

This Agreement between the City of Oakland (“City”) and Alameda-Contra Costa Transit District (“AC Transit”) (hereafter referred to as the "PARTIES") is entered this \_\_\_day of \_\_\_\_\_, 2023.

**RECITALS:**

WHEREAS, the parties wish to outline the specific terms for repairing damage to fiber optic cables designed and constructed along the East Bay Bus Rapid Transit (EBBRT) corridor to serve the needs of the Parties, Caltrans, and Metropolitan Transportation Commission (MTC); and

WHEREAS this Agreement constitutes the terms and conditions under which the damaged fiber optic cables and conduits will be temporarily repaired in order to restore operational services; and

WHEREAS on or about August 15, 2022, a contractor performed pavement saw-cutting within the intersection of International Boulevard and 22<sup>nd</sup> Avenue near the gutter line on the NE quadrant of the intersection (nearby Experience Auto Body).; and

WHEREAS, this saw-cutting operation severed through an existing 3-inch conduit. This 3-inch conduit contained four (4) fiber optic cables; each cable has 144 fiber strands. This saw cutting operation significantly impacted multiple services:

- One 144 strand cable was dedicated to Caltrans traffic signal operations. Caltrans has lost all communications to 48 signalized intersections and must now perform any necessary traffic signal timing adjustments manually by deploying field personnel;
  - It was later learned that the 48 Caltrans signals are also impacting the Metropolitan Transportation Commission’s (MTC) ICM 880 project as MTC shared the fiber with Caltrans;
- One 144 strand cable was dedicated to AC Transit BRT operations. The AC Transit fiber optic cable provides bus patrons with real time bus arrival information, bus fare collection and security operations. AC Transit considers this a critical impact to their services;
- One 144 strand cable was dedicated to the City of Oakland (OakWi-Fi). The location of the fiber break has resulted in significant impacts to residents who rely upon the City’s free wi-fi service. Of the 13 one-half square mile zones that comprise Oak Wi-Fi, 8.5 zones are without service (approx. 45% of service is offline, impacting an estimated 25,000 residents);
- One 144 strand cable was dedicated to City traffic signal operations. The City has lost all communications to 14 signalized intersections and must now perform any necessary traffic signal timing adjustments manually deploying field personnel.

WHEREAS the saw cutting damage was caused by the contractor Accurate Saw Cutting, a subcontractor of the contractor VPI, who in turn is a subcontractor to PG&E; and

WHEREAS, PG&E is the entity responsible for the permitted work within City right of way. The City of Oakland permit number is X2200104 and the PG&E project number is PM 35291344; and

WHEREAS, the conduit facility was properly marked on the pavement – alerting the saw cutting contractor that there was shallow communications conduit; and

WHEREAS, the depth of the existing conduit was also properly marked on the pavement surface – 12 inches; and

WHEREAS, there also appears to be evidence that the PG&E subcontractors had previously exposed this existing 3-inch conduit, and was therefore aware of its existence; and

WHEREAS, PG&E was issued a City permit and therefore is fully responsible for repairing the damage; and

WHEREAS, Saleh Aboutaleb, Construction Inspector Supervisor, City of Oakland, Department of Transportation, sent PG&E an email on Tuesday, August 16, 2022, 4:59 PM informing PG&E of the damage caused by their construction operations, requesting PG&E to identify the assigned PG&E project manager, and demanding that PG&E to begin development of temporary and permanent repairs; and

WHEREAS, PG&E was informed by the City that the damaged facilities are time sensitive and immediate response was necessary; and

WHEREAS, on Wednesday, August 17, 2022, 11:36:49 AM, Saleh Aboutaleb requested that PG&E provide a time frame for the fiber line restoration before the end of the day August 17, 2022; and

WHEREAS, PG&E responded on August 25, 2022 and stated that the City should self-perform the restoration work and submit for reimbursement from PG&E through their claims process; and there has been no further word from PG&E since; and

