

APPENDIX B

AGREEMENT FOR SERVICES BETWEEN THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY AND “INVESTMENT CONSULTANT”.

THIS AGREEMENT is made this XXth day of XXXX, 2010 by and between the **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY (“ACTA”)** and **XXXXXXX (“Investment Consultant”)**.

RECITALS

The following recitals are a substantive part of this Agreement:

- A. ACTA desires professional management services.
- B. Investment Consultant is qualified by virtue of experience, training, education and expertise to accomplish these services.
- C. This Agreement establishes the terms and conditions for ACTA’s engagement of Investment Consultant to provide the services described below.

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM OF AGREEMENT

The term of this Agreement for investment advisory and management services shall be for a period of five (5) years commencing XXXX X, 2010 and ending XXXX XX, 2015, provided however, that ACTA may at its sole and complete discretion terminate this Agreement in its entirety on any annual term anniversary date (any XXXX XX) by providing Investment Consultant a minimum 60 days prior written notice of such termination. ACTA may at its sole discretion exercise an option to renew the Agreement for up to two consecutive two-year periods.

2. INVESTMENT MANAGEMENT

a. All services shall be performed in accordance with generally-accepted professional practices and principles and to ACTA’s reasonable satisfaction. ACTA funds are to be invested and reinvested only in those instruments which are permitted under ACTA’s Statement of Investment Policy (“Investment Policy”), authorized by Sections 53601 and 53635 of the Government Code of the State of California, and Permitted Investment sections of any current or future ACTA financing or investment agreements providing for investment of bond proceeds.

ACTA's Investment Policy is attached hereto as Exhibit A. In the event of a conflict or ambiguity in the interpretation of the Government Code of the State of California, the Investment Policy, the definition of "Permitted Investments" in any current or future documents providing for investment of bond proceeds, the more restrictive provisions as to credit quality and duration shall prevail, unless the Investment Consultant obtains written instructions from ACTA's Chief Financial Officer indicating a different priority of investments. ACTA's Governing Board reserves the right to amend and update Exhibit A from time to time.

b. Investment Consultant will have complete discretion in the management of separate accounts that consist of proceeds of federal, state, and local grants, loans, revenue bond proceeds (including construction funds, debt service reserve funds and capitalization interest funds) and operating revenues. Investment Consultant shall make investment changes pursuant to and in accordance with ACTA's Investment Policy without prior consultation or approval, and invest and reinvest available funds at such time and in such a manner as the Investment Consultant deems to be appropriate for ACTA, with due consideration for risk. In order that Investment Consultant may accomplish the foregoing, ACTA appoints Investment Consultant as agent and attorney-in-fact with the broadest possible power of investment management over the ACTA accounts, and subject to the obligation of the Investment Consultant to act in good faith.

c. ACTA has directed the Trustee/Custodian to act in accordance with the investment instructions of the Investment Consultant. ACTA reserves the right to change the Trustee/Custodian at any time. The Investment Consultant shall at no time have custody or physical control over ACTA assets and the Investment Consultant shall not be liable for any or omission by the Trustee/Custodian.

d. The Parties agree that services of the Investment Consultant hereunder are non-exclusive and ACTA reserves the right in its sole discretion to place portions of its funds with other investment consultants, the Trustee/Custodian or ACTA staff.

Custodian Name:

Custodian Address:

Custodian Contact:

Trustee Name:

Trustee Address:

Trust Contact:

e. ACTA may, at its sole discretion, request that Investment Consultant perform arbitrage rebate calculations on behalf of ACTA. If such request is made, Investment Consultant's fees for the performance are as specified in Exhibit B.

Funds under management by Investment Consultant are attached hereto as Exhibit C. ACTA reserves the right, from time to time and in its sole discretion, to update and revise Exhibit C.

3. **REPORTS**

Investment Consultant will provide by the 10th day of each month:

a. A monthly Statement of Investments held in the ACTA accounts, and all transactions occurring during the month.

b. Any other reports required by statute or regulatory authority.

Investment Consultant shall provide upon ACTA's written request details of trade execution to ACTA at times other than as part of the monthly report.

