

**FIRST AMENDMENT  
JOINT POWERS AGREEMENT  
FOR  
IMPLEMENTATION OF A TRANSIT SHELTER ADVERTISING PROGRAM**

THIS FIRST AMENDMENT TO THE JOINT EXERCISE OF POWERS Agreement (Agreement) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2003 by and between the Alameda-Contra Costa Transit District (District), and the following county and cities: the County of Alameda and the cities of Albany, Berkeley, Fremont, Hayward, Newark and San Leandro (the Participating Entities) and the following cities: the cities of Alameda, Richmond and San Pablo (collectively the "Additional Participating Entities").

**RECITALS**

- A. The District and the Participating Entities entered into a Joint Exercise of Powers Agreement (the Agreement) on August 3, 1998 for the purpose of obtaining a contractor to maintain existing bus stops with the boundaries of the District included within the boundaries of the Participating Entities, as well as to locate new bus shelters within their respective jurisdictions and to participate in a Transit Shelter Advertising Program.
- B. On November 9, 1999, a contract was executed with Lamar Advertising Inc. to accomplish the purposes identified in the Agreement and work was commenced to install up to approximately 500 advertising and non-advertising shelters with the boundaries of the District located within the Participating Entities.
- C. The Additional Participating Entities requested permission to be included in the Transit Shelter Advertising Program for the portions of their jurisdictions which are included within the District's boundaries and to be legally bound by the terms of the Agreement and the contract with Lamar Transit Advertising dated November 9, 1999, as well as to establish a bus shelter program in the San Pablo Corridor in conjunction with the Rapid Bus Program.
- D. Section 16 of the Agreement requires any amendment or modification to it to be in writing and approved by all of the Participating Entities and the District.
- E. The City of Emeryville has advised the District that it desires to terminate its participation in the bus shelter program in accordance with Section 12.b.Subsection 1.

NOW, THEREFORE, in consideration of the faithful performance of the terms, conditions, promises and covenants contained in this Agreement, the parties agree as follows:

A. The JPA is amended in the following respects, and except for the amendments specified in this First Amendment the original terms of the JPA shall remain in full force and effect:

1. Section 1. Term of Agreement is amended to read:

This Agreement shall remain in full force and effect between the parties unless terminated in accordance with the provisions of Section 12 of the Agreement. The term of this Agreement shall commence on the date (the Effective Date) when all of the conditions in Section 2 have been satisfied. The District will notify the Participating Entities and the Additional Participating Entities in writing of the Effective Date of this Agreement.

2. Section 2. Subsequent Execution is deleted in its entirety and all following sections are renumbered accordingly.

3. Former Section 3. Effective Date of Amendment to Agreement shall be renumbered "Section 2." and is amended to read:

This First Amendment to the JPA shall become effective upon its execution by all of the parties identified on page one. The effective date of the First Amendment shall be deemed to have occurred on the date the last of the parties identified at the beginning of this First Amendment has executed it.

4. Former Section 4. Purpose shall be renumbered "Section 3." and is amended to read:

a. The Participating Entities entered into the Agreement for the purpose of working together to implement the Project for the installation and maintenance of bus shelters within their respective jurisdictions subject to the description and criteria/standards set forth in RFP 97-548.

b. The Additional Entities are entering into this First Amendment to also implement the Project, using as a base criteria and standards for the Project, as described in RFP 97-548, subject to the following modification:

The number of bus shelters located within the area of the Participating Entities and the Additional Participating Entities, excluding those within the San Pablo Corridor, shall not exceed five hundred (500).

