



REQUEST FOR PROPOSALS

**Alameda Corridor
Outside Counsel Legal Services**

To be submitted to:

**Alameda Corridor Transportation Authority
3760 Kilroy Airport Way, Suite 200
Long Beach, California 90806**

January 24, 2023



Prospective Law Firms:

SUBJECT: REQUEST FOR PROPOSALS FOR OUTSIDE COUNSEL LEGAL SERVICES.

The Alameda Corridor Transportation Authority (“ACTA”) invites the submittal of proposals to provide certain legal services to ACTA as described herein. Legal services will be provided on an “on-call” basis after an agreement is awarded by the ACTA Governing Board.

Interested firms are invited to submit a proposal to provide the subject services. Instructions and forms to be used in preparing proposals are set forth in this RFP.

The schedule for this RFP will be as follows:

Request for Proposals Published	January 24, 2023
Questions Due	February 03, 2023
Responses to Questions Posted	February 10, 2023
Proposals Due	February 24, 2023

For questions regarding this RFP, please email legal-services-rfp@acta.org by February 03, 2023. Responses to questions will be posted on ACTA’s website at <https://www.acta.org/newsroom/contract-opportunities/legal-services> on February 10, 2023. It is the responsibility of proposers to review ACTA’s website for any RFP revisions or answers to questions prior to submitting a proposal to ensure their proposal is complete and responsive.

If your firm cannot agree to the requirements exactly as set forth in this RFP, please do not submit a proposal.

Sincerely,

Michael Leue

Chief Executive Officer

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ATTACHMENTS

Attachment 1. ACTA Law Firm Agreement

1. INTRODUCTION

1.1. The Alameda Corridor Transportation Authority

The Alameda Corridor Transportation Authority (“ACTA”) was established in 1989 through a Joint Exercise of Powers Agreement (JPA) between the City of Long Beach and the City of Los Angeles. ACTA was created primarily for the purpose of developing, financing, constructing, and operating the Alameda Corridor. In November 1995, the Alameda Corridor was designated by Congress as a Project of National Significance, allowing ACTA to seek a federal loan as part of the funding package to build the \$2.4 billion project.

The Alameda Corridor, completed in 2002, is a 20-mile long, multiple-track rail system designed to link the rail facilities of the Port of Los Angeles and the Port of Long Beach with the transcontinental rail network of the Union Pacific Railroad Company (UP) and the BNSF Railway (BNSF), near downtown Los Angeles. The Corridor consolidated the freight rail traffic from four lines, 90 miles in length, onto a single fully grade-separated route. The Corridor operates 24-hours a day, 7-days a week.

Upon completion in 2002, rail operations on the Corridor began, along with revenue collection from UP and BNSF for use of the corridor. Today, ACTA is focused on revenue collections from its two primary users, UP and BNSF, and repayment of the bonds which were issued in order to pay for the construction of the project. ACTA is also responsible for the maintenance-of-way activities on the Corridor.

ACTA has a seven-member Governing Board, comprised of two members each from Port of Los Angeles and Port of Long Beach, one member each from the City of Los Angeles and the City of Long Beach and one member representing the Los Angeles County Metropolitan Transportation Authority.

For further information regarding ACTA including current Governing Board members, historical revenues, annual reports, and financial information please see its website: <https://www.acta.org/>

1.2. ACTA Co-General Counsel

Pursuant to the terms of its Joint Exercise of Powers Agreement, ACTA is represented by two attorneys serving as Co-General Counsel, assigned from the Long Beach Office of the City Attorney and the Los Angeles Office of the City Attorney. ACTA’s Co-General Counsel provides general in-house legal counsel to the ACTA Governing Board and ACTA staff. The attorneys draft and approve ACTA’s permits and contracts, review real property transactions, assist as in-house counsel on bond financing transactions, and provide day-to-day legal advice on ACTA matters. The Co-General Counsel also represent ACTA in litigation, which may involve contract and construction disputes, real property issues and environmental matters. All outside counsel law firms hired pursuant to this RFP will report to and work directly with ACTA’s Co-General Counsel.

2. THE PROPOSED LEGAL SERVICES

ACTA is seeking experienced law firms possessing substantial background and experience in advising government agency clients with respect to the following practice areas:

1. Public Finance (bond, tax and disclosure services);
2. Business Transactions and Contracts;
3. Employment Matters, including CalPERS expertise;

4. Real Property;
5. Construction Contracts and Claims; and
6. Environmental Regulations and Entitlements (including CEQA and NEPA); and
7. Litigation coverage for any of the matters listed above.

This RFP process is designed to select a pool of suitable firms to provide on-call legal services and advice to ACTA for various matters arising from time to time. After engagement, firms may be assigned to provide services either through direct selection or by internal competitive selection among qualified firms in the pool. Once engaged for a specific project, the firm will be provided with substantial supplemental information concerning the matter.

As requested below, proposals shall set forth the firm's and each attorney's background and qualifications that make the firm suitable for the proposed services. The firm's proposal should identify with specificity the area or areas of expertise listed above for which the firm is seeking to represent ACTA. For each area specified, firms should be able to provide litigation services in the event such need should arise.

The initial duration of any agreements awarded is expected to be for a period of five (5) years. Selected firms are not guaranteed any work or a fixed amount of compensation during the agreement term.

