OPERATIONS AND MAINTENANCE AGREEMENT
WITH ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
FOR BUS RAPID TRANSIT FACILITIES ON STATE ROUTES 112 and 185

This Agreement, entered into, and effective on the 10th day of February, 20__ (“AGREEMENT”) is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “STATE,” and the Alameda-Contra Costa Transit District, a public transit district established under the laws of the State of California, referred to herein as “DISTRICT,” and together referred to as “PARTIES.”

A. RECITALS

1. Under STATE issued Encroachment Permit No. ______________, DISTRICT desires to construct its Bus Rapid Transit (“BRT”) project, which includes, but is not limited to, dedicated bus lanes, passenger platforms, ticket vending and validation systems, safety/security systems, public address and passenger information systems, landscaping, signals and lighting, crosswalk treatment and pedestrian warning signals, sidewalk, and signage, all hereinafter referred to as “BRT FACILITIES,” on East Fourteenth Street (State Route 185) and Davis Street (State Route 112) within the City of San Leandro (San Leandro) and on International Boulevard (State Route 185) within the City of Oakland (Oakland).

2. On State Route 185 within Oakland, STATE delegates certain maintenance functions to Oakland, under an Agreement for Maintenance of State Highways in the City of Oakland (“DMA-OAK”), executed August 23, 1991. As used herein, DMA-OAK includes its future successor agreements, if any.

3. On State Route 185 within San Leandro, STATE delegates certain maintenance functions to San Leandro, under an Agreement for Maintenance of State Highways in the City of San Leandro (“DMA-SL”), executed March 1, 1995. As used herein, DMA-SL includes its future successor agreements, if any.

4. DISTRICT intends to subcontract portions of DISTRICT’s BRT FACILITIES maintenance responsibilities to Oakland and San Leandro. Oakland and San Leandro are not parties to this Agreement.

5. STATE will continue to provide sweeping and maintenance of pavement (at STATE standard level of service) on State Routes 112 and 185 within Oakland and San Leandro, including the pavement of BRT FACILITIES dedicated bus lanes.

6. PARTIES mutually desire to specify the respective BRT FACILITIES operating and maintenance responsibilities of the PARTIES, in particular the maintenance functions to be performed by DISTRICT, and to specify the terms and conditions under which such work will be performed.
B. **AGREEMENT**

In consideration of the mutual covenants and promises herein contained, it is agreed:

1. **DISTRICT** shall be responsible, including all costs related thereto, for operation, maintenance, protection, and repair of BRT FACILITIES. Said work at all times shall be conducted to assure safety and convenience of State highway users. Said work and BRT FACILITIES shall be subject to random inspection by STATE as to safety conditions affecting STATE’s highway facilities, and DISTRICT shall, upon notice from STATE that an unsafe condition exists, take immediate steps to correct such unsafe conditions. If DISTRICT fails to perform after such notice from STATE, STATE shall immediately take necessary corrective action, and DISTRICT shall be billed and shall pay all reasonable costs for such corrective work performed by STATE. DISTRICT’s obligation to pay for the costs of such corrective work shall not apply if the unsafe condition is caused by STATE. Such inspection by STATE, if performed at all, does not relieve DISTRICT of its responsibilities under this Agreement. Should an unsafe condition arise as a result of a catastrophic event, or forces of nature such as a major earthquake, PARTIES shall work together collaboratively to fund and correct such condition as soon as practicable. STATE’s obligation following such catastrophic event will be to restore the pavement to an operating condition. However, STATE does not waive any right to claims against DISTRICT if such catastrophic event is caused by DISTRICT or DISTRICT’s contractor.

2. DISTRICT shall maintain the areas designated in Exhibit A, attached to and made a part of this Agreement, and as further described hereinafter in Section D.

3. Rights granted to DISTRICT under this Agreement are restricted to maintenance and operation of BRT FACILITIES. Any other use or presence by DISTRICT or DISTRICT’s authorized contractors will require that a separate encroachment permit be issued to that party from STATE.