5. Former Section 5. Project Manager shall be renumbered "Section 4." and is amended to read:
  - a. The Project Manager shall be an employee of the District. The District shall be solely responsible for all activities associated with the retention of the Project Manager, including but not limited to, recruitment, hiring, supervision, and termination. Neither the District nor any Participating Entity or Additional Participating Entity shall be required to expend its funds to retain the Project Manager. Funds sufficient to render the position a "cost neutral" position for the District (including salary and benefits) must be derived from revenue generated by the Project, including its expansion into the jurisdictions of the Additional Participating Entities.
  - b. The Project Manager shall be responsible for:
    1. Acting as staff to the Multi-Agency Bus Shelter Committee set forth in Section 5;
    2. Administering the bus shelter/advertising contracts;
    3. Calling, noticing and preparing an agenda for meeting with representative of the Participating Entities, the Additional Participating Entities, or both groups at the same meeting, as appropriate;
    4. Performing such other duties as are called for in the job description for this position.
  - c. If any Participating Entity or Additional Participating Entity has any concerns regarding the manner in which the Project Manager is performing his/her responsibilities, those concerns shall be placed in writing and provided to the District's General Manager.
6. Former Section 6. Multi-Agency Bus Shelter Committee shall be renumbered "Section 5." and is amended to read:

**The New Project Committee.** Within thirty (30) days of the Effective Date of this First Amendment, a new Multi-Agency Bus Shelter Committee shall be created (the New Committee). The membership of the New Committee shall consist of a representative from each of the Participating Entities, the Additional Participating Entities, and the District. The names of the representatives of the Additional Participating Entities shall be provided in writing to the Project Manager prior to the expiration of this thirty (30) day period. The current representatives of the Participating Entities shall remain the same. The names of any replacement of a representative shall

be provided to the Project Manager within 10 days of the effective date of the replacement. A quorum of the New Committee shall consist of fifty percent (50%) plus one of the Participating Entities, the Additional Participating Entities and the District's representative. The Project Manager shall serve as the District's representative to the New Committee. Decisions of the New Committee shall be made by a vote of a majority of the representatives present at the meeting.

a. The New Committee shall:

1. Acting through the Project Manager, provide recommendations on all aspects of the Project to the District's Board of Directors;
2. Work with and provide guidance to the Project Manager;
3. Meet at least quarterly.

b. The New Committee members shall:

1. Disseminate information on the Project to the appropriate persons within the entity that each committee member represents;
2. Have the authority to act on behalf of his/her entity after obtaining, as necessary, whatever direction or authorization is required from his/her agency (the legislative body, the chief executive officer, etc.) and is responsible for keeping his/her agency informed of actions of the New Committee;
3. Act as the selection committee for the review of any bid proposals required for carrying out the Project;
4. Attend meetings of the New Committee;
5. Act as the representative of the entity, when appropriate under the District's procurement procedures, for appropriate negotiations with any successful proposer under any RFP issued under the Agreement for the Project.

7. Former Section 7. Responsibilities of AC Transit is renumbered as "Section 6." and amended to read:

- a. AC Transit will be responsible for assisting in the implementation of the Project and the development of the structure and implementation of the Project for the Additional Participating

Entities and act as the administrative agent to any funding and reporting agencies.

- b. Provide organizational support to the Participating Entities and the Additional Participating Entities in the areas of contracts and grants, legal, procurement, research and planning, and operations relative to the funding and administrative requirements of the Agreement and this First Amendment, any grant requirements and requirements outlined in any contract(s) with the bus shelter contractor.
- c. Communicate on a regular basis with all Participating Entities and Additional Participating Entities through the designated representative of the Multi-Agency Bus Shelter Committee identified in Section 5.
- d. Act as the administrative agent of the Bus Shelter Contracts approved, as appropriate, by each Participating Entity and Additional Participating Entity.
- e. Process any amendments to the Agreement and this First Amendment and any other contracts entered into to accomplish the purposes of the Agreement and this First Amendment.

8. Former Section 8. Advertising Contract RFP is deleted in its entirety.

9. Former Section 9. Steps to Award of Bus Shelter/Advertising Contract is renumbered as "Section 7." and re-titled Steps for Any Future Award of a Bus Shelter/Advertising Contract and shall read:

In accordance with the terms of the Agreement, the District has awarded a bid to and executed a contract with Lamar Advertising, Inc. (Lamar) for the installation of bus shelters in Alameda County. It is the intention of the District, with the concurrence of the Additional Participating Parties, to amend the existing contract with Lamar to cover the work necessary for implementation of the Project in the Additional Participating Entities. However, the contract shall not change the priority that Lamar complete the installation of shelters within the jurisdictions of the Participating Entities before proceeding with the installation of shelters in the jurisdictions of the Additional Participating Entities. Except for the existing contract with Lamar to implement the Project or an amendment of the existing contract with Lamar to implement the Project in the Additional Participating Entities, before any future bid and award of any additional contracts under the Agreement or this First Amendment occurs, the following steps will be followed to ensure that there is concurrence regarding any future project by the parties affected by said new project:

a. Objectives of the RFP Process

1. To develop a process which ensures, as appropriate, that each Participating Entity and Additional Participating Entity has an opportunity to have their interests included in the RFP, considered in the selection process and as part of the contract negotiation process.
2. To select a Contractor who will immediately enter into contract negotiations following acceptance of the proposal.
3. To discuss during the contract negotiation those areas of similarity as well as areas of special concern of the Participating Entities, the Additional Participating Entities and the District.
4. To reach consensus, as appropriate, among the Participating Entities and Additional Participating Entities and authorize the District Board of Directors to execute a contract which effects those issues of concern.

b. Steps to Award of Contract

Following the distribution of the RFP to prospective bidders, the following process will assist the Participating Entities, the Additional Participating Entities and the District in the award of any contract for a future project.

1. Convene a Selection Committee consisting of all of the members of the Multi-Agency Committee identified in Section 5.
2. The AC Transit Procurement Department prepares a list of bids received by the District and of those who are considered responsive bidders. The responsive proposals are distributed to the Selection Committee for evaluation.
3. The evaluation process by the Selection Committee will include both written and oral exercises. The Selection Committee scores proposals and recommends a contractor.
4. The recommendation of the Selection Committee will be brought to the Bus Shelter Committee for discussion and endorsement.

5. The recommendation of the Selection Committee will be brought to each of the Participating Entities and Additional Participating Entities by their respective representative depending on the nature of the project, i.e. is it area specific or affecting all of the jurisdictions in the Agreement and the First Amendment.
6. The District's Board of Directors is responsible for the award of the contract. The recommendation of the Selection Committee, the Project Manager, the Participating Entities and Additional Participating Entities will be brought to the District Board of Directors prior to their decision to accept or reject awarding the contract.

The Participating Entities and Additional Participating Entities shall be bound by and subject to the District's procurement procedures and may not unreasonably withhold consent to the award of the bid to the responsible bidder. However, any Participating Entity and Additional Participating Entity may withdraw from participation in the Agreement or this First Amendment under Section 12 of this First Amendment. Any Participating Entity and Additional Participating Entity that withdraws its consent shall specify in writing the basis for its decision and shall hold the District, the other consenting Participating Entities and Additional Participating Entities and all officers, employees and agents of the District, the other consenting Participating Entities and Additional Participating Entities harmless from any suit of any nature brought by the designated responsible bidder providing the best offer for the rejection of the bid. Any protests regarding the bid or its award shall be governed by the District's policy governing bid award protests.

10. Former Section 10. Review of Restrictions on Bus Shelter Advertising and Design shall be renumbered "Section 8." and shall read:

Each Participating Entity and Additional Participating Entity shall review the applicable provisions of any ordinances or policies it has governing advertising with bus shelters and the design of bus shelters within its jurisdiction.

The Participating Entities and Additional Participating Entities recognize that to the extent a uniform approach to bus shelter advertising and design can be achieved, the greater the opportunity for a successful project. The Multi-Agency Committee, the Project Manager, and such additional staff from the Participating Entities and/or Additional Participating Entities as may be appropriate, will meet to identify those elements of the project

design approval/permit approval processes which are similar within each jurisdiction in order to develop general guidelines and permitting procedures for use by the Advertising Contractor. These guidelines shall not preempt a Participating Entity's and/or Additional Participating Entity's authority in approving the bus shelters located within its jurisdiction.

Any guidelines regarding the potential location of bus shelters and the content of advertising within them adopted following this First Amendment must be approved by the District's Board of Directors and the legislative bodies of two-thirds of the Participating Entities and Additional Participating Entities. Once the guidelines have been approved, they will be incorporated as part of the development of any future RFP for the Advertising Contractor, as well as in any future contract for advertising bus shelters.