3. PROPOSAL REQUIREMENTS

3.1. Proposal Submission

One (1) digital copy of the proposal must be submitted by email on or before February 24, 2023 to:

legal-services-rfp@acta.org

All electronic submissions will be sent a confirmation of receipt from ACTA. It is the responsibility of the proposer to confirm receipt if confirmation is not received following submission. The proposal opening will not be a public event.

Proposers are solely responsible for the timeliness of their submittals. As such, Proposers are cautioned to budget adequate time to ensure that their proposals are delivered via email before the deadline set forth above.

A proposer may withdraw its proposal prior to the specified due date and time. A written request to withdraw, sent by an authorized representative of the firm, must be submitted to ACTA at the address specified herein for submittal of the proposal. After withdrawing a previously submitted proposal, the proposer may submit another proposal at any time up to the specified submission deadline.

By submitting a proposal, Proposers certify that such proposal constitutes their full and complete written response to the RFP and evidences their acknowledgement that additional written material outside of such proposal shall not be considered by ACTA in connection with this RFP, unless ACTA provides a written request that they submit additional written materials. Absent such written request, proposers are instructed to not submit to ACTA written or other materials outside of the proposal, either in a subsequent interview or otherwise.

Proposers shall be responsible for all costs incurred in the preparation and submittal of their proposals, and such costs or expenses shall not be included as a part of their proposal.

3.2. Evaluation Process and Selection Criteria

All proposals meeting the requirements of this RFP shall be reviewed and rated by an evaluation committee according to the following criteria: 1) demonstrated relevant expertise and qualifications of the firm; 2) relevant experience representing and advising public entities in the proposed practice areas, including litigation where applicable; 3) qualifications and experience of proposed attorneys; 4) competitive hourly rates and fees; and 5) quality and responsiveness of the proposal.

ACTA may contact one or more proposing firms for interviews with the evaluation committee as part of the proposal evaluation process. At ACTA's discretion, interviews may be conducted in-person or via a virtual meeting platform such as Microsoft Teams.

The evaluation committee will make the final recommendation for selecting firms, which shall be subject to approval of ACTA's Governing Board. ACTA reserves the right to select and award agreements to one or more firms, however such selection shall not guarantee that any amount of work may be assigned to a firm during the term of the agreement.

Proposers are advised that all documentation submitted in response to this RFP will be considered property of ACTA and may become available to the public as a public record and may be released without further notification. Any information that the proposer considers confidential should not be submitted with the proposal.

The right to reject any and all proposals shall, in every case, be reserved, as shall the right to waive any informality in the proposal when to do so would be to the advantage of ACTA.

3.3. Proposal Content

Proposals shall be written on 8-1/2 x 11-inch paper in no less than 11-point font, with 1-inch page margins. Tables, charts and graphics may be single spaced with smaller fonts but must be easy to read. Proposals shall not include any promotional materials and shall be limited only to the information requested in this RFP.

Proposals should identify with specificity the practice area(s) addressed in this RFP for which the firm is seeking to represent ACTA. A firm proposing to offer services in only one practice area shall submit a proposal which does not exceed 20 single-sided (or 10 double-sided) pages in length. A firm proposing to offer services in two or more of the practice areas requested may add up to 10 additional single-sided (or 5 double-sided) pages for each practice area proposed (e.g., a firm proposing to offer two practice areas may submit a proposal up to 30 single-sided (or 15 double-sided) pages in length). Proposals with double-sided page printing are encouraged to be submitted and pages left blank shall not be included in the page count. In all instances, the Transmittal Cover Letter and attorney resumes shall not be included in the page count and may be submitted in an appendix.

The following items shall be included in the proposal. Proposals that fail to address all requested information may be deemed non-responsive and rejected.

3.3.1. Transmittal Cover Letter

Provide a brief narrative introducing the firm and attorney team highlighting the special strengths of the firm to perform the proposed legal services. Specifically state the practice area(s) for which the firm is proposing to provide legal representation to ACTA, including whether litigation services can be provided in each area proposed. Include a brief description of the firm's legal structure, headquarters and other office locations.

Include a statement in the cover letter indicating that the firm will accept and enter into an agreement with the terms, including insurance and indemnification requirements, as set forth in Attachment 1.

The letter should be signed by an authorized principal of the firm.

3.3.2. Firm Qualifications, Experience and References

Provide a narrative describing the firm's qualifications and relevant experience for the practice areas for which the firm seeks to represent ACTA. Identify the firm's current and recent experience, and the nature of the legal services rendered.

Provide information on the total number of attorneys the firm employs in the proposed practice areas. Selected firms shall have sufficient qualified attorneys, paralegals, and other personnel resources to provide the legal services required. Law firms with offices and assigned attorneys located in the Southern California region are preferred but not required for selection.

Please identify public agency clients the firm has represented in the proposed practice areas and dates of representation, if this information is not confidential. If possible, provide at least two public agency client references, with contact names and information. Please state whether the firm has current or past contracts with ACTA, the City of Long Beach, the City of Los Angeles, or the County of Los Angeles (including the Metropolitan Transportation Authority), with a brief description of services, including contract number(s) and date(s).

Please state if the firm is presently involved in any litigation involving the City of Los Angeles, the City of Long Beach or the County of Los Angeles (including the Metropolitan Transportation Authority). For matters referenced, please provide the jurisdiction, case name and number and a brief description of the matter.

If the firm has been subject to any civil litigation within the last five (5) years for malpractice arising out of its performance of legal services for any firm client, provide the following: (a) name and court case identification number for each case; (b) the jurisdiction in which it was filed; and (c) the status or outcome of the litigation (i.e., whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed).

