

**JOINT EXERCISE OF POWERS AGREEMENT
FOR
IMPLEMENTATION OF A TRANSIT SHELTER ADVERTISING PROGRAM**

THIS JOINT EXERCISE OF POWERS AGREEMENT (Agreement) is made and entered into _____, 1998 by and between the Alameda-Contra Costa Transit District (District) and the following county and cities: the County of Alameda and the cities of Albany, Berkeley, Emeryville, Fremont, Hayward, Newark and San Leandro (collectively the "Participating Entities" and individually as the "Participating Entity", "County", or "City" as the case may be).

RECITALS

A. The Participating Entities, including portions of the County, are included within the boundaries of District's service area.

B. The District operates a public bus transit system in the East Bay Area of the San Francisco/Oakland Bay Area. The District operates approximately 700 buses within its boundaries and has 8000 bus stops.

C. The District previously installed and maintained bus shelters at some of its bus stops. However, in 1995 the District stopped completely the maintenance of its bus shelters and notified the Participating Entities that it would remove the shelters unless the Participating Entities assumed responsibility for these shelters.

D. In 1992, the District and some, if not all, of the Participating Entities entered into contracts with Bus/Line Media for the installation of bus shelters at locations selected by Bus/Line Media. These shelters were privately owned and operated and contained advertisements on a portion of the shelter. Bus/Line Media was placed in receivership in 1993 and the terms of the contracts with the District and the Participating Entities were not fulfilled.

E. The District was able to obtain, with the support of the Participating Entities, a grant from the Bay Area Air Quality Management District through the Alameda County Congestion Management Agency to fund the Multi-Agency Bus Shelter Advertising Project. (the Project) The Project has two objectives: 1) to encourage transit usage and support transit users by providing them with adequate shelter, and 2) to improve air quality by minimizing auto trips. This grant includes the funding of a Project Manager position (the Project Manager) for two years to assist the Participating Entities and the District in seeking and obtaining a Contractor for the purpose of installing and maintaining both commercial

and non-commercial bus shelters within the boundaries of the Participating Entities. The Project Manager position will be funded commencing in FY 1996-97 and continuing to FY 1997-98.

F. In accordance with the provision of Government Code Section 6250, et seq., the District and the Participating Entities desire to enter into this agreement for the purpose of working together to obtain a Contractor to maintain the existing bus shelters, to locate new bus shelters within their respective jurisdictions and to participate in the Transit Shelter Advertising Program.

G. The Participating Entities wish to have District act as the administrator of the county-wide effort to obtain bus shelters for the transit riding public.

NOW, THEREFORE, in consideration of the faithful performance of the terms, conditions, promises and covenants contained in this Agreement, the parties agree as follows:

1. Term of Agreement. This Agreement shall remain in full force and effect between the parties unless terminated in accordance with the provisions of Section 12 of this Agreement. The term of this Agreement shall commence on the date (the Effective Date) when all of the conditions in Section 3 have been satisfied. The District will notify the Participating Entities in writing of the Effective Date of this Agreement.

2. Subsequent Execution. The parties acknowledge that, pursuant to Section 3, this Agreement may become effective even though the county and all of the cities covered by the Agreement have not executed it, and they may decide to execute this Agreement subsequent to the Effective Date. The parties agree the county and/or cities identified as Participating Entities at the beginning of this Agreement may execute this Agreement, and thereby become subject to its terms, at any time after the Effective Date by means of an amendment to this Agreement signed by all those entities who are parties to this Agreement at the time of the amendment. Each party agrees that it will not unreasonably withhold or delay its execution of any amendments to permit the addition of the county or other cities, as provided for in this paragraph, and each Participating Entity authorizes its chief administrative officer to execute any such amendment from time to time. As used in succeeding paragraphs of this Agreement, "Participating Entities" shall mean those Participating Entities identified at the beginning of this Agreement which have signed this Agreement.

3. Effective Date of Agreement. This Agreement shall become effective upon its execution, no later than _____, 1998, by a majority of the parties identified on page one.

4. Purpose. The Participating Entities enter into this Agreement for the purpose of working together to implement the Project, including insuring that the bus shelters installed and maintained under the Project comply with the standards established by the Americans With Disabilities Act.

