

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: April 20, 2020

Reviewed by: NA

**SUBJECT:** Memorandum of Understanding Between AC Transit and the City of Albany for the Administration and Construction Reimbursement for the Bus Stop/Parklet Project

**REPORT BY:** Anne Hersch, AICP, Planning Manager

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**SUMMARY**

Alameda-Contra Costa Transit (AC Transit) has authorized \$70,000 towards the construction of a new bus stop/parklet at 1116 Solano Avenue and is requesting that the City and AC Transit execute a Memorandum of Understanding for the administration and construction reimbursement of the project.

**STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2020-33 authorizing the City Manager to execute a Memorandum of Understanding between the City of Albany and AC Transit for the administration and construction reimbursement of a bus stop/parklet at 1116 Solano Avenue.

**Prior Actions**

The Albany City Council previously approved the following resolutions related to the curb reassignment and parklet project.

- Resolution No. 2018-45 for Bus Stop Relocation approved April 16, 2018.
- Resolution No. 2018-135 directing staff to issue the encroachment permit for the parklet on November 18, 2018.

**BACKGROUND**

**April 2018**

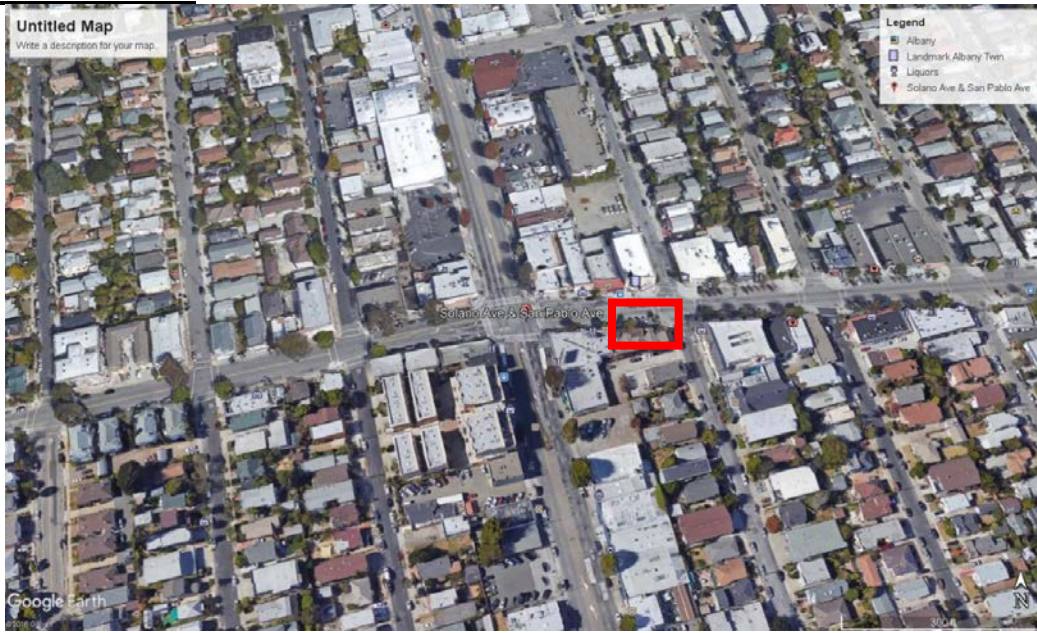
AC Transit filed and received approval for an encroachment permit application to relocate the existing 72/18/G route bus stop on April 16, 2018. Under this request, the bus stop will be separated into two different stops. The approval relocates the 72 route bus stop to the northeast corner of San Pablo and Solano Avenue. The 18/G route bus stop will be relocated to the south side of Solano Ave. at Kains Avenue. The proposed bus stop

relocation for the 18/G will result in a loss of four (4) on-street parking spaces on lower Solano Avenue.

### **November 2018**

Once the initial encroachment permit application was approved, the business owner of Mr. Dewie's Cashew Creamery applied and received approval for an encroachment permit to construct bus stop/parklet in the public right of way on November 18, 2018. The owner has worked with a licensed landscape architect to design a bus stop/parklet on the AC Transit Design Guidelines for bus stops.