Provide information on whether the firm represents any interests which may constitute an actual or potential conflict of interest in the representation of ACTA, including conflicts of interest with the City of Los Angeles, the City of Long Beach or the County of Los Angeles (including the Metropolitan Transportation Authority). If a question exists regarding any potential conflict of interest pursuant to Rule

3-310 of the California Rules of Professional Conflict, counsel shall scrupulously observe the requirements of Section 6068(e) of the California Business and Professions Code.

3.3.3. Assigned Attorneys and Staffing

Provide a brief description of the attorneys and support staff (and any subconsultants) to be assigned in representing ACTA and their relationship to the legal services to be provided. For proposed attorneys, include their name, title, licenses, certificates, fields of expertise, and relevant experience. Provide a resume for each attorney as an appendix to the proposal.

3.3.4. Project Management

Identify the attorney who will be the Supervising Attorney for the firm in providing services to ACTA, which will include agreement administration and project management.

ACTA desires to contract with firms that will be responsive and available on a consistent basis throughout the term of the agreement. Please describe management practices or other safeguards the firm can offer to ensure that the team designated to provide the proposed legal services is affected to the lowest extent possible by turnover and other impacts to continuity.

3.3.5. Hourly Rates and Pricing

Provide specific hourly rates for named attorneys and paralegals proposed for the engagement. Provide standard hourly rates for attorneys and paralegals by position (e.g., associate, senior associate, partner, etc.). If differing rates are charged to municipal entities or you are willing to provide a billing rate discount, please so indicate, and provide a breakdown of those rates. If hourly billing rates are to be increased over the term of the contract, provide the proposed percentage increase or actual increased billing rate by contract year.

Specifically state whether such hourly billing rates include all administrative and overhead costs, such as word processing and telephone charges. Please indicate what charges are not included in the identified hourly billing rates, including reimbursable costs, and any other assumptions made for the rates and pricing provided.

3.3.6. Small Business Enterprise Participation Requirements

The ACTA Governing Board has established a Small Business Enterprise (SBE) participation goal for all ACTA contracts awarded after January 1, 2017, of an aggregate average of 25% by contract value, and/or 25% of all contracts awarded to certified SBE firms. The minimum required SBE participation level by contract value for the proposed Project shall be 0%. However, if a Proposer is a certified SBE firm, please so state in your transmittal cover letter.

ACTA AGREEMENT NO. _____

AGREEMENT BETWEEN
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY
AND

THIS AGREEMENT, is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY (“ACTA”), a Joint Powers Authority, acting by and through its Governing Board, and _____, a (firm type), located at _____ (“Outside Counsel”).

WHEREAS, ACTA has a need for specialized legal services relating to _____ and other advice; and

WHEREAS, Outside Counsel indicates that it has the expertise and competence to perform the professional legal services sought by ACTA; and

WHEREAS, ACTA has selected Outside Counsel to provide such services from time to time as directed by ACTA’s Co-General Counsel, and Outside Counsel desires to provide such services to ACTA and is able to do so without a conflict of interest; and

NOW, THEREFORE, in consideration of the promises, covenants, terms and conditions contained herein, the parties hereby covenant, agree and represent as follows:

1. SCOPE OF REPRESENTATION AND PARTNERING

Outside Counsel is retained to assist ACTA’s Co-General Counsel in providing legal services for ACTA acting by and through its Governing Board. Outside Counsel shall at all times work under the direction of ACTA’s Co-General Counsel. ACTA and its Co-General Counsel shall rely on the competence, expertise and experience of Outside Counsel. At all times, Outside Counsel shall provide professional legal advice and services at the highest level expected of law firms providing legal services in the Los Angeles region. This is a non-exclusive agreement to provide legal services to ACTA and ACTA may, at its discretion, augment the services with another law firm or law firms or select to terminate Outside Counsel’s services in a manner consistent with this Agreement.

ACTA and Outside Counsel recognize and agree that an important purpose of this Agreement is to promote effective collaboration between its Co-General Counsel and Outside Counsel so that, among other things, Co-General Counsel is able to gain familiarity with the legal issues presented in these matters and for Outside Counsel to impart substantive subject matter knowledge to ACTA’s lawyers. To this end, ACTA’s Co-General Counsel and Outside Counsel both agree to make reasonable efforts to coordinate their efforts and work.

2. TERM OF AGREEMENT

The term of this agreement shall be deemed to commence upon the date of signature by ACTA's CEO and, subject to the provisions of Section 6(A), shall be for a term of five years.

3. OUTSIDE COUNSEL SERVICES AND RESPONSIBILITIES

It is understood that ACTA's Co-General Counsel renders day-to-day and on-going legal services to ACTA, and that Outside Counsel shall perform its services hereunder at the direction of Co-General Counsel. Subject to the general supervision of Co-General Counsel, Outside Counsel shall perform legal services as may be necessary or desirable in connection with _____ and other advice and representation as required. It is understood that Outside Counsel shall function as attorneys at law in the independent practice of its profession and not as employees of ACTA.

