

Attachment B: AC Transit Fruitvale Avenue TSP Cooperation Agreement

COOPERATION AGREEMENT

FOR CITY OF OAKLAND SUPPORT OF THE DESIGN, CONSTRUCTION, OPERATIONS, AND MAINTENANCE OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT FRUITVALE AVENUE TRANSIT SIGNAL PRIORITY AND SIGNAL COMMUNICATION INTEGRATION PROJECT (“PROJECT”) IN OAKLAND, CALIFORNIA

THIS COOPERATION AGREEMENT (“Agreement”) is entered into full execution, by and between the City of Oakland (“AGENCY”), 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. AGENCY AND AC TRANSIT, in cooperation with other local, state and federal agencies desire to construct traffic signalization improvements along Fruitvale Avenue in the city of Oakland as specified in the attached Exhibits A and B, which are incorporated by reference herein (“PROJECT”). The primary purpose of the PROJECT is to improve transit operations and service reliability.
- B. AC TRANSIT represents that it has federal and regional funds committed to and available for the implementation of the PROJECT.
- C. AGENCY represents that they are ready and able to provide the staff time required to support delivery of the PROJECT.
- D. 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 AGENCY staff.
- E. The PROJECT will be implemented by AC TRANSIT unless otherwise noted. The PROJECT will upgrade traffic signals and associated equipment with Transit Signal Priority technology so that signals can provide transit vehicles with an early green phase, or an extended green phase when needed, along Fruitvale Avenue between MacArthur Boulevard and E. 9th Street, San Leandro Street leading into the Fruitvale BART Station, E. 12th Street from 29th Avenue to 35th Avenue, and 29th Avenue from E. 12th Street to E. 10th Street. Other improvements include installing corridor communications along Fruitvale Avenue between MacArthur Avenue and San Leandro Street.

SECTION I

PROJECT DESIGN, CONSTRUCTION, ADMINISTRATION AND MAINTENANCE

A. AGENCY AGREES:

1. To cooperate in the review, approval, and support of AC TRANSIT’s design documents and AGENCY-required permit application(s) to facilitate construction inspections associated with any AGENCY-issued permit(s), and to provide any additional reasonable support needed for PROJECT completion.
2. To be responsible for the operation and maintenance of the elements installed as part of the PROJECT as identified in Exhibit B.

3. To reasonably and expediently consider an application(s) for an excavation permit (and any other applicable required permits) authorizing AC TRANSIT or its contractor to perform all construction activities required by the PROJECT within the AGENCY right-of-way, provided AC TRANSIT or its contractor satisfies the AGENCY'S conditions precedent to issuance of required permit(s) (including all necessary indemnification and insurance).

B. AC TRANSIT AGREES:

1. To be responsible for planning, designing, engineering, constructing, testing, and implementing the PROJECT and to cooperate with AGENCY and its staff or agents in implementing the PROJECT in a manner that allows AGENCY 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. Pursuant to California Environmental Quality Act Guideline 15051(d), AC TRANSIT is designated as the lead agency for purposes of environmental review as required under Public Resources Code § 21000, et seq.
3. To designate, at its own expense, an AC TRANSIT representative to work with the AGENCY in coordinating all aspects of the PROJECT including planning, engineering, construction and installation work.
4. To secure and maintain for the duration of this Agreement, insurance coverages as set forth in Section 5, subsections (a)-(c). Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the AGENCY. The AGENCY, its officers, employees, and agents, shall be named on the Commercial General and Automobile Liability policies as additional insureds. The policies required by this Agreement shall be primary and noncontributory as to any policies maintained by the AGENCY and shall include a waiver of subrogation as to the AGENCY.
5. To include a provision in any construction contract for the PROJECT requiring any contractor and subcontractor (as required by the AGENCY) to maintain insurance coverage for, at minimum, the coverage limits listed below:
 - a. Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01, or its equivalent, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - b. Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.

- c. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000.00** per accident for bodily injury or disease.
- d. Professional Liability (if Design/Build), with limits of no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If Contractor maintains higher limits than the specified minimum limits, the District requires and shall be entitled to coverage for the higher limits maintained by Contractor.

- 6. Providing the necessary equipment and technical support to operate and maintain all TSP equipment deployed by the PROJECT within the AGENCY right-of-way as identified in Exhibit B. Although the City will own the TSP equipment, AC TRANSIT, at its sole cost, shall bear full responsibility for providing all labor, materials, incidentals, field assistance, troubleshooting, replacing, reconfiguring, and testing new equipment as needed to support the maintenance of fully functional TSP equipment. AC Transit's maintenance obligations do not extend to damages due to accidental causes or caused by the City's own actions or failure to maintain the infrastructure equipment specified under Section II(10) and as identified in Exhibit B.
- 7. To provide consultant support to AGENCY to review engineering and construction related documents during the PROJECT's design phase. Both AGENCY and AC TRANSIT agree not to exceed \$65,000 for a third-party consultant contract.

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 completion of the PROJECT and acceptance of all PROJECT work by the AGENCY 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 AGENCY for those facilities identified as owned by AGENCY in Exhibit B. No further agreement will be necessary to transfer ownership as hereinbefore stated. The AGENCY 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. 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.
- 4. 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 any 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.

5. AC TRANSIT shall indemnify, defend, and hold harmless the AGENCY, its City Council, officers, employees, agents, and volunteers from and against any and all liability, loss, expense, including attorneys' fees, or claims for injury or damages arising out of its negligent performance under this Agreement, or its failure to comply with any of its obligations contained herein, except such loss or damage that was caused by the negligence or willful misconduct of the AGENCY.
6. AGENCY shall indemnify, defend, and hold harmless AC TRANSIT, its Board of Directors, officers, employees, agents, and volunteers from and against any and all liability, loss, expense, including attorneys' fees, or claims for injury or damages arising out of its negligence or willful misconduct under this Agreement, or its failure to comply with any of its obligations contained herein, except such loss or damage that was caused by the negligence or willful misconduct of AC TRANSIT.
7. In the event the AGENCY installs a new signal on a segment that is part of the PROJECT during the term of this Agreement, the AGENCY will seek to integrate the new signal with the PROJECT pending available resources and funding available from the AGENCY and AC TRANSIT. Ownership, operation, and maintenance of any new signal may follow the terms of this Agreement. Any new signal integration into the PROJECT shall require a written amendment to this Agreement.
8. Except for the obligations for indemnification and dispute resolution, which shall survive termination of this Agreement, obligations under this Agreement will be in effect for 15 years from the date it is fully executed ("term").
9. The AGENCY and AC TRANSIT shall work together in good faith to resolve any disputes arising under this Agreement. Prior to initiating any legal action against the other party, the parties agree to meet and confer in good faith to attempt to resolve the dispute. Nothing in this Section shall be construed to limit either party's right to terminate this Agreement pursuant to Section II(10).

10. **Termination**

(a) Termination for Convenience. Either party (AC TRANSIT OR AGENCY) may terminate this Agreement, in whole or in part, at any time and for any reason, upon sixty (60) days' prior written notice to the other party. Termination under this provision does not require a finding of default or fault by either party. If the 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 the AGENCY's designated address.

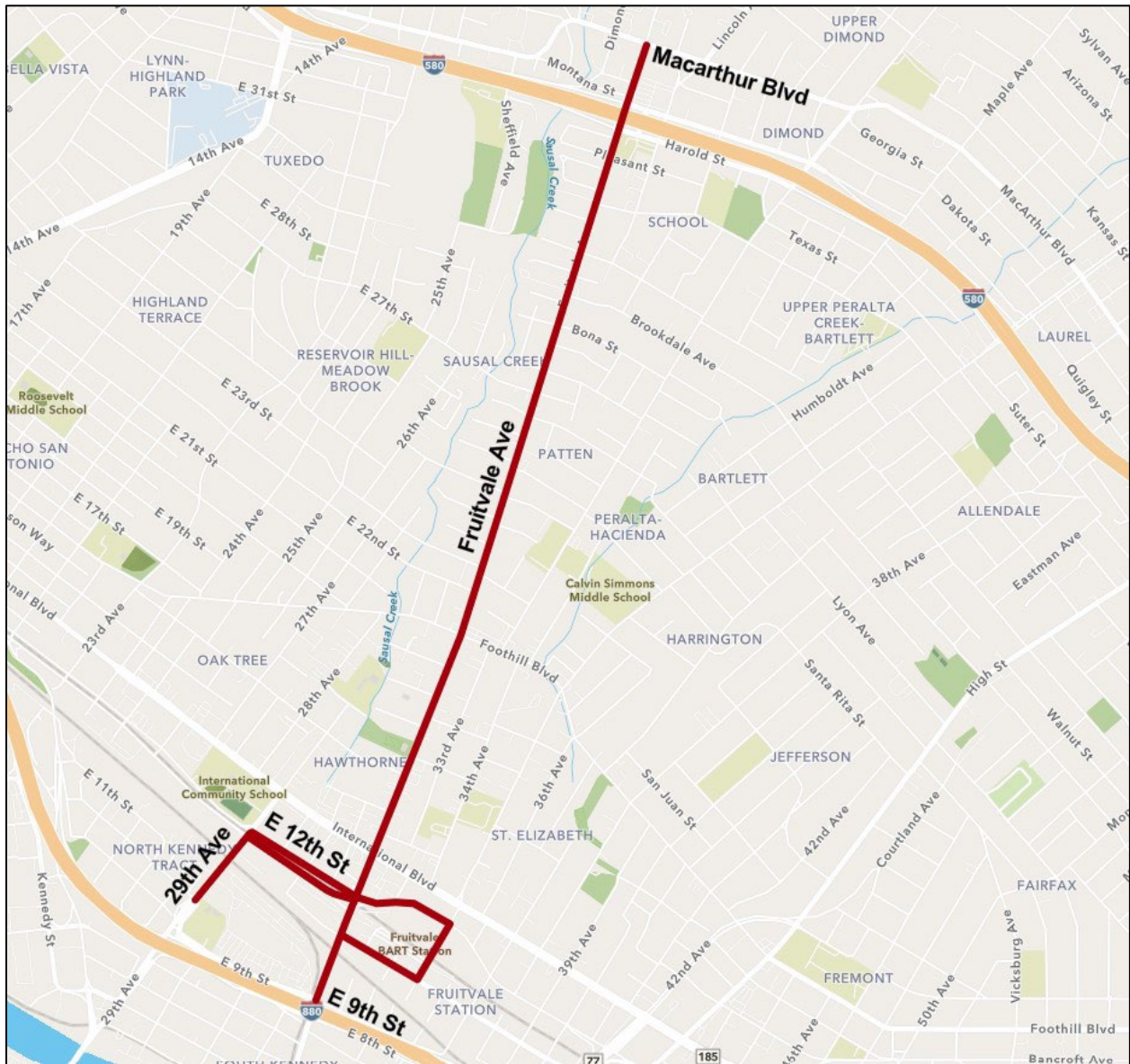
(b) Effect of Termination; Survival. Upon termination of this Agreement for any reason, each party shall promptly cease any further performance of services or obligations terminated by such notice. Termination shall not relieve either party of obligations incurred prior to the effective date of termination. The provisions of this Agreement relating to indemnification, dispute resolution, and governing law shall survive any termination.

11. 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.
12. 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.
13. Neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other.
14. All of the terms, provisions and conditions of this Agreement, shall be binding upon and inure the parties hereto and their respective successors, assigns and legal representatives.
15. By signing this Agreement, the AGENCY 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 by this Agreement. AGENCY and AC TRANSIT further covenant that in the performance of this Agreement no person having any such interest shall be employed by the AGENCY and AC TRANSIT.
16. 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 Agreement 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.
17. 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.
18. 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.

COOPERATION AGREEMENT

BETWEEN CITY OF OAKLAND AND AC TRANSIT FOR DESIGN, CONSTRUCTION, OPERATIONS, AND MAINTENANCE OF THE FRUITVALE AVENUE TRANSIT SIGNAL PRIORITY AND SIGNAL COMMUNICATION INTEGRATION PROJECT (“PROJECT”)

Exhibit A: PROJECT Area



COOPERATION AGREEMENT

BETWEEN CITY OF OAKLAND AND AC TRANSIT FOR DESIGN, CONSTRUCTION, OPERATIONS, AND MAINTENANCE OF THE FRUITVALE AVENUE TRANSIT SIGNAL PRIORITY AND SIGNAL COMMUNICATION INTEGRATION PROJECT (“PROJECT”)

Exhibit B: Proposed New Equipment as Part of the PROJECT

NO.	LOCATION	OWNED	MAINTAINED (IF DIFFERENT FROM OWNED)	Controller Upgrade	GPS Radio Antenna (1)	Phase Selector (1)	Auxiliary Interface Panel (1)	TSP (1)
1	Fruitvale Ave. / MacArthur Blvd.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
2	Fruitvale Ave. / Montana St.	Caltrans		-	-	-	-	GTT GPS Equipment
3	Fruitvale Ave. / Harold St.	Caltrans		-	-	-	-	GTT GPS Equipment
4	Fruitvale Ave. / School St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
5	Fruitvale Ave. / E 27 th St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
6	Fruitvale Ave. / E 23 rd St. (East)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
7	Fruitvale Ave. / E 23 rd St. (West)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
8	Fruitvale Ave. / Foothill Blvd.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
9	Fruitvale Ave. / E 18 th St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
10	Fruitvale Ave. / E 15 th St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
11	Fruitvale Ave. / International Blvd.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
12	Fruitvale Ave. / E 12 th St. (East)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
13	Fruitvale Ave. / E 12 th St. (West)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
14	Fruitvale Ave. / San Leandro St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
15	Fruitvale Ave. / Railroad Crossing	City of Oakland	-	-	-	-	-	GTT GPS Equipment
16	Fruitvale Ave. / E 9 th St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
17	E 12th St. / Derby Ave. (East)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
18	E 12th St. / Derby Ave. (West)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
19	E 12th St. / 29 th Ave. (East)	City of Oakland	-	-	-	-	-	GTT GPS Equipment

20	E 12th St. / 29 th Ave. (West)	City of Oakland	-	-	-	-	-	GTT GPS Equipment
21	E 12th St. / 35 th Ave.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
22	29 th Ave. / Railroad Crossing	City of Oakland	-	-	-	-	-	GTT GPS Equipment
23	29 th Ave. / Food Max Driveway	City of Oakland	-	-	-	-	-	GTT GPS Equipment
24	29 th Ave. / E 10 th St.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
25	San Leandro St. / 33 rd Ave.	City of Oakland	-	-	-	-	-	GTT GPS Equipment
26	San Leandro St. / 35 th Ave.	City of Oakland	-	-	-	-	-	GTT GPS Equipment

Notes:

(1) TSP equipment includes: GTT 764 phase selector, GPS radio antenna, cabling, and associated accessories.

All TSP equipment will be owned, operated and maintained by the City. AC Transit will provide the necessary equipment and technical support to operate and maintain all TSP equipment.

Although the City will own the TSP equipment, AC Transit, at its sole cost, shall bear full responsibility for providing all labor, materials, incidentals, field assistance, troubleshooting, replacing, reconfiguring, and testing new equipment as needed to support the maintenance of fully functional TSP equipment.