### **SITE LOCATION**





**Proposed Parklet Location:** A new bus stop location for the 18/G will be relocated to the south side of Solano Ave. at Kains Ave.

## **DISCUSSION**

In the time since the parklet encroachment permit was approved, the owner of Mr. Dewie's has worked with AC Transit to secure funding for the construction of the bus stop/parklet. In March 2020, AC Transit indicated that they had secured funding up to \$70,000 that the City can provide reimbursement to the project sponsor for the construction of the bus stop/parklet.

The funding will be administered through reimbursement between the project sponsor (Mr. Dewie's), the City and AC Transit. In brief, the project sponsor will provide invoices to City staff who will review for compliance with the MOU. Once compliance is determined, invoices will be forwarded to AC Transit for applicant reimbursement.

The project is not a City project or part of the Capital Improvements Program. The City will contribute \$10,000 from Economic Development funds for project construction. The project sponsor (Mr. Dewie's) has already incurred costs for design services (approximately \$7,000) and is responsible for the remaining construction costs (approximately \$20,000).

As part of the project, a parklet maintenance agreement will be prepared and identify responsibilities for long term maintenance. Additionally, the project sponsor (Mr. Dewie's) will be responsible for utilities associated with the bus stop/parklet.

## **COVID-19**

The shelter in place order published on March 31, 2020 prohibits non-essential construction. Until the shelter in place order is lifted or amended to allow construction, the City will not issue a building permit for the construction of the bus stop/parklet. The project sponsor is welcome to proceed with plan check to initiate building permit review for future issuance.

## **SUSTAINABILITY IMPACT**

Establishing a parklet has demonstrated positive impacts on sustainability, by encouraging creative use of right-of-way space, and the parklet can also help improve bus service within the area.

## **FINANCIAL IMPACT**

As part of the project scope, the City is contributing \$10,000 towards the construction of the bus stop/parklet.

## **SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS**

The bus stop/parklet will be available for all members of the community. It has been designed to accommodate users of all abilities and ages.

## **Attachments**

1. Resolution No. 2020-33
2. Draft Memorandum of Understanding
3. Resolution No. 2018-45
4. Resolution No. 2018-135





**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT  
AND  
CITY OF ALBANY**

This Memorandum of Understanding (MOU) is entered into this \_\_\_\_ day of \_\_\_\_ 2020, by and between the Alameda-Contra Costa Transit District ("AC Transit"), a public transit operator, and the City of Albany ("Recipient"), a municipality located in Alameda County in the State of California.

**RECITALS**

**WHEREAS**, AC Transit has budgeted \$70,000 ("Project Funding") to support a Bus Bulb Parklet Design "Project"; and

**WHEREAS**, AC Transit is working in partnership with the recipient to deliver the Project; and

**WHEREAS**, Recipient and or Sub-recipient will perform design and construction and related activities for the Project by the City directly and through a sub-contract with the Mr. Dewie's business owners, Andrew Cohen, for a not-to-exceed total of \$70,000 with scope as specified in Exhibit A; and

**WHEREAS**, AC Transit will contribute up to \$70,000 of the Project Funding towards the construction phase of the Project;

**NOW, THEREFORE**, in consideration of the faithful performance of the terms and conditions set forth below, AC Transit and Recipient agree that the undertaking described in this MOU shall be implemented in accordance with the following:

**1. JOINT RESPONSIBILITIES**

A. The Project Funding that will be received by Recipient pursuant to this Agreement requires that AC Transit remain responsible for compliance with all terms, conditions, and requirements associated with the grant. The parties hereby agree, notwithstanding the grant requirements, that, as between the parties, it is the parties' intent, and Recipient agrees, that Recipient and Subrecipient shall, to the fullest extent permitted by law, be fully responsible for complying with all terms, conditions, and requirements associated with the applicable grant or grants. The specific responsibilities in this section and elsewhere in this agreement may not be construed or interpreted as in any way restricting, limiting, or modifying the general responsibilities imposed by this section. The recipient acknowledges that its commitment to assume such responsibilities is a material inducement for AC Transit to enter into this Agreement.