5. Project Manager.

- a. The Project Manager shall be an employee of the District for the period of the grant. The District shall be solely responsible for all activities associated with the retention of the Project Manager, including but not limited to recruitment, hiring, supervision and termination. The District shall pay the salary and benefits for the Project Manager from grant funds for the first two years of the Project Manager's employment. After the grant funds expire, neither the District nor any Participating Entity will be required to expend its funds to retain the Project Manager. Funds for continuing the position must be derived from revenue generated by the Project.
- b. The Project Manager shall be responsible for:
 1. Acting as staff to the Multi-Agency Bus Shelter Committee to assist in establishing and implementing the Program;
 2. Administering the bus shelter/advertising contract;
 3. Calling, noticing and preparing an agenda for meetings with representatives of the Participating Entities; and
 4. Performing such other duties as called for in the job description for this position.
- c. If any Participating Entity has any concerns regarding the manner in which the Project Manager is performing his/her responsibilities, those concerns shall be placed in writing and provided to the District's General Manager.

6. Multi-Agency Bus Shelter Committee. Within 30 days of the Effective Date the Multi-Agency Bus Shelter Committee (the Committee) shall be created, consisting of a representative from each of the Participating Entities and the District. The names of the representatives shall be provided in writing to the Project Manager prior to the expiration of this 30 day period. Notice of any replacement of a representative shall be provided to the Project Manager within 10 days of the effective date of the replacement. Each Participating Entity shall appoint a representative to the Committee. However, a quorum of the Committee may act on behalf of all of the Participating Entities once at least fifty percent of the Participating Entities have designated their representative. A quorum of the Committee shall consist of fifty percent plus one of the Participating Entities, and the District's representative. The Project Manager shall serve as the District's representative to the Bus Shelter Committee. Decisions of the Committee shall be made by a vote of a majority of the representatives present at the meeting.

a. The Committee shall:

1. Acting through the Project Manager, provide recommendations on all aspects of the Project to the District's Board of Directors, including the content of the request for proposals (RFP) and the contract to the successful contractor, which must contain provisions for indemnification and insurance coverage for the District and the Participating Entities, applying for necessary permits and payment of any fee requirements.
2. In conjunction with the Project Manager, and subject to the District's procurement requirements, develop specific criteria for inclusion in the RFP. The RFP shall be subject to approval of each Participating Entity, as well as District's Board of Directors.
3. Work with and provide guidance to the Project Manager.
4. Meet at least quarterly.

b. The Committee members shall:

1. Disseminate information on the Project to the appropriate persons within the Participating Entity each committee member represents.

2. Have the authority to act on behalf of his/her Participating Entity after obtaining, as necessary, whatever direction or authorization is required from his/her agency (the legislative body, the chief executive officer, etc.) and is responsible for keeping his/her agency informed of actions of the Committee.
3. Act as selection committee for review of all proposals.
4. Attend meetings of the Committee.
5. Act as the representative of the Participating Entity in the contract negotiations with a Bus Shelter Contractor.

7. Responsibilities of AC Transit.

- i. AC Transit will be responsible for assisting in the development of structure of the project and act as administrative agent to all funding and reporting agencies.
- ii. Provide organizational support to the Participating Entities of the Joint Powers Agreement (JPA) in the areas of contracts and grants, legal, procurement, research and planning, and operations relative to the funding and administrative requirements of the JPA, the grant requirements and requirements as outlined in the final contract with the bus shelter contractor.
- iii. Communicate on a regular basis with all participating Entities through the designated representative on the Bus Shelter Committee
- iv. Once the bus shelter contract is in place to provide for the installation and maintenance of bus shelters, the District will also act as the administrative agent of the contract as approved by the Participating Entities in the contract itself.

8. Advertising Contract RFP. The RFP approved by the Committee shall be submitted for review and comment to the District and the governing bodies of each

Participating Entity who has executed this Agreement. The RFP, as revised, shall be submitted to the District for authorization to proceed with advertising it. The Committee will work with District's procurement department to specify a reasonable period of time for the receipt of comments from the Participating Entities.

9. Steps to Award of Bus Shelter/Advertising Contract

As the Administrator of the Project, the Participating Entities recognize and agree that the District, acting through its Board of Directors shall award the bid and authorize the execution of the contract with the successful bidder. However, before the final contract is adopted, the following steps will be followed to ensure that there is concurrence among the Bus Shelter Committee Members and the Participating Entities regarding the award of and terms of the Contract.

