

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

THIS COOPERATIVE AGREEMENT (“Agreement”) is entered into upon full execution, by and between City of Berkeley, (“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 transit-friendly roadway improvements and traffic signalization improvements along Telegraph Avenue and San Pablo Avenue in the City of Berkeley, as well as arterials that connect San Pablo Avenue and Interstate 80 as specified in Exhibit A, which is incorporated by reference herein (“PROJECT”). The primary purpose of the PROJECT is to improve transit operations and pedestrian access to transit.
- B. AC TRANSIT represents that it has federal and 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 with Transit Signal Priority (TSP) technology so that signals can provide transit vehicles an early green phase, or a green phase extension when needed. The PROJECT will improve sidewalk at select bus stops to facilitate pedestrian boarding of buses and upgrade Americans with Disabilities Act (ADA) ramps at select bus stops along Telegraph Avenue and Dana Street in the City of Berkeley.

SECTION I

PROJECT DESIGN, CONSTRUCTION, ADMINISTRATION AND MAINTENANCE

- A. AGENCY AGREES:
 - 1. To cooperate in the review, approval, and support of AC TRANSIT’s design documents and to provide engineering and inspection support (per construction permits) during construction, administration services, and any additional reasonable support 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, excluding TSP equipment, as identified in Exhibit A.
 - 3. To cooperate in AC TRANSIT’s installation of the proposed existing and new bus stops that are part of the PROJECT. Such cooperation shall include designating the identified bus stop areas for use solely by AC Transit vehicles through the use of regulatory signs, pavement markings, and red-painted curb. The PROJECT will not change ownership or maintenance responsibilities of the existing and new bus stops. AC TRANSIT maintains bus poles. AGENCY maintains sidewalks and curb. Existing shelters, benches, and trash receptacles, if any, are maintained by AGENCY or a third party through a contract with AGENCY. To grant an encroachment permit authorizing AC TRANSIT or its contractor to perform all construction activities required by the PROJECT within the AGENCY right -of-way.

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, agents, in planning, designing, engineering, constructing, testing, and implementing the PROJECT, including, but not limited to, the procurement of equipment and software 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.
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 include a provision in any construction or professional service contracts for the PROJECT that requires the contractor and its subcontractor(s) to defend, indemnify, and hold harmless the AGENCY from any claims, lawsuits or judgements arising out of the contractor's negligence or willful acts or omissions arising out of its work under said construction or professional services contracts (with legal counsel reasonably acceptable to the AGENCY), to the fullest extent permitted by law.
5. To include a provision in any construction or professional service contracts for the PROJECT requiring any contractor to name AGENCY as an additional insured with endorsements and certifications as to work performed under the construction or professional service contracts.
6. To operate and maintain all TSP equipment deployed by the PROJECT within the AGENCY right -of-way.
7. To provide consultant support to AGENCY to review engineering and construction related documents.

AC TRANSIT will provide necessary equipment and support to maintain TSP system, and all associated cables and equipment for the duration of this Agreement.

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. 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 will automatically vest in the AGENCY for its facilities identified as owned by AGENCY in Exhibit A. 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 A.
3. 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.

4. 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.
5. 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 AGENCY under or in connection with any work, authority or jurisdiction delegated to AGENCY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AGENCY 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 AGENCY under or in connection with any work, authority or jurisdiction delegated to AGENCY under this Agreement, except those arising by reason of the sole negligence or willful misconduct of AC TRANSIT, its directors, its officers, or its employees.
6. Neither AGENCY, 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 AGENCY, 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, except those arising by reason of the sole negligence or willful misconduct of AGENCY, its officers, or its employees.
7. In the event AGENCY installs a new signal on the PROJECT segment during the term of this Agreement, AGENCY is responsible for integrating the new signal including new TSP equipment with the PROJECT. Ownership, operation, maintenance of a new signal will follow the policy adopted for all other project signals in the Agreement called out in Exhibit A.
8. 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.
9. 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 STAKEHOLDER AGENCIES 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 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.
10. In the event a good faith dispute cannot be resolved through the dispute resolution process described in Section II.9 of this Agreement, either the AGENCY or AC TRANSIT may terminate this Agreement upon 60 days' prior written notice to the other party. If 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 AGENCY general management address.

11. 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 AGENCY for work that could not have been suspended at the time of the notice of termination. AC TRANSIT will reimburse the AGENCY 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.
12. 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.
13. 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.
14. Neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other.
15. This Agreement shall commence as of the date signed by all the parties 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 or 15 years from the date it is fully executed, whichever comes first.
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, 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 AGENCY.
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 Berkeley

Date

Dee Ridley-Williams

City Manager, City of Berkeley

Approved as to Form:

Michael Woo

Deputy City Attorney