

**COOPERATIVE AGREEMENT
BETWEEN CITY OF ALAMEDA AND AC TRANSIT FOR DESIGN, CONSTRUCTION, OPERATIONS,
AND MAINTENANCE OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT PARK STREET
TRANSIT SIGNAL PRIORITY AND SIGNAL OPTIMIZATION PROJECT IN ALAMEDA,
CALIFORNIA**

THIS COOPERATIVE AGREEMENT (“Agreement”) is entered into full execution, by and between the City of Alameda (“AGENCY”), 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. AGENCY AND AC TRANSIT, in cooperation with other local, state and federal agencies desire to construct traffic signalization improvements along Park Street in the City of Alameda as specified in the attached Exhibits A and B which are incorporated by reference herein (“PROJECT”). The primary purpose of the PROJECT is to improve transit operations and service reliability.
- B. AC TRANSIT represents that it has regional funds committed and available for the implementation of the PROJECT.
- C. AGENCY represents that they are ready and able to provide the staff time required to support delivery of the PROJECT.
- D. AC TRANSIT represents that it will complete the design of the PROJECT and administer the construction of the PROJECT upon the approval and with the support of AGENCY staff.
- E. The PROJECT will be implemented by AC TRANSIT unless otherwise noted. The PROJECT will upgrade traffic signals and associated equipment with Transit Signal Priority technology so that signals can provide transit vehicles with an early green phase, or a green phase extension when needed, along Park Street between Alameda Avenue and Otis Drive in city of Alameda. Other improvements include interconnect between signals along Park Street from Blanding Avenue to Otis Drive.

SECTION I

PROJECT DESIGN, CONSTRUCTION, ADMINISTRATION AND MAINTENANCE

A. AGENCY AGREES:

- 1. To cooperate in the review and approval of AC TRANSIT’s design documents, contract administration, procurement, and to provide support to AC TRANSIT during construction (per AGENCY permits issued as described herein), and related administrative services needed for PROJECT completion.
- 2. To operate and maintain as installed and be responsible for the operation and maintenance of the elements installed as part of the PROJECT as identified in Exhibits A and B.
- 3. To reasonably and expediently consider an application(s) for an encroachment permit authorizing AC TRANSIT or its contractor to perform all construction activities required by the PROJECT within the AGENCY right-of-way, provided AC TRANSIT or its contractor satisfies the AGENCY’s conditions precedent to issuance of an encroachment permit (including all necessary indemnification and insurance).

B. AC TRANSIT AGREES:

- 1. To be responsible for planning, designing, engineering, constructing, testing, and implementing the PROJECT and to cooperate with AGENCY and its staff or agents, in implementing the PROJECT in a manner that allows AGENCY to utilize, operate, and maintain such equipment and software, including, among other things, rights to utilize support services and enforce warranties.

2. To, at its own expense, handle any environmental reviews and develop and implement a public awareness program to inform the public regarding the PROJECT prior to its implementation. Pursuant to California Environmental Quality Act Guideline 15051(d), AC TRANSIT is designated as the lead agency for purposes of environmental review as required under Public Resources Code § 21000, et seq.
3. To designate, at its own expense, an AC TRANSIT representative to work with the AGENCY in coordinating all aspects of the PROJECT including planning, engineering, construction and installation work.
4. To secure and maintain for the duration of this Agreement, insurance coverages as set forth in Section 5, subsections (a)-(c). All self-insurance, self-insured retentions, and deductibles must be declared and approved by the AGENCY. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Entity. AGENCY, its officers, employees, and agents, shall be named on the Commercial General and Automobile Liability policies as additional insureds. The policies required by this Agreement shall be primary and noncontributory as to any policies maintained by the AGENCY and shall include a waiver of subrogation as to the AGENCY.
5. To include a provision in any construction contract for the PROJECT requiring any contractor and subcontractor (as required by the AGENCY) to maintain insurance coverage for, at minimum, the coverage limits listed below:
 - a. Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01, or its equivalent, covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - b. Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
 - c. Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than **\$1,000,000.00** per accident for bodily injury or disease.
 - d. Professional Liability (if Design/Build), with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.If contractor maintains higher limits than the specified minimum limits, the District requires and shall be entitled to coverage for the higher limits maintained by Contractor.
6. Providing the necessary equipment and technical support to operate and maintain all TSP equipment deployed by the PROJECT within the AGENCY right-of-way as identified in Exhibit B. Although AGENCY will own the TSP equipment, AC TRANSIT, at its sole cost, shall bear full responsibility for providing all labor, materials, incidentals, field assistance, troubleshooting, replacing, reconfiguring, and testing new equipment as needed to maintain fully functional TSP equipment. AC Transit's maintenance obligations do not extend to damages caused by the City's own actions or failure to maintain the GPS/wireless infrastructure specified under Section II(12).

SECTION II MISCELLANEOUS PROVISIONS

THE PARTIES MUTUALLY AGREE:

1. To cooperate, under the terms of this Agreement, in the support, review, and approval of the design, procurement, construction and implementation of the PROJECT.