**2. AC TRANSIT RESPONSIBILITIES**

A. AC Transit will process invoices submitted by Recipient for cost reimbursement within 60 days of receipt of invoice if submitted in the proper format and accompanied by acceptable supporting documentation of expenditures, including copies of invoices submitted by Sub-recipient and processed by Recipient. Total payment will not exceed the amounts specified in this agreement.

- B. AC Transit shall indemnify, defend, and hold harmless the Recipient, its officers, directors, 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 performance under this MOU, or its failure to comply with any of its obligations contained herein, except such loss or damage which was caused by the negligence or willful misconduct of the Recipient or Sub-recipient.

**3. RECIPIENT RESPONSIBILITIES**

- A. *No Guarantee of Additional Funding.* Recipient agrees that AC Transit has no obligation to provide funds in excess of the amount specified to recipient, unless there is approval of additional funding for the project and both parties execute a written amendment to this agreement to reflect any additional funding. The recipient agrees that AC Transit is not obligated to provide funds not funded by the Project Funding.

Recipient Initial: \_\_\_\_\_

- B. *Recipient Responsible for Costs in Excess of Award.* Recipient acknowledges that AC Transit will only pass through project funding it has already allocated. Recipient agrees that it is responsible for any project costs that exceed the amount awarded to the recipient, including costs that exceed the estimated costs of the project.

Recipient Initial: \_\_\_\_\_

- C. *Treatment of Disallowed Costs.* Recipient acknowledges that it is responsible to fully refund AC Transit any payments made under this agreement that are determined to be disallowed.

Recipient Initial: \_\_\_\_\_

- D. *Reimbursable Costs.* Recipient agrees that only actual, allowable, necessary and reasonable construction costs are reimbursable. Recipient will provide invoices and accompanying documents to AC Transit for reimbursement of funds. Recipient will be responsible for maintaining all applicable records in compliance with auditing requirements as stated in the agreement between Recipient and AC Transit for the receipt of Project Funding

Recipient Initial: \_\_\_\_\_

- E. *Invoicing Requirements.* Recipient may submit invoices to AC Transit as frequently as monthly for reimbursement of eligible project costs in a form acceptable to AC Transit, along with a description of project activities. Invoices should include the time period for the invoice and itemized staff charges to the project. Each invoice will also include documentation of claimed expenditures as a condition of cost reimbursement. Recipient shall pay sub-contractors or subrecipients in a timely manner, and proof of payment to sub-contractors or subrecipients is required documentation for invoices to AC Transit.

Recipient Initial: \_\_\_\_\_



#### 4. EXCULPATION

- A. It is expressly understood by recipient that AC Transit is providing project funds solely as a project sponsor and that recipient shall be fully responsible for ensuring compliance with grant terms, program and legal compliance, necessary recordkeeping, and shall be responsible for any and all penalties, claims, fines, or expenses of any kind whatsoever, arising out of the use of Project Funds. AC Transit and recipient agree that neither AC Transit nor any director, officer, agent or employee of AC Transit (collectively "AC Transit Parties") shall be legally responsible for any claim, loss, damage, or liability of any kind arising out of or related to Recipient's actions or Sub-recipient's actions under the program or in connection with this agreement, including (but not limited to) damages or liability occurring by reason of malfeasance or misuse of project funds, improper allocation of funds (regardless of Recipient's intent or Sub-recipient's intent), failure to comply with any local, state, federal, or other regulatory laws or requirements, improper recordkeeping, negligent hiring, or any contract or tort claims arising from Recipient's or Subrecipient's operations.
- B. To the fullest extent permitted by law, recipient waives all claims (in law, equity, or otherwise) against AC Transit arising out of, knowingly and voluntarily assumes the risk of, and agrees that AC Transit shall not be liable to Recipient or Sub-recipient for any of the following:
  - a. Injury to or death of any person; or
  - b. Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause.
- C. AC Transit shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of the AC Transit Parties; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed on any AC Transit Parties.
- D. This section shall survive the expiration or earlier termination of this Agreement Until all claims within the scope of this section are fully, finally, and absolutely barred by the applicable statutes of limitations.
- E. Recipient acknowledges that this section was negotiated with AC Transit, that the consideration for it is fair and adequate, and that Recipient had a fair opportunity to negotiate, accept, reject, modify, or alter it.
- F. Waiver of Civil Code section 1542. With respect to the exculpation provided in this section, Recipient waives the benefits of California Civil Code §1542, which provides:
  - a. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

