

COOPERATIVE AGREEMENT
BETWEEN THE STAKEHOLDER AGENCIES AND AC TRANSIT FOR DESIGN,
CONSTRUCTION, OPERATIONS AND MAINTENANCE OF THE
SOUTH ALAMEDA COUNTY MAJOR CORRIDORS TRAVEL TIME IMPROVEMENT PROJECT
(AC TRANSIT LINE 97 TPI) IN UNINCORPORATED ALAMEDA COUNTY, SAN LEANDRO,
HAYWARD, AND UNION CITY, CALIFORNIA

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into upon full execution, by and between the County of Alameda, City of Hayward, City of San Leandro, and City of Union City ("STAKEHOLDER AGENCIES"), 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. AC TRANSIT, in cooperation with other local, state and federal agencies, including STAKEHOLDER AGENCIES, desire to construct transit-friendly roadway improvements and traffic signalization improvements as specified in the attached Exhibits A, B, and C, which are incorporated by reference herein ("PROJECT").
- B. AC TRANSIT and the STAKEHOLDER AGENCIES have entered into a memorandum of understanding ("MOU") regarding the PROJECT described herein. The PROJECT's ability to implement seamless and coordinated timing between jurisdictions is enhanced by cooperation between the parties to the MOU.
- C. The MOU anticipated the need for implementing agreements, including, but not limited to, this agreement.
- D. AC TRANSIT represents that it has \$5,700,000 in federal and regional funds committed and available for the implementation of the PROJECT.
- E. STAKEHOLDER AGENCIES represent that they are ready and able to provide the staff time required to support delivery of the PROJECT.
- F. 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 STAKEHOLDER AGENCY staff.
- G. The PROJECT will be implemented by AC TRANSIT unless otherwise noted. The PROJECT will install sidewalk at select bus stops to facilitate pedestrian boarding of buses and upgrade ADA ramps at select bus stops along the project length. The PROJECT will also upgrade traffic signals with Transit Signal Priority technology so that signals can provide transit vehicles an early green phase, or a green phase extension when needed. Other improvements to signals include incorporation of an adaptive signal control system, and interconnect between signals.

SECTION I
PROJECT DESIGN, CONSTRUCTION, ADMINISTRATION AND MAINTENANCE

- A. STAKEHOLDER AGENCIES AGREE:
 - 1. To cooperate in the review, approval, and support of AC TRANSIT's design documents, contract administration, procurement, and to provide resident engineering and inspection 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 as identified in Exhibit B. California Department of Transportation (Caltrans) is not part of this Agreement. Caltrans and AC TRANSIT will enter

into an Operations Agreement for the intersections owned and operated by Caltrans within the PROJECT.

3. To cooperate in AC TRANSIT's installation of the proposed existing and new bus stops that are part of the PROJECT as identified in Exhibit C. 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. STAKEHOLDER AGENCIES maintain sidewalks and curb. Existing shelters, benches and trash receptacles, if any, are maintained by STAKEHOLDER AGENCIES or a third party through a contract with STAKEHOLDER AGENCIES. Existing bus stop locations and proposed changes to each location are identified in Exhibit C.
4. To grant an encroachment permit authorizing AC TRANSIT or its contractor to perform all construction activities required by the PROJECT within the STAKEHOLDER 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 STAKEHOLDER AGENCIES and their 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 STAKEHOLDER AGENCIES 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 STAKEHOLDER AGENCIES 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 STAKEHOLDER AGENCIES 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 STAKEHOLDER AGENCIES), 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 STAKEHOLDER AGENCIES as an additional insured with endorsements and certifications as provided in the attached Exhibit D, or in another mutually-agreeable form, as to work performed under the construction or professional service contracts.

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

C. AC TRANSIT AND COUNTY OF ALAMEDA (COUNTY) AGREE:

1. For the segment impacted by the Hesperian Boulevard Corridor Improvement Project from Embers Way to West A Street by the County, AC TRANSIT and the COUNTY agree to share cost and responsibilities as provided in the attached Exhibit E.