Objectives of the RFP Process

1. To develop a step wise process which ensures that each Participating Entity has an opportunity to have their interests included in the RFP, considered in the selection process and as part of the contract negotiation process.
2. To select a Contractor who will immediately enter into contract negotiations following acceptance of the proposal.
3. To discuss during the contract negotiation those areas of similarity as well as areas of special concern for each Participating Entity and the District.
4. To reach consensus among the Participating Entities and authorize the AC Transit Board of Directors to execute a contract which reflects those issues of concern and which has an initial term of 5 years with an option to extend to an additional 5 years if terms of contract are met.

Steps to Award of Contract

Following the distribution of the RFP to prospective bidders, the following process will assist the Participating Entities and the District in the award of the contract for the installation and maintenance of advertising bus shelters.

1. Convene the Selection Committee which is comprised of all of the members of Bus Shelter Committee.

2. AC Transit Procurement Department prepares a list of bids received by the District and of those who are considered responsive bidders. The responsive proposals are distributed to the Selection Committee for evaluation.
3. Evaluation process by Selection Committee will include both written and oral exercises. Selection Committee scores proposals and recommends Contractor.
4. The recommendation of the Selection Committee will be brought to Bus Shelter Committee for discussion and endorsement.
5. The recommendation of the Selection Committee will be brought to each of the Participating Entities by their respective representative as appropriate.
6. AC Transit Board of Directors awards contract. The recommendation of the Selection Committee, the Project Manager and statements of support regarding the recommendation from each of the Participating Entities will be brought to the AC Transit Board of Directors to accept or reject awarding the contract.

The Participating Entities shall be bound by and subject to the District's procurement procedures and may not unreasonably withhold consent to the award of the bid to the responsible bidder. However, any Participating Entity may withdraw from participation in the JPA under Section 12 of this Agreement. Any Participating Entity that withholds its consent shall specify in writing the basis for its decision and shall hold the District, the other consenting Participating Entities and all officers, employees and agents of the District and the other consenting Participating Entities harmless from any suit of any nature brought by the designated responsible bidder providing the best offer for the rejection of the bid. Any protests regarding the bid or its award shall be governed by the District's policy governing bid award protests.

10. Review of Restrictions on Bus Shelter Advertising and Design. Each Participating Entity shall review applicable provisions of any ordinances or policies it has governing advertising within bus shelters and the design of bus shelters within its jurisdiction.

The Participating Entities recognize that to the extent a uniform approach to bus shelter advertising and design can be achieved, the greater the opportunity for a successful Project. The Committee, the Project Manager, and such additional staff from

the Participating Entities as may be appropriate, will meet to identify those elements of the project design approval/permit approval processes which are similar within each jurisdiction in order to develop general design guidelines and permitting procedures for use by the Advertising Contractor. These guidelines shall not preempt a Participating Entities' authority in approving the bus shelters located within its jurisdiction.

The guidelines regarding the potential location of bus shelters and the content of advertising within them must be approved by the District's Board of Directors and the legislative bodies of two-thirds of the Participating Entities. Once they have been approved, these general guidelines will be incorporated as part of the development of the RFP for the Advertising Contractor, as well as in the final contract for advertising bus shelters.

11. Hold Harmless. The successful contractor for the bus shelter/advertising contract shall be required, as part of that contract, to hold the Participating Entities and District harmless and defend them against any causes of action associated with the installation, maintenance and removal of any bus shelters installed in accordance with the Project and the contract, as well as any claims associated with the advertising in the bus shelters.

However, since the Participating Entities exercise land use and police power authority over the public property within their respective jurisdictions on which the bus shelters will be located, as well as the administrative approval process, the Participating Entities shall hold harmless and defend the District and the other Participating Entities from any claim or suit, of any nature whatsoever, brought against the District and the Participating Entities, or any of them, arising from the approval or disapproval of a location for a bus shelter within their respective jurisdictions.

District agrees to hold the Participating Entities harmless and to defend them from any claim or suit, of any nature whatsoever, arising from the activities of the Program Manager or District employee regarding the fulfillment of the District's responsibilities under this agreement.