A. Professional Ethics and Conflicts of Interest

ACTA recognizes that Outside Counsel may have clients that, from time to time, may have interests adverse to ACTA. Any such representation shall be in accordance with the ethical duties of members of the State Bar of California including, without limitation, those established by the Bar's Rules of Professional Conduct. Outside Counsel shall send written notice to Co-General Counsel of any actual or potential conflict of interest with ACTA that exists during Outside Counsel's engagement under this Agreement and request a waiver of such conflict by Co-General Counsel. The request for waiver shall describe in detail the nature of the proposed engagement by Outside Counsel, the nature of the conflict, and why Outside Counsel believes a waiver is appropriate. Outside Counsel's representation of ACTA does not create an attorney/client relationship with any of ACTA's member agencies.

B. Key Outside Counsel Personnel

1. Outside Counsel's Supervising Attorney for this Agreement shall be _____. Outside Counsel's Supervising Attorney shall not be changed without Co-General Counsel's written authorization.

2. Outside Counsel's Supervising Attorney shall have full authority to act for Outside Counsel on all daily operational matters under this Agreement and shall serve as or designate Lead Counsel for all matters performed pursuant to this Agreement. Designation of a Lead Counsel other than the Supervising Attorney shall be subject to Co-General Counsel's prior written approval.

C. Legal Representation

1. Outside Counsel shall provide ACTA with the necessary representation by qualified staff at the least costly billing category. The names of personnel authorized to provide services under this Agreement and the hourly rates for each staff member are listed in Exhibit A, attached hereto and incorporated herein.

2. Any use of personnel other than as enumerated in Exhibit A shall be subject to the prior written approval of Co-General Counsel. Outside Counsel may hire consultants, but

only with the prior written approval of Co-General Counsel. Outside Counsel may retain other law firms or attorneys as subcontractors to provide the legal services covered by this Agreement, but only with the prior written approval of Co-General Counsel. Any such written approval of subcontractors must set forth the name of each approved attorney or other personnel and the agreed rate for such individual. Outside Counsel will require any such subcontractors or consultants to comply with the terms and conditions of this Agreement and will indemnify, defend and forever hold harmless ACTA from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of any negligent acts errors, or omissions or willful misconduct of any such subcontractors or consultants.

3. Outside Counsel shall provide all required reports referenced in this Agreement.

4. Outside Counsel shall meet with Co-General Counsel as requested.

5. Outside Counsel shall consult with Co-General Counsel on trial and tactical decisions.

6. Outside Counsel shall maintain all backup documentation to support all entries included in its billings.

4. COMPENSATION

A. Not To Exceed Amount

For the services rendered to ACTA by Outside Counsel pursuant to this Agreement, ACTA shall pay Outside Counsel at hourly rates not-to-exceed the hourly rates attached hereto as Exhibit A, which rates shall remain in effect for the term of this Agreement. All fees and expenses billed pursuant to this Agreement shall not exceed _____ (\$_____) without prior mutual agreement of the parties and a written amendment.

B. Outside Counsel's Obligation For Continued Performance

In the event that Outside Counsel's fees, costs and expenses, in the aggregate, exceed the amount appropriated by ACTA as provided herein, Outside Counsel shall not be obligated to provide services or incur any further costs or expenses on the work required hereunder, and ACTA shall not be liable for fees or costs in excess of the amount appropriated, unless the appropriated amount is increased as provided herein. Outside Counsel shall be responsible for notifying Co-General Counsel that the aforesaid appropriated amount will be expended before completion of the work required hereunder and that Outside Counsel will need additional funds if ACTA desires further work. Outside Counsel shall give written notice to Co-General Counsel when Outside Counsel's expenditures under this Agreement are equal to sixty percent (60%) and eighty percent (80%) of the total dollar value appropriated for this Agreement so that Co-General Counsel has sufficient time to consider whether it desires to seek an additional appropriation and written amendment to the Agreement.

C. Fees

ACTA shall pay Outside Counsel for the services performed by Outside Counsel which are reasonably necessary. The fees for such services shall be based upon the time expended to render the required services, with fractions thereof being stated to the tenth of an hour, and shall be computed at a rate not to exceed the rates specified for each category of staff as listed in Exhibit A.

D. ACTA's Reservation of Rights to Obtain Reimbursement

ACTA shall pay Outside Counsel based on Outside Counsel's submission of monthly billing statements consistent with the provisions of this Agreement. Even though ACTA makes payment pursuant to billing statements, ACTA shall have the right to demand reimbursement any time ACTA determines that previously paid costs and expenses were not properly billed by Outside Counsel. Outside Counsel shall promptly reimburse ACTA for such costs and expenses previously paid by ACTA.

E. Expenses

ACTA shall reimburse Outside Counsel for reasonable, actual out-of-pocket expenses enumerated below incurred in performing the work specified herein. Such out-of-pocket expenses over \$50.00 must be supported by appropriate documentation for reimbursement. Absent the express prior written approval of Co-General Counsel, ACTA will not pay for any extraordinary expenses incurred in any legal matter. Co-General Counsel must approve in writing any item of expense that exceeds \$1,000. Such expenses include, but are not limited to, expert witnesses, consultant services, investigative services, computer litigation support services, videotaping of depositions, temporary office help, travel expenses, meals as well as other expenses. Outside Counsel shall note that ACTA is exempt from all filing fee charges.