## 5. INDEMNIFICATION

- A. Recipient agrees to fully defend, indemnify, and hold harmless AC Transit to the maximum extent permitted by law from and against all claims, suits, losses, damages, injuries, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines and penalties of any kind (including consultant and expert expenses, court costs and reasonable attorneys' fees actually incurred), from any cause ("Claims"), arising out of or relating (directly or indirectly) to this Agreement including (a) any act, error, failure to act, or negligence of Recipient or Sub-recipient or of the Recipient or Subrecipient's officers, agents, directors, employees, contractors, subcontractors, invitees, guests, licensees, or any of them (including failure to comply with any applicable laws, rules, regulations, orders, decrees) and (b) any breach or default in performance of any obligation on Recipient's part to be performed under this Agreement, including obligations which survive expiration or earlier termination of this Agreement under the terms of this Agreement.
- B. AC Transit agrees to fully defend, indemnify, and hold harmless the Recipient to the maximum extent permitted by law from and against all claims, suits, losses, damages, injuries, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines and penalties of any kind (including consultant and expert expenses, court costs and reasonable attorneys' fees actually incurred), from any cause, arising out of or relating (directly or indirectly) to this Agreement, including (a) any act, error, failure to act, or negligence of AC Transit or of its officers, agents, employees, contractors, subcontractors, invitees, guests, licensees, or any of them (including failure to comply with any applicable laws, rules, regulations, orders, decrees) and (b) any breach or default in performance of any obligation on AC Transit's part to be performed under this Agreement, including obligations which survive expiration or earlier termination of this Agreement under the terms of this Agreement.
- C. This indemnification extends to and includes Claims for
  - a. Injury to any persons (including death at any time resulting from that injury);
  - b. Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and
  - c. All economic losses and consequential or resulting damage of any kind
- D. Except as provided in this section, the indemnification in section 3.A shall apply regardless of the active or passive negligence of AC Transit Parties and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on AC Transit Parties. The indemnification in section 3.A shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one AC Transit Party was proximately caused by the willful misconduct of that AC Transit Party. In that event, however, this indemnification shall remain valid for all other AC Transit Parties.
- E. To the fullest extent permitted by law, Recipient agrees to provide AC Transit with a full legal defense of any claims, with the counsel of AC Transit's choosing. Recipient's defense obligation shall arise upon tender of a claim by AC Transit and continue until the claim is resolved to AC Transit's satisfaction, whether by settlement, adjudication, or other means. Recipient shall pay for AC Transit's actual defense costs, including attorneys' fees, costs of suit, costs authorized by statute or pursuant to law, cost of litigation consultants, expert witnesses, and document fees. Recipient's duty to defend AC Transit Parties is separate and

independent of Recipient's duty to indemnify AC Transit Parties. The duty to defend includes claims for which Agency Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Recipient Parties have been determined. The duty to defend applies immediately, regardless of whether AC Transit Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the parties that AC Transit Parties be entitled to obtain summary adjudication or summary judgment regarding Recipient's duty to defend AC Transit Parties at any stage of any claim or suit within the scope of this section.

- F. The indemnification provided in this section may not be construed or Interpreted as in any way restricting, limiting, or modifying Recipient's and or Sub-recipient's insurance or other obligations under this Agreement and is independent of Recipient's and or Sub-recipient's insurance and other obligations. Recipient's compliance with the insurance requirements and other obligations under this Agreement shall not in any way restrict, limit, or modify Recipient's indemnification obligations under this Agreement.
- G. The prevailing party shall be entitled to recover its actual attorney fees and court costs incurred in enforcing the indemnification clauses set forth in this section.
- H. The clauses of this section shall survive the expiration or earlier termination of this Agreement until all claims against AC Transit Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

## **6. AMENDMENT**

- A. The term of this MOU is **April 20, 2020 through April 20, 2021**. The parties may extend, terminate or otherwise modify this MOU by mutual consent. Any extension or modification shall be confirmed in writing. Either party may terminate this MOU upon sixty (60) days prior written notice.

