

COOPERATIVE AGREEMENT
BETWEEN CITY OF EL CERRITO AND AC TRANSIT FOR DESIGN, CONSTRUCTION,
OPERATIONS AND MAINTENANCE OF THE RAPID CORRIDORS PROJECT IN EL CERRITO,
CALIFORNIA

THIS COOPERATIVE AGREEMENT (“Agreement”) is entered into upon full execution, by and between City of El Cerrito (“AGENCY”), and the ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (“AC TRANSIT”), a 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 transit-friendly roadway improvements and traffic signalization improvements along San Pablo Avenue in the City of El Cerrito as well as arterials connecting San Pablo Avenue and Interstate 80 as specified in the attached Exhibit A, which are incorporated by reference herein (“PROJECT”). The primary purpose of the PROJECT is to improve transit operations.
- B. AC TRANSIT represents that it has federal, state and regional funds committed and available for the implementation of the PROJECT.
- C. AGENCY represents that it is 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.
- E. The PROJECT will be implemented by AC TRANSIT unless otherwise noted. The PROJECT will upgrade traffic signals with Transit Signal Priority (TSP) technology so that signals can provide transit vehicles an early green phase, or a green phase extension when needed.

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 AGENCY equipment utilized as part of the PROJECT within the AGENCY’S jurisdiction as identified in Exhibit A, attached hereto and incorporated herein by reference.
- 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 shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher. 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 non-contributory 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 the minimum amounts listed below:
 - a. Commercial General Liability: Commercial General Liability Insurance (CGL) on a standard occurrence form, no less broad than *Insurance Services Office (ISO) form CG 00 01. \$2,000,000.00* per occurrence; *\$4,000,000.00* General Aggregate; *\$2,000,000.00* Products/Completed Operations Aggregate. *The General Aggregate shall apply separately to each Contract with the District.* If a general aggregate limit applies, either the general aggregate limit shall apply separately to this contract/project/location (*ISO CG 25 03 or 25 04*) or the general aggregate limit shall be twice the required occurrence limit. Minimum Limits: 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.
 - b. Automobile Liability: *Insurance Services Office Form CA 0001* covering *Code 1 (any auto)*, with limits no less than the following per accident for bodily injury and property damage: *\$5,000,000.00* combined single limit per accident.
 - 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* per accident for bodily injury or disease.
6. . Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher. 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 non-contributory as to any policies maintained by the AGENCY and shall include a waiver of subrogation as to the AGENCY. .
7. 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 A. Although the City 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.

SECTION II
MISCELLANEOUS PROVISIONS

AC TRANSIT and AGENCY 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. See PROJECT Corridor Map Exhibit A.
2. 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 A, and ownership of the TSP equipment will automatically vest in the AGENCY for those facilities identified as owned by the AGENCY in Exhibit A. No further agreement will be necessary to transfer ownership as herein stated. The AGENCY will be the sole owner of the traffic signal and communications equipment in its respective jurisdiction as identified in Exhibit A. AGENCY and AC TRANSIT will be responsible for the operation and maintenance of the equipment as identified in Exhibit A.
3. Upon termination of this Agreement, AGENCY shall have no obligation to AC TRANSIT to operate or maintain the TSP equipment installed.
4. 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.
5. 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.
6. AC Transit shall indemnify, defend, and hold harmless City of El Cerrito, 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 City of El Cerrito.
7. City of El Cerrito 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 sole negligence or willful misconduct 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.
8. 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.

9. 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").
10. The AGENCY and AC TRANSIT shall work together in the spirit of good faith and cooperation to successfully implement this Agreement. To the extent there are disagreements between the AGENCY and AC TRANSIT regarding the interpretation of this Agreement, those disagreements shall immediately be raised between the parties. Prior to initiating any legal action against another party, the parties agree to meet in good faith to attempt to resolve any non-third-party dispute through a mediation process conducted by an impartial third party. The AGENCY and AC TRANSIT shall jointly select and engage the efforts of a mediator to help resolve the dispute. The AGENCY and AC TRANSIT 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 mediation process has been satisfied.
11. In the event a good faith dispute cannot be resolved through the mediation process described in Section II.10 of this Agreement, either the AGENCY or AC TRANSIT may terminate this Agreement upon 60 days' prior written notice to the other 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.
- 12.
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.

Signed by:

AC Transit

Date

Michael Hursh

General Manager

Approved as to form and content:

Jill A. Sprague

General Counsel for AC Transit

City of El Cerrito

Date

Name

Title

5483885.1

**COOPERATIVE AGREEMENT
BETWEEN CITY OF EL CERRITO AND AC TRANSIT FOR DESIGN, CONSTRUCTION, OPERATIONS AND MAINTENANCE OF THE RAPID CORRIDORS PROJECT**

Exhibit A: Proposed New Equipment As Part of the Rapid Corridors Project

NO.	LOCATION	OWNED	MAINTAINED (IF DIFFERENT FROM OWNED)	Controller	Cabinet	GPS Radio Antenna (1)	Phase Selector (1)	Auxiliary Interface Panel (1)	TSP (1)
1	Central Ave/Carlson Blvd	El Cerrito	-	1	-	-	-	-	GTT GPS Equipment
2	San Pablo Ave/Knott Ave	El Cerrito	-	1	-	1	1	1	GTT GPS Equipment
3	San Pablo Ave/Conlon Ave	El Cerrito	-	1	-	1	1	1	GTT GPS Equipment
4	San Pablo Ave/Ohlone Greenway	El Cerrito	-	1	-	1	1	1	GTT GPS Equipment

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 the City. AC Transit will provide the necessary equipment and technical support to operate and maintain all TSP equipment .