1. Reimbursable ordinary expenses shall include, but are not limited to:

a) Deposition fees. ACTA expects Outside Counsel to keep the costs of deposition transcripts to a minimum. When depositions are taken and Outside Counsel receives the original deposition transcript, ACTA shall not pay the court reporter's fee for providing Outside Counsel with an extra photocopy of the deposition transcript. ACTA expects Outside Counsel to make a photocopy of the original deposition transcript at Outside Counsel's office. Likewise, when attending depositions of third parties or third-party witnesses, ACTA requests that, if Outside Counsel believes an additional copy of the deposition transcript is necessary, Outside Counsel agree with opposing counsel to share the costs. Prior written approval from Co-General Counsel must be obtained before ordering any expedited original or expedited copy of a deposition transcript.

b) Deposition summaries, if necessary, should be brief and should be completed by the deposing attorney. ACTA shall not pay for a paralegal or other lawyer to summarize the deposition transcript unless trial is imminent. ACTA shall not pay for summaries that are, in effect, a complete regurgitation of the underlying deposition.

c) Transcript fees.

- d) Messenger service. Note that where possible, documents should be transmitted via email or facsimile.
- e) Process service.
- f) In-house document reproduction. Outside Counsel may charge up to \$0.10 cents per page for photocopies. The billing statement shall contain the total number of copies made.

2. Reimbursable extraordinary expenses shall include charges of which Outside Counsel has obtained Co-General Counsel's prior written approval. Such expenses shall include, but are not limited to:

- a) Consultants.
- b) Expert witnesses.
- c) Investigative services.
- d) Computer Assisted Legal Research ("CALR") - ACTA's decision to retain a particular firm is based in part on the firm's expertise and knowledge. ACTA therefore assumes familiarity with the basic substantive law at issue in the matter for which the firm was retained; any exception to this general expectation should be discussed fully at the time of retention. In conducting legal research Outside Counsel is expected to utilize all appropriate sources reasonably available, including previously prepared briefs and memoranda. Should Outside Counsel determine that it is necessary to incur CALR charges in order to satisfy the terms of this Agreement, Outside Counsel shall obtain Co-General Counsel's prior written approval to charge for such expenses. No charges for CALR shall be paid by ACTA without Co-General Counsel's prior written approval of such a charge.
- e) Outside Counsel shall describe in detail in its billings any travel expenses incurred by Outside Counsel. ACTA retains the right to audit these expenses. All travel shall be reimbursed in the same manner for which the travel would be reimbursable to ACTA employees if incurred by them in the performance of their duties. All travel expenses outside the Counties of Los Angeles, San Bernardino, Orange, Riverside, Imperial, Kern, Ventura and Santa Barbara shall be subject to Co-General Counsel's prior written approval. Unapproved travel shall not be reimbursed.
- f) Lodging. A receipt shall be submitted for reimbursement of single occupancy hotel accommodation, which will be reimbursed up to the maximum allowed to an ACTA employee if incurred by them in the performance of their duties.

3. Non-reimbursable expenses shall include, but are not limited to:
 - a) Staff time or overtime for performing secretarial, clerical, or word processing functions.
 - b) Charges for time spent complying with ACTA audits or billing inquiries.
 - c) Charges for work performed which Co-General Counsel had not authorized. Such work shall be a gratuitous effort by Outside Counsel.
 - d) Expenses that are considered to be part of general law firm overhead, including but not limited to, administrative time, secretarial time, calendaring, setting up files, indexing, word processing, air conditioning, equipment rental, office supplies, meals, snacks, beverages, seminars, books or association dues, etc.
 - e) Charges for telephone services except for international long distance which shall be charged at cost.

F. Most Favored Nation

Outside Counsel represents that, as of the date hereof, the rates set forth in Exhibit A and the other economic terms and conditions provided in this Agreement, taken individually, are at least as favorable to ACTA as those provided to the Long Beach City Attorney's Office or the Los Angeles City Attorney's Office for the same type of work set forth in Section 3 of this Agreement, in the event that either of these entities are a client of Outside Counsel (individually and collectively defined herein as "Municipal Client").

If during the term of this Agreement (including any extension or renewal) Outside Counsel has in effect or places into effect an agreement with a Municipal Client that has a lower rate or other more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel shall promptly offer such More Favorable Provision to ACTA, unconditionally by providing written notice thereof to ACTA (an "MFN Notice") and, at ACTA's election, this Agreement shall be deemed to have been modified to provide ACTA with such More Favorable Provision from the date such provision is effective for Outside Counsel's Municipal Client.

Outside Counsel's failure to provide ACTA with an MFN Notice shall not limit or otherwise impact ACTA's right to enjoy the benefits of the applicable More Favorable Provision(s).

5. BILLINGS AND PAYMENT

A. Payment to Outside Counsel shall be made by ACTA from time to time in due course of payments, but not more frequently than once each month, and only upon the submission of an itemized invoice as described in this Agreement, showing in reasonable and complete detail the services rendered and reimbursable costs and expenses incurred in connection with the services rendered. Outside Counsel and ACTA mutually recognize that legal services performed under this Agreement are being paid for with public funds and that,

therefore, a heightened duty of care exists in Outside Counsel and ACTA to ensure that Outside Counsel scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying out the goals of this Agreement. Outside Counsel pledges to observe a duty of reasonableness and cost-effective representation in all aspects of this Agreement.

B. Each invoice shall be signed by Outside Counsel's Supervising Attorney shall include the following certification:

"I certify under penalty of perjury that the above invoice is just and correct according to the terms of ACTA Agreement No. _____ and that payment has not been received. I further certify that none of the items contained in said invoice have been submitted for reimbursement to any other company or agency."