## **7. NOTICES**

- A. Any notices which may be required under this MOU shall be in writing, effective when received and given by personal service or by certified or registered mail to the following:

AC Transit:  
Michael A. Hursh, General Manager  
1600 Franklin Street, Oakland, CA 94612

City of Albany  
Nicole Almaguer, City Manager  
1000 San Pablo Avenue, Albany, CA 94706

## **8. DISPUTES**

- A. Any disputes arising under this MOU between the parties shall be resolved by the City Administrator, City of Albany, and the General Manager, AC Transit, or their designees. In the event that the Recipient and AC Transit are unsuccessful in informally resolving any dispute, the parties shall attempt to mediate the dispute by a mediator jointly selected by the parties before initiating any litigation. Such mediation may be requested by either party and shall be

performed within 60 days of the request, unless extended by mutual agreement. The obligation to mediate shall be terminated in the event that the parties are unable to mutually agree upon a mediator.

- The parties shall equally bear the costs of any third party alternative dispute resolution process.
- The terms and conditions of this MOU represent the entire understanding of the parties with respect to the subject matter of this MOU. No other agreement, statement or promise relating to the subject matter of this MOU shall be valid or binding except by a written amendment to this MOU.

**9. GOVERNING LAW**

- A. This MOU shall be governed by California law.

**10. ASSIGNMENT**

- A. This MOU shall not be assigned to any third party.

**11. SURVIVABILITY**

- A. If a court of competent jurisdiction finds or rules that any provision of this MOU is invalid, void, or unenforceable, the provisions of this MOU not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other provision of this MOU.

**12. EXECUTION**

- A. This MOU may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Understanding on the dates set forth below.

City of Albany  
By: Nicole Almaguer  
City Manager Date

Approved as to form and legality:  
Mala Subramanian, City Attorney

By: Michael A. Hursh  
General Manager Date  
Alameda-Contra Costa Transit District

Approved as to form and content  
Denise C. Standridge, General Counsel

**EXHIBIT A  
CITY OF ALBANY'S  
PILOT PARKLET PROGRAM  
In support of  
AC TRANSIT'S SAFE ROUTES TO TRANSIT PROJECT**

**Summary:**

In 2014, AC Transit received \$100,000 of Safe Routes to Transit funds to develop the concept of a shared parklet/bus stop, including design and construction of a "proof of concept." Staff then worked closely with the City of Albany and business owners to develop such a parklet on Solano Avenue. This Parklet was installed at the intersection of Solano Avenue and Cornell in 2018. Following the successful implementation of that parklet, AC Transit and the City were approached by another business – Mr Dewie's – to install another parklet. This new parklet will create a new stop for AC Transit Lines 18 and G and allow for service on San Pablo Avenue to move to the far-side of Solano Avenue, thus improving safety and reliability for operations on a high-frequency corridor.

**Background:**

Parklets

A parklet is an adaptive reuse of an on-street parking space to provide new amenities such as seating, landscaping, bike storage, public art, wayfinding, or pedestrian scale shade or lighting. Parklets can be designed to offer all the benefits of a traditional concrete bulb-out including reduced delay, more convenient ADA access, and larger footprint for passenger amenities. Using parklets as a mechanism for these transit improvements has the added benefit of engendering greater community support, reducing environmental review burden, reducing capital costs and truncating timeline for construction.

**Objective:**

The parklet must meet the needs of all users and must therefore function as both outside seating for the business and a convenient and comfortable bus bulb for transit users. To meet this objective, the key design features are:

- Bench seating and landscaping for all users;
- ADA accessible design for all users;
- 250+ square feet of queueing space for transit users off the sidewalk;
- 265+ square feet of cafe-style seating in front of a neighborhood-serving retail; and
- Possible pedestrian-scale lighting improvements.