4. **NOTICES AND INSTRUCTIONS**

ACTA may rely upon any instruction given by the Investment Consultant in connection with the ACTA accounts, orally, by electronic means or in writing (including facsimile and E-mail). Investment Consultant agrees to confirm in writing all oral instructions, but failure to do so shall not affect ACTA's right to rely thereon. Notices to Investment Consultant may be oral or in writing, and any written notice shall be deemed received by either confirmation it was delivered or the day on which it is mailed to the address set forth below or such address specified by Investment Consultant in writing for such purpose.

5. **COMPENSATION**

Investment Consultant's annual compensation will be invoiced and payable monthly at the rates reflected in the attached fee schedule, Exhibit B. Investment Consultant shall also be entitled to reimbursement for reasonable out-of-pocket expenses associated with extraordinary services such as, but not limited to, travel or special reports. Extraordinary services shall be approved in advance by ACTA's Chief Financial Officer. Investment Consultant shall send invoices for payment to ACTA's Chief Financial Officer. Any provision herein to the contrary notwithstanding, the annual compensation payable to Investment Consultant shall not exceed \$XXX,XXX.

6. **CONFIDENTIAL RELATIONSHIP**

All information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except as required by law.

7. **FURTHER INFORMATION REGARDING ACTA**

State of Incorporation: **A Public Entity Formed Pursuant To
The California Joint Powers Act**

Address: **One Civic Plaza
Suite 350
Carson, California 90745**

Contact: **Chief Financial Officer**

8. **CERTIFICATION**

Tax Identification Number: XX-XXXXXXX

Under penalties of perjury, ACTA certifies that:

- a. The number shown on this form is the correct taxpayer identification, and
- b. ACTA is not subject to backup withholding, because ACTA is exempt from backup withholding.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications to avoid backup withholding.

9. **INDEPENDENT CONTRACTOR**

Excepting for the agency relationship as provided by Section 2.b., it is agreed that the Investment Consultant shall act and be an independent contractor and is not an employee of ACTA and is not entitled to participate in any pension plans or other benefits ACTA provides for its employees.

10. **COMPLIANCE WITH LAW**

Investment Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

11. **OWNERSHIP OF WORK PRODUCT**

All documents and other information, in connection with this Agreement, developed or received by Investment Consultant shall be the property of ACTA. Investment Consultant shall provide ACTA with copies of these items upon demand or upon termination of this Agreement.

12. **CONFLICT OF INTEREST IN REPORTING**

Investment Consultant shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. Investment Consultant agrees to comply with the requirements of the Fair Political Practices Commission, including, but not limited to preparation and filing as required of Form 700, Statement of Economic Interest. It is understood that the Investment Consultant performs investment advisory services for various clients. ACTA agrees that the Investment Consultant may give advice and take action with respect to any of its clients which may differ from the advice given to, or the timing or nature of action taken with respect to ACTA, provided that the policy and practice of the Investment Consultant is not to favor or disfavor consistently or consciously any client or class of clients in the allocation of investment opportunities and that, to the extent practical, such opportunities are allocated among clients over a period of time on a fair and equitable basis.

13. **INDEMNIFICATION**

Investment Consultant agrees to protect and hold harmless ACTA and its board, officers, agents and employees from any and all claims, liabilities, expenses or damages of any nature arising from the performance of this Agreement.

At all times during the term of this Agreement, Investment Consultant shall maintain the following fidelity bonds and insurance policies:

- a. \$10 million limit, excess \$100,000 deductible, Investment Advisor Professional Liability Insurance.
- b. \$1 million General Liability Coverage.

14. **MODIFICATION**

This Agreement constitutes the entire Agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by ACTA and Investment Consultant.

15. **ENTIRE CONTRACT**

This Agreement, together with the Exhibits annexed hereto, states the entire Agreement of the parties hereto; is intended to be the complete and exclusive statement of the terms hereof; and, may not be modified or amended except by a writing signed by the parties hereto as specified in paragraph 14.

16. **GOVERNING LAW**

This Agreement shall be construed, enforced and administered according to the laws of the State of California.

17. **PRESERVATION OF AGREEMENT**

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

18. **AUTHORITY TO EXECUTE**

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

IN WITNESS WHEREOF, these parties have executed this Agreement:

**ALAMEDA CORRIDOR TRANSPORTATION
AUTHORITY**

By: _____
John T. Doherty
Chief Executive Officer

By: _____
ACTA Co- Counsel

XXXXXXXX

By: _____