Signature

Further, Outside Counsel shall certify that its members and employees have performed the work and incurred the costs and expenses in full conformance with the provisions of this Agreement and that it is entitled to receive said amount pursuant to the terms of this Agreement. In the event Co-General Counsel assigns additional matters unrelated to each other to Outside Counsel, a separate and distinct identification must be reflected on each invoice submitted to ACTA and detailed description of work performed as assigned by Co-General Counsel as described above.

C. Outside Counsel shall not bill for hours other than those expressly devoted to the tasks as authorized under this Agreement, and Outside Counsel shall not bill for time not specifically assigned by Co-General Counsel. Outside Counsel shall not use legal professionals for secretarial work, and under no circumstances, bill for time consumed by attorneys making copies or scheduling appointments or taking care of matters or work which would otherwise be performed by a clerk or a secretary. Any and all conferences and activities engaged by Outside Counsel shall be fully described in complete detail and shall only take place when assigned by Co-General Counsel.

D. ACTA shall not pay for more than one attorney doing any particular task unless Co-General Counsel has given its prior written approval. ACTA will not pay for two or more attorneys attending the same meeting, deposition or court appearance unless approved by Co-General Counsel. ACTA will pay for the time recorded by more than one attorney for in-office conferences, but only if the conference is an occasional and necessary strategy meeting relating to some significant legal event or proceeding.

E. ACTA shall not pay for duplicative time charges by two or more attorneys, e.g., for legal research, reviewing documents, drafting documents, except as approved in writing by Co-General Counsel. ACTA shall not pay for "training" or "apprenticeship" time. ACTA shall not pay for the involvement of attorneys who work on the case irregularly or sporadically, unless a particular attorney has a special expertise that substantially advances a particular project or the prosecution/defense of a case.

F. Use of paralegals is encouraged providing they meet the requirements set forth herein. Assignment of work to paralegals should not result in duplicative activity between attorneys and paralegals, or the reworking or rewriting of paralegals' work product by attorneys. ACTA shall not pay for paralegal time spent performing clerical/secretarial work (e.g., filing, indexing, sorting, organizing, photocopying and bates stamping documents) unless Co-General Counsel has given its prior written approval. ACTA expects paralegals to perform true paralegal work, e.g., research, document productions, preparing discovery or responses, interviewing witnesses, etc.

G. Billings under this Agreement shall not be made in more than one-tenth of an hour (six minute) increments, and shall represent the devotion of a full six minutes before such an increment is billed. Under no circumstances shall Outside Counsel use "block billing" procedures, wherein a list of series of activities is done each day with only an aggregate amount of time specified. Instead, Outside Counsel shall provide a detailed specific entry for each separate task and sub-task reflecting the time for such task or subtask. All tasks set forth in Outside Counsel's billing documentation shall be highly specific and highly detailed. Overly generalized listings of task descriptions such as "review contract", "prepare for negotiations", "review/send communications" or similar entries shall not be acceptable. Outside Counsel shall provide detailed descriptions providing a meaningful record to an independent auditor reviewing said task description.

H. Each billing statement shall be identified by a unique number and itemized to include:

- a) Project name;
- b) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal;
 - 1) Each activity shall be billed in a reporting format as set forth in Exhibit B.
 - 2) A detailed description of specific activities for each attorney and/or paralegal shall include, but is not limited to:
 - (a) In-person conferences.
 - (b) Telephone calls.
 - (c) Correspondence.
 - (d) Research, including computerized legal research.
 - (e) Travel.
- c) Total current monthly expenses billed in the following categories:
 - 1) Consultant and expert witness expenses;
 - 2) Deposition and transcript expenses;
 - 3) Other miscellaneous expenses.
 - 4) Total cumulative expenses to date billed in (1)-(3).
- d) Total cumulative fees and expenses billed to date on project/matter.

Outside Counsel shall submit appropriate supporting documents with each billing statement. Such documents may include provider invoices, payrolls, and time sheets. ACTA may require, and Outside Counsel shall provide, all documents reasonably required to determine whether amounts on the billing statement are allowable expenses under this Agreement.

I. For payment and processing, all original billing statements should be sent to the following address:

Alameda Corridor Transportation Authority
Kevin Scott, CFO
3760 Kilroy Airport Way, Suite 200
Long Beach, CA 90806
kscott@acta.org

6. GENERAL CONDITIONS

A. Termination or Suspension of Legal Services

1. Termination/Suspension For ACTA's Convenience

The ACTA Governing Board, in its sole discretion, may terminate and cancel all or part of this Agreement for any reason upon giving Outside Counsel ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

After receiving a notice of termination or suspension, unless otherwise directed by Co-General Counsel, Outside Counsel shall:

- 1) Stop services on the date and to the extent specified in the notice;
- 2) Continue to perform services not terminated or suspended by the notice;
- 3) Submit final billing for services rendered through the time of termination no later than thirty (30) calendar days from the effective date of termination; and
- 4) If Outside Counsel fails to submit a final billing within the time allowed, Co-General Counsel may determine the amount, if any, to be paid to Outside Counsel. Outside Counsel agrees that Co-General Counsel's determination shall be final.

2. Termination For Outside Counsel's Default

Services performed under this Agreement may be terminated in whole or in part by ACTA upon a default by Outside Counsel. Under this Agreement, Outside Counsel will be deemed in default if Outside Counsel:

- 1) Fails to perform the service(s) within the specified time period; or

- 2) Fails to perform any of the provisions contained in this Agreement; or
- 3) Fails to make adequate progress in the matter and endangers the performance of this Agreement's terms.