Design details are available in the plans provided in **Exhibit B**

**Insurance Liability:**

As a condition of approval, the business owner is required by the City of Albany and AC Transit to list the City of Albany and AC Transit as additional insureds on the business owner's general commercial liability policy for the duration of the project's construction. Policy limits must not be less than \$1,000,000 per occurrence.

**Annual Renewal:**

Annually, the City of Albany will renew the parklet permit following a parklet inspection to ensure the parklet is safe and in a state of good repair. Renewal will also require Business Owner to provide the City of Albany an updated certificate of commercial liability insurance (not less than \$1,000,000).

**Cost Estimate:**

Materials and construction is estimated to cost approximately \$39,500 to \$43,350. The range of costs accounts for optional features--canopy and/or pedestrian scale lighting. A breakdown of costs for materials, labor, and equipment are summarized below in Figure 1. Detailed cost estimates are provided in Exhibit C.

**Figure 1. Cost Estimates for Materials and Labor**

AC Transit will contribute up to \$70,000 of General Funds to the project. All cost overruns must be paid by the business owner. The business owner must have sufficient funds in place to complete the proposed work before beginning the implementation process. The business owner will be required to show proof that sufficient funds are available before permits are issued.

**Reimbursement of Project Costs:**

AC Transit General Funds will be used for this project as a reimbursement for construction costs. The business owner will submit invoices to the City of Albany for eligible (i.e., construction-only) expenses. The City of Albany will then invoice AC Transit. AC Transit will reimburse the City for up to \$70,000 in eligible expenses via a Memorandum of Understanding (MOU) for the explicit purpose of funding construction of the parklet.

The City of Albany will reimburse the business owner for eligible expenses in a timely manner. The City of Albany will invoice AC Transit for those eligible expenses but will not withhold payment to the business owner pending payment from AC Transit. Likewise, AC Transit will reimburse the City of Albany for eligible expenses in a timely manner.

Below is a general outline of events for the transfer of funds

- Business owner pays costs for materials and labor
- Business owner invoices City of Albany for eligible costs
- City of Albany reimburses business owner through pilot parklet program in a timely manner
- City of Albany invoices AC Transit for eligible costs
- AC Transit reimburses City of Albany through general funds reserved for this project code

**Maintenance and Responsibilities:**

AC Transit, the City of Albany, and the Business Owner

**Figure 2. Maintenance and Responsibilities****Hours of Operation:**

The parklet shall remain available for public use during the full span of transit service, approximately 5:30 AM - 1:00 AM.

**Timeline:**

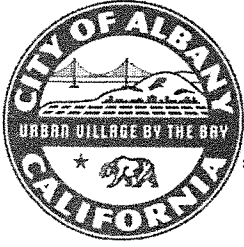
Below is a general timeline of events for this project

- XX/XX/2020 – City of Albany approves funding agreement and parklet design
- XX/XX/2020 – AC Transit approves funding agreement
- XX/XX/2020 – Business owner is authorized to construct parklet
- XX/XX/2020 – Construction complete
- XX/XX/2020 – Business owner submits invoice to City of Albany for eligible costs

- XX/XX/2020 – City of Albany submits invoice to AC Transit for eligible costs
- XX/XX/2020 – AC Transit reimburses City of Albany







# City of Albany

1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • [www.albanyca.org](http://www.albanyca.org)

## RESOLUTION NO. 2018-45

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 16th day of April, 2018, by the following votes:

AYES: Council Members Barnes, Maass, Nason, Pilch and Mayor McQuaid

NOES:

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

17th day of April, 2018.

*Eileen Harrington*

Eileen Harrington  
DEPUTY CITY CLERK







# City of Albany

1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • www.albanyca.org

**RESOLUTION NO.        2018-135**

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 19<sup>th</sup> day of November, 2018, by the following votes:

AYES: Council Members Barnes, Maass, Nason, Pilch, and Mayor McQuaid

NOES:

ABSENT:

ABSTAINED:

RECUSED:

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 20<sup>th</sup> day  
of November, 2018

Anne Hsu  
CITY CLERK