

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 _____, 2023, 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) a project estimated at \$364.5 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 – Project Area Map.
- 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 December 2, 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 January 26, 2023 by Resolution No. __ and by the City Council of the CITY by _____ No. ____ C.M.S. on _____, 2023.

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 therefor.

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 or bridge spans, bridge seats, bearings, fascia girder, waterproofing membrane or seal on the decking, column bents, the deck plate or decking, fiber optic (Freight Intelligent Transportation System) facilities, parapet and steel parapet fence, and perimeter fence (Port of Oakland Property) at no cost to ALAMEDA CTC immediately following the formal PROJECT construction contract acceptance by ALAMEDA CTC and PORT. Elements of the STRUCTURE to be owned, maintained and repaired by the PORT are depicted on Exhibit B – Ownership and Maintenance of Improvements. Certain details and sections of the STRUCTURE are depicted on Exhibit B-1 – Foundation Plan, Exhibit B-2 – Substructure Typical Section,

Exhibit B-3 – Substructure Framing Details, Exhibit B-4 – Mat Foundation Reinforcing Details (Sheet 1 of 3), and Exhibit B-5 – Barrier Cover Plate Layout. Full sets of the related plans are on file at the PORT and the CITY.

II.2 Within a reasonable time following written notice from RAILROAD, in the event PORT fails to maintain Port-owned elements of the STRUCTURE in good condition and repair, free of any defect, to reimburse RAILROAD for the reasonable costs of repair of such elements promptly following receipt of an invoice for such repairs from RAILROAD.

II.3 To undertake actions necessary to accept an assignment and acceptance of the permanent UNDERPASS STRUCTURE EASEMENT DEED (as defined below) and certain rights and obligations under the C&M Agreement (as defined below) from ALAMEDA CTC to the PORT for the transfer of ownership and maintenance of the STRUCTURE immediately following the formal PROJECT construction contract acceptance by ALAMEDA CTC and PORT.

II.4 Obtain all requisite permits and RAILROAD right of entry authorization related to maintenance of the STRUCTURE as depicted on Exhibit B, and in compliance with RAILROAD right of entry requirements set forth in Article IV.3. below, at no cost to ALAMEDA CTC and CITY.

II.5 The costs associated with the maintenance and repairs of the STRUCTURE that are fully associated with the operations and functionality of the railroad bridge are to be borne by the PORT. Should the CITY or PORT determine that the PORT'S work on the STRUCTURE will have an impact on the elements of the NEW ALIGNMENT, the PORT agrees to convene with the CITY to discuss coordination, potential cost sharing and roles and responsibilities before the commencement of any work.

II.6 To assume the obligation for graffiti abatement on all PROJECT elements that are owned, maintained and repaired by the PORT, and specifically exclude elements owned, repaired and maintained by the RAILROAD and the CITY, as depicted on Exhibit B.

II.7 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 B, 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 on the STRUCTURE will have an impact on the elements of the NEW ALIGNMENT, 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 the 7th Street NEW ALIGNMENT for the conveyance of motor vehicles, bicyclists, and pedestrians (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 (aka bioswale) 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), that are depicted on Exhibit C – City Roadway Elements Map, all at no cost to ALAMEDA CTC, immediately following the formal PROJECT construction contract acceptance by ALAMEDA CTC and CITY, completion of construction of the NEW ALIGNMENT, and assignment and acceptance of the permanent ROADWAY EASEMENT DEED (as defined below) and certain rights and obligations under the C&M Agreement from ALAMEDA CTC to CITY. Elements of the NEW ALIGNMENT related to the STRUCTURE to be owned, operated, maintained, and repaired by the CITY are depicted on Exhibit B. Certain details and sections of the STRUCTURE are depicted on Exhibit B-1 – Foundation Plan, Exhibit B-2 – Substructure Typical Section, Exhibit B-3 – Substructure Framing Details, Exhibit B-4 – Mat Foundation Reinforcing Details (Sheet 1 of 3), and Exhibit B-5 – Barrier Cover Plate Layout. Full sets of the related plans are on file at the PORT and the CITY.

III.2 To own, maintain, and repair certain elements of the STRUCTURE, such as foundation elements of the STRUCTURE that are integrated with and functionally reliant upon the NEW ALIGNMENT roadway and related appurtenances as described above, III.1, and as shown on Exhibit B. Should the CITY or PORT determine that the CITY'S work in the NEW ALIGNMENT will have an impact on the elements of the STRUCTURE, the CITY agrees to convene with the PORT to discuss coordination, potential cost sharing and roles and responsibilities before the commencement of any work.

III.3 The costs associated with the maintenance and repairs of the NEW ALIGNMENT that are fully associated with the operations and functionality of 7th Street are to be borne by the CITY.

III.4 To assume the obligation for graffiti abatement on all PROJECT elements that are owned, maintained and repaired by the CITY, and specifically exclude elements owned, repaired and maintained by the RAILROAD and the PORT, as depicted on Exhibit B.

III.5 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 and CITY.

