

# DRAFT

**TRANSIT SERVICE AGREEMENT  
BETWEEN  
THE CITY OF OAKLAND  
AND  
THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT  
FOR PUBLIC TRANSIT SERVICE SERVING DOWNTOWN OAKLAND**

This Transit Service Agreement (the “Agreement”) is entered into by and between the City of Oakland, a municipal corporation (“City”), and the Alameda-Contra Costa Transit District, a public transit district established under the laws of the State of California (“AC Transit” or “District”) as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

## SECTION I

### RECITALS

1. District is a special district established under section 24501 et seq. of the California Public Utilities Code to provide public transportation service.
2. On July 26, 2010, the City and District executed a two-year agreement for the operation of the Broadway Shuttle (hereafter the “Shuttle”).
3. On July 26, 2012, the City and District executed a new two-year agreement for the operation of the Shuttle.
4. On June 11, 2014, the AC Transit Board of Directors authorized the General Manager to negotiate and enter into an agreement whereby District would operate the Shuttle for two additional years and receive payment from public and private grants and financial support secured from any source (“External Subsidy”) for fare-free service.
5. On August 12, 2014, Resolution No. 85157 C.M.S., the Oakland City Council authorized the City Administrator to execute a new Agreement with District to operate the Shuttle for two additional years.
6. On October 8, 2014, the AC Transit Board of Directors authorized the General Manager to amend the Transit Service Agreement to extend weekday evening service until 10PM.
7. On September 7, 2016, the City and District executed a new two-year agreement for the operation of the Shuttle from July, 26, 2016 through December 31, 2018 (herein the “2016 Agreement”).

8. On October 24, 2018, the City and District executed a 6-month extension of the 2016 agreement to June 30, 2019.
9. On April 24, 2019 the City and District executed a executed a 6-month extension of the 2016 agreement to December 31, 2019.
10. City and District wish to enter into this Agreement to continue operation of the Broadway shuttle.

NOW, THEREFORE, for good and valuable consideration the parties hereby agree as follows:

## SECTION II

### PARTY OBLIGATIONS

1. Term – The term of this Agreement is from January 1, 2020 until June 30, 2022, unless terminated earlier in accordance with terms established below. This Agreement may be extended for a period not to exceed twenty-four (24) months upon mutual concurrence of the parties in writing.
2. Services Provided – District shall operate the Shuttle and provide Shuttle service during the term of this Agreement. The services to be provided under this Agreement will be operated in accordance with District’s standard operating procedures with the single exception that the service will be fare free. The service to be provided is described in Exhibit A to this Agreement which is attached hereto and made a part of this Agreement.
3. Service Subsidy – City agrees to pay District to subsidize the operating expenses of the Shuttle service as follows:
  - a. For Service Monday-Friday 7am-10pm, , the City agrees to pay District at a rate of \$92.00 per hour of service beginning on January 1, 2020 until June 30, 2020, \$95.00 per hour of service beginning on July 1, 2020 until June 30, 2021, and \$98.00 per hour of service beginning on July 1, 2021 until June 30, 2022.

Holidays: Shuttle service will not be provided on the following federal and state holidays recognized by AC Transit: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas unless City submits to District a request to operate Shuttle on any of these days no later than twenty (20) days prior to the day(s) on which service is desired. Holiday service shall be subject to premium rates determined by Amalgamated Transit Union (“ATU”). AC Transit will notify City of current rates upon receipt of request. District reserves right to deny requests for service on AC Transit recognized holidays.

District shall invoice City quarterly along with appropriate documentation of hours of service to justify payment. Payment is due within thirty (30) days of receipt of invoice. Payment shall be directed to:

AC Transit  
 1600 Franklin Street  
 Oakland, CA 94612  
 Attention: Treasury Department

4. Termination – This Agreement may be terminated by either party with or without cause by giving 90 days prior written notice to the other party. City and District acknowledge that the service provided under this Agreement may be discontinued by District or City should the External Subsidy(s) be discontinued.
5. Reduction in Service – City reserves right to reduce service hours due to reduction in External Subsidies or if any of the Shuttle Service Categories (i.e. Weekday Day, Weekday Night) are not achieving the City’s intended goals. City must provide District with 90 days notice to discontinue a specific Shuttle Service Category if a substantial External Subsidy for that category of service is discontinued, or 90 days notice if City decides that a specific Shuttle Service Category is not achieving its intended goals.
6. Quarterly Schedule Notification – District shall submit quarterly Shuttle service schedule for City approval at least two weeks prior to last day on which schedule changes/revisions can be made by District.
7. Vehicle Assignment – District shall provide four (4) “Dedicated” vehicles for the Shuttle service and is responsible for the cost of all maintenance, repairs, fueling, insurance, replacement, and all other costs associated with the operations and upkeep of the vehicles. City shall assume all costs for vehicle decal design, placement and replacement if desired. The four vehicles to be provided by District and used for the Shuttle service are as follows:

	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
Vehicle Manufacturer	Van Hool	Van Hool	Van Hool	Van Hool
Model	5100	5100	5100	5100
Engine Type	Cummins ISB	Cummins ISB	Cummins ISB	Cummins ISB
Model Year	2008	2008	2008	2008
Fuel Type	Diesel	Diesel	Diesel	Diesel
Vehicle Length	30 feet	30 feet	30 feet	30 feet
Passenger Capacity	25 Seats, 20 Standees	25 Seats, 20 Standees	25 Seats, 20 Standees	25 Seats, 20 Standees

In the event that none of the four branded vehicles are available, the District shall use a 30-foot Van Hool vehicle to ensure that service is operated. If a non-branded vehicle is used, it shall include a “B” logo on each side of the vehicle and a “Broadway Shuttle” sign in the front window. The destination signage shall be consistent with that of the dedicated Shuttle fleet.

8. Service Notifications – District shall make every attempt to notify City in an expeditious matter when any of the four dedicated Shuttle vehicle are rerouted, detoured, taken out of service and/or replaced with the a backup vehicle or any other non-Dedicated vehicle due to maintenance, road conditions, public assemblies/marches, or avoidable/unavoidable Shuttle vehicle breakdowns.
9. Bicycle Storage – Each Shuttle bus shall have the capacity for storage of two (2) bicycles on racks attached to the front of the vehicles for easy bicycle on loading and offloading.
10. Vehicle Cleanliness – District shall be responsible for washing, and cleaning the Shuttle vehicles. The Shuttle vehicle interiors shall be cleaned daily and vehicle exteriors shall be washed at the end of every service day.
11. Revenue Generating Advertising In and On District Vehicles – District shall permit the City of Oakland to generate revenue via the sale of interior and exterior advertising on Broadway Shuttle vehicles. City of Oakland shall be responsible for all functions related to the sale of transit advertising, including but not limited to sales, billing, collection, production, installation and maintenance of advertising. The City may choose to have the District print and install interior advertising, but City shall be charged the District’s in-house rate for printing and installation. Available interior space includes what is commonly referred to as the car card, doghouse, and ad card spaces. Available exterior space includes three ad spaces on the four shuttle vehicles as depicted on Exhibit A. Advertising placed on vehicle windows must utilize perforated vinyl that allows visibility to the driver of the vehicle. Advertisements must be in accordance with AC Transit Board Policy 404, “Advertising on District Property.” City of Oakland shall use its best professional judgment to determine whether advertising copy submitted complies with AC Transit’s advertising policy, and shall reject any copy that, based on the City of Oakland’s best professional judgment, does not comply with District policy. The City of Oakland shall inform the District in writing of any advertising rejected pursuant to this subsection. The City of Oakland shall maintain all display advertising in a nature consistent with high-quality industry standards. Each ad shall present a sharp, clear, clean, high-quality appearance at all times. Layering of ads is not permissible. Within 60 (sixty) days of notification by AC Transit, City of Oakland shall repair and/or replace any damaged advertising. City shall assure that advertising intended for longer-term display utilizes materials warrantied to withstand normal cleaning and weather conditions. Expired advertising copy shall be removed by the City of Oakland no later than thirty (30) business days of the contract end date. City of Oakland shall work with AC Transit to ensure disruptions to transit operations due to installation, maintenance or removal are minimized. The use of advertising decals shall not cause

damage to the District's vehicles, their paint schemes, underlying decals, or exterior surfaces and equipment. City of Oakland shall be required to reimburse the District for the full dollar cost to repair any damage to the District's vehicles and property resulting from the application or removal of said advertising adhesive materials. City of Oakland will receive revenues from advertisements placed on the Shuttle.

12. Non-Revenue Generating Advertising In and On District Vehicles – Such advertisements shall include but not be limited to route diagrams, event announcements, and the promotion of City or shuttle grantors/sponsors and their programs. District shall provide printing and installation services for interior signage in what is commonly referred to as the car card, doghouse, and ad card spaces, provided that changes to the signage are not requested more than once a month (for car card), once every three months (for doghouse), or once every six months (for ad card). For the ad card spaces, although individual ad card replacement requests can be made up to once every three months, turnover of all the ad card spaces cannot exceed once every six months. If requests exceed these frequencies, City shall be charged the District's in-house rate for printing and installation. City shall be responsible for the production, installation and maintenance of exterior advertising. Advertisements must be in accordance with AC Transit Board Policy 404, "Advertising on District Property."
13. City shall be responsible for restocking District's supply of Broadway Shuttle "Take-One Box" brochures. District shall be responsible for checking the five Take One Box holders on each vehicle each day and replenishing the brochures. District shall notify City when brochure supplies are running low.
14. Real time Predictions – All existing and future District real time prediction signs along the Shuttle route at which the Shuttle makes a stop shall display real time prediction information that includes the estimated arrival time of the next Shuttle bus. Shuttle passengers shall be able to retrieve Broadway Shuttle real time predictions on their PDA's/Smart Phones. District shall monitor and ensure that real time predictions for the Shuttle are being reported properly.
15. Real Time Prediction Signage – If City purchases and installs new real time prediction signs, City shall display real time information for all other District lines that serve that same stop. District will pay all monthly real time prediction vendor fees associated with displaying Shuttle and other District line information on Shuttle real time prediction signs purchased and installed by City.
16. Regional Transit Information – District agrees to incorporate the Broadway Shuttle in the AC Transit schedule data normally delivered to the Metropolitan Transportation Commission (MTC) for use in the 511 Trip Planner. While District has no control over the layout, functions or constraints of the 511.org website or software, District will continue to work with the MTC to ensure that the schedule, stop or the other data used to manage the

Broadway Shuttle project is correct and available for use in the 511 website and 511 trip planner. Real-time predictions for the phone-based, text-based, or web-based aspects of the 511 system are managed and approved exclusively by the MTC. Consequently, the specific details of how Shuttle real-time information will be available to potential riders are not a matter for the District and should be agreed to by the City of Oakland and the MTC.

17. Customer Feedback – City is permitted to publish District Telephone Information Center phone number (510-891-7142) on Shuttle brochures, collateral material, City Shuttle website and Shuttle stop signs/flags. District will be responsible for logging all complaints, comments and commendations regarding the Shuttle, and will produce and share with the City reports every six months that include summaries of all calls fielded by the District Customer Relations team related to the Broadway Shuttle.
18. Service Change Requests – City requests for bus schedule, bus stop location, or routing changes must be submitted in writing to the District no less than ninety (90) days prior to the District driver-bid (sign-up) dates closest to the requested schedule or route changes(s). District sign-ups traditionally occur in mid-March, mid-June, late-August, and late-December.

Should City wish to expand the Shuttle service, City will pay to District according to the rate schedule established in (3)(a). Expanded service would include either more frequent service within the span of service specified in Exhibit A and/or new service hours. All City requests will be evaluated according to established District procedures. District will endeavor to make changes as requested by City but reserves the right to determine the schedule and routes.

19. Operator Conduct – District shall provide a high quality, customer service-oriented, fixed-route bus operation. Bus drivers shall be instructed to treat all passengers in a respectful, helpful and courteous manner to achieve the maximum level of customer service.
20. Operator Assignment - Operators shall be assigned to the Shuttle service per established District procedure with the goal of ensuring consistent and reliable service, and promote familiarity between operators and passengers. All operators are responsible for knowledge of the service system design, including the routing and stops, fare policy (fare-free), schedules, ADA requirements, regional transit connections, and general knowledge of destinations and attractions along the route. The City shall provide educational material to assist with operator familiarization for attractions and destinations along the Shuttle route. If any trips are missed due to unavailability of drivers or vehicles, District shall notify City by email within three business days.
21. Performance Goals – District shall implement the service with a stated performance goal to provide reliable and on-time transit performance. District shall ensure that an adequate number of extra drivers and spare vehicles are available at all times, with the following exceptions: District shall not be held responsible for failure to provide on-time service due

to unusual weather, traffic conditions, road construction, schedule delays associated with rail crossings, or naturally occurring disasters.

22. Destination Signage – While in service, District drivers shall ensure that the proper route destination is displayed on the head, side and rear destination signs. For the Day route, the headsign message shall be orange, and shall be changed to “Free Shuttle; Broadway Shuttle/To Jack London Square” at the Grand Ave at Webster Shuttle stop; and shall be changed to “Free Shuttle; Broadway Shuttle/To Grand Avenue” at the Webster at Embarcadero Shuttle stop. For the Night route, the headsign message shall be blue, and shall be changed to “Free Shuttle; Broadway Shuttle/To Jack London Square” at the Broadway at 27th stop; and shall be changed to “Free Shuttle; Broadway Shuttle/To Broadway at 27th Street” at the Webster at Embarcadero Shuttle stop.
23. Bus Stop Announcements – District shall announce bus stop locations in accordance with existing District policies and commensurate with requirements issued under the Americans with Disabilities Act.
24. End of the Line – District bus operators shall empty the bus of all passengers at the end of the Shuttle route cycle. Passengers shall not be allowed to ride on the bus for longer than one Shuttle route cycle. District operators shall be responsible for enforcing these rules.
25. Reporting – The following reports are to be submitted:
  - a. Ridership – On a quarterly basis, District shall provide ridership data summaries for the Shuttle using the Automated Passenger Counter (APC) system. Summary ridership data (“Data”) shall include trip data broken down by Shuttle stop, trip, direction, hour, and by day of the week, to the extent said data is statistically valid according to District practice. District shall include Shuttle ridership information on annual ridership reporting to Federal, State and Local agencies as required.
  - b. Customer Service Report – Every six months, District shall provide a report to the City that includes summaries of all calls fielded by the District related to the provision of the Shuttle service.
  - c. On-Time Performance Report – Every six months, District shall provide quarterly on-time performance data summaries for the Shuttle using the Automated Vehicle Location (AVL) system. Reports shall include the number of occurrences that buses depart a timed stop more than one minute early, and depart from a timed stop more than five minutes late.
  - d. Vehicle Maintenance Report – District shall provide six-month vehicle maintenance summaries for the Shuttle using the OrbCAD Incident Report system, if available. Reports shall include the number of occurrences that a

branded vehicle was taken out of service or not put into service due to maintenance, accident, or other event.

26. Notice – Notices given pursuant to this Agreement shall be in writing, effective when received and given by personal service, or by certified or registered mail, return receipt requested to the addresses set forth below, or to such other address which may be specified in writing by the parties:

District:  
AC Transit  
Attn: John Urgo  
Service and Operations Planning  
1600 Franklin St.  
Oakland CA 94612

City:  
City of Oakland  
Attn: Ariel Espiritu Santo  
Department of Transportation  
250 Frank H. Ogawa Plaza  
Oakland CA 94612

27. Indemnification - City shall indemnify, defend, and hold harmless District, its directors, officers, employees, and agents against any and all suits, claims or actions of any sort or nature, including but not limited to injuries to or death of any persons, or for loss of or damage to any property (including costs of attorney's fees) arising out of its performance under this Agreement, or its failure to comply with any of its obligations contained herein, except such injury, loss or damage caused by the sole negligence or willful misconduct of District. City further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against District or any of the other individuals enumerated above in any such action, City at its expense shall satisfy and discharge the same. This indemnity shall survive the termination of the Agreement.

28. District shall indemnify, defend, and hold harmless City, its officers, agents and employees against any and all suits, claims or actions of any sort or nature, including but not limited to injuries to or death of any persons, or for loss of or damage to any property (including costs of attorney's fees) arising out of its performance under this Agreement, or its failure to comply with any of its obligations contained herein, except such injury, loss or damage caused by the sole negligence or willful misconduct of City or by the condition of City's property. District further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered



against City or any of the other individuals enumerated above in any such action, District at its expense shall satisfy and discharge the same. This indemnity shall survive the termination of the Agreement.

29. Living Wage Ordinance – District is subject to the Living Wage Ordinance codified in Chapter 2.28 of the Oakland Municipal Code and its implementing regulations. The Ordinance requires among other things that, unless specific exemptions apply or a waiver is granted, all covered employers must pay a minimum level of compensation to their covered employees of at least \$11.35 per hour if health benefits of at least \$1.25 per hour are offered, or \$13.05 per hour if no health benefits are offered. This wage rate shall be adjusted annually pursuant to the terms of the Ordinance. District agrees to abide by the requirements of the Living Wage Ordinance to pay the specified minimum compensation to its covered employees, to offer the required compensated and uncompensated leave time to its covered employees, to provide the required notices to its covered employees, to submit the required documentation to City, and to satisfy all other applicable requirements. District also agrees to include language in any service contract that it enters into related to the work under this Agreement, if the amount of the service contract exceeds \$25,000, requiring that the service contractor comply with Living Wage requirements for its covered employees. District shall submit a copy of such service contracts to City’s Office of Contract Compliance. For purposes of this section, “covered employees” mean any natural person who performs services for the employer and spends at least half of his or her time on work under this Agreement; but does not include managerial, supervisory, or confidential employees, independent contractors, volunteers, or those construction employees who are entitled to be paid at prevailing wages. Under the provisions of the Living Wage Ordinance, City may, under appropriate circumstances, terminate this Agreement and seek other remedies as set forth therein for violations of the Ordinance.
30. Modifications – This Agreement may be changed, modified or extended by written agreement of the parties
31. Governing Law – This Agreement is made in the State of California, and will be construed and enforced in accordance with the laws of the State of California.
32. Assignment – All of the terms, provisions and conditions of the Agreement hereunder shall be binding upon and inure to the parties hereto and their respective successors, assigns and legal representatives. Notwithstanding the preceding sentence, neither party shall assign or transfer interest in this Agreement without the written consent of the other party.
33. Alternative Dispute Resolution/ Mandatory Arbitration – In the event that any controversy, claim or dispute between the District and the Contractor arising out of or related to this Contract, or the breach hereof, that has not been resolved by informal discussions and negotiations, either party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking

these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the thirty (30) days following said written notice, the parties shall meet, confer and negotiate in good faith to resolve the dispute. Either party may, during said thirty (30) day period, request the utilization of the services of a professional mediator, and the other party or parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

34.

- a. In the event that any controversy, claim or dispute between the District and the Contractor arising out of or related to this contract, or the breach hereof, cannot be settled or resolved amicably by the parties during the thirty (30) day period of good faith negotiations provided for above, the either party or any party hereto may submit said controversy, claim or dispute for binding arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Rules”); provided, however, that notwithstanding any provisions of such Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in Title III of Part 4 (commencing with Section 1985) of the California Code of Civil Procedure, as and to the extent that the arbitrator deems fair and reasonable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.
- b. Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate (“Notice”). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this Contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.
- c. The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of this Contract, to award to the prevailing party its costs, including its share of the arbitration costs, and reasonable attorneys’ and expert witness fees and expenses.

- d. If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party shall be a party to an agreement with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, shall consent to arbitration as provided for hereunder.
  - e. All arbitration proceedings shall be held in Oakland, California.
  - f. The Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
35. 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.
36. This Agreement may be signed in multiple counterparts, which, when signed by all parties, will constitute a binding agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

**FOR THE DISTRICT**

**FOR THE CITY**

\_\_\_\_\_  
Michael A. Hursh, General Manager

\_\_\_\_\_  
Sabrina Landreth, City Administrator

**Approved as to Form and Content:**

**Approved as to form and legality:**

\_\_\_\_\_  
Denise Standridge, General Counsel

\_\_\_\_\_  
Deputy City Attorney