

File: 07-LA-405-8.8
EA: 30480
Project: 0714000084
Agreement: 0721RRC00377
DOT: 921636D
RMP: 0013.96

**RIGHT OF WAY AGREEMENT
RAILROAD COORDINATION
TO SUPPORT CONSTRUCTION OF THE
STRUCTURAL DRAINAGE PROJECT AT DOLORES YARD**

This Agreement ("Agreement") is made as of this ____ day of _____, 2021 ("Effective Date") by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority, acting by and through its Governing Board, herein called "ACTA", and the State of California, acting by and through its DEPARTMENT OF TRANSPORTATION, herein called "State" and collectively referred to herein as "The Parties."

RECITALS:

- A. State desires to improve current drainage system along the median of the Interstate 405 freeway over railroad tracks owned by ACTA. The State will remove fourteen non-functional drainage inlets and replace them with numerous smaller inlets at State overhead bridge (Bridge #53-1168) identified as DOT #921636D crossing over ACTA's tracks and Union Pacific's intermodal yard known as Dolores Yard along the Alameda Corridor Subdivision in the City of Carson, Los Angeles County, California (the "Project").
- B. Railroad operations and facilities are located within the Project's limits.
- C. All work affecting rail operations and public crossings are under the jurisdiction of the California Public Utilities Commission ("CPUC") and their authorization must be obtained prior to start of Project.
- D. In order for the Project to proceed, State and ACTA agree that to comply with the CPUC and Federal safety requirements for the Project set forth in CPUC Orders and Federal requirement 23 CFR 140 Subpart I and 23 CFR 646, State must seek, and ACTA must provide preliminary engineering review and approval of the Project's plans.
- E. In consideration of the foregoing recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

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AGREEMENT:

1. The Parties agree that ACTA, at no cost to ACTA, will review the State's project plans for any potential conflicts and identify compliance requirements. Approval of the preliminary engineering plans will not be unreasonably withheld. ACTA will provide initial responses and/or feedback to STATE starting six weeks after receiving the initial submission of plans. ACTA acknowledges that STATE must certify that all pre-contract award requirements for the project have been met by June 30, 2021. The Parties mutually acknowledge that the time frame for delivery of final plan review and separate agreement to establish construction and maintenance requirements for the Project and/or secure requested railroad services, if required, is dependent upon many factors including, without limitation, the complexity of the interface between the Project's design and rail corridor safety and operations requirements.
2. State agrees to reimburse ACTA for actual costs and expenses reasonably and necessarily incurred by ACTA in performance of required activities in connection with the Project, including all direct and indirect overhead labor/construction costs. State recognizes that it can elect under 23 CFR 140.907 to reimburse ACTA for all direct and indirect overhead labor/construction costs using Federal additive rates and agrees to do so. The ACTA's scope of work and the estimated amount of cost and expense to be incurred by ACTA in connection with the Project work are summarized in the estimate attached hereto as Exhibit "A" (the "Estimate"). Any additional work required incidental to that shown on the Estimate, but specifically detailed thereon, may be included as part of this Agreement by written request or approval of State and ACTA. The Parties acknowledge and agree that ACTA may recalculate and update the Estimate in the event that the Effective Date is greater than six (6) months after the date of the Estimate. Application of federally approved and STATE accepted labor additive rates will apply to current or future costs and may be retroactively applied to any cost billed after the Effective Date of this Agreement.
3. All work to be done hereunder by ACTA shall be done by ACTA's employees or ACTA's contractor(s) on a force account basis, the cost hereof to be paid to ACTA by State in the manner herein set forth.
4. The Parties hereto agree State is a qualified self-insurer.
5. All applicable portions of Title 23, Code of Federal Regulations, Parts 646A, 646B and 140I are by reference incorporated herein and made a part of.
6. The records accounts of ACTA relating to the project shall be open for inspection and audit by State and/or Federal Government during normal business hours at ACTA's Long Beach, California headquarters for a period of three years from the date final payment from State is received by ACTA in connection with the Project.

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7. Under Federal Regulations there are no ascertainable net benefits to ACTA and there shall be no required ACTA sharing of the costs.
8. In accordance with the California Prompt Payment Act, Government Code Sections 927 et seq., all undisputed bills shall be paid within 45 days of receipt of the invoice from ACTA. In the event that State determines that any costs set forth in an invoice are not allowable, State shall deliver written notice to ACTA identifying the disputed amounts and setting forth State's reasoning as to why such amounts are not allowable, and upon ACTA's receipt of such notice, State and ACTA shall use commercially reasonable efforts to promptly resolve any such disputed amounts. The provisions of this Section 8 shall survive termination of this Agreement. All invoices and payment inquiries shall be submitted to:

CA Department of Transportation
Division of Right of Way & Land Surveys
Attn: Railroad Agreements
P.O. Box 942874 MS 37
Sacramento, CA 94274-0001

9. No alternation or variation of the terms of this Agreement shall be valid unless made by a formal amendment and executed by the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
10. The provisions of this Agreement are not intended to create duties or obligations or rights to third Parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
11. This Agreement is effective as of the Effective Date shown on the front page of this Agreement and after it is fully signed and executed by all Parties' authorized signatories. Each party hereto represents and warrants that the person executing this Agreement on behalf of such party has full power and authority to enter into this Agreement.
12. ACTA shall submit its bills to State on a monthly basis for actual costs ACTA incurred for work performed by ACTA.

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13. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of ACTA and upon the assigns of State.
14. This Agreement shall terminate upon completion of the work performed by ACTA pursuant to Article 1, or five years from the Effective Date of this Agreement, whichever is earlier in time.
15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate, by their officers thereunto duly authorized, as of the day and year first above written.

By: _____
MICHAEL C. LEUE, P.E.
CHIEF EXECUTIVE OFFICER

By: _____
APPROVED AS TO FORM
LOS ANGELES CITY ATTORNEY – MICHAEL N. FEUER

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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
TIAIRA T MOERING-HILL
Chief, office of Railroad & Utility Relocations
Division of Right of Way and land Surveys

Recommended for Approval:

By: *Teresa McNamara*
TERESA McNAMARA
HQ Railroad Coordinator
Division of Right of Way and Land
Surveys

By: *Mario Zamorano Jr*
MARIO ZAMORANO JR
Associate Right of Way Agent
Division of Railroads

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EXHIBIT "A"

COST ESTIMATE

Locations: I-405 FWY – CARSON, CA
DOT#921636D
Railroad MP 13.96

Project: To install drainage pipes along the underside of the freeway

ESTIMATE:

Project Oversight and Plan Review	\$25,000.00
Contingency @25%	<u>\$ 6,250.00</u>
Total	<u>\$31,250.00</u>

Note: This is an estimate only. ACTA will bill on an actual cost basis.