2. AGENCY is responsible for maintaining GPS time clocks and wireless communication infrastructure required for the operation of the TSP system within the PROJECT corridor. As a redundant measure, and to ensure communications are continuous during maintenance activities, AC Transit shall install GPS time clocks at traffic signal(s) to provide accurate time synchronization in the event of temporary wireless communication disruption.
3. The TSP system components can serve a dual purpose and provide Emergency Vehicle Preemption (EVP) in addition to TSP. AGENCY may, at its own expense, configure the TSP system to provide EVP within the corridor project boundaries.
4. Upon completing and accepting all work on the PROJECT under this Agreement, ownership and title to the materials, equipment and appurtenances will be as provided in Exhibit B, and ownership will automatically vest in the AGENCY for those facilities identified as owned by AGENCY in Exhibit B. No further agreement will be necessary to transfer ownership as hereinbefore stated. The AGENCY will be the sole owner and will be responsible for operation and maintenance of the traffic signal and communications equipment as provided in Exhibit B.
5. The parties shall each observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies having jurisdiction over the scope of the PROJECT or any part thereof, including, but not limited to, all laws and regulations regarding public works projects, the provisions of the California Occupational Safety and Health Act, and all federal, state, municipal, and local safety regulations.
6. 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 any 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.
7. AC TRANSIT shall indemnify, defend, and hold harmless the AGENCY, its City Council, officers, employees, agents, and volunteers from and against any and all liability, loss, expense, including attorneys' fees, or claims for injury or damages arising out of its negligent performance under this Agreement, or its failure to comply with any of its obligations contained herein, except such loss or damage that was caused by the negligence or willful misconduct of the AGENCY.
8. AGENCY shall indemnify, defend, and hold harmless AC TRANSIT, its Board of Directors, officers, employees, agents, and volunteers from and against any and all liability, loss, expense, including attorneys' fees, or claims for injury or damages arising out of its negligent performance under this Agreement, or its failure to comply with any of its obligations contained herein, except such loss or damage that was caused by the negligence or willful misconduct of AC TRANSIT.
9. In the event the AGENCY installs a new signal on a segment that is part of the PROJECT during the term of this Agreement, the AGENCY will seek to integrate the new signal with the PROJECT pending available resources and funding available from the AGENCY and AC TRANSIT. Ownership, operation, and maintenance of any new signal may follow the terms of this Agreement. Any new signal integration into the PROJECT shall require a written amendment to this Agreement.
10. Except for the obligations for indemnification and dispute resolution, which shall survive termination of this Agreement, obligations under this Agreement will be in effect for 15 years from the date it is fully executed ("term").
11. The AGENCY and AC TRANSIT shall work together in good faith to resolve any disputes arising under this Agreement. Prior to initiating any legal action against the other party, the parties agree to meet and confer in good faith to attempt to resolve the dispute. Nothing in this Section shall be construed to limit either party's right to terminate this Agreement pursuant to Section II(12).
12. **Termination**

(a) Termination for Convenience. Either party (AC Transit or Agency) may terminate this Agreement, in whole or in part, at any time and for any reason, upon sixty (60) days' prior written notice to the other

party. Termination under this provision does not require a finding of default or fault by either party. If the AGENCY desires to terminate this Agreement under this provision, 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 under this provision, such written notice shall be sent by U.S. Postal Service certified mail to the AGENCY's designated address: City of Alameda, Alameda City Hall, 2263 Santa Clara Avenue, Alameda, CA 94501 (Attn: City Manager).

(b) Effect of Termination; Survival. Upon termination of this Agreement for any reason, each party shall promptly cease any further performance of services or obligations terminated by such notice. Termination shall not relieve either party of obligations incurred prior to the effective date of termination. The provisions of this Agreement relating to indemnification, dispute resolution, and governing law shall survive any termination.

13. 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.
14. 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.
15. Neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other.
16. All of the terms, provisions and conditions of this Agreement, shall be binding upon and inure the parties hereto and their respective successors, assigns and legal representatives.
17. By signing this Agreement, the AGENCY and AC TRANSIT covenant that each presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for by this Agreement. AGENCY and AC TRANSIT further covenant that in the performance of this Agreement no person having any such interest shall be employed by the AGENCY and AC TRANSIT.
18. 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.
19. This Agreement may be executed in any number of original counterpart signature pages, and each counterpart signature page shall be attached to and incorporated in the original agreement.
20. By signing this Agreement, each signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or, if acting on behalf of an entity, the entity upon behalf of which he/she acted, executed this Agreement.