If ACTA terminates services under this Section 6.A.2, ACTA may obtain alternative legal services with terms and in a manner ACTA deems appropriate. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to ACTA for any excess costs associated with obtaining and utilizing alternative legal services.

3. Closing Report Upon Termination

If requested by Co-General Counsel, Outside Counsel shall deliver a Closing Report within two days of the termination of services. The Closing Report shall include, but is not limited to, a description of the status of projects handled by Outside Counsel prior to termination. Outside Counsel shall give Co-General Counsel all evidence, files and attorney work product for every matter in which Outside Counsel has represented ACTA, including but not limited to any computerized indices, programs and document retrieval systems created or used for the matter.

B. Independent Contractor Status

This Agreement is between ACTA and Outside Counsel and is not intended, and shall not be construed, to create, as between ACTA and Outside Counsel, the relationship of agent, servant, employee, partnership, joint venture or association. Outside Counsel understands and agrees that all Outside Counsel personnel furnishing services to ACTA under this Agreement are employees solely of Outside Counsel and not ACTA. Outside Counsel shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any Outside Counsel personnel for injuries arising from services performed under this Agreement.

C. Ownership of Documents

All information, documents, records, reports, data, or other materials furnished to Outside Counsel or other such information, documents, records, data or other materials to which Outside Counsel has access during their performance pursuant to this Agreement are deemed confidential and shall remain the property of ACTA. Outside Counsel shall not make use of such items for any purpose unrelated to the matter involved herein and shall not make oral or written disclosure thereof, other than as necessary for their performance hereunder, without the prior written approval of ACTA.

D. Indemnity for General Liability

Except for the sole negligence or willful misconduct of ACTA, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel 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 Outside Counsel'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, or omissions or willful misconduct incident to the performance of this Agreement by Outside Counsel 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.

E. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of ACTA, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel undertakes and agrees to defend, indemnify and hold harmless ACTA and any and all of its Boards, Officers, Agents, or Employees, Assigns and Successors in Interest from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against ACTA, its Boards, Officers, Agents, Employees, Assigns and Successors in Interest by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any negligent acts, errors, or omissions, or willful misconduct of Outside Counsel, its boards, officers, agents, employees, or subconsultants.

F. Workers' Compensation

Outside Counsel 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 the Outside Counsel shall comply with such provisions before commencing the performance of the tasks under this Agreement. Outside Counsel 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 Workers' Compensation and occupational disease requirements shall include coverage for all employees of Outside Counsel, and for all employees of any subcontractor or other vendor retained by Outside Counsel.

G. Professional Liability Insurance

Outside Counsel 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.

Outside Counsel 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 this Agreement and until two (2) years following termination or completion of services pursuant to this Agreement.

- a) Carrier Requirements: All insurance which Outside Counsel 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.
- b) Notice of Cancellation: In the event that Outside Counsel receives notice of intended cancellation of the above described Professional Liability Insurance policy, or that coverage limits will be reduced below \$1,000,000, Outside Counsel shall immediately provide written notice of same to ACTA and Co-General Counsel.
- c) Modification of Coverage: ACTA's Chief Executive Office, at his or her 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 Outside Counsel.
- d) Renewal of Policies: At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall furnish to ACTA a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Outside Counsel neglects or fails to secure or maintain the insurance required above, ACTA's Chief Executive Officer may, at his or her own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance will be deducted from the next payment due Outside Counsel.

H. Validity

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

I. Waiver

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any future breach of the provision or any breach of any other provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

J. Remedies Reserved to ACTA

The remedies reserved to ACTA shall be cumulative and additional to any other remedies provided in law or equity.

K. Authorization for Warranty

Outside Counsel represents and warrants that the signatory to this Agreement is fully authorized to obligate Outside Counsel and that all corporate acts necessary to the execution of this Agreement have been accomplished.

L. Changes and Written Amendment of Terms

Material changes to this Agreement shall only be effective upon the execution of a mutually-approved written amendment.

7. AUTHORIZED REPRESENTATIVES

ACTA's Co-General Counsel represents ACTA on all matters related to this Agreement.

8. NOTICES

The following addresses shall serve as the places to which notices and other correspondence between the parties shall be sent:

A. Outside Counsel:

B. ACTA Co-General Counsel:

Long Beach Office of the City Attorney
411 West Ocean Blvd, 9th Floor
Long Beach, CA 90802
Attention: ACTA Co-General Counsel

Los Angeles Office of the City Attorney
Harbor Division
425 S. Palos Verdes Street
San Pedro, CA 90731
Attention: ACTA Co-General Counsel

C. ACTA:

ACTA
Kevin Scott
Chief Financial Officer
3760 Kilroy Airport Way, Suite 200
Long Beach, California 90806

All such notices shall be delivered personally to the other parties, or shall be deposited in the United States mail, properly addressed as aforesaid, with postage fully prepaid by certified or registered mail, and shall be effective upon receipt.

9. EMPLOYMENT OF OTHER COUNSEL, SPECIALISTS OR EXPERTS

Outside Counsel will not employ or otherwise incur any obligation, pay other counsel, specialists or experts for services in connection with this Agreement without prior written approval of Co-General Counsel.

