

AGREEMENT BETWEEN THE ALAMEDA CONTRA COSTA TRANSIT AUTHORITY AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

IN CONNECTION WITH BUS BRIDGE SERVICES

This funding Agreement is effective as of January 1, 2021 (the "Effective Date") by and between the Alameda-Contra Costa Transit Authority, ("AC Transit"), and the San Francisco Bay Area Rapid Transit District ("BART") (collectively, the "Parties").

RECITALS

1. WHEREAS, AC TRANSIT is a special District duly created and acting under the California Public Utilities Code Sections 24501 et seq., operating a public transit system serving 13 cities and adjacent unincorporated areas in Alameda and Contra Costa counties; and
2. WHEREAS, BART is a Rapid Transit District duly created and acting under the California Public Utilities Code Sections 28500 et seq., operating a regional rapid transit system for the San Francisco Bay Area; and
3. WHEREAS, both AC TRANSIT and BART operate public transit services in the San Francisco Bay Area; and
4. WHEREAS, due to upcoming infrastructure work at interlockings along BART's R-Line and A-Line Right-of-Way, BART train service will be suspended between various stations along the R-Line and A-Lines; and
5. WHEREAS, AC TRANSIT has the ability to provide high capacity bus service; and
- ~~5.6.~~ WHEREAS, AC TRANSIT is subject to physical distancing requirements and health and safety protocols by local public health agencies; and
- ~~6.7.~~ WHEREAS, on October 22, 2020, subject to specified limits, the BART Board of Directors authorized its General Manager to execute agreements with bus service providers for temporary bus transportation services when BART is unable to provide complete train service; and
- ~~7.8.~~ WHEREAS, on XXXXXXXXXX, the AC TRANSIT Board of Directors authorized its General Manager to agree to operate the Bus Services as defined herein (hereinafter "Bus Bridge Services").

NOW, THEREFORE, AC TRANSIT and BART, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

AGREEMENT

1: BART RESPONSIBILITIES

A. BART agrees to provide funding to AC TRANSIT for the Bus Bridge Services described in Attachment A, Scope of Services, and Attachment B, Concept of Operations, in accordance with, and as described in, Attachment C, Reimbursement Schedule. Attachments A, B, and C are attached hereto and incorporated herein by this reference. In no event, shall the amount owed by BART to AC TRANSIT under this Agreement exceed the sum of \$150,000 per day. BART agrees to compensate AC TRANSIT for service AC TRANSIT provides hereunder on BART holidays that are not observed by AC TRANSIT.

B. BART agrees to notify AC TRANSIT of any requested changes to the services described in Attachment A, Scope of Services, and Attachment B, Concept of Operations, as soon as possible.

C. BART agrees to provide AC TRANSIT with BART's marketing and public relations plans for the Project.

D. BART represents that no Title VI equity or fare analysis is required for these services.

E. BART will encourage passengers to follow AC Transit's guidelines for safe and healthy transit riding.

~~D.F.~~ BART will ensure passenger loads on AC Transit buses are not exceeded and sufficient service levels are included in the plan to avoid exceeding physical distancing requirements.

SECTION 2: AC TRANSIT RESPONSIBILITIES

A. AC TRANSIT will provide services as described in Attachment A, Scope of Services, and Attachment B, Concept of Operations.

B. AC TRANSIT will charge BART in accordance with Attachment C, Reimbursement Schedule. In no event, shall AC TRANSIT charge BART more than \$150,000 per day.

C. AC TRANSIT agrees to provide the Bus Bridge Services in a manner consistent with its existing service.

D. Customer Feedback: AC TRANSIT agrees to be solely responsible for logging and addressing all complaints, comments and commendations regarding the Bus Bridge Services operated by AC TRANSIT, as it relates to AC TRANSIT's service and equipment. Any complaints that do not relate to AC TRANSIT's service and equipment will not be addressed by AC TRANSIT. At BART's request, AC TRANSIT agrees to provide to BART a summary of all feedback related to the Bus Bridge Services fielded by the AC TRANSIT.

E. AC TRANSIT acknowledges that the Bus Bridge Services will operate during specified times within BART's service hours and further acknowledges that BART personnel may be limited during the Bus Bridge Services hours. AC TRANSIT agrees that BART has no responsibility or liability for the security and safety of riders on AC TRANSIT buses except for stops located on BART property.

F. Federal and state requirements: AC TRANSIT agrees to be solely responsible and liable for compliance of its services with all federal and state laws to which the Bus Bridge Service is subject, including but not limited to the Americans With Disabilities Act of 1990 ("ADA") and the Title VI of the Civil Rights Act of 1964. AC TRANSIT shall also indemnify and hold BART harmless for any claim

arising from or relevant to AC TRANSIT'S compliance with these laws as it pertains to AC TRANSIT's bus operations provided hereunder

SECTION 3: BILLING AND PAYMENT PROCEDURES

A. AC TRANSIT agrees to invoice BART by task order based on the actual service provided in the previous quarter. Invoices will describe the service performed, the period covered, the amount charged, and the supporting calculation for the amount charged consistent with Attachment A

B. BART will make a best effort to process payments within thirty (30) calendar days of receipt of each invoice.

SECTION 4: INSURANCE AND INDEMNIFICATION

A. Insurance: At or before execution of this Agreement and at all times during the life of this Agreement, or as may be requested, AC TRANSIT, at its own cost and expense, shall provide the insurance specified.