SIGNATURE PAGE FOLLOWS

Alameda – Contra Costa Transit District:

The City of Alameda:

By: _____
Salvador Llamas
General Manager / Chief Executive Officer

By: _____
Adam Politzer
City Manager

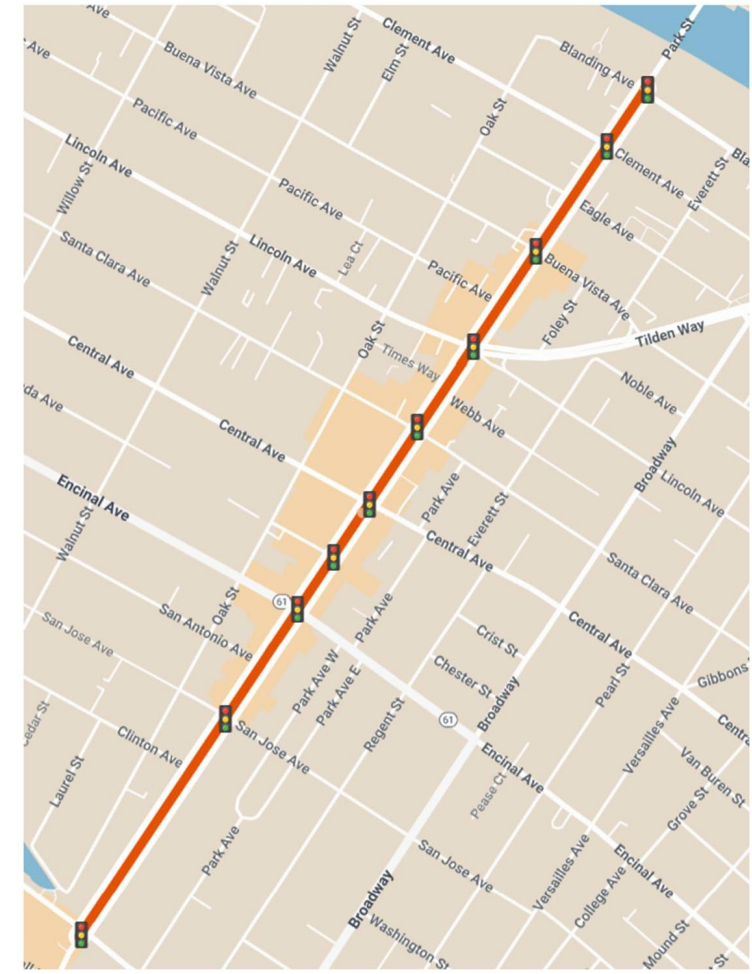
Approved As To Form and Content:

By: _____
Aimee Steele
General Counsel / Chief Legal Officer

Exhibit A: PROJECT AREA

COOPERATIVE AGREEMENT

BETWEEN CITY OF ALAMEDA (“AGENCY”) AND AC TRANSIT FOR DESIGN, CONSTRUCTION, OPERATIONS, AND MAINTENANCE OF THE PARK STREET TRANSIT SIGNAL PRIORITY AND SIGNAL OPTIMIZATION PROJECT (“PROJECT”)



Existing Transit Signal Priority	New Transit Signal Priority (1)
Park Street & Blanding Avenue	Park Street & Alameda Avenue
Park Street & Clement Avenue	Park Street & Encinal Avenue (SR 61)
Park Street & Buena Vista Avenue	Park Street & San Jose Avenue
Park Street & Lincoln Avenue/Tilden Way	Park Street & Otis Drive
Park Street & Santa Clara Avenue	
Park Street & Central Avenue	

Notes

(1) New Transit Signal Priority will be installed by AC Transit as part of the PROJECT.

Exhibit B: Proposed New Equipment as Part of the PROJECT

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NO.	LOCATION	OWNED	MAINTAINED (IF DIFFERENT FROM OWNED)	Controller	Cabinet	TSP GPS Radio Antenna (1)	TSP Phase Selector (1)	TSP Auxiliary Interface Panel (1)	GPS Clock	Wireless Communication Equipment
1	Park Street /Blanding Ave	Alameda	-	-	-	-	-	-	-	-
2	Park Street /Clement Ave	Alameda	-	-	-	-	-	-	-	-
3	Park Street /Buena Vista Ave	Alameda	-	-	-	-	-	-	-	-
4	Park Street /Tilden Way - Lincoln	Alameda	-	-	-	-	-	-	-	-
5	Park Street /Santa Clara Ave	Alameda	-	-	-	-	-	-	-	-
6	Park Street /Central Ave	Alameda	-	-	-	-	-	-	-	-
7	Park Street /Alameda Ave	Alameda	-	-	-	1	1	1	-	-
8	Park Street /Encinal Ave (SR 61)	Caltrans	Alameda	-	-	1	1	1	-	1
9	Park Street /San Jose Ave	Alameda	-	Econolite Cobalt ATC Shelfmount	Econolite P44 Cabinet	1	1	1	1	2
10	Park Street /Otis Dr	Alameda	-	-	-	1	1	1	-	1

Notes:

(1) TSP equipment includes: GTT 764 phase selector, GPS radio antenna, cabling, and associated accessories.

All TSP equipment will be owned, operated and maintained by AGENCY. AC Transit will provide the necessary equipment and technical support to operate and maintain all TSP equipment.

Although AGENCY will own the TSP equipment, AC Transit, at its sole cost, shall bear full responsibility for providing all labor, materials, incidentals, field assistance, troubleshooting, replacing, reconfiguring, and testing new equipment as needed to maintain fully functional TSP equipment.

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