resolution of the disagreement. However, any and all legal actions may only be brought if the preceding dispute resolution process has been satisfied.

7. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.
8. In the event a dispute cannot be resolved as described in Section II.6 of this Agreement, either the CITY or AC TRANSIT may terminate this Agreement upon 60 days prior written notice to the other party. If CITY desires to terminate this Agreement, such written notice shall be sent by U.S. Postal Service certified mail to: General Manager, AC Transit, 1600 Franklin Street, Oakland, CA 94612. If AC TRANSIT desires to terminate this Agreement, such written notice shall be sent by U.S. Postal Service certified mail to City of Alameda, Office of the City Manager, 2263 Santa Clara Ave, Alameda, CA 94501.
9. In the event that this Agreement is terminated by either party before the PROJECT has been completed, AC TRANSIT shall pay only those reasonable costs incurred by the CITY for work that could not have been suspended at the time of the notice of termination. AC TRANSIT will reimburse the CITY for eligible costs incurred following termination that reasonably were incurred at the time of termination and such additional eligible costs necessary to bring any portion of the outstanding work to a reasonable point of completion following the notice of termination. If there is any question regarding the work to be completed, the parties will discuss the outstanding work and concur on the stage at which the incomplete work will end following the receipt of the notice of termination.
10. This Agreement and all work performed thereunder shall be interpreted under and pursuant to the laws of the State of California. The parties agree that the jurisdiction and venue of any dispute arising under this Agreement shall be the Superior Court of Alameda County.
11. Neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other.
12. Each party agrees to keep and maintain (and to require all contractors and subcontractors connected with performance of this Agreement) to keep and maintain records showing actual time devoted and all costs incurred in the performance of all work subject to this Agreement until three (3) years after the accepted completion of the PROJECT, or until such later date as is required under applicable law; provided, however, that if any actions brought under the dispute resolution provisions of this Agreement or lawsuits arising from this Agreement have not been finally resolved by the foregoing deadline, then any

records which pertain to any such action shall be maintained until such actions have been finally resolved.

13. This Agreement shall commence as of the date entered and shall continue in effect until the parties reach a mutually agreeable date for termination of the Agreement after all work required by this Agreement has been completed.
14. All of the terms, provisions and conditions of the Agreement hereunder, shall be binding upon and inure the parties hereto and their respective successors, assigns and legal representatives.
15. By signing this Agreement, CITY covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this Agreement. CITY further covenants that in the performance of this Agreement no person having any such interest shall be employed by the CITY, and that the CITY receives no commissions or other payments from parties other than the DISTRICT as a result of work performed hereunder.
16. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this agreement, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

ALAMEDA-CONTRA COSTA  
TRANSIT

CITY OF ALAMEDA  
A Municipal Corporation

RECOMMENDED FOR APPROVAL

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\_\_\_\_\_  
John A. Russo  
City Manager

\_\_\_\_\_  
Robert G. Haun  
Public Works Director

APPROVED AS TO FORM

APPROVED AS TO FORM  
City Attorney

\_\_\_\_\_  
Denise Standridge  
Interim General Counsel

\_\_\_\_\_  
Michael Roush  
Interim Assistant City Attorney

Dated: \_\_\_\_\_