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate as respects products/completed operations if applicable.

a. Coverage included shall be:

- i. Premises and Operations;
- ii. Broad Form Property Damage;
- iii. Blanket Contractual Liability;
- iv. Products/Completed Operations;
- v. Personal Injury Liability;
- vi. Cross-liability and Severability of Interest; and
- vii. Independent Contractor Liability.

b. Coverage shall be endorsed to include the following, copies of which shall be provided to BART:

- i. Inclusion of BART, and any other entity as required by Agreement, and their directors, officers, representatives, agents and employees as additional insureds as respects ongoing and completed services and operations in connection with this Agreement; and
- ii. Stipulation that the insurance is primary insurance and no insurance or self insurance of BART will be called to contribute to a loss, except for situations related to BART's

maintenance of their real property as well as their actions or inactions pertaining to their responsibilities under this Agreement.

- iii. Waiver of subrogation in favor of BART, its directors, officers, representatives, agents and employees except for situations related to BART's maintenance of its real property and situations wherein BART, its directors, officers, representatives, agents and/or employees were negligent or engaged in willful misconduct pertaining to their responsibilities under this Agreement.
2. Automobile Liability for bodily injury (including death) and property damage which provides coverage limits of no less than Ten Million (\$10,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of BART, its directors, officers, representatives, agents and employees, a copy of which shall be provided to BART except for situations related to BART's maintenance of its real property and situations wherein BART, its directors, officers, representatives, agents and/or employees were negligent or engaged in willful misconduct pertaining to their responsibilities under this Agreement.
3. Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per occurrence applicable to Employers' Liability coverage for all employees engaged in AC TRANSIT services or operations under this Agreement. The policy shall include broad form all states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of BART, its directors, officers, representatives, agents and employees, a copy of which shall be provided to BART except for situations related to BART's maintenance of its real property and situations wherein BART, its directors, officers, representatives, agents, and/or employees were negligent or engaged in willful misconduct pertaining to their responsibilities under this Agreement.
4. Other Insurance Provisions:
 1. The policies are to contain, or are to be endorsed to contain, the following provisions, copies of which endorsements shall be attached to Certificates of Insurance submitted to BART:
 - i. Cancellation – Each policy required shall be endorsed to state that the coverage shall not be suspended, voided, canceled by either party, reduced in coverages or limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to BART.
 - ii. Approval of Coverages – AC TRANSIT shall furnish BART with an appropriate letter of self-insurance and/or Certificates of Insurance with original Endorsements effecting coverages required. The Certificates and Endorsements are to be signed by a person authorized by the insurer to bind coverage. **“2021 Calendar Year Bus Bridge Services Agreement”** shall be included in all insurance submittals and for the years 2022 and 2023 when available.
 2. All policies shall be issued by companies authorized to do business in the State of California which hold a current policy holders alphabetic and financial size category rating of not less than A VIII according to Best's Insurance Reports.

C. Indemnification:

1. AC TRANSIT to the extent permitted by law, shall indemnify, defend, and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss,

damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reasons of any act, or failure to act, of AC TRANSIT, its officers, agents, employees and subcontractors or any of them, under or in connection with this Agreement, and AC TRANSIT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of AC TRANSIT services or operations, and to pay and satisfy any resulting judgments. This indemnity shall survive the termination of the Agreement.

2. BART, to the extent permitted by law, shall indemnify, defend, and hold harmless AC TRANSIT, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reasons of any act, or failure to act, of BART, its officers, agents, employees and subcontractors or any of them, under or in connection with this Agreement, and BART agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against AC TRANSIT, its directors, officers, agents and employees, or any of them, arising out of BART services or operations, and to pay and satisfy any resulting judgments. This indemnity shall survive the termination of the Agreement.
3. The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code and are intended by the parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

SECTION 5: GENERAL PROVISIONS

A. Responsibility: AC TRANSIT shall be solely responsible for the maintenance, safety, and operation of its buses providing Bus Bridge Services, and for the conduct, supervision, and training of its personnel and contractors.

B. Personnel and contractors performing services arising from this Agreement on behalf of AC TRANSIT will at all times be under AC TRANSIT's exclusive direction and control.

C. Notices: All invoices must be e-mailed to the address below, notices or other communications to either party by the other will be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

TO BART:	Invoices:	Ap_supplier@bart.gov CC: Joel Soden jsoden@bart.gov
	All Other Notices:	John McCormick Operations Planning and Support Manager 300 Lakeside Drive P.O. Box 12688 Oakland, CA 94604-2688 (510) 464-6169

To AC TRANSIT:	All Notices:	Robert del Rosario Director of Service Development Alameda Contra Costa Transit District 1600 Franklin Street Oakland, CA 94612
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F. Records and Audits: AC TRANSIT shall permit BART's authorized representative to inspect and audit all data and records relating to performance under this Agreement. AC TRANSIT shall maintain all such records for a period of five (5) years after BART makes final payment under this Agreement.

G. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to matters addressed herein and supersedes any prior negotiations. All prior or contemporaneous agreements, understandings, representations, and statements are merged into this Agreement and are of no further force or effect. Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

SECTION 6: TERM OF THE AGREEMENT, TERMINATION

A. Term: The services to be provided under this Agreement shall commence on January 1, 2021 and be completed by December 31, 2023, unless this Agreement is terminated earlier as provided below. If agreed upon by both parties, this Agreement may be extended twice. Each extension continues the Agreement for one additional year.

B. Termination: Either party may terminate this Agreement for any reason by sending written notice to the other party ten (10) days prior to the proposed date of service. BART agrees to pay for all AC TRANSIT services provided, in accordance with this Agreement, up to the effective date of termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates listed below.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

Date: _____
Robert Powers
General Manager

CENTRAL CONTRA COSTA TRANSIT
AUTHORITY

Date: _____
Michael Hursh
General Manager

APPROVED AS TO FORM:

Date: _____
BART Attorney

APPROVED AS TO FORM & CONTENT:

Date: _____
AC TRANSIT Attorney