

AGREEMENT NO. C0871

BETWEEN THE ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY
AND
MANATT, PHELPS AND PHILLIPS, LLP

THIS AGREEMENT ("Agreement") is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority ("ACTA"), acting by and through its Governing Board ("Board") and MANATT, PHELPS AND PHILLIPS, LLP, a California Limited Liability Partnership, 1050 Connecticut Avenue, N. W. , Suite 600, Washington, D.C., 20036 ("Consultant").

WHEREAS, ACTA requires effective federal government advocacy representation in Washington, D.C. to assist ACTA in pursuing various legislative and regulatory objectives and securing federal funding when available; and

WHEREAS, ACTA requires the professional, expert and technical services of Consultant to assist ACTA in developing and implementing an effective federal government advocacy plan to secure additional resources and support for ACTA's strategic objectives; and

WHEREAS, ACTA requires the professional services of Consultant to monitor and advise ACTA of proposed legislation and policy matters that could impact ACTA and the Goods Movement Industry; and

WHEREAS, Consultant possesses extensive experience in dealing with key members of Congress, White House and other federal government officials, as well as experience handling policy issues and advocacy groups that impact ACTA; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to ACTA; and

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to ACTA, as an independent contractor, certain professional, technical and expert services as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between ACTA and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or

other, and regardless of whether assessed by the federal government, any state, city, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's Chief Executive Officer ("ACTA's CEO") or his or her designee, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to ACTA and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon ACTA's CEO's written request, Consultant shall supply ACTA with all agreements between Consultant and its Subconsultants.

II. SERVICES TO BE PERFORMED BY ACTA

A. ACTA shall furnish Consultant, upon its request, all documents and papers in possession of ACTA which may lawfully be supplied to Consultant and which are necessary for Consultant to perform its obligations.

B. ACTA's CEO or his or her designee is designated as the contract administrator for ACTA and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article IX (Termination) hereof.

C. Consultant shall provide ACTA's CEO with reasonable advance written notice if it requires access to the premises of ACTA or of the Alameda Corridor. Access rights, if any, shall be granted to Consultant at the sole reasonable discretion of ACTA's CEO, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or contractors of ACTA and that access rights granted by ACTA to Consultant shall be consistent with any such occupancy or use.

III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. The effective date of this Agreement shall be the date of its execution by ACTA's CEO or his designee upon authorization of the Board.

B. This Agreement shall be in full force and effect commencing from the date of execution by ACTA's CEO or his designee and shall be for an initial period from that date of execution to June 30, 2021, subject to the following:

1. ACTA has the option to renew the term of the Agreement for one (1) consecutive renewal period of three (3) years, or a portion thereof. Exercise of the option to renew shall be by approval of the Board and written amendment approved by both parties prior to the end of the initial term of the Agreement; or

2. The Board, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

IV. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ACTA shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum amount payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Two Hundred Ten Thousand Dollars (\$210,000).

C. Consultant shall submit invoices in duplicate to ACTA monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

"I certify under penalty of perjury that the above invoice is true and just, in accordance with the terms of Agreement No. C0871, that payment of this invoice has not been received and that none of the items contained in the invoice have been submitted to any other agency.

(Consultant's Signature)

D. All invoices shall be approved by ACTA's CEO or his designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of ACTA business, the same may be approved, audited and processed.

E. Invoices shall include the Agreement number, Contract Task Order number if applicable, employee name, title/classification, hourly rates (if applicable), hours worked, current charges and cumulative charges. Subconsultant invoices, if any, shall be in a similar format. Consultant shall submit appropriate supporting documents

with each invoice, including a Monthly Activity Report for the services provided during the prior month pursuant to 1) the fixed monthly fee and 2) Contract Task Orders issued during the reporting month, if any. Additional supporting documents may include provider invoices, payrolls, and time sheets. ACTA may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Department
Alameda Corridor Transportation Authority
3760 Kilroy Airport Way, Suite 200
Long Beach, California 90806

V. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at Consultant's premises by ACTA, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, ACTA may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to ACTA. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ACTA at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ACTA. ACTA's right shall also include inspection

at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to ACTA, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article V shall constitute a material breach of this Agreement and shall entitle ACTA to withhold any payment due under this Agreement until such breach is cured.

VI. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ACTA. Consultant shall not represent itself as an agent or employee of ACTA and shall have no power to bind ACTA in contract or otherwise.

VII. INDEMNIFICATION

Except for the sole negligence or willful misconduct of ACTA, its Board or any of its Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless ACTA, its Board and any of its Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by ACTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its Subcontractors of any tier. Rights and remedies available to ACTA under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California.