III.6 Obtain all requisite permits and RAILROAD right of entry authorization related to operating, maintaining, and repairing the NEW ALIGNMENT that are not obtained by ALAMEDA CTC pursuant to Section IV below and certain elements of the STRUCTURE as depicted on Exhibit B, and in compliance with RAILROAD right of entry requirements stipulated in Article IV.3. below, at no cost to ALAMEDA CTC and PORT.

III.7 To coordinate with, and provide lane closure for, RAILROAD at no cost for RAILROAD for its inspection of the STRUCTURE, provided RAILROAD provides reasonable written notice to the CITY in advance of any such inspection.

III.8 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 B, 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 NEW ALIGNMENT will have an impact on the elements of the STRUCTURE, 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, including entering into the C&M Agreement, 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 cooperation with the CITY and PORT formally accept the PROJECT after verifying that the PROJECT work (construction) was completed per approved contract documents and change orders, PROJECT permit conditions have been fully satisfied, and all punch list items have been addressed to the satisfaction of the PARTIES.

IV.2 To obtain conveyance from RAILROAD of permanent easement deeds for the NEW ALIGNMENT (the "ROADWAY EASEMENT DEED") and STRUCTURE (the "UNDERPASS STRUCTURE EASEMENT DEED") from RAILROAD.

IV.3 To reserve the following rights of routine inspection and maintenance of the 7th Street Roadway and related appurtenances, the NEW ALIGNMENT and STRUCTURE for the CITY and PORT as follows:

1) Request the RAILROAD provide right of entry permit(s) to the PORT and/or the CITY, as applicable, for routine inspection and maintenance of the properties and facilities not owned by RAILROAD, pursuant to RAILROAD'S standard terms. The compensation due to RAILROAD for such entry, if any, will depend on the extent and duration of the entry and any interference with RAILROAD'S operations outside of the area covered by the UNDERPASS STRUCTURE EASEMENT DEED or the ROADWAY EASEMENT DEED, as applicable.

2) Request the RAILROAD provide the PORT and/or the CITY, as applicable, with one Right of Entry permit (at a mutually acceptable date and time) at no cost to the PORT and/or the CITY, as applicable, (other than an administrative fee charged by RAILROAD to all applicants for access, which administrative fee currently is \$1,025.00 and will not be increased unreasonably) for purposes of an annual inspection.

3) If any access requests to RAILROAD property not included within the areas covered by the ROADWAY EASEMENT DEED or the UNDERPASS STRUCTURE EASEMENT DEED, as applicable, then RAILROAD'S approval of such request will be at RAILROAD'S sole discretion and

if RAILROAD grants such request RAILROAD may require fair market compensation in connection with any such access.

4) In the event of need for immediate access to RAILROAD property necessary to protect the health or safety of any person, the PORT and/or the CITY, as applicable, shall first contact the RAILROAD's emergency number (RMCC – (888) 877-7267) to coordinate access and secure RAILROAD's cooperation prior to entry onto Railroad property.

IV.4 To assign to the CITY the ROADWAY EASEMENT DEED and certain rights and obligations under the C&M Agreement pursuant to an Assignment Agreement in a form acceptable to RAILROAD and the CITY.

IV.5 To assign to PORT the UNDERPASS STRUCTURE EASEMENT DEED and certain rights and obligations under the C&M Agreement pursuant to an Assignment Agreement in a form acceptable to RAILROAD and PORT.

SECTION V IT IS MUTUALLY AGREED:

V.1 The CITY and PORT acknowledge that there are overlapping assets that are integral and a part of the NEW ALIGNMENT and the STRUCTURE, and maintenance and repairs of the NEW ALIGNMENT and/or the STRUCTURE shall always be coordinated between the CITY and PORT. The costs associated with the maintenance and repairs that are associated with the operations and functionality of the NEW ALIGNMENT and the STRUCTURE are to be borne by both the CITY and the PORT proportionally correlated to the then determined operations and functionality deficiencies. In the event any dispute arises under this Agreement, the CITY and PORT shall make best efforts to meet and confer in good faith in order to attempt to resolve the dispute on a basis satisfactory to both Parties.

V.2 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.3 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.4 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.5 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.6 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.7 Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

V.8 This AGREEMENT may not be amended or modified in any respect whatsoever except by an instrument in writing, executed by all of the PARTIES hereto.

V.9 This AGREEMENT, the assigned portions of the C&M Agreement, the UNDERPASS STRUCTURE EASEMENT DEED, and the ROADWAY EASEMENT DEED contain 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.

V.10 This AGREEMENT may be executed in counterparts, each of which will be deemed to be an original but all of which will together constitute one and the same instrument.

[Signatures on following page]

EXHIBIT A

Project Area Map

EXHIBIT B

Ownership and Maintenance of Improvements

EXHIBIT B-1

Foundation Plan

EXHIBIT B-2

Substructure Typical Section

EXHIBIT B-3

Substructure Framing Details

EXHIBIT B-4

Mat Foundation Reinforcing Details (Sheet 1 of 3)

EXHIBIT B-5

Barrier Cover Plate Layout

EXHIBIT C

City Roadway Elements Map