11. Former Section 11. Hold Harmless shall be renumbered "Section 9." and amended to read:

The District shall enter into an amendment to the existing agreement with Lamar to add the Additional Participating Entities to the hold harmless provisions contained in that contract. Lamar, or any future contractor, will be required to hold harmless and defend the Participating Entities, the Additional Participating Entities, and the District against any causes of action associated with the installation, maintenance and removal of any bus shelters or other amenities installed in accordance with the Project and the contract, or any amendment to it, as well as any claims associated with the advertising in the bus shelters.

However, since the Participating Entities and Additional Participating Entities exercise land use and police power authority over the public property within their respective jurisdictions on which the bus shelters and other amenities will be located, as well as the administrative approval process, the Participating Entities and the Additional Participating Entities shall hold harmless and defend the District and the other Participating Entities and Additional Participating Entities from any claim or suit, of any nature whatsoever, brought against the District and the Participating Entities and Additional Participating Entities, or any of them, arising from the approval or disapproval of a location for a bus shelter within their respective jurisdictions.

The District agrees to hold the Participating Entities and the Additional Participating Entities harmless and to defend them from any claim or suit, of any nature whatsoever, arising from the activities of the Program Manager or District employees regarding the fulfillment of the District's responsibilities under the Agreement or this First Amendment.

12. Former Section 12. Termination shall be renumbered "Section 10." and amended to read:

- a. This Agreement may be terminated by the District and a majority of the Participating Entities and Additional Participating Entities upon the occurrence of any of the following events:
  1. The agreement between the District and the successful contractor is terminated and a successor is not obtained within six months of the date of termination on terms and conditions as favorable to the District, the Participating Entities and the Additional Participating Entities;
  2. Upon the conclusion of the contract(s) with the contractor, provided notice of termination is provided at least six months prior to the end of the contract(s);
  3. The revenues generated by the bus shelter advertising contract(s) is not sufficient to pay the costs of the position of Project Manager;
  4. A majority of the Participating Entities and Additional Participating Entities no longer wish the District to act as the administrator of the bus shelter contract.
- b. A Participating Entity or Additional Participating Entity may terminate its participation in this Agreement if:
  1. The Participating Entity or Additional Participating Entity does not sign the appropriate Implementation Agreement with the Contractor for Bus Shelters;
  2. The Participating Entity or Additional Participating Entity receives what is considered substantial negative public response to the project affecting that entity; or
  3. The Participating Entity or Additional Participating Entity no longer has an obligation to the advertising contractor and therefore has no purpose for continued participation in the JPA.

13. Former Section 13. Notices is renumbered "Section 11" and amended to read:

Any notices required under this Agreement shall be sent by facsimile and U.S. mail (first class with postage prepaid) and shall be effective upon

receipt of the facsimile, provided the facsimile and the mailed notice are sent to the following:

To AC Transit: Alameda-Contra Costa Transit District  
1600 Franklin Street  
Oakland, CA 94612  
Attn: General manager, 10<sup>th</sup> Floor  
Facsimile No.: (510) 891-7157

To Participating Entities: See list attached as Exhibit A

To Additional Participating Entities: See list attached as Exhibit B

To Contractor: To be attached as Exhibit C

14. Former Section 14. Distribution of Assets is renumbered "Section 12." and amended to read:

Upon the termination of this Agreement, any moneys due and owing to the District, the Participating Entities and Additional Participating Entities shall be distributed in accord with the applicable program and the contract with the contractor. Each party to this Agreement, upon its termination, shall be entitled to contract separately with the contractor or arrange for some other arrangement for the providing of bus shelters within their respective jurisdictions.

15. Former Section 15. Governing Law is renumbered "Section 13." and amended to read:

This Agreement is executed in and shall be governed by the laws of the State of California. Any suit brought under the terms of this Agreement shall be vested in a state court in the County of Alameda for any litigation involving the District. A Participating Entity or an Additional Participating Entity located in Alameda County, or in Contra Costa County for any litigation involving an Additional Participating Entity located in Contra Costa County, or, where appropriate, in the United States District Court for the Northern District of California in Oakland or San Francisco.