12. Termination.

- a. This Agreement may be terminated by the District and a majority of the Participating Entities upon the occurrence of any of the following events:
 1. The agreement between the District and the successful contractor is terminated and a successor is not obtained within six months of

the date of termination on terms and conditions as favorable to the District and the Participating Entities;

2. Upon the conclusion of the contract(s) with the contractor, provided notice of termination is provided at least six months prior to the end of the contract(s);
- 3 The position of Project Manager is not funded beyond the grant period or sufficient revenues are not generated by the bus shelter advertising contract(s) to pay the costs of the position;
4. If a majority of the Participating Entities no longer wish District to act as the administrator of the bus shelter contract.

b. A Participating Entity may terminate its participation in this Agreement if:

1. the Participating Entity does not sign the Implementation Agreement with the Contractor for Bus Shelters;
2. the Participating Entity receives what it considers substantial negative public response to the Project; or
3. the Participating Entity no longer has an obligation to the advertising contractor and therefore, has no purpose for continued participation in the JPA.

13. Notices. Any notices required under this Agreement shall be sent by facsimile and U.S. Mail (first class with postage prepaid) and shall be effective upon receipt of the facsimile, provided the facsimile and the mailed notice are sent to the following:

To AC Transit: Alameda-Contra Costa Transit District
 1600 Franklin Street
 Oakland, CA 94612
 Attn.: General Manager, 10th Floor
 Facsimile No: (510) 891-7157

To Participating Entities: See list attached as Exhibit A

To Contractor: To be attached as Exhibit B once the Contractor has been selected.

14. Distribution of Assets. Upon the termination of this Agreement, any moneys due and owing to the District and the Participating Entities shall be distributed in accord with the Program and the contract with the Contractor. Each party to this Agreement, upon its termination, shall be entitled to contract separately with the Contractor or arrange for some other arrangement for the providing of bus shelters within their respective jurisdictions.

15. Governing Law. This Agreement is executed in and shall be governed by the laws of the State of California. Any suit brought under the terms of this Agreement shall be vested in a state court in the County of Alameda or, where appropriate, in the United States District Court for the Northern District of California in Oakland or San Francisco.

16. Amendment. Any amendment or modification to the Agreement must be in writing and approved by all of the Participating Entities and the District.

17. Litigation.

- a. If any litigation is instituted by the District or any Participating Entity to enforce the terms of this Agreement, the prevailing party shall be entitled to receive reimbursement for its costs and attorney's fees. Before proceeding to litigation, the parties shall seek to settle the dispute through good faith discussions and any alternative dispute resolution process which is acceptable to the parties. Only if these efforts have been exhausted may a party bring a suit against the other party to the dispute.
- b. If the Participating Entities and District authorize litigation against a third party or are the subject of a suit by a third party, subject to the provisions of Section 11, the District is authorized to pursue/defend this litigation on behalf of the Participating Entities either with its own resources or through outside counsel, after determining if there is any insurance or indemnification coverage from the Bus Shelter Contractor. Any costs or expenses, including attorney's fees, shall be reimbursed to the District on a prorata basis. A Participating Entity may elect, at its own expense, to pursue/defend the litigation on its own behalf, in which case the Participating Entity would not be required to reimburse the District for litigation costs and expenses.

18. Binding Affect. This Agreement is binding upon any successor to any of the parties to this Agreement.

19. Authorization. The signatories to this Agreement represent they are authorized by their respective agencies to enter into and bind their agencies to its terms and conditions.

20. Execution by Counterpart. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates indicated below.

For the District

Sharon D. Banks
Sharon D. Banks, General Manager

For the County of Alameda

Keith Carson

Approved as to form:

Approved as to form:

Kenneth C. Scheidig
Kenneth C. Scheidig, General Counsel

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I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board of Supervisors on ~~MAR-31-1998~~ and that a copy has been delivered to the President as provided by Government Code Section 25103.

Date: AUG - 3 1998

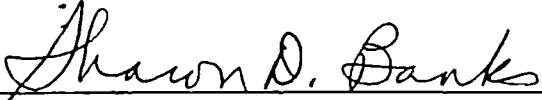
ATTEST:

LESLIE J. BURNS, Asst. Clerk of the Board of Supervisors, County of Alameda, State of California



By R Caballero

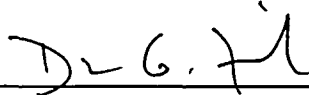
For the District


Sharon D. Banks, General Manager


Approved as to form:


Kenneth C. Scheidig, General Counsel

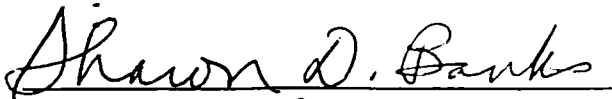
For the City of Albany



Approved as to form:



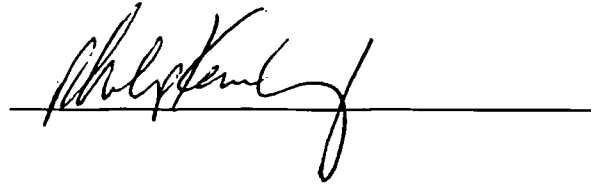
For the District


Sharon D. Banks, General Manager

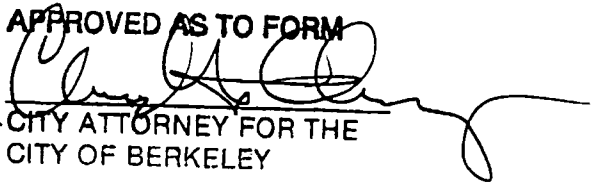
Approved as to form:


Kenneth C. Scheidig, General Counsel

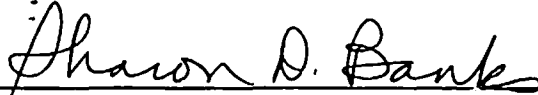
For the City of Berkeley



Approved as to form:

APPROVED AS TO FORM

For CITY ATTORNEY FOR THE
CITY OF BERKELEY


For the District


Sharon D. Banks, General Manager

Approved as to form:


Kenneth C. Scheidig, General Counsel


For the City of Emeryville


John A. Stoen

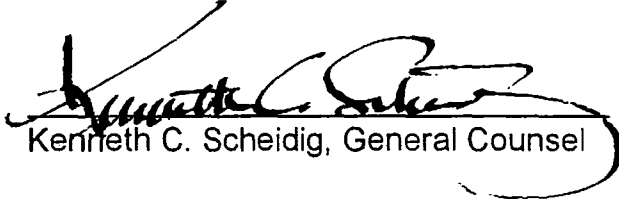
Approved as to form:


Michael G. Bradley

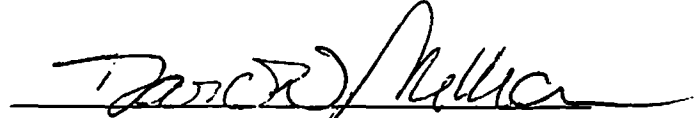
For the District


Sharon D. Banks, General Manager

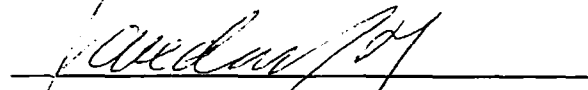
Approved as to form:


Kenneth C. Scheidig, General Counsel

For the City of Fremont


David Millican, Assist. City Manager

Approved as to form:


Sandra Fox, Special Counsel

For the District



Sharon D. Banks, General Manager

For the City of Hayward



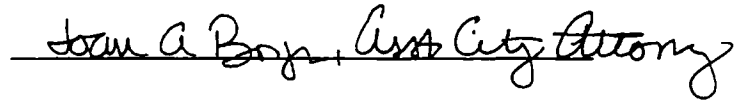
CITY MANAGER

Approved as to form:




Kenneth C. Scheidig, General Counsel

Approved as to form:



Joan A. Boyer, Asst City Attorney


For the District


Sharon D. Banks, General Manager


Approved as to form:


Kenneth C. Scheidig, General Counsel

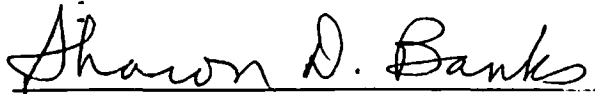
For the City of Newark


David W. Smith, Mayor

Approved as to form:


Gary T. Galliano, City Attorney

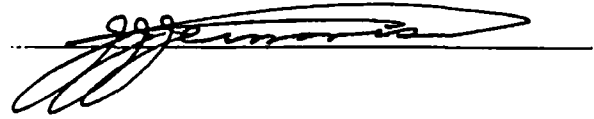
For the District


Sharon D. Banks, General Manager

Approved as to form:


Kenneth C. Scheidig, General Counsel

For the City of San Leandro



Approved as to form:

