

COOPERATIVE AGREEMENT
between
ALAMEDA COUNTY TRANSPORTATION COMMISSION,
THE PORT OF OAKLAND
and the
CITY OF OAKLAND
for the
7TH STREET GRADE SEPARATION EAST PROJECT

This Cooperative Agreement (“AGREEMENT”), is made and entered into on _____, by and between ALAMEDA COUNTY TRANSPORTATION COMMISSION, a joint powers agency (“ALAMEDA CTC”), the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (“PORT”), and the CITY OF OAKLAND, a municipal corporation acting by and through its City Council (“CITY”). ALAMEDA CTC, PORT and CITY are sometimes referred hereinafter to as the “PARTIES.”

RECITALS

- A.** ALAMEDA CTC, in cooperation with CITY and the PORT, proposes to deliver the 7th Street Grade Separation East Project (Alameda CTC Project No. 1442001 and Federal Project No. LPPSB1L 6480(015)), a project estimated at \$372 million in project improvements, within and near the Port of Oakland in the City of Oakland, that are critical to the State and the San Francisco Bay Area regional economy (“PROJECT”) as shown on Exhibit A.
- B.** The PROJECT will be implemented as part of a larger 7th Street Grade Separation and Port Arterial Improvements program referred to as “Global Opportunities at the Port of Oakland” (“GoPort”). The PROJECT will reconstruct a 90- and a 50-year old structurally inadequate two-span Union Pacific Railroad (“RAILROAD”) underpass structure located along 7th Street between I-880 and Maritime Street, one of three gateways into the Port, to meet current geometric and seismic standards by increasing both vertical and horizontal clearances for trucks as well as widen and upgrade the roadway and a shared pedestrian/bicycle pathway to meet current American with Disabilities Act (ADA) and geometric design standards.
- C.** The PROJECT builds upon prior investments, including the CITY'S investment in the Oakland Army Base redevelopment area to bolster the global competitiveness of the Port and the larger Oakland Port Complex area, which will create jobs that are essential to the stability and growth of the local and regional economy.
- D.** By instrument dated December 19, 1930, Southern Pacific Transportation Company, the successor-in-interest of which is the RAILROAD, granted an easement to the CITY for the construction, use, and maintenance of a grade-separated underpass structure for vehicular traffic on 7th Street to cross under RAILROAD’s tracks at what today is milepost 4.50 on the RAILROAD’s Niles Subdivision (DOT Crossing No. 972497a).

- E.** The underpass structure has outlived its useful life and, due to its current geometric configuration, has a direct impact on the ability of trucks to move in and out of the Port in the most safe and efficient manner. The PROJECT will replace the underpass structure with a new alignment of 7th Street ("NEW ALIGNMENT") and a new grade-separated replacement underpass structure ("STRUCTURE"). Both the NEW ALIGNMENT and the STRUCTURE are depicted on Exhibit A.
- F.** The PROJECT improvements will be ultimately owned, operated, repaired and/or maintained by RAILROAD, the CITY or the PORT.
- G.** This AGREEMENT memorializes the roles and responsibilities of the PARTIES for the transfer of ownership, and the operations and maintenance of the PROJECT at the point at which the Project construction contract is formally accepted by ALAMEDA CTC and the permanent ownership and maintenance obligations of ALAMEDA CTC, stipulated in the Construction and Maintenance Agreement dated _____, 2022 ("C&M AGREEMENT") shall be assigned to the CITY and the PORT as contemplated in the C&M AGREEMENT.
- H.** Execution of this AGREEMENT was approved pursuant to actions of the ALAMEDA CTC on March 26, 2020, by the Port Board of Commissioners on _____, 2022 by Resolution No. ____ and by the City Council of the CITY by Resolution No. ____ on _____, 2022.

NOW THEREFORE, the PARTIES mutually understand and agree to the following:

SECTION I INTRODUCTION:

- I.1** The Recitals above are true, correct and made a part hereof.
- I.2** This AGREEMENT shall be legally binding on the PARTIES, and by executing the same, each PARTY hereby acknowledges that its governing body has given all approvals necessary therefore.

SECTION II PORT AGREES:

Ownership, Repair and Maintenance

II.1 To own, maintain and repair certain elements of the STRUCTURE such as the bridge piers, abutments, girders, seats, bearings, fascia girder, waterproofing membrane or seal on the decking, column bents, the deck plate, and perimeter fence (Port of Oakland Property) at no cost to ALAMEDA CTC immediately following the formal PROJECT construction contract acceptance by ALAMEDA CTC. Elements of the STRUCTURE to be owned, maintained and repaired by the PORT are depicted on Exhibit B.

II.2 To undertake actions necessary to accept a permanent easement deed from ALAMEDA CTC for the transfer of ownership and maintenance of the STRUCTURE immediately following the Project construction contract acceptance.

II.3 Obtain all requisite permits and RAILROAD right of entry authorization related to maintenance of the STRUCTURE as depicted on Exhibit B at no cost to ALAMEDA CTC.

II.4 To provide written notification to the CITY no less than ninety (90) days in advance of any repair or maintenance work on PORT owned elements that are located within portions of the STRUCTURE depicted in Exhibit X as the area of coordination (“COORDINATION AREA”), unless such work is being performed on an emergency basis, in which case the PORT may provide shorter notification to the CITY. Should the CITY or PORT determine that the PORT’S work in the COORDINATION AREA will have an impact on the elements of the STRUCTURE to be owned by the CITY, the PORT agrees to convene with the City to discuss coordination, potential cost sharing and roles and responsibilities before the commencement of any work.

SECTION III CITY AGREES:

Ownership, Operations, Repair and Maintenance

III.1 To own, operate, maintain, and repair certain elements of the PROJECT related to the 7th Street Roadway and portions of the STRUCTURE such as STRUCTURE footings and its waterproofing, and roadway including without limitation, the NEW ALIGNMENT roadway and related appurtenances including seal slab and its waterproofing, seal slab piles (aka hold-down piles), retaining walls, retaining wall railing and its waterproofing, aesthetic or design elements, soffit or retaining wall facades, roadway drainage systems, including clean water program elements and drainage pump systems, roadway and underpass lighting (including conduit and electrical connections), landscape (including irrigation and irrigation conduits) and hardscape, multi-use path and railing, and path lighting (including conduit and electrical connections), all at no cost to ALAMEDA CTC. Elements of the NEW ALIGNMENT to be owned, operated, maintained, and repaired by the CITY, including the clean water program elements are depicted on Exhibit C.

III.2 To assume the obligation for graffiti abatement on all PROJECT elements, excluding elements to be owned and maintained by the RAILROAD.

III.3 To undertake actions necessary to accept a permanent easement deed from ALAMEDA CTC for the NEW ALIGNMENT immediately following the formal PROJECT construction contract acceptance by ALAMEDA CTC.

III.4 Obtain all requisite permits and RAILROAD right of entry authorization related to owning, operating, maintaining, and repairing the NEW ALIGNMENT and certain elements of the STRUCTURE as depicted on Exhibit C at no cost to ALAMEDA CTC.

III.5 To provide written notification to the PORT no less than ninety (90) days in advance of any repair or maintenance work on CITY owned elements that are located within portions of the STRUCTURE depicted in Exhibit X as the COORDINATION AREA, unless such work is being performed on an emergency basis, in which case the CITY may provide shorter notification to the PORT. Should the CITY or PORT determine that the CITY'S work in the COORDINATION AREA will have an impact on the elements of the STRUCTURE to be owned by the PORT, the CITY agrees to convene with the PORT to discuss coordination, potential cost sharing and roles and responsibilities before the commencement of any work.

SECTION IV ALAMEDA CTC AGREES:

IV.1 To obtain all necessary approvals and permits from local, state, and other jurisdictions, including the California Public Utilities Commission, for construction of PROJECT, furnish all necessary labor, material and equipment, and construct and complete the PROJECT work, including without limitation the NEW ALIGNMENT, the STRUCTURE and all appurtenances thereof through PROJECT construction contract acceptance. The construction contract acceptance of the PROJECT is defined as when ALAMEDA CTC in with cooperation the CITY and PORT formally accept the PROJECT after verifying that the PROJECT work (construction) was completed per approved contract documents and change orders, and all punch list items have been addressed to the satisfaction of the PARTIES.

IV.2 To ensure that necessary rights of entry for maintenance of the 7th Street Roadway and related appurtenances, the NEW ALIGNMENT and STRUCTURE shall be issued by RAILROAD at no cost to CITY or PORT.

SECTION V IT IS MUTUALLY AGREED:

V.1 Following PROJECT construction contract acceptance, neither ALAMEDA CTC, nor its governing body or any officer, consultant, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by PORT or CITY in connection with the PROJECT. It is also understood and agreed, pursuant to Government Code Section 895.4, PORT and CITY shall fully defend, protect, indemnify and hold harmless ALAMEDA CTC, its governing body, and all its officers, employees, agents, representatives, and successors-in-interest, against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury (as defined in Government Code Section 810.8) or damages occurring by reason of anything done or omitted to be done by ALAMEDA CTC, in connection with PROJECT, including the performance of the PROJECT or operation or use of the equipment that is subject to this AGREEMENT.

V.2 Following PROJECT construction contract acceptance, neither PORT, nor its governing body or any officer, consultant, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by ALAMEDA CTC or CITY in connection with the PROJECT. It is also understood and agreed, pursuant to

Government Code Section 895.4, ALAMEDA CTC and CITY shall fully defend, protect, indemnify and hold harmless PORT, its governing body, and all its officers, employees, agents, representatives, and successors-in-interest, against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury (as defined in Government Code Section 810.8) or damages occurring by reason of anything done or omitted to be done by PORT in connection with PROJECT, including the performance of the PROJECT or operation or use of the equipment that is subject to this AGREEMENT.

V.3 Following PROJECT construction contract acceptance, neither CITY, nor its governing body or any officer, consultant, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by ALAMEDA CTC or PORT in connection with the Project. It is also understood and agreed, pursuant to Government Code Section 895.4, ALAMEDA CTC and PORT shall fully defend, protect, indemnify and hold harmless CITY, its governing body, and all its officers, employees, agents, representatives, and successors-in-interest, against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury (as defined in Government Code Section 810.8) or damages occurring by reason of anything done or omitted to be done by CITY in connection with Project, including the performance of the Project or operation or use of the equipment that is subject to this Agreement.

V.4 Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties not party to this AGREEMENT. This AGREEMENT gives no rights or benefits to anyone other than ALAMEDA CTC, CITY, and PORT and has no third-party beneficiaries.

V.5 All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or for any other cause of action, will be subject to the statutes of limitations of the State of California.

V.6 Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorney's fees from the other party.

V.7 This AGREEMENT contains the entire understanding between the PARTIES regarding the PROJECT, and no oral understanding or agreement not incorporated herein or therein shall be binding on any of the PARTIES hereto, except _____, executed by and between _____ dated _____.

IN WITNESS WHEREOF, ALAMEDA CTC has by order caused this AGREEMENT to be subscribed by the binding authority of the ALAMEDA CTC; PORT has by order caused this AGREEMENT to be subscribed by the binding authority of the PORT; and CITY has by order caused this AGREEMENT to be subscribed by the binding authority of the CITY.

PORT OF OAKLAND

ALAMEDA COUNTY TRANSPORTATION
COMMISSION (ALAMEDA CTC)

By:

Recommended by:

By:

Reviewed as to Budget/Financial Controls

Approved as to form and legality:

Approved as to form and legality:

City Attorney by Celso D. Ortiz

EXHIBIT A

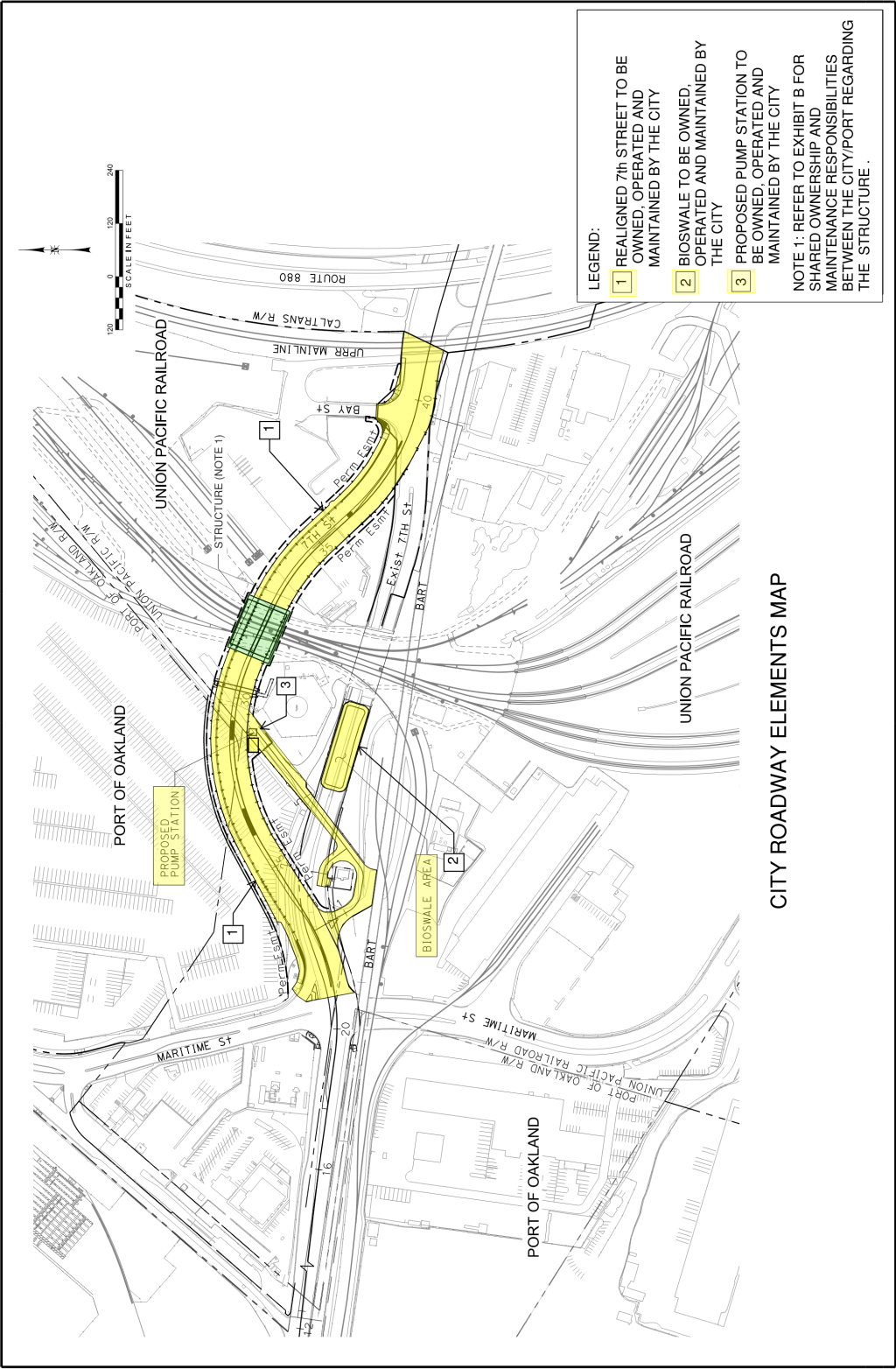


EXHIBIT B