16. Former Section 16. Amendment is renumbered "Section 14." and amended to read:

Any amendment or modification to the Agreement or this First Amendment must be in writing and approved by all of the Participating Entities, Additional Participating Entities, and the District.

17. Former Section 17. Litigation is renumbered "Section 15." and amended to read:

- a. If any litigation is instituted by the District or any Participating Entity or Additional Participating Entity to enforce the terms of the Agreement and/or this First Amendment, the prevailing party shall be entitled to receive reimbursement for its costs and attorney's fees. Before proceeding to litigation, the parties shall seek to settle the dispute through good faith discussions and any alternative dispute resolution process which is acceptable to the parties. Only if these efforts have been exhausted may a party bring a suit against the other party to the dispute.
- b. If the Participating Entities, Additional Participating Entities and District authorize litigation against a third party or are the subject of a suit by a third party, subject to the provisions of Section 9, the District is authorized to pursue/defend this litigation on behalf of the Participating Entities and Additional Participating Entities either with its own resources or through outside counsel, after determining if there is any insurance or indemnification coverage from the Bus Shelter Contractor. Any costs or expenses, including attorney's fees, shall be reimbursed to the District on a prorata basis. A Participating Entity or Additional Participating Entity may elect, at its own expense, to pursue/defend the litigation on its own behalf, in which case the Participating Entity or Additional Participating Entity would not be required to reimburse the District for litigation costs and expenses.

18. Former Section 18. Binding Affect is renumbered "Section 16." and shall read:

This First Amendment is binding upon any successor to any of the parties to this First Amendment.

19. Former Section 19. Authorization is renumbered "Section 17." and shall read:

The signatories to this Agreement represent they are authorized by their respective agencies to enter into and bind their agencies to its terms and conditions.

B. Execution by Counterpart. This First Amendment may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute on and the same instrument.

IN WITNESS WHEREOF, the parties have signed this First Amendment to the Joint Exercise of Powers Agreement as of the dates indicated below.

**For the District**

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Rick Fernandez, General Manager

Approved as to form:

**For the County of Alameda**

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Approved as to form:

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Kenneth C. Scheidig, General Counsel

## Exhibit A

### List of Participating Entities

City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706  
Attn: Planning Director  
Facsimile No.: (510) 524-9359

City of Berkeley  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
Attn: Deputy City Manager on Transportation  
Facsimile No.: (510) 981-7099

City of Fremont  
39550 Liberty Street  
Fremont, CA 94537-5006  
Attn: Department of Public Works Manager  
Facsimile No.: (510) 494-4645

City of Hayward  
777 B Street  
Hayward, CA 94541  
Attn: Engineering and Transportation Manager  
Facsimile No.: (510) 583-3620

City of Newark  
37101 Newark Boulevard  
Newark, CA 94560  
Attn: Department of Public Works Manager  
Facsimile No.: (510) 790-7265

City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: Community Relations Representative  
Facsimile No.: (510) 577-3340

**List of Participating Entities (Continued)**

Alameda County  
399 Elmhurst Street  
Hayward, CA 94544  
Attn: County Traffic Engineer  
Facsimile No.: (510) 782-1939

## Exhibit B

### List of Additional Participating Entities

City of Alameda  
950 West Mall Square  
Alameda, CA 94501-7552  
Attn: Public Works Department Manager  
Facsimile No.: (510) 749-5867

City of Richmond  
1401 Marina Way South  
Richmond, CA 94804  
Attn: Engineering Division Manager  
Facsimile No.: (510) 307-8116

City of San Pablo  
13831 San Pablo Avenue  
San Pablo, CA 94806  
Attn: Public Works Division Manager  
Telephone No.: (510) 215-3030

## **Exhibit C**

### **Contractor**

Lamar Transit Advertising  
2302 Tripaldi Way  
Hayward, CA 94545  
Attn: General Manager  
Facsimile No.: (510) 293-0864