**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 B, and ownership will automatically vest in the STAKEHOLDER AGENCY for those facilities identified as owned by STAKEHOLDER AGENCY in Exhibit B. No further agreement will be necessary to transfer ownership as hereinbefore stated. The STAKEHOLDER AGENCIES 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.
3. STAKEHOLDER AGENCIES will enter into a Maintenance Agreement with STAKEHOLDER AGENCIES and Caltrans, which establishes on-going provision for cost sharing of maintaining the adaptive signal control system.
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 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.
6. 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 STAKEHOLDER AGENCIES under or in connection with any work, authority or jurisdiction delegated to STAKEHOLDER AGENCIES under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STAKEHOLDER AGENCIES 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 STAKEHOLDER AGENCIES under or in connection with any work, authority or jurisdiction delegated to STAKEHOLDER AGENCIES 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.
7. Neither STAKEHOLDER AGENCIES, nor their 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 STAKEHOLDER AGENCIES, and their 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 STAKEHOLDER AGENCIES, their officers, or their employees.

8. In the event a STAKEHOLDER AGENCY installs a new signal on the PROJECT segment during the term of this agreement, the STAKEHOLDER AGENCY is responsible for integrating the new signal with the PROJECT.
9. Except for the obligations for indemnification and dispute resolution, which shall survive termination of this agreement, obligations under this cooperative agreement will be in effect for 15 years from the date it is executed.
10. 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, including, but not limited to consulting with any Technical Advisory Committee (TAC) or Technical Coordinating Committee (TCC) that is established to assist in project management. TAC will consist of executive managers of the STAKEHOLDER AGENCY, AC TRANSIT and Caltrans. TCC will be comprised of technical staff from the STAKEHOLDER AGENCY, AC TRANSIT and Caltrans who are responsible for day-to-day transportation service, operations and management of their respective systems within the PROJECT. In the event the parties cannot resolve the dispute through the TAC and/or TCC, they will make a thorough good faith effort to resolve such issues 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.
11. In the event a good faith dispute cannot be resolved through the dispute resolution process described in Section II.10 of this Agreement, either the STAKEHOLDER AGENCY or AC TRANSIT may terminate this Agreement upon 60 days' prior written notice to the other party. If STAKEHOLDER 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 STAKEHOLDER AGENCY general management address.
12. 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 STAKEHOLDER AGENCY for work that could not have been suspended at the time of the notice of termination. AC TRANSIT will reimburse the STAKEHOLDER 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.
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. Each party agrees to keep and maintain (and to require all contractors and subcontractors connected with performance of this agreement to keep and maintain records) showing actual time devoted and all costs incurred in the performance of all work subject to this agreement until three (3) years after the accepted completion of the project, or until such later date as is required under applicable law; provided, however, that if any actions brought under the dispute resolution provisions of this agreement or lawsuits arising from this agreement have not been finally resolved by the foregoing deadline, then any records which pertain to any such action shall be maintained until such actions have been finally resolved.
17. This agreement shall commence as of the date entered 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.
18. All of the terms, provisions and conditions of the agreement hereunder, shall be binding upon and inure the parties hereto and their respective successors, assigns and legal representatives.
19. By signing this agreement, STAKEHOLDER AGENCIES 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 under this agreement. STAKEHOLDER AGENCIES and AC TRANSIT further covenant that in the performance of this agreement no person having any such interest shall be employed by the STAKEHOLDER AGENCY.
20. 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 agreements 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.
21. 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.
22. 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.

SECTION III DEFINITIONS

STAKEHOLDER AGENCIES – Collectively the County of Alameda, City of Union City, City of San Leandro, and the City of Hayward.

STAKEHOLDER AGENCY – each of the County of Alameda, City of Union City, City of San Leandro, and the City of Hayward.

Signed by:

AC Transit

Date

Michael Hursh

General Manager

Approved as to form and content:

Denise Standridge

General Counsel for AC Transit

City of San Leandro

Date

Chris Zapata
City Manager

David Baum
Finance Director

Approved as to form and content:

Richard Pio Roda
City Attorney for City of San Leandro

Attest

Tamika Greenwood
City Clerk

City of Union City

Date

Antonio Acosta

City Manager

County of Alameda

Date

Wilma Chan

President, Alameda County Board of Supervisors

Approved as to form:

Donna R. Ziegler, County Counsel

By: Kathy Lee, Deputy County Counsel

City of Hayward

Date

Date

Morad Fakhrai

Director of Public Works

Engineering and Transportation

Kelly McAdoo

City Manager

Date

Attest:

Date

Michael Lawson

City Attorney

Miriam Lens

City Clerk