4. DISTRICT shall not, at any time, use or permit the public to use BRT FACILITIES in any manner that will interfere with or impair the primary use of BRT FACILITIES as a bus transit facility.

5. STATE reserves its right to use those BRT FACILITIES areas within STATE’s right of way for future construction, reconstruction, expansion, modification, or maintenance purposes without restriction or reimbursement to any party should BRT FACILITIES be reconfigured or closed.

6. An encroachment permit from the STATE will be required for third parties if DISTRICT contracts out the BRT FACILITIES maintenance to a contractor or to another public agency. Said contractor(s) or public agency shall be subject to the same inspections and responsibilities as specified herein for work performed directly by DISTRICT.

7. DISTRICT shall not erect signs of any kind within BRT FACILITIES, except such signs as may be necessary or appropriate in connection with the operation of the BRT
FACILITIES or that are required by law. Such signs shall not be attached to or painted on any STATE freeway structures or facilities except by prior written consent of STATE.

8. DISTRICT, at DISTRICT’s sole expense, will maintain any additions or modifications to drainage inlets, such as, but not limited to, drainage inlet debris filters.

9. As conditions determined by STATE warrant, it will continue to be the responsibility of STATE to rehabilitate or reconstruct the entire pavement, including the BRT FACILITIES dedicated bus lane pavement, consistent with STATE standards and subject to funding availability. STATE will provide reasonable advance notice of such construction activity and will coordinate with DISTRICT to minimize adverse impacts to DISTRICT’s BRT operations.

C. MAINTENANCE DEFINED

Maintenance is defined in Section 27 of the Streets and Highways Code:

Sec. 27 (a) The preservation and keeping of rights-of-way, and each type of roadway, structure, safety convenience or device, planting, illumination equipment, and other facility, in the safe and usable condition to which it has been improved or constructed, but does not include reconstruction or other improvement.

(b) Operation of special safety conveniences and devices, and illuminating equipment.

(c) The special or emergency maintenance or repair necessitated by accidents or by storms or other weather conditions, slides, settlements, or other unusual or unexpected damage to a roadway, structure, or facility.

D. MAINTENANCE FUNCTIONS

The BRT FACILITIES maintenance functions to be performed by DISTRICT, which are at DISTRICT’s sole expense unless otherwise specified, are as follows:

1. PAVEMENT MAINTENANCE AND STREET SWEEPING

(a) State Routes 112 and 185

STATE will not maintain nor pay for the maintenance of BRT station concrete bus pads, BRT pavement markings, and any BRT pavement surface painting or pigmentation, which will be at DISTRICT’s sole expense. DISTRICT may contract separately with STATE or, notwithstanding article B(6) hereinabove, a third party contractor should DISTRICT desire pavement maintenance beyond the STATE standard level of service.
(b) State Route 185 within Oakland

DISTRICT shall enter into and maintain in force a separate agreement with Oakland for Oakland to maintain BRT FACILITIES pavement, including street sweeping, on State Route 185 for the term of this Agreement. DISTRICT shall reimburse Oakland for its documented additional maintenance cost, if any, attributable to BRT FACILITIES pavement maintenance and street sweeping in excess of the authorized expenditures in DMA-OAK for pavement maintenance and street sweeping of State Route 185.

(c) State Routes 112 and 185 within San Leandro

DISTRICT shall enter into and maintain in force a separate agreement with San Leandro for San Leandro to provide street sweeping of BRT FACILITIES pavement on State Routes 112 and 185 for the term of this Agreement. DISTRICT shall reimburse San Leandro for its documented additional maintenance cost, if any, attributable to BRT FACILITIES street sweeping in excess of the authorized expenditures in DMA-SL for street sweeping of State Routes 112 and 185.

2. SIGNS

DISTRICT shall be responsible for the maintenance and the installation of signage necessary for the direction and operation of BRT FACILITIES.

3. STRIPING

DISTRICT shall maintain all striping and pavement markings required for the direction and operation of BRT FACILITIES traffic.

4. LIGHTING

DISTRICT shall be responsible for maintenance and operations, including electrical energy costs, of BRT FACILITIES lighting (ordinary street lighting) and related electrical installations.

STATE will not pay for the maintenance, installation, repair, servicing, nor power for ordinary street lighting; however, lighting at intersections, which qualify as safety lighting under warrants approved/accepted by STATE, will be paid for on a pro rata basis when approved and specifically authorized by STATE.

5. SAFETY DEVICES

DISTRICT shall be responsible for the maintenance, repair, replacement, and cleaning of safety devices, including gates, bollards, fences, railing, guardrails, and markers.
6. **LANDSCAPING AND HARDSCAPING**

   DISTRICT shall be responsible for maintaining all landscaping, hardscaping (which includes, but is not limited to, wood, concrete, brick, or stone median paving or planter boxes), curbs, and irrigation at BRT stations as well as any new median landscaping installed as part of DISTRICT’s BRT project.

7. **PASSENGER PLATFORMS**

   DISTRICT shall be responsible for maintenance of shelters, benches, passenger platforms, and their appurtenances and shall provide graffiti removal and garbage collection services. DISTRICT shall also maintain electrical connections to shelters for the purposes of providing lighting and/or transit information displays. Advertising displays, if any, are subject to federal and state laws and regulations.

9. **CROSSWALKS AND IN-ROAD WARNING LIGHTS**

   DISTRICT shall be responsible for maintenance of any decorative or patterned crosswalks established as part of DISTRICT’s BRT Project. DISTRICT shall also maintain crosswalks, including any in-road warning lights, at non-signalized intersections.

10. **TRAFFIC SIGNAL SYSTEMS**

    DISTRICT, at DISTRICT’s expense, shall be responsible for maintenance of transit vehicle preemption devices installed as part of traffic signal systems.

**E. LEGAL RESPONSIBILITIES:**

1. 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 or affect the legal liability of any party to the Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.

2. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction allocated to DISTRICT under this Agreement. It is understood and agreed that, DISTRICT will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tort, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by DISTRICT under this Agreement.
3. Neither DISTRICT nor any officer, director, employee, or consultant thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction allocated to STATE under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless DISTRICT, and respective officers, directors and employees thereof, from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tort, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

4. Labor Code Compliance: Prevailing Wages
   If the work performed on this Project is done under contract and falls within the Labor Code Section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code 1771, DISTRICT must conform to the provisions of Labor Code Sections 1720 through 1815, all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. DISTRICT agrees to include prevailing wage requirements in its contracts for public work. Work performed by DISTRICT's own forces is exempt from the Labor Code's Prevailing Wage requirements.

5. Prevailing Wage Requirements in Subcontracts
   DISTRICT shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all Prevailing Wage requirements set forth in DISTRICT's contracts.

6. Insurance
   DISTRICT and its contractors shall maintain in force, during the term of this Agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of $1 million per occurrence and $2 million in aggregate. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to STATE that shall be delivered to STATE with a signed copy of this Agreement.

F. EFFECTIVE DATE AND RIGHT TO TERMINATE

This Agreement shall be effective upon the date appearing on its face and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by STATE for cause. Upon termination of this Agreement, DISTRICT shall, at DISTRICT's expense and to the extent practicable, return BRT FACILITIES to a condition substantially equivalent to the condition existing prior to the execution of this Agreement, or to a condition acceptable to STATE.
The PARTIES are empowered by Streets and Highways Code sections 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and PARTIES covenant to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
By: [Signature]
DAVID J. ARMILIO
General Manager

STATE OF CALIFORNIA
Department of Transportation
MALCOLM DOUGHERTY
Director of Transportation

ATTEST:

By: [Signature]
Clerk

By: [Signature]
NADER ESHghiPOUR
Deputy District Director Maintenance

Approved as to form and content:

By: [Signature]
DAVID A. WOLF
General Counsel

As to form and procedure:

By: [Signature]
Attorney for STATE OF CALIFORNIA
Department of Transportation