10. AUDIT AND INSPECTION OF RECORDS

For at least three years after completion of services under this Agreement or termination of this Agreement, Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement, shall maintain backup documentation to support all entries included in the monthly billing statement. Such backup documentation shall be maintained in an auditable format and in accordance with generally accepted accounting principles. ACTA, at its sole discretion, may, at any time up to three years beyond the completion of services or termination of this Agreement, audit Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement. Outside Counsel and any such third parties shall promptly and fully cooperate with the audit, including affording ACTA, Co-General Counsel and/or its auditors access to records and files maintained by Outside Counsel and the third party.

11. 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. Outside Counsel shall assist ACTA in implementing ACTA's Small Business Program 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.

12. MERGER

This Agreement supersedes all prior communications and all previous written and oral agreements, and shall constitute the complete and exclusive statement of understanding between ACTA, Co-General Counsel and Outside Counsel relating to the subject matter of this Agreement.

13. COMPLIANCE WITH APPLICABLE LAWS

Outside Counsel shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations.

14. 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.

15. TRADEMARKS, COPYRIGHTS, AND PATENTS

Outside Counsel agrees to save, keep, hold harmless, protect and indemnify ACTA 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 Outside Counsel in the performance of this Agreement.

16. PROPRIETARY INFORMATION

The Outside Counsel may not disclose to any party without ACTA's permission any information developed pursuant to this Agreement. ACTA will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to ACTA.

17. 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 Outside Counsel relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Outside Counsel 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, Outside Counsel is required to safeguard such information from access by unauthorized personnel.

18. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Outside Counsel declares that it has an authorized TIN. No payments will be made under this Agreement without a valid TIN.

19. NO ASSIGNMENT

This Agreement contemplates the personal professional services of Outside Counsel, its members and professional employees, and it is acknowledged by the parties hereto that a substantial inducement to ACTA for entering into this Agreement was, and is, the professional reputation and competence of Outside Counsel. Neither this Agreement nor any interest therein may be assigned. Any attempt by Outside Counsel to assign or subcontract services

relating to this Agreement without prior written consent shall constitute a material breach of this Agreement.

20. INTEGRATION

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

21. SEVERABILITY

Should any part of this Agreement be found to be invalid, the remainder of this Agreement is to continue in full force and effect.

22. COUNTERPARTS

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

The use of electronic signatures herein, or in any amendments to this Agreement, and any electronic records related to this Agreement (including, without limitation, any agreement or other record created, generated, sent, communicated, received, or stored by electronic means), shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

The words "execution," "signed," "signature," and words of like import in this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf" "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign or Acrobat Sign).

The parties agree that electronically signed and/or electronically transmitted signatures shall be conclusive proof, admissible in judicial proceedings, of such party's execution of this Agreement.

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

ALAMEDA CORRIDOR TRANSPORTATION
AUTHORITY

Date _____

By: _____
Chief Executive Officer

FIRM NAME

Date _____

By: _____
Managing Partner

APPROVED AS TO FORM

_____, 2023
_____, _____ City Attorney

By: _____
_____, Deputy City Attorney
ACTA Co-General Counsel

EXHIBIT A

FIRM NAME
 AGREEMENT NO. _____

A. The hourly rates for each authorized timekeeper shall not exceed the following amounts, as provided for each year of the agreement. After the first two years, the hourly rate for each authorized timekeeper shall be increased by ___ percent (_%), rounded to the nearest dollar, effective on July 1 of years 2025, 2026 and 2027 as indicated below.

Authorized Timekeeper	Title	7/1/2023 to 6/30/2025	7/1/2025 to 6/30/2026	7/1/2026 to 6/30/2027	7/1/2027 to 6/30/2028
	Partner	\$			
	Of Counsel	\$			
	Sr. Associate	\$			
	Associate	\$			

B. The hourly rate for each timekeeper category shall not exceed the following amounts, as provided for each year of the agreement. After the first two years of the agreement, the hourly rate for each timekeeper category shall be increased by _____ percent (_%), rounded to the nearest dollar, effective on July 1 of years 2025, 2026 and 2027 as indicated below.

Timekeeper Category	7/1/2023 to 6/30/2025	7/1/2025 to 6/30/2026	7/1/2026 to 6/30/2027	7/1/2027 to 6/30/2028
Partner	\$			
Of Counsel	\$			
Sr. Associate	\$			
Associate	\$			
Paralegal	\$			

EXHIBIT B
SAMPLE INVOICE
 (Legal Firm Letterhead)

Alameda Corridor Transportation Authority
 Attention: Kevin Scott, CFO
 3760 Kilroy Airport Way, Suite #200
 Long Beach, CA 90806

Invoice #:

 Invoice Date:

Invoice Period:
 Project Name/Matter Number:

Professional Services

<u>Date</u>	<u>Timekeeper</u>	<u>Position</u>	<u>Description of Services</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
Total Professional Services						\$ -

Expenses/Disbursements

<u>Date</u>	<u>Timekeeper</u>	<u>Position</u>	<u>Description</u>	<u>Amount</u>	<u>Rate</u>	<u>Total</u>
						\$ -
						\$ -
Total Expenses						\$ -

Total Invoice Amount \$ -

Total Cumulative Fees and Expenses Billed to
 Date on Project/Matter \$ -

I certify under penalty of perjury that the above invoice is just and correct according to the terms of ACTA Agreement No. _____ and that payment has not been received. I further certify that none of the items contained in said invoice have been submitted for reimbursement to any other company or agency.

 Signature