VIII. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VII, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to

ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(2) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against ACTA in any circumstance in which it is alleged that actions or omissions of ACTA contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

(3) Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following completion or termination of the Agreement.

B. Insurance Procured by Consultant on Behalf of ACTA

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VII, and where Consultant is required to name ACTA, its Board, officers, agents and employees as Primary additional insureds on any insurance

policy required by this Agreement, Consultant shall cause ACTA to be named as an additional insured on all policies it procures in connection with this Article VIII. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that ACTA, its Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. C0871, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons to ACTA's CEO.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by ACTA is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to ACTA's CEO with copies sent to ACTA's Co-General Counsel at the following addresses; 1) Office of the Long Beach City Attorney, 333 West Ocean Boulevard, 11th Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article VIII shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Consultant's insurance broker or agent shall submit to ACTA the appropriate proof of insurance on Consultant's behalf.

Upon request by ACTA, Consultant shall furnish full copies of certified policies of any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ACTA.

(3) Notice of Cancellation

Each insurance policy described above, except for professional liability, shall provide that it shall not be canceled or reduced in coverage until after ACTA has each been given a 10-days notice of cancellation for nonpayment of premium and a 30-days notice of cancellation for any other reason by written notice via registered mail to ACTA. Consultant warrants that it shall maintain the professional liability insurance coverage required under this Agreement and shall provide written notice to ACTA under this section for any cancellation or reduction of professional liability insurance coverage.

(4) Modification of Coverage

ACTA's CEO, at his sole reasonable discretion, based upon recommendation of independent insurance consultants to ACTA, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to ACTA a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, ACTA's CEO may, at his or her own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, ACTA requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to ACTA.

D. Accident Reports

Consultant shall report in writing to ACTA's CEO within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon any Alameda Corridor property if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

IX. TERMINATION PROVISION

The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of ACTA to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

X. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of ACTA's CEO where the work may conflict with the interests of ACTA.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on ACTA to such Subconsultant(s) or give the Subconsultant(s) any rights against ACTA.

XI. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded shall contain a like nondiscrimination provision.

XII. SMALL BUSINESS ENTERPRISE PROGRAM

It is the policy of ACTA to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all ACTA contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist ACTA in implementing ACTA's Small Business Program attached hereto as Exhibit D, and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement.

XIII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of ACTA. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ACTA relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, ACTA may immediately terminate this Agreement by giving written notice thereof.

XIV. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of ACTA's CEO.

XV. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVI. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify ACTA, its Board and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any

person or persons, or corporations in consequence of the use by ACTA of any materials supplied by Consultant in the performance of this Agreement.

XVII. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ACTA as soon as they are developed, whether in draft or final form. ACTA has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ACTA at all times owns rights provided for in this Article free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ACTA the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ACTA, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to ACTA, its Board, officers, agents or employees, is not given in confidence. Accordingly, ACTA or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, ACTA shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by ACTA. Upon ACTA's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to ACTA. It is expressly understood and agreed that, as between ACTA and Consultant, the referenced license shall arise for ACTA's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ACTA may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by ACTA.

XVIII. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

XIX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice ACTA shall be addressed to its Chief Executive Officer, Alameda Corridor Transportation Authority, 3760 Kilroy Airport Way, Suite 200, Long Beach, California 90806, and notice to Consultant shall be addressed to it at Consultant's address set forth in the opening paragraph of this Agreement. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XX. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

XXI. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this

Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXII. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

XXIII. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XIV. MODIFICATION IN WRITING

This Agreement may be modified, amended or changed only by written agreement of all parties, said agreement duly executed and delivered by both parties. Any such modifications are subject to all applicable approval processes required by ACTA.

XV. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XVI. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

XVII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY

Date: _____

By: _____
John T. Doherty, P.E.
Chief Executive Officer

Attest: _____
Secretary

MANATT, PHELPS AND
PHILLIPS, LLP

Date: _____

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

APPROVED AS TO FORM

_____, 2018
MICHAEL N. FEUER, Los Angeles City Attorney

By _____
Heather M. McCloskey
ACTA Co-General Counsel

Exhibit A

Scope of Work

ACTA's Public Affairs Office will oversee the efforts of Consultant, under the direction of ACTA's Chief Executive Officer.

The following areas are the assignments for which Consultant will provide federal advocacy assistance to ACTA pursuant to the monthly retainer fee.