WHEREAS, based on the PG&E response and the immediacy of necessary repairs, the following actions were taken/recommended:

- The City IT Department agreed to have an estimate prepared for a temporary repair to restore service;
- The IT Department engaged with Diablo Engineering, who engaged with an OakWiFi fiber contractor to perform a field estimate (completed and attached to this memo);
- The IT Department developed interim designs (completed and attached to this memo) to restore only those fiber strands that were active before the fiber break. The approximate number of interim repaired strands are:
  - 22 strands for AC Transit
  - 48 strands for Caltrans
  - 28 strands Oak Wi-Fi
  - Total of 98 strands for temporary repairs

**THEREFORE, the parties hereby agree as follows:**

1. Action Plan For Fiber Repair and Service Restoration. AC Transit agrees to reimburse City of Oakland for temporary repair of 22 AC Transit's fiber strands for an amount not-to-exceed \$20,000 with the following understanding:
  - A. The City of Oakland will take the lead in drafting a joint agency letter to formally notify PG&E of the fiber damage, temporary repair work, immediate/timely reimbursement for the temporary work, and seek/demand plan for permanent fix;
  - B. The City of Oakland's contractor will perform the temporary fiber repair at 22nd Avenue and International Blvd, provide construction oversight, and perform required testing before accepting the repair work
  - C. AC Transit agrees to pass through \$38,800.00 from the Metropolitan Transportation Commission ("MTC") to the City to cover temporary repairs to the damages sustained to MTC fiber strands.
2. Terms And Conditions For Repair And Restoration of Service

- A. This is a one-time repair by the City; no further work stemming from this project in relation to the BRT fiber should be expected beyond the scope of the one-time patch repair;
- B. These repairs are temporary and should not be considered permanent;
- C. The temporary designs have been provided by the City to AC Transit for review but do not require formal AC Transit approval;
- D. The temporary fiber repairs/splices will be tested in the immediate location of the 22nd Avenue break;
- E. This temporary fiber repair excludes testing or performing repairs beyond the immediate repair area of 22nd Avenue;
- F. There should be no expectation that the City will manage repairs in this manner in the future without further agreement;
- G. AC Transit will only reimburse the City and release MTC's pass-through amount upon receiving an invoice for a successful completion of the temporary repairs and by verifying connections/signals are fully restored to the original performance specifications;
- H. City will include this in its demand letter to PG&E, and upon receipt of payment from PG&E, reimburse AC Transit.
- I. City agrees to hold PG&E fully responsible for permanent repairs as articulated in its demand letter and claims submitted to PG&E.

### 3. Indemnification

- A. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, and their Councilmembers, Board members, officers, partners, agents and employees (individually and collectively, hereinafter referred to as the "Indemnified Party") from and against any and all liabilities, claims, lawsuits, personal injuries (including death), property damage, damages, liabilities, losses, liens, judgements, demands, debts, obligations, administrative or regulatory fines or penalties, actions or causes of action, costs and expenses (including reasonable attorneys' fees) incurred by the Indemnified Party arising out of any claim related to the breach of an Indemnifying Party's obligations, representations, or warranties under this Agreement, negligent performance of any act, any failure to act in the performance of this Agreement, negligent or willful act or omission, or the commission of any criminal act by the Indemnifying Party or any of its employees or agents under this Agreement.
- B. The Indemnifying Party's obligations under this Section 3 are expressly conditioned upon the Indemnified Party promptly notifying the Indemnifying Party in writing of any such claim and promptly tendering the control and the defense and settlement of any such claim to the Indemnifying Party at Indemnifying Party's expense and with Indemnifying Party's choice of counsel. Each Indemnified Party shall cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling such claim. Notwithstanding the foregoing, the Indemnified Party may join in the defense of such action with counsel of its choice at its own expense.