- Assist in developing ACTA's annual legislative priorities.
- Provide advocacy assistance and continued outreach to the federal administration and Congress, as well as legislative staff and federal agencies such as USDOT and FRA.
- Monitor and report on proposed legislation and policy matters that could impact ACTA, the ports of Los Angeles and Long Beach and the Goods Movement Industry, particularly as it may impact transportation in Southern California.
- Working with ACTA staff, keep Congress and federal administration staff abreast of ACTA matters, such as:
 - Performance on the Alameda Corridor
 - ACTA's fee collection structure
 - ACTA bonds
- Arrange meetings for ACTA staff with Congressional delegation members, legislative staff and federal agencies. Staff from the ports of Los Angeles and Long Beach may participate in these meetings to promote the legislative needs of these two ports. Provide logistic support and attend these meetings as necessary.
- Monitor and/or attend Goods Movement and Transportation meetings in Washington, D.C., as requested.
- Inform ACTA of current and future freight and transportation project funding opportunities.

Upon request of ACTA, Consultant shall provide additional or extraordinary services not described herein or covered by the monthly retainer fee. ACTA and Consultant shall jointly coordinate such services in accordance with the terms of the Agreement, this Exhibit A and Exhibit B.

Exhibit B Compensation

- A. As compensation for the satisfactory performances of services required to be rendered by this Agreement, ACTA shall pay Consultant a monthly retainer fee of Five Thousand Dollars (\$5,000) following the month in which Consultant has rendered such services.
- B. For any work performed pursuant to a written Contract Task Order, the following fully-burdened hourly rates for the individuals listed herein shall be as follows:

<u>Name</u>	<u>Function</u>	<u>Hourly Rate</u>
June DeHart	Federal Advocate	\$762.75
Ned Waters	Legislative Advocate	\$216.75

The hourly rates set forth herein shall be subject to a 3.5% annual percentage increase during the term of the Agreement, to be implemented on the annual anniversary of the effective date of the Agreement.

- C. Each monthly Invoice required by Section IV of the Agreement shall be accompanied by a Monthly Activity Report that details the work and accomplishments completed in support of the Scope of Work of this Agreement. The parties acknowledge and agree that written acceptance of the Monthly Activity Report by ACTA's CEO or his designee constitutes a condition precedent to ACTA's payment obligation under the Agreement.
- D. In accordance with the terms of the Agreement, the compensation set forth herein includes payment for all labor, travel, per diem, fringe benefits, general and overhead costs, expenses, profit, materials, supplies, transportation and all other direct and indirect expenses incurred by Consultant.

**EXHIBIT C
MONTHLY SUBCONTRACTOR MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of _____.

Contract No. _____ Start Date _____ End Date _____

Committed SBE Participation Percentage _____

	Name of Subcontractor	Type of Work Performed	Certifications:* SBE/VSBE/MBE/WBE/OBE/DVBE	PROPOSED	ACTUALS	
				Original Proposed SBE Percentage	Amount Paid to Date	Contract Amount Percentage
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

* Indicate all certifications held by each subcontractor

EXHIBIT D

SMALL BUSINESS ENTERPRISE PROGRAM

The Alameda Corridor Transportation Authority ("ACTA") is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at ACTA. ACTA's Small Business Enterprise (SBE) Program was created to provide opportunities for small businesses to participate in professional service and construction contracts. It is the policy of ACTA to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBEs). The SBE Program allows ACTA to target small business participation, including MBEs, WBEs, and DVBEs, more effectively.

An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this Federal Advocacy Services Agreement, it has been determined that the percentage of small business participation will be 0% participation.**

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement, where required, and for reporting to ACTA. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

Name of Firm _____

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to ACTA, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

Small/Very Small Business Enterprise Program: Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE
 VSBE
 MBE
 WBE
 DVBE
 OBE

Signature _____
 Printed Name _____

Title _____
 Date Signed _____

NOTARY

<p>STATE OF CALIFORNIA)) ss COUNTY OF LOS ANGELES)</p> <p style="text-align: center; margin-top: 20px;">Place Notary Seal and/or Stamp Above</p>	<p>Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20__ by</p> <p>(1) _____ Name of Signer (1)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)</p> <p style="text-align: center;">(and)</p> <p>(2) _____ Name of Signer (2)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)</p> <p>Signature _____</p>
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Contractor Description Form

For the Prime Contractor and each Subcontractor, state the type of SBE certification claimed and, if available, return documentation with this form to ACTA evidencing the declared SBE certification.

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____

Contract Title: _____

Business Name: _____ Award Total: \$ _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)

If claimed, state SBE certification type: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)

If claimed, state SBE certification type: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)

If claimed, state SBE certification type: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____