**AGREEMENT BETWEEN THE CITY OF OAKLAND AND ALAMEDA-CONTRA COSTA  
TRANSIT DISTRICT FOR FIBER OPTIC CABLE REPAIR PROJECT  
DRAFT VERSION**

4. Miscellaneous

- A. Assignment. Neither Party may assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party.
- B. Notices. Any notices and other communications required or permitted under this Agreement shall be effective if in written form and delivered personally or sent by fax, Federal Express or other generally recognized overnight carrier or by First Class U.S. Mail, with postage prepaid, addressed to the parties at the addresses set forth on the signature page to this Agreement. Unless otherwise specified herein, such notices or other communications shall be deemed effective (and to have been received) (a) on the date delivered, if delivered personally; (b) one (1) business day after being sent, if sent by Federal Express or other generally recognized overnight carrier; (c) one (1) business day after being sent, if sent by fax with confirmation of good transmission and receipt; or (d) three (3) business days after being deposited in the U.S. Mail, First Class, with postage prepaid. Each of the parties hereto shall be entitled to specify another address for receiving notices by giving notice thereof to the other Party as set forth herein.
- C. Relationship of the Parties. Other than the limited agency set forth in this Agreement, the City and AC Transit are independent parties, and nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture, and neither party shall hold itself out as an agent, legal representative, partner, subsidiary, joint venture, servant or employee of the other. Neither party nor any officer or employee thereof shall, in any event, have any right collectively or individually to bind the other party, to make any representations or warranties, to accept service of process, to receive notice, or to perform any act or thing on behalf of the other party, except as authorized in writing by such other Party in its sole discretion.
- D. Force Majeure. Neither party shall be liable for any delay or failure in its performance of any of the acts required by this Agreement when such delay or failure arises from circumstances beyond the control and without the fault or negligence of such party. Such causes may include, without limitation, acts of God, acts of local, state or national governments or public agencies, acts of public enemies, acts of civil or military authority, labor disputes, material or component shortages, embargoes, rationing, quarantines, blockades, sabotage, utility or communication failures or delays, earthquakes, fire, flood, epidemics, riots or strikes. The time for performance of any act delayed by any such event may be postponed for a period equal to the period of such delay.
- E. Time. Time is of the essence of this Agreement with respect to each and every provision of this Agreement in which time is a factor.
- F. Waiver and Modification. No purported waiver by either Party of any provision of this Agreement or of any breach thereof shall be deemed to be a waiver of such provision or of any subsequent breach of the same or any other provision hereof, nor shall either party's continued dealing with the other party following a breach of any provisions hereof be deemed to be a waiver of such or any other breach.

**AGREEMENT BETWEEN THE CITY OF OAKLAND AND ALAMEDA-CONTRA COSTA  
TRANSIT DISTRICT FOR FIBER OPTIC CABLE REPAIR PROJECT  
DRAFT VERSION**

No change in, modification of, or addition, amendment or supplement to this Agreement shall be valid unless set forth in writing and signed by each of the parties hereto.

G. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without regard to the conflict of law's provisions thereof. Any action brought by City or AC Transit arising out of or related to this Agreement shall be brought in the state or federal courts located in Alameda County, Oakland, California.

H. Entire Agreement. This Agreement, inclusive of all schedules attached hereto, sets forth the entire agreement between the parties hereto, and supersedes all prior agreements or understandings between the parties pertaining to the subject matter hereof.

I. Severability. If any provision of this Agreement (or any portion thereof) is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding on the parties hereto and enforceable in accordance with their terms, as though the invalid or unenforceable provision (or portion thereof) was not contained in this Agreement.

**AGREED:**

**City of Oakland**

**Alameda-Contra Costa Transit District**

\_\_\_\_\_

\_\_\_\_\_

**Signature**

**Signature**

\_\_\_\_\_

\_\_\_\_\_

**Name (Print)**

**Name (Print)**

\_\_\_\_\_

\_\_\_\_\_

**Title**

**Title**

\_\_\_\_\_

\_\_\_\_\_

**Date**

**Date**

\_\_\_\_\_

**Approved As To Form**